



SJA NEWSLETTER

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Topic of the Month

“In a constitutional democracy wedded to and governed by the rule of law, responsibilities of the judiciary arouse great expectations. Justice Frankfurter remarked: “It is not a printed finality, but a dynamic process. Its applications to the actualities of the Government is not a mechanical exercise, but a high function of statecraft”.

The constitutional adjudications have the urgent task of defining or redefining from time to time the basic constitutional concepts in a changing and disparate world. Judicial policy is directed to the management within the constitutional parameters of the apparent conflicts in society. The exercise of democratic power on the one hand and legal control of the Government on the other, pose seemingly irreconcilable positions.

It is said that an unfailing index to the maturity of a democracy is the degree of its respect for the unwritten conventions. The silences of a Constitution are eloquent and they are constitutional device forming part of an advanced constitutional culture.

The measure of success in achieving all this may be regarded as the measure of success of the working of the Constitution and in promoting and sustaining constitutionalism. The role of the judiciary in protecting individual rights and freedoms and promoting constitutional values is not discretionary but obligatory.”

(Taken from lecture delivered by Hon'ble Mr. Justice M.N. Venkatachaliah, Former Chief Justice of India delivered on 23-04-2008.)

Chief Patron

Hon'ble Mr. Justice
Barin Ghosh
Chief Justice

Judge-In-Charge

Hon'ble Mr. Justice
Hakim Imtiyaz Hussain

Editor

Gh. Mohi-ud-Din Dar
Director SJA

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The Editor

SJA Newsletter
Jammu & Kashmir
State Judicial Academy
Janipur, Jammu-180001
Ph: Jammu: 0191-2530871
Srinagar: 0194-2472078
Fax: Jammu: 0191-2530783
Srinagar: 0194-2472078
E-mail: jkja@jk.nic.in

Compiled, Composed & Layout by :

Pankaj Kumar Gupta
Deputy Registrar

SOME RECENT SUPREME COURT JUDGMENTS OF PUBLIC IMPORTANCE (Delivered in April-May 2009)

1. On 1st April, 2009, a two Judges Bench in *Vikram Greentech (I) Ltd. & Anr. v. New India Assurance Co. Ltd.* (Civil Appeal No.2080 of 2002) held that an insurance contract, is a species of commercial transaction and must be construed like any other contract to its own terms and by itself”.

“In a contract of insurance, there is requirement of *uberimma fides* i.e. Good faith on the part of the insured. Except that, in other respects, there is no difference between a contract of insurance and any other contract. The four essentials of a contract of insurance are (i) the definition of the risk, (ii) the duration of the risk; (iii) the premium and (iv) the amount of insurance. Since upon issuance of insurance policy, the insurer undertakes to indemnify the loss suffered by the insured on account of risks covered by the insurance policy, its terms have to be strictly construed to determine the extent of liability of the insurer. The endeavour of the court must always be to interpret the words in which the contract is expressed by the parties. The court while construing the terms of policy is not expected to venture into extra liberalism that may result in re-writing the contract or substituting the terms which were not intended by the parties. The insured cannot claim anything more than what is covered by the insurance policy”, said the Bench.

The Bench held that “document like proposal form is a commercial document and being an integral part of policy, reference to proposal form may not only be appropriate but rather essential”.

2. On 13th April, 2009, a two Judges Bench in *Avinash Mehrotra v. Union of India & Others* (Writ Petition (Civil) No. 483 of 2004) held that it is imperative “that the education which is provided to children in the primary schools should be in the environment of safety”.

The Bench held that “each school must follow the bare minimum safety standards, in addition to the compliance of the National Building Code of India, 2005, in particular Part IV- Fire & Life Safety and the Code of Practice of Fire Safety in Educational Institutions (IS 14435:1997) of the Bureau of Indian Standards”. Thereafter the Bench directed that :- (i) before granting recognition or affiliation, the concerned State Governments and Union Territories shall ensure that the buildings are safe and secured from every angle and they are constructed according

to the safety norms incorporated in the National Building Code of India; (ii) all existing government and private schools shall install fire extinguishing equipments within a period of six months; (iii) the school buildings be kept free from inflammable and toxic material. If storage is inevitable, they should be stored safely; (iv) evaluation of structural aspect of the school may be carried out periodically and the concerned engineers and officials must strictly follow the National Building Code. The safety certificate be issued only after proper inspection. Dereliction in duty must attract immediate disciplinary action against the concerned officials and (v) necessary training be imparted to the staff and other officials of the school to use the fire extinguishing equipments.

3. On 15th April, 2009, a two Judges Bench in *State of Jharkhand & Ors v. Shiv Karampal Sahu* [Civil Appeal No. 2539 of 2009] held that “a circular letter providing for appointment on compassionate ground in case of death of a government servant cannot be extended in case of the dependent of the deceased who was not a government servant”.

4. On 15th April, 2009, a three Judges Bench in *State of Madhya Pradesh v. Sheikh Shahid* [Criminal Appeal No. 660 of 2004] held that “in order to exercise the discretion of reducing the sentence the statutory requirement is that the Court has to record “adequate and special reasons” in the judgment and not fanciful reasons which would permit the Court to impose a sentence less than the prescribed minimum. The reason has not only to be adequate but also special. What is adequate and special would depend upon several factors and no strait-jacket formula can be indicated”.

5. On 6th May, 2009, a two Judges Bench in *U. Suvetha v. State by Inspector of Police and another* [Criminal Appeal No. 938 of 2009] while considering the question as to whether the term “relative of husband of a woman” within the meaning of Section 498 A IPC should be given an extended meaning, held that “by no stretch of imagination a girl friend or even a concubine in an etymological sense would be a ‘relative’. The word ‘relative’ brings within its purview a status. Such a status must be conferred either by blood or marriage or adoption. If no marriage has taken place, the question of one being

relative of another would not arise”.

6. On 6th May, 2009, a two Judges Bench in Suresh Kumar Singh v. State of U.P. [Criminal Appeal No. 939 of 2009] while examining the application of the term ‘soon before her death’ occurring in Section 304 B IPC held that “some harassment which had taken place one year prior to the death without something more” “could not have been considered to be a cruelty which had been inflicted soon before the death of the deceased”. “It does not satisfy the proximity test”, the Bench said.

7. On 8th May, 2009, a two Judges Bench in Sasikumar v. The State of Tamil Nadu [Criminal Appeal No. 966 of 2009] held that “though a dying declaration is entitled to great weight”, “the accused has no power of cross-examination”. “This is the reason the Court also insists that the dying declaration should be of such nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence”, said the Bench.

8. On 11th May, 2009, a three Judges Bench in Smruti Pahariya v. Sanjay Pahariya [Civil Appeal No. 3465 of 2009] held that “it is only on the continued mutual consent of the parties that decree for divorce under Section 13 B of the Hindu Marriage Act, 1955 can be passed by the Court. If petition for divorce is not formally withdrawn and is kept pending then on the date when the Court grants the decree, the Court has a statutory obligation to hear the parties to ascertain their consent. From the absence of one of the parties for two to three days, the Court cannot presume his/her consent.

“The Court while passing its decree under Section 13 B would be slow and circumspect before it can infer the existence of such jurisdiction fact. The Court has to be satisfied about the existence of mutual consent between the parties on some tangible materials which demonstrably disclose such consent”, said the Bench.

9. On 29th May, 2009, a two Judges Bench in Post Graduate Institute of Medical Education & Research, Chandigarh v. Jaspal Singh & Ors. [Civil Appeal No. 7950 of 2002] held that “wrong blood transfusion is an error which no hospital/doctor exercising ordinary care” would make. “Such an error is not an error of professional judgment but in the very nature of things a sure instance of medical negligence”, said the Bench.

ACADEMY NEWS

1. One day Refresher course on the topics of ‘Dishonour of Cheques’ and ‘Import of Sections 164 & 164-A Cr.P.C’ was conducted by the Judicial Academy at District Headquarter, Anantnag on 13-08-2009 at 2:00 P.M.

Ms. Kaneez Fatima, Presiding Officer, Motor Accident Claims Tribunal, Srinagar was the Resource person for the Ist topic whereas Shri Rajesh Sekhri, Addl. District & Sessions Judge, Anantnag was the Resource person for the topic ‘Import of Sections 164 & 164-A Cr.P.C. Seven Judicial Officers of the rank of Chief Judicial Magistrates and Judicial Magistrates from District Anantnag and Kulgam participated in the Refresher course. Principal District & Sessions Judge, Anantnag also briefly participated in the Refresher course.

Ms. Kaneez Fatima told the participants as to what were the reasons for the enactment of Section 138 of Negotiable Instrument Act and connected provisions and told them that in fact business transactions have of late being done in the shape of issuance of cheques because cash transaction has several risks involved in it but unscrupulous persons have of late been issuing cheques which generally bounce and results in defrauding of the gullible payees. The civil remedy is not only less efficacious but also time consuming and in order to overcome that difficulty, this provision has been enacted. This provision has some technicalities because defrauded payee cannot lodge a complaint unless he issue a notice, within 30 days after getting information that his cheque has bounced, impressing upon the drawer to make payment within 15 days and if Drawer after receipt of the notice fails to make payment, cause of action arises to lodge the complaint. Madam Kaneez also dealt with other technical and legal aspects of the provision and said that in fact dead line provided that the complaint under Section 138 of Negotiable Instrument Act shall be decided within a period of six months and that as far as possible day to day hearing be hold is observed in breach and purpose for which this provision was engrafted in the Negotiable Instrument Act is as such defeated. She also told the

participants about the other aspect of this provision of law and the participants took tremendous interest in the refresher course which was evident from the queries put by the participants. In addition to Resource person, Director, State Judicial Academy and Shri Rajiv Gupta, Sub-Judge also took active part in the deliberations.

2nd topic was dealt with by Shri Rajesh Sekhri, Addl. District & Sessions Judge, Anantnag in a very professional manner. He told the participants as to how the confessional statement and statement of witnesses u/s 164 are now recorded in the light of the authoritative pronouncements of the Apex Court. He also told the participants about the background in which Section 164-A was legislated and told the participants that a material witness whose statement has been recorded u/s 164-A, he can be proceeded against and convicted if he later on resiles from his earlier stand.

The Refresher course conducted by the Judicial Academy at District headquarter was unique in nature because no such workshop was conducted by the Judicial Academy in any District Headquarter. Step was appreciated by Bar and Bench equally and the message that the Judicial Education is of paramount importance for providing inexpensive and expeditious justice to the people at their door steps was conveyed loudly.

2. One day workshop on the topics of 'Dishonour of Cheques' and 'Import of Sections 164 & 164-A Cr.P.C' was conducted by the Judicial Academy at District Court, Baramulla on 19-08-2009 at 2:00 P.M. Shri Mohd. Nazir Fida, Principal District & Sessions Judge, Baramulla was the Resource person for the topic 'Dishonour of Cheques' and Shri Kikar Singh Parihar, 4th Addl. District and Sessions Judge, Sriangar was the Resource person for the topic 'Import of Section 164 and 164-A Cr.P.C.'. 11 Judicial Officers of the rank of Chief Judicial Magistrates and Judicial Magistrates of Districts Baramulla, Kupwara and Bandipora participated. In addition Shri Abdul Rashid Bhat-II, Addl District & Sessions Judge, Baramulla and Shri R.K. Wattal, Ist Addl. District and Sessions Judge, Baramulla also participated in the Refresher course.

Different aspects of both the topics were dealt with in detail and difficulties faced by the Magistrates in the expeditious disposal of cases u/s 138 of Negotiable Instrument Act were discussed and remedial measures for overcoming these difficulties were also suggested in the Refresher course so that cases u/s 138 of Negotiable Instrument Act are decided as expeditiously as possible within the stipulated period of six months.

Shri Mohd. Nazir Fida replied to the queries put by the participants and in addition to said resource person Director, Judicial Academy and Addl. District & Sessions Judge, Baramulla took active part in the said course.

2nd topic was dealt by Shri Kikar Singh Parihar in a scholarly manner and he told the participants about the background in which Section 164-A was added in the Code of Criminal Procedure and particularly referred to the case of Zahira Sheikh. He also told the participants as to what precautions are to be taken while recording confessional statement and statement of witnesses u/s 164 Cr.P.C. Participants were also told as to the difference between confessional statement recorded u/s 164 Cr.P.C and a statement of prosecution witness recorded under the same section. In the Refresher course it was felt that much discretion has been given to the Investigating agency to choose and decide as to who is material witness in a case in order to get statement recorded u/s 164-A Cr.P.C.

Refresher Courses held at District headquarters Baramulla proved to be beneficial to the Institution in several ways. First it saved the time of the Judicial Officers for coming from their respective places of posting to Srinagar and second, it conveyed a message that Judicial education is getting importance in the administration of justice. It was felt that such programmes shall be often conducted at different headquarters.

LEGAL JOTTINGS

(Civil Appeal No. 5053 of 2009)

R. Mahalakshmi v. A.V. Anantharaman & Ors.

Date of Decision: 3-08-2009.

Coram: Hon'ble Mr. Justice S.B. Sinha & Hon'ble Mr. Justice Deepak Verma

Subject Index: Partition of family property by co-sharer. In a suit of partition of property inherited from the father, trial court decreed the suit. The contention of defence regarding other properties of father which he had inherited by way of a written deed. Plaintiff had not included those properties in the suit for partition. The trial court did not take into consideration the contention of partial partition. Held by Supreme Court in view of the circumstances whether only some of properties were subject matter of suit and some properties were not included in suit, it was a case of partial partition. Such suit cannot be decreed. All the properties are required to be included in a single suit only.

(Civil Appeal arising out of SLP (c) No. 24327 of 2005 with Writ Petition (c) 507 of 2006)

Subash Chandra & Anr. v. Delhi Subordinate Service Selection Board & Ors.

Date of Decision: 4-08-2009.

Coram: Hon'ble Mr. Justice S.B. Sinha & Hon'ble Mr. Justice Cyriac Joseph

Subject Index : Article 341 & 342 of Constitution of India. Scheduled Castes, Scheduled Tribes, Backward Classes are separately notified for each of States separately by presidential notification in terms of Article 341 of Constitution. A person may be Scheduled Caste/Scheduled Tribe/Backward Class in a state for which notification is issued but cannot be so in another State for which such notification has not been so issued. Further held there is no distinction between State and Union Territories for the purpose of Article 341 & 342 of Constitution, the State and Union Territories are treated at par.

(Civil Appeal No. 7203 of 2004)

Attar Singh v. Union of India & Anr.

Date of Decision: 4-08-2009.

Coram: Hon'ble Mr. Justice S.B. Sinha & Hon'ble Mr. Justice Cyriac Joseph

Subject Index: Land acquisition : Not satisfied by the award of collector, petitioners filed arbitration application. Rate of land enhanced. Petitioners were still not satisfied. They claimed parity of rates as were mutually agreed between other claimants in different petition, by way of award of Lok Adalat. Held - On what basis the aforementioned settlement in the Lok Adalat was arrived at is not known. Details of the land with regard to location, nature, advantages and dis-advantages pertaining thereto are absent. In absence of any detailed particulars showing the similarity of the land and/or the respective advantages and dis-advantages pertaining thereto, in our opinion, the said settlement had rightly not been made the basis for determining the market value of the land.

(Civil Appeal arising out of SLP (c) No. 3372 of 2007)

New India Assurance Co. Ltd. v. Kusum & Ors.

With Civil Appeal arising out of SLP (C) No. 4176 of 2007)

United India Insurance Co. Ltd. V. Darshan Singh & Ors.

Date of Decision: 4-08-2009.

Coram: Hon'ble Mr. Justice S.B. Sinha & Hon'ble Mr. Justice Deepak Verma

Subject Index : Motor Accidents Claim : driver of offending bus, not possessing valid driving licence. In the final award, insurance company directed to pay

the award amount to the petitioners and to recover the same subsequently from the owner and driver of the offending vehicle. Insurance company paid the award amount and sought to recover the said amount from owner and driver by way of execution application to the same tribunal. Tribunal and subsequently High Court refused execution, holding that Insurance Company was required to file a separate suit to recover the award amount. Held by the Supreme Court that the remedy available to the Insurance Company was to file execution application. It would be travesty of justice, if the Insurance Company which is directed to pay the amount and then face immense difficulties in executing a decree. No separate suit is required to be filed by Insurance Company.

NEWS AND VIEWS

A warm send off was given to Hon'ble Shri Justice Yash Paul Nargotra, Judge, High Court of Jammu & Kashmir on his Lordships laying down of robes on 22nd of August, 2009. On this occasion, a group photograph of Hon'ble Judges of the High Court in full robes was taken and a memento was presented to His Lordship by Hon'ble the Chief Justice.



Hon'ble the Chief Justice while presenting memento to Hon'ble Shri Justice Yash Paul Nargotra



A group photograph of Hon'ble the Chief Justice and Hon'ble Judges on laying down of robes by Hon'ble Shri Justice Y.P. Nargotra

SC cautions courts on bails for accused in flesh trade cases

The Supreme Court has deplored the practice of courts casually granting bails to persons accused of heinous offences like coercing minor girls into prostitution racket.

“It is unfortunate that the investigating officers and the courts ordinarily fail to bear in mind a distinction between the rescued children including girls, on the one hand, and the persons who have been organising such immoral traffic in a systematic manner and have otherwise been aiding and abetting the commission of offences thereunder.

“The Legislature as also the Executive have failed to draw a well-thought out plan for rehabilitation of the rescued children in the society by bringing in suitable legislations or schemes,” the apex court observed.

A bench of Justices S B Sinha and Cyriac Joseph passed the observation while dealing with an appeal filed by an NGO Guria Swayam Sevi Sansthan questioning the bail granted by the Allahabad High Court to Sheik Mohammed, charged with luring minor girls into a prostitution racketed in Varanasi.

The bail was granted on the ground that sufficient material was not produced by the investigating agency to establish the involvement of the accused.

(HT/02.08.2009)

No religious building on public space: SC

Taking note of mushrooming places of worship on public land across the country, the Supreme Court on Friday asked the Centre to ensure that no temple, church, mosque or gurudwara was built illegally on government land.

“The solicitor general will file an affidavit to ensure that no temple, church, mosque or gurudwara is constructed on a public street or a public space,” a bench headed by Justice Dalveer Bhandari said during hearing of a petition filed by the Centre.

The petition was filed challenging a 2006 order of the Gujarat High Court to demolish places of worships illegally built on public land.

The apex court had earlier stayed a Gujarat HC order on an urgent petition by the Centre.

The apex court gave the Centre four weeks to talk to the states and reach a consensus before filing an affidavit. The case will come up for hearing again on September 29.

“As far as existing religious institutions are

concerned, we can understand that demolishing them will create law and order problem but the Centre must ensure that no religious place comes up in future in public places,” the court said.

The government should ensure that the local official, in whose jurisdiction, the religious structure comes up in an unauthorised and illegal manner, should be punished for it, the SC said.

Solicitor General Gopal Subramaniam said the government was trying to build a consensus among all states.

(HT/01.08.2009)

Employees have no right of “special leave”, says Apex Court

The Supreme Court has ruled that government employees cannot seek special leave as a matter of right as the same is dependent on the exigencies of the administration.

“Special leave is not a matter of right vested in the employee. It depends on the administrative exigencies,” a bench of Justices S.H. Kapadia and Aftab Alam said while striking down a direction passed by Punjab and Haryana High Court.

The Apex court held that an employee cannot claim the right merely because his contemporaries or others have been extended similar relief.

“In our view, these are matters which fall in the category of administrative exigencies and this court cannot sit in appeal thereon,” the bench said.

The high court had directed the government to grant special leave of five years to Sanjay Kumar Bansal. Bansal had approached the High Court after the government refused to grant him special leave due to shortage of doctors.

Government employees normally enjoy special leave facilities extending up to five years.

The High Court while passing the direction had accepted the view of Bansal that the government had discriminated against him by not granting him special leave though the same was granted earlier to others. Aggrieved by the high court’s direction, the government had appealed in the apex court.

(HT/22.07.2009)

CASE COMMENTS

State of Maharashtra

v.

Dhanendra Shriram Bhurle

AIR 2009 SC 1709

Principles for grant or refusal of Bail are well settled and the considerations therefor are certain now. Various judicial pronouncements of Hon'ble Supreme Court of India and various other High Courts of the country, on the subject, have clearly established the legal position.

In a Judgment reported as AIR 2009 SC 1709, titled "State of Maharashtra, etc. v. Dhanendra Shriram Bhurle, etc.", the Hon'ble Supreme Court has reiterated the principles for grant of Bail and also has held that some reasons are required to be given for prima facie conclusion why bail is granted. Though another important factor to be kept into mind is that an order granting or refusing bail need not be a detailed one. Some important observations of Hon'ble Supreme Court are as under:-

8. While dealing with an application for bail, there is a need to indicate in the order, reasons for prima facie concluding why bail was being granted particularly where an accused was charged of having committed a serious offence. It is necessary for the courts dealing with application for bail to consider among other circumstances, the following factors also before granting bail, they are:

The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;

Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

Prima facie satisfaction of the Court in support of the charge

10. Though a conclusive finding in regard to the points urged by the parties is not expected of the Court considering the bail application, yet giving reasons is different from discussing merits or demerits. As noted above, at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. But that does not mean that while granting bail some reasons for prima facie concluding why bail was being granted is not required to be indicated.

(*Anoop Sharma*)
Munsiff, Pampore.

Ranveer Singh v. State of M.P.
AIR 2009 SC 1658

In a Judgment reported as AIR 2009 SC 1658, titled "Ranveer Singh v. State of M.P.", the Hon'ble Supreme Court has made significant observations

regarding the "Right of private defence". In the first place it has been held that "Right of private defence" need not be specifically pleaded by accused, it can be gathered from the surrounding circumstances. Further, it has been observed that though the burden of proving the plea of right of self-defence is on accused, such burden can be discharged by preponderance of probability in favour of that plea.

Hon'ble Supreme Court has categorically observed that no test can be laid down to determine such a question. The existence of factors justifying the exercise of right of self-defence can be gathered from the surrounding circumstances. Accused may not have pleaded the existence of right of self-defence in too many words, but if such circumstances are available on record, the Court is required to consider such circumstances to appreciate whether right of self-defence was legitimately exercised or not. It is for accused to bring on record such material which gives indication as to existence of right of self-defence. It can be done either through positive evidence by accused or by eliciting necessary facts from the witnesses examined for the prosecution.

It has been further mentioned in the Judgment that such onus to be discharged by accused is akin to concept of preponderance of probabilities in civil cases. Whereas prosecution is required to prove guilt of accused beyond reasonable doubt, accused is only required to show preponderance of probability in favour of plea of self-defence on the basis of material on record. Accused need not prove the existence of the right of private defence beyond reasonable doubt.

(*Nighat Sultana*)

Addl. Distt. & Session Judge,
Udhampur.

Abhay Singh v. State of U.P.
2009 Cri.L.J. 2189

Can an accused be compelled to undergo Narco Analysis and Brain Mapping Test against his wishes?

Investigation is the process of collection of evidence to be placed for Judicial determination before a criminal court. Narco Analysis and Brain Mapping is one of such scientific ways of collection of evidence employed in the course of investigation of criminal cases.

In the case under comments, Hon'ble High Court of Allahabad while rejecting the plea of accused against subjecting him to Narco Analysis and Brain

Mapping Test in connection with a murder case held that discovery of truth is the desideratum of investigation and if Narco Analysis and Brain Mapping Test can be helpful in finding out facts relating to the offence, it should be used and utilized and that Courts should not obstruct conduct of such exercise.

Another reason advanced to justify the test in question, as elaborated in the judgment is that if invasion of the person of an accused is permissible by taking his nails and hairs for utilization during investigation, then the same principle should be applicable to Narco Analysis and Brain Mapping Test also.

Two judgments, one by Hon'ble High Court of Gujarat and another by Hon'ble High Court of Chennai as reported in 2007 Cr.L.J 4566 and 2006 Cr.L.J 2401 respectively, were cited and relied upon in the case under comments and it was noted that there is no ruling of Hon'ble Apex Court on the point.

The judgment therefore is amplification of the proposition that area within which the doctrine of protection against self incrimination operates should not be far extended so as to countenance within its ambit the Narco Analysis and Brain Mapping Test of an accused albeit against his wishes.

(*Amarjeet Singh Langeh*)
Munsiff, Ramban

Chhotanney & Ors. v. State of U.P. & Ors.
AIR 2009 SC 2013

Where the ocular evidence in a case is at variance with the medical evidence it has to be noted that it would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses, to exclude the eyewitness account, which has to be tested independently and not treated as the 'variable' keeping medical evidence as the 'constant'.

Hon'ble Supreme Court in a recent judgment in case titled 'Chhotanney & Ors v. State of U.P. & Ors.', held that it is trite that where the eyewitnesses account is found credible and trustworthy, medical opinion pointing to alternative possibilities, is not accepted as conclusive.

According to Bentham the witness are the eyes and ears of justice. The eyewitnesses' account would require a careful independent assessment and evaluation for their credibility which should not be adversely pre-judged making any other evidence including medical evidence as the sole touchstone for

test of such credibility. The eyewitnesses evidence must be tested for its inherent consistency and inherent probability of story; consistency with the account of other witnesses held to be creditworthy; consistency with undisputed facts; the 'credit' of the witnesses; their performance in witness box; their power of observation etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation.

(*Sandeep Gandotra*)
Munsiff, Kishtwar

Surinder Kumar Bhatia v. Kanhaiya Lal & Ors.
2009 Apex Criminal Reports 327

Whether the immunity under Section 77 IPC is available to a Collector / Land Acquisition Officer/Special Officer who makes an award, by way of settlement or otherwise, under the provisions of Land Acquisition Act, 1984. In case titled 'Surinder Kumar Bhatia v. Kanhaiya Lal & Ors.', Hon'ble Supreme Court set aside the findings recorded by the High Court of Rajasthan holding that "a Collector/Land Acquisition Officer making an award under Section 11(2) of the Act is entitled to the immunity of a judge u/s 77 IPC" and held in para 16 of the judgment as under :

"16. Only Judges (as defined in Sec. 19 I.P.C) acting judicially are entitled to the protection u/s 77 I.P.C. The Collector is neither a Judge as defined u/s 19 nor does he act judicially when discharging any of the functions under the Act. The decision of the High Court that the F.I.R. Is to be quashed as the subject matter of the complaint related to the action taken by the Collector/Special Officer in his capacity as a 'Judge' is opposed to law and therefore is liable to be set aside".

The case against the Land Acquisition Officer, among others, was that the private party has made false representation to the Board and in collusion with the Special Officer of the Board and office bearers of society, had fraudulently obtained allotment of pattas and grabbed valuable land from the Rajasthan Housing Board and the Chief Minister has suggested action in the case. Accordingly, an F.I.R was registered which was sought to be quashed claiming immunity u/s 77 R.P.C.

(*Bala Jyoti*)
Pr. District & Sessions Judge,
Ramban