

HIGH COURT OF SIKKIM



NEWSLETTER

Vol. 7, Issue No. 1

January to March, 2015



EDITORIAL BOARD

Hon'ble Mr. Justice Sunil Kumar Sinha, Chief Justice, High Court of Sikkim

Hon'ble Mr. Justice S.P. Wangdi, Judge, High Court of Sikkim

COMPILED BY

Mrs. K. C. Barphungpa, Registrar General

A quarterly Newsletter published by High Court of Sikkim, Gangtok.
Also available on our website : www.highcourtofsikkim.nic.in

Contents

Vacancies in Court	1
Institution, Disposal and Pendency of Cases	2-6
Some Recent High Court Judgements	7-8
Major Developments & Events	9-10
Important Visits & Conferences	11

VACANCIES IN COURTS**(i) Vacancies in High Court of Sikkim as on 31.03.2015**

Sl. No.	Sanctioned Strength	Working Strength	Vacancies
1	03	02	01

(ii) Vacancies in the District & Subordinate Courts as on 31.03.2015

Sl. No.	Sanctioned Strength	Working Strength	Vacancies
1	Superior Judicial Service (SSJS) -10	8	2 1 post of District & Sessions Judge (Spl. Div.-I) & 1 recently created post (in compliance to the decision passed in Brij Mohan Lal Vs. Union of India)
2	Sikkim Judicial Service (SJS) - 08	7	1 1 post of CJM-cum-Civil Judge (South & West)
Total	18	15	3

INSTITUTION, DISPOSAL & PENDENCY OF CASES**(1). Statement of Main & Misc. Cases in the High Court of Sikkim from 01.01.2015 to 31.03.2015**

Sl. No	Pending as on 01.01.2015		Institution		Total Disposal		Pending as on 31.03.2015	
	Main Case	Misc. Appl	Main Case	Misc. Appl	Main Case	Misc. Appl	Main Case	Misc. Appl
1	108	44	44	84	33	81	119	47

(2). Total Institution, Disposal and Pendency of cases in the Subordinate Courts of Sikkim from 01.01.2015 to 31.03.2015

Name of the Court		Civil Cases				Criminal Cases			
		Opening Balance as on 01.01.15	Institution from 01.01.15 to 31.03.15	Disposal from 01.01.15 to 31.03.15	Pendency at the end of 31.03.15	Opening Balance as on 01.01.15	Institution from 01.01.15 to 31.03.15	Disposal from 01.01.15 to 31.03.15	Pendency at the end of 31.03.15
East District at Gangtok	Main Cases	169	31	23	177	514	165	146	533
	Misc Cases	83	60	52	91	14	203	205	12
West District at Gyalshing	Main Cases	16	2	3	15	27	30	25	32
	Misc Cases	17	9	13	13	0	63	63	0
North District at Mangan	Main Cases	13	4	3	14	12	8	7	13
	Misc Cases	2	7	7	2	0	6	5	1
South District at Namchi	Main Cases	49	7	7	49	78	90	93	75
	Misc Cases	25	23	24	24	12	97	106	3
Family Courts	Main Cases	77	39	28	88	27	25	14	38
	Misc Cases	0	1	0	1	8	11	5	14
Fast Track Court	Main Cases	-	-	-	-	7	3	2	8
	Misc Cases	-	-	-	-	0	0	0	0
Juvenile Justice Boards	Main Cases	-	-	-	-	10	15	12	13
	Misc Cases	-	-	-	-	0	2	2	0
Total Main Cases		324	83	64	343	675	336	299	712
Total Misc Cases		127	100	96	131	34	382	386	30

INSTITUTION, DISPOSAL & PENDENCY OF CASES DISTRICT WISE

(1). Total Institution, Disposal and Pendency of cases in the Subordinate Courts of Sikkim from 01.01.2015 to 31.03.2015

(I) East District at Gangtok

Name of the Court		Civil Cases				Criminal Cases			
		Opening Balance as on 01.01.15	Institution from 01.01.15 to 31.03.15	Disposal from 01.01.15 to 31.03.15	Pendency at the end of 31.03.15	Opening Balance as on 01.01.15	Institution from 01.01.15 to 31.03.15	Disposal from 01.01.15 to 31.03.15	Pendency at the end of 31.03.15
Principal District & Sessions Judge (East)	Main Cases	65	22	17	70	71	34	22	83
	Misc Cases	68	52	49	71	2	44	43	3
District & Sessions Judge (Spl.Div. - I)	Main Cases	1	0	0	1	0	0	0	0
	Misc Cases	0	1	0	1	0	0	0	0
District & Sessions Judge (Spl.Div. - II)	Main Cases	1	0	0	1	1	0	1	0
	Misc Cases	1	5	2	4	0	0	0	0
Chief Judicial Magistrate-cum-Civil Judge (East & North)	Main Cases	6	1	0	7	280	102	94	288
	Misc Cases	5	0	0	5	4	90	91	3
Civil Judge-cum-judicial Magistrate (East)	Main Cases	96	8	6	98	162	29	29	162
	Misc Cases	9	2	1	10	8	69	71	6
Total Main Cases		169	31	23	177	514	165	146	533
Total Misc Cases		83	60	52	91	14	203	205	12

(II) West District at Gyalshing

Name of the Court		Civil Cases				Criminal Cases			
		Opening Balance as on 01.01.15	Institution from 01.01.15 to 31.03.15	Disposal from 01.01.15 to 31.03.15	Pendency at the end of 31.03.15	Opening Balance as on 01.01.15	Institution from 01.01.15 to 31.03.15	Disposal from 01.01.15 to 31.03.15	Pendency at the end of 31.03.15
District & Sessions Judge (West)	Main Cases	9	1	1	9	12	7	3	16
	Misc Cases	14	7	9	12	0	3	3	0
Civil Judge-cum-judicial Magistrate (West)	Main Cases	7	1	2	6	15	23	22	16
	Misc Cases	3	2	4	1	0	60	60	0
Total Main Cases		16	2	3	15	27	30	25	32
Total Misc Cases		17	9	13	13	0	63	63	0

(iii) North District at Mangan

Name of the Court		Civil Cases				Criminal Cases			
		Opening Balance as on 01.01.15	Institution from 01.01.15 to 31.03.15	Disposal from 01.01.15 to 31.03.15	Pendency at the end of 31.03.15	Opening Balance as on 01.01.15	Institution from 01.01.15 to 31.03.15	Disposal from 01.01.15 to 31.03.15	Pendency at the end of 31.03.15
District & Sessions Judge (North)	Main Cases	8	1	3	6	1	0	0	1
	Misc Cases	2	6	6	2	0	2	2	0
Civil Judge-cum-judicial Magistrate (North)	Main Cases	5	3	0	8	11	8	7	12
	Misc Cases	0	1	1	0	0	4	3	1
Total Main Cases		13	4	3	14	12	8	7	13
Total Misc Cases		2	7	7	2	0	6	5	1

(iv) South District at Namchi

Name of the Court		Civil Cases				Criminal Cases			
		Opening Balance as on 01.01.15	Institution from 01.01.15 to 31.03.15	Disposal from 01.01.15 to 31.03.15	Pendency at the end of 31.03.15	Opening Balance as on 01.01.15	Institution from 01.01.15 to 31.03.15	Disposal from 01.01.15 to 31.03.15	Pendency at the end of 31.03.15
District & Sessions Judge (South)	Main Cases	32	3	2	33	48	19	15	52
	Misc Cases	19	21	17	23	0	26	26	0
Chief Judicial-Magistrate cum-Civil Judge(South & West)	Main Cases	0	0	0	0	17	49	58	8
	Misc Cases	3	0	3	0	6	60	63	3
Civil Judge-cum-judicial Magistrate (South)	Main Cases	17	4	5	16	13	22	20	15
	Misc Cases	3	2	4	1	6	11	17	0
Total Main Cases		49	7	7	49	78	90	93	75
Total Misc Cases		25	23	24	24	12	97	106	3

(V) Family Courts

Name of the Court		Civil Cases				Criminal Cases			
		Opening Balance as on 01.01.15	Institution from 01.01.15 to 31.03.15	Disposal from 01.01.15 to 31.03.15	Pendency at the end of 31.03.15	Opening Balance as on 01.01.15	Institution from 01.01.15 to 31.03.15	Disposal from 01.01.15 to 31.03.15	Pendency at the end of 31.03.15
Family Court, East at Gangtok	Main Cases	48	23	20	51	17	13	9	21
	Misc Cases	0	1	0	1	7	6	4	9
Family Court, West at Gyalshing	Main Cases	6	3	3	6	4	1	2	3
	Misc Cases	0	0	0	0	0	0	0	0
Family Court, North at Mangan	Main Cases	0	1	0	1	0	2	0	2
	Misc Cases	0	0	0	0	0	0	0	0
Family Court, South at Namchi	Main Cases	23	12	5	30	6	9	3	12
	Misc Cases	0	0	0	0	1	5	1	5
Total Main Cases		77	39	28	88	27	25	14	38
Total Misc Cases		0	1	0	1	8	11	5	14

(vi) Fast Track Court

Name of the Court		Criminal Cases			
		Opening Balance as on 01.01.15	Institution from 01.01.15 to 31.03.15	Disposal from 01.01.15 to 31.03.15	Pendency at the end of 31.03.15
Fast Track Court (East & North at Gangtok)	Main Cases	2	2	0	4
	Misc Cases	0	0	0	0
Fast Track Court (South & West) at Gyalshing	Main Cases	5	1	2	4
	Misc Cases	0	0	0	0
Total Main Cases		7	3	2	8
Total Misc Cases		0	0	0	0

(vii) Juvenile Justice Boards

Name of the Court		Criminal Cases			
		Opening Balance as on 01.01.15	Institution from 01.01.15 to 31.03.15	Disposal from 01.01.15 to 31.03.15	Pendency at the end of 31.03.15
Juvenile Justice Board East at Gangtok	Main Cases	6	5	3	8
	Misc Cases	0	0	0	0
Juvenile Justice Board West at Gyalshing	Main Cases	0	4	1	3
	Misc Cases	0	1	1	0
Juvenile Justice Board North Mangan	Main Cases	3	4	5	2
	Misc Cases	0	0	0	0
Juvenile Justice Board South at Namchi	Main Cases	1	2	3	0
	Misc Cases	0	1	1	0
Total Main Cases		10	15	12	13
Total Misc Cases		0	2	2	0

SOME RECENT HIGH COURT JUDGMENTS

- 1. Unlike in Criminal proceedings which require proof beyond reasonable doubt, the test to be applied in Civil proceedings is preponderance of probabilities:** On 05.03.2015, a Single Bench of the Court in Mat. App. No. 03 of 2014 (Smt. Renu Rai vs Buddha Kumar Rai) held that in civil proceedings, proof beyond reasonable doubt would hardly be required as the same being the proof of higher standard which generally governs criminal trials or quasi criminal matters. In the instant case of dissolution of marriage on grounds of cruelty, probabilities are to be looked into and if the probabilities and other surrounding circumstances are in such a fashion that a reasonable man can draw only one conclusion, then it has to be drawn. The test to be applied is whether, on preponderance of probabilities, the fact is proved or not. The court held that the humiliation and agony suffered by the respondent as a result of filing of false complaint by the appellant against him under the Domestic Violence Act was an instance of cruelty against the respondent. It was further held that the instances of the appellant having an extra marital affair as found in the evidence of the respondent himself, as well as the other witnesses, were sufficient to prove the ground raised under Section 13(1)(i) of the Hindu Marriage Act, 1955, and at the same time, they were also sufficient to prove the act of mental cruelty committed by the appellant against the respondent. The Court, finding no substance in the appeal against the judgment and decree of dissolution of marriage, dismissed the appeal.
- 2. Cruelty in the context of Section 498-A IPC must be of a very grave nature:** On 10.03.2015, a Single Bench of the Court in CrI. A. No. 25 of 2014 [Krishna Bahadur Rawat (Chettri) vs. State of Sikkim] held that while considering the case of cruelty in the context of the provisions of Section 498-A of the IPC, the court must examine that allegations/accusations must be of a very grave nature and should be proved beyond reasonable doubt. A casual incident of assault or petty quarrel between husband and wife cannot be taken as proof of cruelty as is required under Section 498-A. Unless there is a continuous state of affairs of torture, petty quarrels and simple family affairs between husband and wife would not prove the cruelty between them for the purpose of Section 498-A. Thus, on an incident of a petty quarrel of 2004 and on other incident of a petty quarrel of 2010 between the appellant husband and his wife, the conviction of the appellant under Section 498-A IPC was not justified. The Court set aside the conviction of the appellant under Section 498-A IPC.

3. **Appellate court should not interfere with the judgment of acquittal in the absence of compelling and substantial reasons:** On 11.03.2015, a Single Bench of the Court in CrI. L.P. No. 08 of 2014 (State of Sikkim Vs. Lakpa Tshering Gensapa) held that the principle to be followed by the Appellate Court, considering the matter of appeal against the judgment of acquittal, is to interfere only when there are compelling and substantial reasons for doing so. The paramount consideration of the court, in such matters, is to ensure that miscarriage of justice is prevented. In a case where admissible evidence is ignored a duty is cast upon the appellate Court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused has really committed any offence or not. The Court, finding no compelling and substantial reasons to interfere with the findings recorded by the Special Court in a case under Section 13(1)(e) of the Prevention of Corruption Act, 1988 read with Section 120-B of the IPC, observed that it is not a case in which the impugned judgment is clearly unreasonable or a case in which relevant and convincing material has been eliminated in the process of appreciation of evidence. The court dismissed the petition seeking leave to file the appeal against the judgment of acquittal.
4. **Availability of civil remedy by itself is not a ground to quash the criminal proceedings:** On 12.03.2015, a Single Bench of the Court in CrI M.C. No. 11 of 2014 (Vijay Kumar Ghai Vs. Ashwin Oberoi) held that a commercial transaction or a commercial dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. Since, the scope of the two proceedings is different, the mere fact that the complaint relates to a commercial transaction for which a civil remedy is available, is by itself not a ground to quash the criminal proceedings. The Court refusing to quash the complaint filed by the respondent against the petitioner under Sections 406/420 of the IPC in the court of Ld. Judicial Magistrate, East and North at Gangtok for dishonestly presenting the undated cheques kept as security by the respondent to the petitioner in terms of the franchise agreement for encashment in violation of the legal contract and the express direction in the contract, held that in the present case, the dispute no doubt emanates from a commercial transaction but from the facts and circumstances of the case, it also attracts the offence under Section 405 IPC. The Court further held, that the existence of an arbitration clause in the agreement is not by itself an effective substitute for a criminal prosecution when the disputed act itself is an offence.

MAJOR DEVELOPMENTS & EVENTS

1. REPUBLIC DAY CELEBRATION

The High Court of Sikkim celebrated Republic Day on 26th January, 2015. The National Flag was unfurled by Hon'ble Mr. Justice Sunil Kumar Sinha, Acting Chief Justice in presence of Hon'ble Mr. Justice S.P. Wangdi, Judge, High Court of Sikkim.

Present on the occasion were Judicial Officers, Members of the Bar, Officers and staff of the Registry, Press and Media.

2. FULL COURT REFERENCE

On 17th February, 2015 a Full Court Reference was held in the High Court of Sikkim on the sad demise of Justice R.K. Patra, former Chief Justice of this High Court on 28th January, 2015.

The Full Court Reference was attended by Hon'ble Mr. Justice Sunil Kumar Sinha, Acting Chief Justice, High Court of Sikkim, Hon'ble Mr. Justice S.P. Wangdi, Judge, High Court of Sikkim, Judicial Officers, Senior Advocates, Members of the Bar and Officers of the Registry.

3. SWEARING-IN CEREMONY



In pursuance of Notification No. K-13031/01/2015-US.II dated 26th March, 2015 issued by the Government of India, Ministry of Law & Justice, (Department of Justice), New Delhi, Hon'ble Mr. Justice Sunil Kumar Sinha, Acting Chief Justice, High Court of Sikkim was sworn-in as the Chief Justice of High Court Sikkim on 30th March, 2015.



The Oath of Office was administered by the Hon'ble Governor of Sikkim, Shri Srinivas Patil at Ashirbad Hall, Raj Bhawan, Gangtok in the presence of Hon'ble Chief Minister of Sikkim, Shri Pawan Chamling, Hon'ble Cabinet Ministers, Hon'ble Mr. Justice S.P. Wangdi, Judge, High Court of Sikkim. The Chief Secretary, Dignitaries of the State Government, Judicial Officers, Senior Advocates, Members of the Bar and local gentry also attended the function.

IMPORTANT VISITS & CONFERENCES

- (1) Hon'ble Mr. Justice Sunil Kumar Sinha, Acting Chief Justice, High Court of Sikkim attended the *Meeting of Chairpersons of High Court Computer Committee* at Supreme Court of India on 14-15 February, 2015.
- (2) Hon'ble Mr. Justice S.P. Wangdi, Judge, High Court of Sikkim & Executive Chairman, Sikkim SLSA and also Member, Central Authority, NALSA attended the *International Conference on Global Environmental Issues* organized by the National Green Tribunal on 14-15 March, 2015 at Vigyan Bhawan, New Delhi.

His Lordship also attended the 13th *All India Meet of State Legal Services Authority & Central Authority Meeting of NALSA* on 21-22 March, 2015 at Ranchi, Jharkhand.

The Meet was organized by the Jharkhand State Legal Services Authority and the Government of Jharkhand.