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FROM THE DESK OF CHIEF EDITOR

The challenge of Judicial Education is to make good and great judges. To inculcate good court craft. To cultivate good communication skills. To learn the art of writing good judgements. To imbibe good values. Be good human beings. Be good judges. M.C. Chagla was a great judge. It is said about his Court that it was a 'temple' of justice for the litigant. An academy of 'Legal Education' for the lawyers. I wish to add, it was an epitome of 'Judicial Education'.

A judge's Court should be such where lawyers are tempted to appear. The judge must keep good environment. Convenient and comfortable. Equally, the lawyers must contribute to such congenial court environment. The lawyers and the judges constitute the legal and judicial coparcenary. The lawyers should be able to assist the court effectively. In the best possible manner. If that be so, the judges would enrich through the medium of their judgements. The inter-action between the lawyers and judges should always be meaningful and useful. A judge in court should be able to solicit the best from the lawyer. Similarly, the lawyer should be able to give the best to assist the court. The both will have to learn the court craftsmanship. The lawyers must be respectful to the court. The judges also must respond in the same manner. This understanding between the two can go a long way. This would usher a system which would be highly productive. The judges should not be arrogant. The lawyers should not be agitated. Cool and sound minds are always highly productive. Both need to learn, how to control. How to manage the situation. No denting. No mending. All smooth. They must realize that they are dealing with human problems. Therefore, they must nurture humane attitude. Positive mind. Scientific temper. They must show light. Carve out a smooth passage to write good judgements. Judgements to do justice.

Judicial Academies need to play an effective role in inculcating the art of writing good judgments. A judge speaks through his judgments. A judgement should always be reflective of factual canvas. A clear appreciation of the evidence on record. The legal issues. The submissions and arguments. The consideration and application of mind. The reasoning. The parties must know why one has won and the other has lost the case. A question has arisen. Should judgements be evaluated while considering for promotion from one step another to another? The answer is only one, in the affirmative. Good and very good judgements speak of the mind of the judge. There could not be a better barometer to measure the strength of a good judge than to judge the judgements of a judge. Learning from the experience of experienced judges is real Judicial Education. I would like to share what happened when Justice M.C. Chagla was sitting with Chief Justice Sir John Beaumont hearing Income Tax reference. After the arguments finished, the Chief turned to Chagla and told him; "I have lost my voice. You fire off the judgement". Justice Chagla dictated the judgement extempore on the subject which was new to him. Having concluded the judgement, Justice Chagla told the Chief : "I wish you had given me some notice before asking me to deliver the judgement". He smiled and said: "my dear boy, you have done very well. I do not think any notice was necessary." That was the beauty of Justice Chagla's mind. I urge the Judicial Fraternity to accept the challenge of writing good judgements. Judges are always remembered for their judgements.

Balram K. Gupta

AN INDIAN SUMMER OF JUDICIAL EDUCATION IN CHANDIGARH, AUGUST 2018

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Unlike a poem that begins in delight and ends in wisdom, this write-up in remembrance of the *Judicial Training Programme for Sri Lankan Judges* held from 11th to 13th of August 2018 at *Chandigarh Judicial Academy* is quite the opposite, beginning with wisdom ending in delight. To begin with, travelling to India to participate in this programme, I carried with me a sombre notion from Leo Tolstoy's *"Death of Ivan Ilyich"*, a reservoir of wisdom on the conduct of judges as human beings. The novella opens with a scene where members of the bench and the public prosecutor had come together in the judge's chambers during a court adjournment. Amidst their conversation on a famous case, they come across in the newspaper, a death announcement of a fellow judge. Their response is distressing for a judge to read.

> "Ivan Ilyich had been a colleague of the gentlemen assembled there, and they had all liked him. He had been ill for several weeks, and the word was that his illness was incurable. His post had been kept open for him, but there was an understanding that in the event of his death Alexeyev would step into his place, and Alexeyev's place would be taken by either Vinnikov or Shtabel. So, the first thought that occurred to each of the assembled gentlemen on hearing the news of his death was how this death might affect his own prospects, and those of their acquaintances, for transfer or promotion.
>
> 'I'm sure to get Shtabel's job now, or Vinnikov's,' thought Fyodor Vasilyevich. 'They promised me ages ago, and a promotion like that would give me another eight hundred roubles a year, plus expenses.'
>
> 'I must apply to have my brother-in-law transferred from Kaluga,' thought Pyotr Ivanovich. My wife will be delighted. She won't be able to tell me I never do anything for her people."
>
> (Tolstoy L., *"The Death of Ivan Ilyich and Other Stories*", Translated by Ronald Wilks, Anthony Briggs and David McDuff (2008), Penguin Group, England, Pages 157, 158.)

This is distressing for a judge, for two reasons. Firstly, it reflects the nature of human behaviour where competition and ambition sets in. No matter how noble and divine the vocation is there is no exception to how they await the downfall of others to take their vacated position. Secondly, it portrays the estrangement among comrades. There seems to be no camaraderie, no compassion, and no humanity.

* The views expressed in this article are solely the personal views of the writer.

What this has to do with judicial education dawned upon me first during the lecture on *"Strengthening Justice Delivery System by Building Judicial Human Fabric"* at the *Chandigarh Judicial Academy.* The Academy's highly respected Director (Academic), Senior Advocate, Professor (Dr.) Balram Gupta, he himself an epitome of academic excellence, professional firmness and unending kindness, begins this lecture with the notion that *"Judicial education is all about making a good human being in order to be a good judge".* True to its very core, one would envisage that had judicial education of this nature been available in 1880's Russia, such would not have been the mentality of members of this noble profession. It makes one feel fortunate to be a judge in an era where there exists recognition of higher spiritual value for the humanistic qualities of a judge. It is a blessing to be in a place where the beauty of judicial education is the practice of selfless, compassionate sharing of knowledge by the senior experienced judges with the younger judges. It is indeed a comforting thought to a young judicial mind to be among senior professionals of such calibre. Professor Gupta has most generously shared with us his recipe for weaving the Judicial Human Fabric. In his words:

> *"Humanism and compassion are the integral part of Judicial Fabric and Culture. Humanism and Compassion are the Constitutional Fundamental Duties of every citizen of the country. This is more in the case of Judicial Brethren. We do not need computerised justice. Even in the computer age. Judges divorced from humanism and compassion will not be able to render wholesome and complete justice as envisaged under Article 142 of the Constitution. Judicial Human Fabric must be weaved in compassion and humanism."*

This philosophy runs parallel to that of India's much admired and respected Supreme Court Judge Hon. Justice V.R. Krishna Iyer that *"The need today is not great heads but good hearts, not loaded learning but deep love, not super intelligence but utter integrity. We want man, not brilliant beast"* (V.R. Krishna Iyer, *"Leaves from my Personal Life",* 2017, Gyan Publishing House, New Delhi, India, page 21). The experience in Chandigarh also relates closely to the ideology of Justice Krishna Iyer that the judges are the trustees of judicial power. His conviction that *"justices wear robes on oath under the Constitution as trustees par excellence of judicial power, ofcourse within their legal jurisdiction and constitutional jurisprudence"(Judges are Public servants not bosses* – OPINIAN- The Hindu, V.R. Krishna Iyer, 2008, https://www.thehindu.com/todays-paper/tp-opinian/judges-are-public-servants-not-bosses/article15214632.ece last accessed on 20.09.2018) justifies the necessity of "Application of Constitutional Provisions to Welfare Legislations", a lecture delivered by HMJ A.B. Chaudhari and the "Role of Courts in upholding the Rule of Law" also by Professor

(Dr.)Balram Gupta. The judiciary is no man's personal inheritance or property. The Judiciary ought to be held in trust by the judges on behalf of the country's sovereign people. They are only the guardians and custodians of the system which they are bound to protect. The knowledge gained by years of judicial experience is meant to be shared, passed on with compassion to the future generation of judges so that they too will be equipped with the tools to safeguard the sovereign rights of the people. It requires total selflessness in giving, total acceptance of the notion that the judiciary belongs necessarily to the future generation. Not to the past, not to the present, not to the outgoing but to the future generation of Judges to come. This is the essence of the most important lessons learnt in Chandigarh.

In between the philosophical and jurisprudential concepts presented, were the more technical topics such as "e-court Project" and "Best Practices for Speedier Justice". In explaining the management aspects of the judicial duties, HMJ Madan B. Lokur in his lecture "Justice Administration: Case and Court Management" expressed the pragmatic and realistic view that *"We Are Judges, Not Managers".* Highlighting the importance of expertise in court management his Lordship questions that if there are Masters Degrees for Business Administration, Human Resource Management, Hospital Administration and Hotel Management why not for Court Management. This is food for thought for any country with a judicial system oppressed with case delays, disproportionate caseload allocations, insufficient numbers of Judicial Officers and court staff, shortage of resources and infrastructure.

In the beautiful blessed land of Chandigarh, what we witnessed was this. A true "*Indian summer"* of judicial education. Under the unusually tranquil skies and hazy but warm and comfortable weather in August, it was indeed an intellectual feast as promised on the very first day of the programme at the Introductory Session by Professor (Dr.) Balram Gupta. The grand intellectual feast catered by the Honourable Senior Indian Judges and eminent academics was one of a kind, imparting knowledge that cannot be found in the best of books alone. Hence, I return to homeland in delight having witnessed the grandeur of India's beautiful concept of Judicial Education which maybe the secret recipe for the rich reservoir of jurisprudence and the great many number of legendary judges it has gifted to the world. In profound gratitude, I may warmly add this wish from the depth of my heart. A wish, for enough sunshine and showers for the brightest rainbow in the skies of *Chandigarh Judicial Academy* to spread its wonderful hues to all corners of the world in continuation of the noble task of enriching the Global Judicial Culture.

LATEST CASES : CIVIL

"Gratuity for workers is no longer a gift but a right. It is a vague humanitarian expression of distributive justice to partners in production for long meritorious service."

V.R. Krishna Iyer, J. in Straw Board Mfg. Co. Ltd. vs. Workmen, (1977) 2 SCC 329

Shivraj vs. Rajender & Anr. : 2018 SCC Online SC 1472 – **Held** – **The court in MACT case can evaluate the disability shown in doctor's certificate –** In this case the tribunal after adjudging the permanent disability of the appellant to the extent of 60% of the whole body had computed the income of appellant and compensation to the tune of Rs.5,83,000/-. The High Court had allowed the appeal of insurer on the grounds that the appellant had traveled in the tractor as a passenger which was in breach of policy condition because tractor was insured for agriculture purpose and not for carrying the goods. Therefore, the insurance company was held not liable for loss or injuries suffered by the appellant or to indemnify the owner of the tractor. The High Court had also considered the contention of the appellant that the tribunal was justified in the assessing the permanent disability to the extent of 60% instead of 67% assessed by the doctor on the basis of evidence on record. The Hon'ble Apex Court allowed the appeal of insurance company partly that the company would pay the compensation to the injured and having the right to recover the same from the owner of the offending tractor.

Jagjit Singh (D) through LRs vs. Amarjit Singh : SCC Online SC 1472 (SC) – **Held** – **Civil court can evaluate the readiness and willingness of purchaser** – In this case, the plaintiff had filed suit for specific performance of the contract against the defendant on the basis of an agreement. It is alleged that the total sale consideration for the shop in dispute was Rs.1,50,000/- and Rs.1,30,000/- was paid at the time of execution of agreement to sell. The balance amount was to be paid on a stipulated date but time was extended with the consent of both the parties but the defendant did not get executed and registered the sale deed. The defendant had denied that the plaintiff had not paid any amount and the trial court on the basis of evidence dismissed the suit on the grounds that no agreement to sell was executed between the parties. The first appellate court had also dismissed the appeal but it was observed that the agreement to sell was executed but plaintiff was not ready and willing to perform his part of contract. The High Court had reversed the judgment of appellate court and appeal of the plaintiff / respondent was allowed. The apex court had set aside the judgment of High Court on the grounds that the plaintiff had failed to plead or prove his willingness to perform his part of contract from the date of agreement till the filing of the suit and by allowing the appeal of the appellant/ defendant. The order of first appellate court was restored.

Kehar Singh (D) through LRs & Ors. vs. Nachittar Kaur & Ors. : 2018 SCC Online SC 1017 (SC) – **Held** – **Court can gather the legal necessity of Karta from evidence** – In this case, the plaintiff had filed suit against his father challenging the sale deed executed by his father in favour of defendants No.2 & 3 on the grounds that the sale deed are without any legal necessity of the family. It is also alleged that the property in dispute is an ancestral property. The defendants had taken the stand that the suit land was not ancestral land and the parties were not governed by any custom. It is also added that the sale deed in question was executed for consideration and for legal necessity of the family and defendant No.2 & 3 were the bona fide purchaser. The trial court had decreed the suit of the plaintiff by holding that the suit land was ancestral property and there was no legal necessity to sell the suit land. The appellate court partly allowed the judgment of trial court and observed that the purchasers were able to prove the legal necessity of the family partly. The purchasers again filed second appeal before the High Court and during the pendency Punjab Custom Amendment Act, 1973 came into force and it was observed by the High Court that the plaintiff had no right to challenge the alienation made by his father under the custom prevailing the relevant time. The Supreme Court had observed that the legal necessity for sale of ancestral property by the karta has been established and defendants were able to discharge the burden. It is further observed that no coparcener has a right to challenge the sale made by the karta of his family. The plaintiff being a son was one of the coparcener

alongwith his father and had no right to challenge such sale in the light of findings of legal necessity being recorded against him.

Birwati Chaudhary vs. State of Haryana: 2018 SCC OnLine SC 1020 – **Providing 'justifiable reasons' to support grant or refusal of stay is a sine qua non** – **Held** – The Supreme Court has allowed an appeal filed against the order of High Court wherein the application for stay as filed by the appellants herein was rejected. The appellants had filed a writ petition against the State in the High Court, and during the pendency of the same, application was filed for grant of ad-interim stay in relation to the subject matter of the land in question. By the order impugned, the High Court declined to grant the ad-interim stay. Against the said order, the appellants filed the instant appeal by way of special leave. The Supreme Court, on perusing the record of the case, observed that no adequate reason was given in the order impugned for not granting stay. The reason given did not justify the rejection, having regard to the nature of the controversy involved. In short, *justifiable reasons* to support either grant or rejection need to be stated, keeping in view the facts and the law applicable to the controversy involved. It was not so found in the order impugned. Resultantly, the Supreme Court allowed the appeal; set aside the order impugned, and remanded the case to the High Court to decide the matter afresh.

Bir Singh vs. Ram Kanwar Singh (D) through LRs. & Ors. : 2018 SCC Online SC 1567 – The appellant claims through the original mortgagee under the usufructuary mortgage had filed a suit claiming ownership of the property in-question by prescription and also sought for permanent injunction in favour of the appellant. The trial court decreed the suit and granted permanent injunction. On appeal, the first appellate court partly allowed the appeal holding that the appellant, claiming through the mortgagee, cannot claim right to ownership over the property in-question. However, the first appellate court affirmed the permanent injunction in favour of the appellant in the capacity of the appellant as a mortgagee. The same view was affirmed by the High Court. However, the High Court granted liberty to the respondents to work out their remedy for right to redemption in separate proceedings. Also, the High Court affirmed the grant of injunction in favour of the appellant. Before, Supreme Court the short question involved was whether the appellant, being the mortgagee, can claim grant of ownership by contending that the right of mortgagor has been foreclosed. The appeal was dismissed by reiterating law laid down in Singh Ram (Dead) Thr. Legal Representatives vs. Sheo Ram and Others, (2014) 9 SCC 185 wherein it was held that "A usufructuary mortgagee is not entitled to file a suit for declaration that he had become an owner merely on the expiry of 30 years from the date of the mortgage".

State Bank of Patiala vs. Satya Jyoti Rice Mills : SCC OnLine P&H 4657 : Civil Court cannot have jurisdiction in matters covered under SARFAESI Act, 2002 just because fraud is alleged – Held – In this case, revision petition was filed against an order where application for rejection of plaint was dismissed. The Plaintiffs were alleged with not signing the documents of guarantee. The plaintiff had approached the Civil Court in the matter related to SARFAESI Act, 2002 where according to Section 17 of the Act any person affected is entitled to file an application before the Debt Recovery Tribunal (DRT). In pursuance of Section 34 of the Act which bars Civil Court's jurisdiction in matters covered under SARFAESI Act, defendant i.e. Nationalized Bank pleaded that Civil Court had no jurisdiction. Trial Court referred the case of **Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311** where it was held that in cases of fraud, Civil Court does have jurisdiction.

This Court observed that the pleadings of the plaintiff suggests that the word *fraud* had been deliberately used so as to oust the jurisdiction of Debt Recovery Tribunal and in a decision of **Madras High Court vs. Thulasi v. Indian Overseas Bank, 2011 SCC OnLine Mad 670** it was held that where it is found that the word fraud has been deliberately used as a clever drafting in order to bring the suit before Civil Court such efforts will be repelled by the Court. High Court enabled the DRT by virtue of provisions of SARFAESI Act, 2002 to deal with the issue of whether the plaintiffs had stood guarantee to the loan received by the borrowers or not. Therefore, both the revision petitions were allowed and the matter will be taken up by the DRT.

LATEST CASES : CRIMINAL

"Liberty and right to equality taken individually may appear to pull in different directions. But viewed as a part of justice and fairness the two are the primary tenants of model egalitarian society. The real difficulty is in translating them into practical working."

R.M. Sahai, J. in Indira Sawhney vs. Union of India, 1992 Supp (3) SCC 217

State by Lokayuktha Police vs. H. Srinivas, (SC) : 2018 (3) RCR (Criminal) : 119-Cr.P.C–Section 154 Investigation–Absence of entries in General Diary concerning preliminary enquiry – Not per se illegal – No provision under Cr.P.C barring investigating authority to investigate into matter, which may for some justifiable ground, not found to have been entered in General Diary right after receiving confidential Information – This observation was given by apex court in appeals against the common order passed by the High Court wherein the High Court quashed the proceedings instituted against the accused on the ground that it was mandatory to make entries in the Station Diary and failure of the same would be fatal for the prosecution. The first set of facts pertain to Crime under Section 13(1)(e) read with section 13(2) of the Prevention of Corruption Act, 1988 [PC Act] against one H. Srinivas, for having acquired disproportionate assets against his known source of income. The second FIR was about amassing of the disproportionate assets by one accused who was working as Secretary to Government. It was admitted by the state that there was no entry in the General Diary, during the conduction of the preliminary enquiry. The High Court in a petition under challenging the act relied upon Lalitha Kumari's case (2014) 2 SCC 1 and held that it was mandatory to make entries in the Station Diary and failure of the same would be fatal for the prosecution. The apex court distinguished Lalitha Kumari's case & observed that it was obligatory on the part of the concerned Police Officer to maintain a General Diary, but such non-maintenance per se may not be rendering the whole prosecution illegal but such non-maintenance of General Diary may have consequences on the merits of the case, which is a matter of trial. The apex court allowed the appeals & set aside the order of the High Court.

Navtej Singh Johar vs. Union of India : 2018 SCC Online SC 1350:Section 377 IPC–The Supreme Court decriminalized consensual sex amongst adults in private saying sexual orientation was natural and people had no control over it. A bench of five judges of the Supreme Court partially struck down Section 377 of the Indian Penal Code (IPC), which made "carnal intercourse against the order of nature" a criminal offence. It was held that there was no presumption of constitutionality for pre-Constitution laws & that a person's sexual orientation itself was natural. The court found that Section 377 violated the right of members of the LGBTQI community to dignity, identity, and privacy, all covered under Article 21 of the Constitution.

Sheila Sebastian vs. R. Jawaharaj & Anr. : 2018 (3) RCR (Criminal) 234:IPC–Section 465–Forged Document–Making of fake document is different than causing it to be made; only maker can be charged with forgery–The complainant, in this case, had alleged that accused no.1, with the aid of an imposter who by impersonating as Mrs. Doris Victor, created a power of attorney document in his name as if he was her agent. Though the trial court and first appellate court convicted the accused, the high court acquitted them holding that to get the offence of forgery attracted, "making of a false document" is essential. In appeal against this judgement, the apex court observed that unless and until ingredients under Section 463 are satisfied a person cannot be convicted under Section 465 by solely relying on the ingredients of Section 464, as the offence of forgery would remain incomplete. It was further observed that a charge of forgery cannot be imposed on a person who is not the maker of the document and that making of a document is different than causing it to be made. "It is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery.

Sonvir @ Somvir vs. The State of NCT of Delhi : 2018 (3) RCR (Criminal) 767: Identification of Prisoners Act–Section 4 magistrate's order not necessary for police officer to obtain accused's fingerprint specimen–Even in absence of manner prescribed for taking finger impression–Evidence is admissible–The apex court considered an important issue pertaining to the interpretation of Sections 4 and 5 of the Identification of Prisoners Act in an appeal filed by a murder convict. The Delhi High Court relied upon Mohd. Aman & Anr. vs. State of Rajasthan

(1997) 10 SCC 44 & discarded the evidence of palm impression holding that specimen chance print of the accused was not taken in the presence of a Magistrate. In appeal against that judgment, the apex court observed that Mohd. Aman's case was in the facts of that case and cannot be read to mean that Police Officer cannot obtain fingerprints without obtaining an order from Magistrate u/s 5. The court referred to a three-judge bench judgment in Shankaria vs. State of Rajasthan (1978) 3 SCC 345 wherein it was held that it was not necessary for the police officer to obtain an order from a magistrate for obtaining a specimen of fingerprints. It was further held that "Non-framing of any rules under Section 8 by the State Government does not prohibit the exercise of powers given under Sections 3 and 4 of the Act".

Haribhau vs. State of Maharashtra : 2018 SCC OnLine SC 1337: Sentence undergone, age of convict, no criminal antecedents, non-denial of commission–Relevant facts to alter punishment–Held–The appeal filed by the convict under Sections 294, 353, 504 read with Section 34 IPC, was allowed in part. The appeal was filed against the judgment of High Court which upheld his conviction and sentence awarded by the trial court. As per the prosecution case, the appellant (Sarpanch of the village) along with the co-accused (Member of Gram Panchayat) and obstructed him in his official duties and were tried and convicted for the charges as mentioned above by the trial court. An appeal was preferred to the High Court which acquitted the co-accused but the appeal so far it concerned the appellant herein was dismissed. Aggrieved thus, the appellant filed the present appeal. The Supreme Court considered the factual matrix and was of the opinion that the sentence awarded to the appellant deserved to be modified. For reaching such conclusion, the Court gave relevance to four facts which are enumerated hereinafter:

- Firstly, the appellant had already undergone a sentence of one month in prison out of three months imprisonment awarded to him.
- Secondly, the appellant was old and the incident seemed to have occurred at spur of the moment.
- Thirdly, he had no criminal antecedents.
- Lastly, fairly, he did not deny the commission of the act and did not challenge his conviction.

The appeal was, thus, allowed in part. The punishment of imprisonment awarded by the trial court and upheld by the High Court was altered. The sentence of imprisonment was reduced to the period already undergone by the appellant. However, the fine of Rs 800 was increased to Rs. 15,000.

Master Bholu through his father and Natural Guardian Vinod Kumar vs. CBI : 2018 (3) RCR (Criminal) 357 (P&H) : Section 167(2) Cr.P.C–Presentation of challan–Merely leaving the challan with Ahlmad or any other functionary will not satisfy compliance of Section 167(2) Cr.P.C–Challan has to be presented before Court and Court alone–In order to determine as to whether challan presented well within stipulated time period–Date on which same is presented before Court only relevant – Appellant filed application for default bail on 05.02.2018 and contended that challan was filed on 06.02.2018 – Ahlmad in his report stated that challan was filed on 05.02.2018. The HC held that presumption in law that judicial acts are regularly performed. Merely on asking of appellant or by adverting to some document, it cannot be urged that challan was actually presented on 06.02.2018 and wrong report has been given by Ahlmad and order also incorrectly recorded date and time of presentation of challan. This observation came in an appeal filed to challenge order dated 05.02.2018 passed by the Additional Sessions Judge, Gurugram, whereby, the application filed by the appellant u/s 167(2)(a)(ii) Cr.P.C. was dismissed. After the filing of the application a report was called from the Criminal Ahlmad, wherein it was stated that the challan had been submitted by the CBI on 05.02.2018. It was urged by the investigating agency that it had presented the challan on 05.02.2018 itself, by putting up the challan before the Ahlmad of the Court. The HC Relied upon Gurcharan Singh @ Mintu vs. State of Haryana 2016 (1) Law Herald 679 & observed that if the challan was left with the Ahlmad, the same could not to be construed as proper presentation of the final report, as envisaged u/s 173(2) Cr.P.C. The challan has to be presented before the Court and the Court alone and merely leaving it with the Ahlmad or any other functionary would not satisfy the requirement of Section 167(2) Cr.P.C.

Smt. Shamim vs. State (Government of NCT Delhi): 2018 SCC OnLine SC 1559 : It is **held** by the Apex Court that while appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole inspires confidence.

LATEST CASES: FAMILY LAW

"It is one thing to say that everywhere and tear of married life need not lead to suicide and it is another thing to put it so crudely and suggest that one or two assaults on a woman is an excepted social norms. Judges have to be sensitive to women's problem. Assault on a woman offends her dignity. What effect it will have on a woman depends on the facts and circumstances of each case."

Ranjana P. Desai, J. in Vajresh Venkatray Anvekar vs. State of Karnataka, (2013) 3 SCC 462

Siddaling vs. State : 2018 SCC OnLine SC 958 – Conviction u/s 498-A & 306 IPC maintained; held leniency to the same would be misplaced – **Held** – The Supreme Court has refused to modify the quantum of sentence as sought for by the appellant; on the reasoning that the conviction of the appellant under Section 498-A and 306 IPC as given by the High Court is to be maintained and any leniency in the same would be a misplaced one. The facts of the case clearly draw the picture towards mental agony leading to the act of suicide committed by the deceased. Appellant was convicted under Section 498-A & 306 IPC as the wife of the appellant had committed suicide due to being subjected to cruelty and alleged dowry demand along with one of the significant factors in all the allegations being an illicit relationship of the appellant with another woman. After the conviction from Trial Court, the High Court had further convicted the appellant under Sections 498-A and 306 IPC on consideration of the facts and evidence which constituted that the appellant even after agreeing on not continuing his relationship with another woman continued to do so, which definitely caused mental agony to the deceased-wife. Reliance was placed on **Randhir Singh vs. State of Punjab, (2004) 13 SCC 129** in regard to "**abetment involving a mental process of instigating a person or in any manner aiding that person in doing of the thing."** The order of High Court's was maintained.

K. Subba Rao vs. State of Telangana : 2018 SCC OnLine SC 1080 – **Relatives of husband acquitted of charge u/s 498-A IPC on finding allegations to be omnibus and unspecific**– **Held**–The Supreme Court has allowed a criminal petition filed against the judgment of High Court whereby appellants' petition u/s 482 Cr.P.C was dismissed. Respondent 2 - wife filed a complaint alleging harassment by her husband and his relatives including the appellants herein. The appellants were maternal uncles of the husband. Pursuant to the said complaint, an FIR was filed u/s 498A IPC. The appellants filed the petition before the High Court for quashing the FIR. However, the High Court, vide the judgment impugned, dismissed the petition of the appellants. In appeal the Supreme Court reversed the order and had found that the appellants were not the immediate family members of the husband. Except for the statement that they support the husband who was harassing the wife, nothing showed their involvement in the offence alleged. The Court referred to **Kans Raj vs. State of Punjab, (2000) 5 SCC 207 and Kailash Chandra Agarwal vs. State of U.P., (2014) 16 SCC 551** and observed that the relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out. On the facts and circumstances of case, the Court held that not even a prima facie case was made out against the appellants.

Anurag Mittal vs. Shaily Mishra Mittal : 2018 SCC OnLine SC 1136 – **Marriage solemnized before dismissal of appeal against decree of divorce held valid on 'purposive construction'**– **Held** – The Apex Court allowed an appeal filed against the judgment of High Court whereby the marriage between the appellant and the respondent was held void. The interesting factual matrix of the case is that, earlier, the appellant was married to one Rachna Agarwal. In August 2009, she had filed a divorce petition u/s 13(1)(ia) of the Hindu Marriage Act, 1955 which was allowed by the Additional District Judge and thus their marriage was dissolved. The appellant filed an appeal against the decree in the High Court. During pendency of the appeal, the appellant and the said Rachna Agarwal reached a settlement. Pursuant to the settlement, the appellant filed an application for withdrawing the appeal. The settlement was reached on 15.10.2011; the application for withdrawal was filed on 28.11.2011, and the High Court dismissed the appeal as withdrawn on 20.12.2011. In the meanwhile, on 6.12.2011, the appellant married the respondent. Subsequently, consequent to matrimonial discord, the respondent filed a petition for declaring the marriage void u/s 5(i) r/w Section 11. The main ground being that the appellant married the respondent during pendency of appeal against the decree of divorce from his first wife. The family court dismissed the respondent's petition. However, on appeal, the

High Court declared the marriage between the appellant and the respondent as null and void. Aggrieved by the same, the appellant filed the instant appeal. To adjudicate the issue, the Supreme Court, *inter alia*, perused Section 15 of the Act. The Court was of the view that it could not be said that he had to wait till a formal order was passed in the appeal, or otherwise his marriage on 6.12.2011 was unlawful. Following the principles of purposive construction, the Court held that the restriction placed on second marriage u/s 15 till dismissal of an appeal would not apply to a case where parties have settled the matter and decided not to pursue the appeal. The judgment of the High Court annulling the marriage between appellant and respondent was held to be erroneous. Accordingly, the judgment impugned was set aside and the appeal was allowed.

Anupriya Pal vs. State of U.P.: 2018 SCC OnLine SC 1316 – **FIR lodged on mere basis of taking revenge against wife's maintenance petition, liable to be quashed**–**Held**–A petition while setting aside the order passed by High Court u/s 482 Cr.P.C for quashing of proceedings. The Supreme Court observed that the primary allegation submitted by the respondent against the appellant was that Appellant 1 had wrongly represented that she had completed her MCA at the time of marriage and merely on the said basis, it cannot be said that appellant had cheated upon the respondent and therefore, Court found that absolutely no offence could be found under Section 420 IPC and the FIR is just a counterblast against the maintenance proceeding against the appellant.

Vijay Kushwaha vs. Chanchal: 2018 SCC OnLine Del 10828–**Husband not allowed to take benefit of non-disclosure of income and defeat legitimate right of wife; no reduction in amount of maintenance**–**Held**–The appeal was filed by the husband u/s 19 of the Family Courts Act, 1984 assailing the order passed by the family court where the appellant was directed to pay Rs.4500pm as maintenance to the respondent-wife u/s 24 of the Hindu Marriage Act (maintenance *pendente lite*) from the date of filing of the application. The husband submitted that as he was a permanent resident of U.P., the Minimum Wages Act of Delhi would not be applicable to him. The High Court held that Section 24 empowers the Court to award maintenance *pendent lite* and litigation expenses to a party who has no independent source of income sufficient for his / her support during the pendency of proceedings. Reference was made to **Jasbir Kaur Sehgal vs. District Judge, (1997) 7 SCC 7**. The Court observed that in the present case, the husband failed to produce any documentary proof with regard to his employment status and also his actual income; and by not disclosing his source of income the husband was trying to defeat the legitimate right of the wife to claim maintenance. Furthermore, the appellant could not be allowed to take benefit of non-disclosure of his income despite being bound in law to disclose it. Thus, the plea of the husband that Minimum Wages Act of U.P. is applicable to him doesn't come to his rescue.

Kiran Lohia vs. State Govt. of NCT of Delhi:2018 SCC OnLine Del 868 – **Women are socializing but does not mean they are failing in maternal obligations, visiting psychologist not a taboo** – **Held** – The case is in the form of writ petition moved by a woman, a socialite and a dermatologist, seeking direction to her estranged husband to produce minor daughter in the court and to set her at liberty in her custody. While trying to secure the interest and welfare of a minor child caught between warring parents, the High Court remarked that the love and affection that a mother has for a child would be no less merely because the child was born out of surrogacy and holding otherwise would be devaluing the great qualities of love and bonding experienced not only by human beings but all animal species. The court observed, "Though, she was born out of surrogacy, since the petitioner suffered two earlier miscarriages, she is nevertheless the biological mother of the petitioner child. Thus, it is only natural that the petitioner and respondent and their respective family members, hold love and affection in their hearts for the minor child… even in respect of an adopted child, the parents, by and large, express and feel the same sense of love and affection with equal intensity as they would feel in respect of their naturally born child." It was further observed that, "It is no longer a taboo in our society to consult a psychotherapist, or a psychiatrist, or a counselor, as it was in the earlier days. Merely because a person may go for such like therapy and consultation, it does not follow that the person does not possess mental equilibrium, or is mentally unsound. Such trained professionals are becoming more relevant in today's day and age, considering the fact that the families are smaller, and one may not have siblings and other elders in the family readily available to talk to, and discuss private and personal issues".

NOTIFICATIONS

1. **HIV/AIDS Act, 2017 brought into force, to safeguard rights of the affected :** The Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 shall come into force from 10-09-2018, as notified on the same date by the Ministry of Health and Family Welfare *vide* **S.O. 4715(E)**.

The Act, safeguards the rights of people living with HIV and affected by HIV. The provisions of the Act address HIV-related discrimination, strengthen the existing program by bringing in legal accountability, and establish formal mechanisms for inquiring into complaints and redressing grievances.

The Act seeks to prevent and control the spread of HIV and AIDS, prohibits discrimination against persons with HIV and AIDS. The Act lists various grounds on which discrimination against HIV positive persons and those living with them is prohibited. 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).

The requirement for HIV testing as a pre-requisite for obtaining employment or accessing health care or education is also prohibited.

Every HIV infected or affected person below the age of 18 years has the right to reside in a shared household and enjoy the facilities of the household. The Act also prohibits any individual from publishing information or advocating feelings of hatred against HIV positive persons and those living with them. As per provisions of the Act, a person between the age of 12 to 18 years who has sufficient maturity in understanding and managing the affairs of his HIV or AIDS affected family shall be competent to act as a guardian of another sibling below 18 years of age to be applicable in the matters relating to admission to educational establishments, operating bank accounts, managing property, care and treatment, amongst others. As per the provisions of the Act, every person in the care and custody of the state shall have right to HIV prevention, testing, treatment and counseling services.

2. **MoU signed between Indian Railways – GAIL (India) Ltd., for use of natural gas in railway workshops :** In order to replace Industrial gases like Dissolved Acetylene, LPG, BMCG and Furnace Oil / High Speed Diesel (HSD) oil with environment friendly Natural Gas, **Indian Railways** has signed a Memorandum of Understanding (MoU) with **M/s GAIL (India) Limited**, to provide infrastructure facilities for supply of Natural Gas to Indian Railways Workshops, Production Units and Depots. This MoU is a broad based, in principle agreement, between GAIL and Indian Railways for creation of infrastructure and supply of CNG/LNG/PNG for both industrial and domestic purposes. Out of 54 workshops and PUs, 23 workshops have been identified in the first phase for replacement of Industrial Gases with Natural Gas. In domestic segment, in Railway colony, Bhubaneswar, about 1100 houses have been provided with D-PNG supply. The use of Natural Gas has potential to replace about 844027 cubic meter of Acetylene, 2354425 Kg of LPG and 140991 Kg of BMCG and 5500 KL of HSD/Furnace oil worth Rs. 70 crore per annum. Replacement by Natural Gases is likely to result into a saving of about Rs. 20 crore per annum to Indian Railways. All 23 workshops are directed to start using Natural Gas by 31-12-2018, and further all 54 workshops and production units should be covered by 30-07-2019. All railway establishments, including base kitchens of IRCTC, all guest houses and hostels and railway divisions are further directed to start using Natural Gas by 30-09-2019. GAIL and IROAF would prepare a report on implementation of Natural Gas in Railway workshops by 30-09-2018.

The huge benefits to the environment by reducing harmful greenhouse emissions, the replacement of industrial gases and furnace oils with Natural Gas also results in cost benefits with potential for huge savings which has been estimated to the order of Rs. 20 Crs. per annum over all Workshops/ Production Units/ Depots & residential colonies of Indian Railways.

EVENTS OF THE MONTH

1. Mr. Inderjeet Mehta joined CJA on April 27, 2017 as Director (Admn). Prior to this, he had joined Haryana Judicial Service on July 12, 1984. Thereafter, he came to be promoted to Haryana Superior Judicial Service on 05.02.2000. He **superannuated on attaining age of 60 on August 31, 2018** after rendering 34 years of service. Dr. Balram K. Gupta, Director (Academics), the Faculty Members and the entire Academy staff bid him farewell. The Academy wished him even a better second innings in the years to come.

2. **Refresher-cum-Orientation Course for Civil Judges-cum-Judicial Magistrates from the States of Punjab and Haryana** was organized on September 01, 2018 to sensitize them with regard to important Civil and Criminal Matters. The Judicial Officers were sensitized on the topics: Protection against Self Incrimination – Dimensions and Applicability, Relevance of Revenue Records for Disposal of Civil Matters I&II, Challenges in Appreciation of Electronic Evidence and Training on Practical Use of Computers in Courts. 54 participants attended the programme.

3. **Refresher-cum-Orientation Course through Video Conferencing for Additional District & Sessions Judges from the State of Punjab** was organized on September 7, 2018 on the topic "Role of Children's Court under Juvenile Justice Act". Dr. K.P. Singh, DGP, Haryana Human Rights Commission was the resource person for video-conferencing with the Judicial Officers.

4. **Refresher-cum-Orientation Course for ADJs from the States of Punjab & Haryana** was organized on 15.09.2018 to sensitize the Judicial Officers with regard to the Role of Referral Judges in Mediation Training. They were sensitized on topics : ADR: Relevance with special reference to Section 89, Code of Civil Procedure, 1908 (Introduction); Mediation: Definition and Concept, Advantages of Mediation, Comparison between Judicial Process, Arbitration and Mediation, Comparison between Mediation, Conciliation and Lok Adalat, Mediation: Functional Stages, Role of Mediators; Role of Referral Judges : Reference to ADR, Stage of referral, consent Avoiding delay of trial, Cases suitable for reference, Motivating and preparing the lawyers and parties for mediation, Referral Order, Role after conclusion of mediation proceedings; Guidelines for referral Judges and Check List : Interactive Session. 70 participants attended the programme.

5. **Training for Fourth Batch of Public Prosecutors from Punjab** commenced from September 24, which will conclude on October 5, 2018. The training includes four sessions of 1.15 hours per day. Total 39 sessions and the valedictory session covering different aspects relevant for Public Prosecutors regarding Criminal and Civil Matters in order to enhance their capacity to perform their duties effectively and efficiently. The Public Prosecutors were sensitized on topics: The Role of Prosecutor and the Constitution, Prosecution Sanction for Public Servants, Law on Bails- Regular and Anticipatory, Recent Changes in law- Substantive and Procedural, Protection against self Incrimination- Dimensions and Applicability, Sentencing Policy & Restitutive Justice- Legal and Procedural Aspects-I&II, Suits against and by the Government–Legal implications, Criminal Appeals & Revisions – Law and Procedure, Important Aspects in Checking of Challans by the Prosecutor-I, Process of Trial in Civil Cases-Best Practices & Law on Amendments of Pleadings, Role of Post-mortem in Aid of Justice, Determination of

Compensation under Land Acquisition Act, Legal Facets of Human Trafficking, Law of Admissions and Confessions, Examination of witnesses –Principles and Procedures, Jurisprudence of Circumstantial Evidence, Mens-Rea Presumptions under NDPS Act & its constitutionality, Medical Evidence –Legal Aspects, Law on Constructive & Joint Criminal Liability, Delays in Criminal Trials-Causes & Remedial Measures, Child in Conflict with Law – Legal Rights and Protection, Cyber Crime Parameters of Investigation- Challenge, Executions-Speedy & Expeditious Disposals, Law Relating to Under Trials, Parole, Furlogh & Pre Mature Release of Prisoners, Cordiality amongst Prosecutors, Police, Judiciary & District Administration, Electronic Evidence Admissibility & Appreciation, Access to Justice -Legal Aid Special Reference to Kasab Case, Ramifications of Personal Search under NDPS Act, Interpretation of Revenue Records & their Applicability in Cases I&II, General Aspect of Service Law, Law of Custody during Investigation and special legislations, Compensation under MACT Act., Forensic Evidence-Legal Scenario, DNA Profiling & Evidence, Miscellaneous Applications under Civil Procedure Code, Awards under Arbitration & Reconciliation Act- Legal Issues., Summoning of Additional Accused and Evidence – Legal Parameters. The different sessions were taken by Dr. Balram K. Gupta, Director (Academics), Anil Malhotra, Advocate, Punjab & Haryana High Court, Dr. J.S. Dalal, Prof. & Head Department of Forensic Medicine CMC, Ludhiana, Faculty from CJA and CFSL, Chandigarh. The valedictory session will be held on 05.10.2018.

6. **Refresher-cum-Orientation Course for Civil Judges from the States of Punjab and Haryana** was organized on September 29, 2018 to sensitize the Judicial Officers with regard to the Role of Referral Judges in Mediation Training. They were sensitized on topics : ADR: Relevance with special reference to Section 89, Code of Civil Procedure, 1908 (Introduction); Mediation : Definition and Concept, Advantages of Mediation, Comparison between Judicial Process, Arbitration and Mediation, Comparison between Mediation, Conciliation and Lok Adalat, Mediation: Functional Stages, Role of Mediators; Role of Referral Judges : Reference to ADR, Stage of referral, consent Avoiding delay of trial, Cases suitable for reference, Motivating and preparing the lawyers and parties for mediation, Referral Order, Role after conclusion of mediation proceedings; Guidelines for referral Judges and Check List : Interactive Session. 50 participants attended the programme.

FORTHCOMING EVENTS

1. **Refresher-cum-Orientation Course through Video Conferencing for Additional District & Sessions Judges from the State of Haryana** will be organized on October 5, 2018 on the topic "Role of Children's Court under Juvenile Justice Act". Dr. K.P. Singh, DGP, Haryana Human Rights Commission, will be the resource person for video-conferencing with ADJs.

2. **Refresher-cum-Orientation Course for Civil Judges (JD)** on October 6, 2018.

3. **Programme on 'Video Conferencing facility for clerks'** from District Courts of Punjab will be held on October 25, 2018 and on October 26, 2018 for Clerks of District Courts of Haryana and Chandigarh.