HIGH COURT OF SIKKIM

NEWSLETTER

Vol. 13, Issue No. 3 July to September, 2018

EDITORIAL BOARD

COMPILED BY

A quarterly Newsletter published by High Court of Sikkim, Gangtok

Also available on our website: www.highcourtofsikkim.nic.in

CONTENTS

Page No.

EDITORIAL BOARD, HIGH COURT OF SIKKIM

VACANCIES IN COURTS.....1

INSTITUTION, DISPOSAL & PENDENCY OF CASES 2–8

RECENT HIGH COURT JUDGMENTS.....9-45

SOME RECENT MAJOR EVENTS.....46-49

IMPORTANT VISITS & CONFERENCES.....50

HIGH COURT OF SIKKIM
EDITORIAL BOARD

Hon'ble Mr. Justice Bhaskar Raj Pradhan,
Judge,
High Court of Sikkim/Chairman

VACANCIES IN COURTS

(i) Vacancies in the High Court of Sikkim as on 30.09.2018

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

(ii) Vacancies in the District & Subordinate Courts as on 30.09.2018

Sl. No.	Sanctioned Strength	Working Strength	Vacancies
1.	Sikkim Superior Judicial Service (SSJS) - 13	10	03 • Central Project Coordinator, e-Courts • 01 post in the cadre of SSJS created (in compliance to the direction passed by the Hon'ble Supreme Court in Brij Mohan Lal Vs. Union of India) • District and Sessions Judge (Spl. Div-I)
2.	Sikkim Judicial Service (SJS) – 10	09	01 • Chief Judicial Magistrate-cum-Civil Judge (East) at Gangtok
Total	**23**	**19**	**04**

INSTITUTION, DISPOSAL & PENDENCY OF CASES

(1) Statement of Main & Misc. Cases in the High Court of Sikkim from 01.07.2018 to 30.09.2018.

Sl. No.	Pending as on 30.06.2018	Institution	Disposal	Pending as on 30.09.2018
	Main Cases	Main Cases	Main Cases	Main Cases
1.	239	53	57	235

(2) Total Institution, Disposal & Pendency of cases in the Subordinate Courts of Sikkim from 01.07.2018 to 30.09.2018.

NAME OF THE COURT		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.07.2018	Institution from 01.07.2018 to 30.09.2018	Disposal from 01.07.2018 to 30.09.2018	Pendency at the end of 30.09.2018	Opening balance as on 01.07.2018	Institution from 01.07.2018 to 30.09.2018	Disposal from 01.07.2018 to 30.09.2018	Pendency at the end of 30.09.2018
East District at Gangtok	Main cases	267	75	96	246	591	230	245	576
	Misc. cases	104	69	80	93	10	185	157	38
West District at Gyalshing	Main cases	57	05	35	27	30	35	26	39
	Misc. cases	08	23	16	15	01	49	47	03
North District at Mangan	Main cases	04	01	02	03	15	15	18	12
	Misc. cases	01	03	04	00	01	16	14	03
South District at Namchi	Main cases	57	17	31	43	156	90	79	167
	Misc. cases	101	49	99	51	01	94	92	03
Family Courts	Main cases	130	85	95	120	137	37	25	149
	Misc. cases	00	00	00	00	16	07	09	14
Fast Track Courts	Main cases	-	-	-	-	14	04	06	12
	Misc. cases	-	-	-	-	00	00	00	00
Juvenile Justice	Main cases	-	-	-	-	08	09	07	10

Boards	Misc. cases	-	-	-	-	00	08	07	01
Total Main Cases		515	183	259	439	951	420	406	965
Total Misc. Cases		214	144	199	159	29	359	326	62

INSTITUTION, DISPOSAL AND PENDENCY OF CASES DISTRICT WISE

(1) Total Institution, Disposal and Pendency of cases in the Subordinate Courts of Sikkim from 01.07.2018 to 30.09.2018

(i) **East District at Gangtok.**

NAME OF THE COURTS		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.07.2018	Institution from 01.07.2018 to 30.09.2018	Disposal from 01.07.2018 to 30.09.2018	Pendency at the end of 30.09.2018	Opening balance as on 01.07.2018	Institution from 01.07.2018 to 30.09.2018	Disposal from 01.07.2018 to 30.09.2018	Pendency at the end of 30.09.2018
District & Sessions Judge (East)	Main cases	91	47	29	109	221	50	35	236
	Misc. cases	64	63	68	59	05	99	76	28
District & Sessions Judge (Spl. Div.-I)	Main cases	46	01	16	31	15	00	05	10
	Misc. cases	08	00	05	03	00	00	00	00
District & Sessions Judge (Spl. Div.-II)	Main cases	26	09	16	19	12	01	06	07
	Misc. cases	13	00	04	09	00	00	00	00
Chief Judicial Magistrate-cum-Civil Judge (East)	Main cases	04	02	02	04	132	126	129	129
	Misc. cases	01	00	00	01	01	27	27	01
Civil Judge-cum- Judicial Magistrate (East)	Main cases	58	14	20	52	64	47	29	82
	Misc. cases	10	04	01	13	03	58	53	08
Civil Judge-cum- Judicial Magistrate Chungthang Sub-division stationed at Gangtok (East)	Main cases	38	01	11	28	120	00	34	86
	Misc. cases	06	01	02	05	01	01	01	01
Civil Judge-cum-Judicial Magistrate Rangpo Sub-division, East Sikkim	Main cases	04	01	02	03	20	05	03	22
	Misc. cases	02	01	00	03	00	00	00	00
Civil Judge-cum-Judicial Magistrate Rongli Sub-division, East Sikkim	Main cases	00	00	00	00	07	01	04	04
	Misc. cases	00	00	00	00	00	00	00	00
Total Main Cases		267	75	96	246	591	230	245	576
Total Misc. Cases		104	69	80	93	10	185	157	38

(ii) **West District at Gyalshing**

NAME OF THE COURT		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.07.2018	Institution from 01.07.2018 to 30.09.2018	Disposal from 01.07.2018 to 30.09.2018	Pendency at the end of 30.09.2018	Opening balance as on 01.07.2018	Institution from 01.07.2018 to 30.09.2018	Disposal from 01.07.2018 to 30.09.2018	Pendency at the end of 30.09.2018
District & Sessions Judge (West)	Main cases	10	04	08	06	19	08	05	22
	Misc. cases	08	16	13	11	00	13	13	00
Chief Judicial Magistrate-cum-Civil Judge (West)	Main cases	02	00	01	01	03	10	07	06
	Misc. cases	00	01	00	01	01	06	07	00
Civil Judge-cum-Judicial Magistrate (West)	Main cases	41	00	24	17	02	05	05	02
	Misc. cases	00	03	01	02	00	11	08	03
Civil Judge-cum-Judicial Magistrate, Soreng Subdivision, West Sikkim	Main cases	04	01	02	03	06	12	09	09
	Misc. cases	00	03	02	01	00	19	19	00
Total Main Cases		57	05	35	27	30	35	26	39
Total Misc. Cases		08	23	16	15	01	49	47	03

(iii) **North District at Mangan**

NAME OF THE COURTS		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.07.2018	Institution from 01.07.2018 to 30.09.2018	Disposal from 01.07.2018 to 30.09.2018	Pendency at the end of 30.09.2018	Opening balance as on 01.07.2018	Institution from 01.07.2018 to 30.09.2018	Disposal from 01.07.2018 to 30.09.2018	Pendency at the end of 30.09.2018
District & Sessions Judge (North)	Main cases	04	00	02	02	07	04	09	02
	Misc. cases	01	03	04	00	01	05	06	00
Chief Judicial Magistrate-cum-Civil Judge (North)	Main cases	00	00	00	00	02	09	08	03
	Misc. cases	00	00	00	00	00	04	01	03
Civil Judge-cum-Judicial Magistrate (North)	Main cases	00	01	00	01	03	01	00	04
	Misc. cases	00	00	00	00	00	03	03	00
Civil Judge-cum-Judicial Magistrate, Chungthang Sub Division, North Sikkim	Main cases	00	00	00	00	03	01	01	03
	Misc. cases	00	00	00	00	00	04	04	00
Total Main Cases		04	01	02	03	15	15	18	12
Total Misc. Cases		01	03	04	00	01	16	14	03

(iv) **South District at Namchi**

NAME OF THE COURTS		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.07.2018	Institution from 01.07.2018 to 30.09.2018	Disposal from 01.07.2018 to 30.09.2018	Pendency at the end of 30.09.2018	Opening balance as on 01.07.2018	Institution from 01.07.2018 to 30.09.2018	Disposal from 01.07.2018 to 30.09.2018	Pendency at the end of 30.09.2018
District & Sessions Judge (South)	Main cases	34	08	16	26	133	19	27	125
	Misc. cases	93	47	95	45	00	37	37	00
Chief Judicial Magistrate-cum- Civil Judge (South)	Main cases	02	01	02	01	08	49	39	18
	Misc. cases	01	00	01	00	01	35	35	01
Civil Judge-cum- Judicial Magistrate (South)	Main cases	05	06	04	07	04	10	07	07
	Misc. cases	00	02	01	01	00	14	14	00
Civil Judge-cum-Judicial Magistrate, Jorethang Sub Division (South)	Main cases	05	00	03	02	10	09	06	13
	Misc. cases	01	00	01	00	00	07	05	02
Civil Judge-cum-Judicial Magistrate, Yangang Sub Division (South)	Main cases	11	02	06	07	01	03	00	04
	Misc. cases	06	00	01	05	00	01	01	00
Total Main Cases		57	17	31	43	156	90	79	167
Total Misc. Cases		101	49	99	51	01	94	92	03

(i) **Family Courts**

NAME OF THE COURT		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.07.2018	Institution from 01.07.2018 to 30.09.2018	Disposal from 01.07.2018 to 30.09.2018	Pendency at the end of 30.09.2018	Opening balance as on 01.07.2018	Institution from 01.07.2018 to 30.09.2018	Disposal from 01.07.2018 to 30.09.2018	Pendency at the end of 30.09.2018
Family Court, East at Gangtok	Main cases	85	54	59	80	21	22	15	28
	Misc. cases	00	00	00	00	04	03	03	04
Family Court West at Gyalshing	Main cases	09	07	06	10	04	03	02	05
	Misc. cases	00	00	00	00	00	00	00	00

Family Court North at Mangan	Main cases	05	01	04	02	00	00	00	00
	Misc. cases	00	00	00	00	00	00	00	00
Family Court South at Namchi	Main cases	31	23	26	28	15	12	08	19
	Misc. cases	00	00	00	00	12	04	06	10
Total Main Cases		130	85	95	120	40	37	25	52
Total Misc. Cases		00	00	00	00	16	07	09	14

(ii) **Fast Track Court**

NAME OF THE COURT		CRIMINAL CASES			
		Opening balance as on 01.07.2018	Institution from 01.07.2018 to 30.09.2018	Disposal from 01.07.2018 to 30.09.2018	Pendency at the end of 30.09.2018
Fast Track Court (East & North) at Gangtok	Main cases	12	04	04	12
	Misc. cases	00	00	00	00
Fast Track Court (South & West) at Gyalshing	Main cases	02	00	02	00
	Misc. cases	00	00	00	00
Total Main Cases		14	04	06	12
Total Misc. Cases		00	00	00	00

(i) **Juvenile Justice Boards**

NAME OF THE COURTS		CRIMINAL CASES			
		Opening balance as on 01.07.2018	Institution from 01.07.2018 to 30.09.2018	Disposal from 01.07.2018 to 30.09.2018	Pendency at the end of 30.09.2018
Juvenile Justice Board East, at Gangtok	Main cases	07	03	01	09
	Misc. cases	00	04	03	01
Juvenile Justice Board West, at Gyalshing	Main cases	01	02	03	00
	Misc. cases	00	00	00	00
Juvenile Justice Board North, at Mangan	Main cases	00	00	00	00
	Misc. cases	00	00	00	00
Juvenile Justice Board South, at Namchi	Main cases	00	04	03	01
	Misc. cases	00	04	04	00
Total Main Cases		08	09	07	10
Total Misc. Cases		00	08	07	01

SOME RECENT JUDGMENTS OF HIGH COURT OF SIKKIM FROM (01.07.2018 to 30.09.2018)

1. **Damber Singh Chettri**

v.

State of Sikkim

Crl. A. No. 05 of 2017

2018 SCC OnLine Sikk 132

Decided on 9th July, 2018

A. Maxim – *falsus in uno fulsus in omnibus* – Principle – Is the common law dating back to the late seventeenth century. Was at one time a mandatory presumption that a witness was unreliable if he had previously lied while offering testimony. During the nineteenth century the English Courts began to advice that such a presumption is not mandatory – In India however, this maxim has not been accepted and witnesses cannot be branded as liars – The Indian Courts have consistently declined to apply the maxim as a general proposition of law. Even if major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, his conviction can be maintained – This maxim at the most is merely a rule of caution involving the question of weight of evidence which a Court may apply in a given set of circumstances but not what may be called a mandatory rule of evidence. In the Indian context, the doctrine if applied could be dangerous for hardly one comes across any witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment – Each case must be examined as to what extent the evidence is worthy of acceptance.

B. Evidence – Appreciation of evidence – Need for the Courts to ascertain the truth – The Court has to punish the guilty and protect the innocent. Investigating agency required to be fair and efficient. However, any lapse in investigation cannot *per se* be a ground to discard the prosecution case when overwhelming evidence is available to prove the offence. It is vital to examine evidence keeping in mind the setting of the crime – While appreciating the evidence of a witness; the Court must ascertain whether the evidence read as a whole appears to be

truthful. It is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the Court may discard his evidence.

C. Indian Evidence Act, 1872 – S. 155 – Impeaching Credit of Witness – All inconsistent statements are not sufficient to impeach the credit of witness. To contradict a witness must be to discredit the particular version of a witness. In arriving at the conclusion about the guilt of the accused the Court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Even if a major portion of the evidence is deficient, in case the residue is sufficient to prove guilt of the accused his conviction can be maintained – Duty of the Court to separate the grain from the chaff. Exaggerating the rule of benefit of doubt can result in miscarriage of justice – Just because a close relative is a witness, it is not enough to reject her/his testimony if it is otherwise credible – Evidence can be closely scrutinized to assess whether an innocent person is falsely implicated – Must be done keeping in mind this vital aspect – If the scene of crime is rural and the witnesses are rustics, their behavioural pattern and perceptive habits are required to be judged as such. Very sophisticated approach based on unreal assumptions about human conduct should not be encouraged. Discrepancies and minor contradictions in narrations and embellishments cannot militate against the veracity of the core of the testimony – A trained judicial mind must seek the truth and conformity to probability in the substantial fabric of testimony delivered – Witnesses' do not all have photographic memory – A witness may also be overawed by the Court atmosphere and the piercing cross-examination. Nervousness due to the alien surroundings may lead to the witness being confused regarding sequence of events. Witnesses are also susceptible to filling up details from imagination sometimes on account of the fear of looking foolish or being disbelieved activating the psychological defence mechanism. Quite often improvements are made to the earlier version during trial in order to give a boost to the prosecution case. Discrepancies which do not shake the foundation facts may be discarded – Merely because there are embellishments to the version of the witness the Court should not disbelieve the evidence altogether if it is otherwise trustworthy – Almost impossible in a criminal trial to prove all the elements with scientific precision.

D. Evidence – Beyond a reasonable doubt – Principle Explained – A Court could be convinced of the guilt only beyond the range of a reasonable doubt. Proof beyond a reasonable doubt is the same as proof which affords moral certainty to the Judge. Doubt to be

reasonable must be of an honest, sensible and fair-minded man supported by reason with a desire to ascertain the truth. An honestly entertained doubt of guilt is a reasonable doubt. While appreciating the evidence of a witness the Court must ascertain whether the evidence read as a whole appears to be truthful. It is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the Court may discard his evidence.

E. Evidence – How should the Court deal with cases which violate human dignity in sexual crimes? – Cases involving sexual molestation, supposed consideration which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of prosecutrix should not, unless the discrepancies are such which are fatal in nature, be allowed to throw out an otherwise reliable prosecution case – Inherent bashfulness of a woman and her tendency to conceal outrage of sexual aggression should not be ignored. The testimony of a victim in such cases is vital and unless there are compelling reasons which necessitate corroboration the Court should find no difficulty to act on the victim's testimony alone to convict the accused – The Indian Evidence Act, 1872 does not mandate that a victim's evidence cannot accepted without corroboration.

F. Evidence – Appreciation of Evidence of a Child Witness – Law recognises the child as a competent witness – Evidence of a child witness can be considered under S. 118 of the Indian Evidence Act, 1872 provided that such witness is able to understand the questions and able to give rational answers thereof – Incumbent upon the Court to put questions to them to gauge effectively the child's power of comprehension and mental state to speak the truth before the Court – Demeanour of the child witness must also be ascertained and noted. The Court therefore, should always record their opinion regarding the child's ability to understand the duty to speak the truth. A child witness if found competent to depose to the facts and a reliable one, such evidence could be the basis of conviction. Tender age of a child witness makes them susceptible to be swayed by what others tell them and may fall easy prey to tutoring and thus, although not as a general rule to be applied in every case but as a precautionary measure in cases in which there is an element of uncertainty, corroboration may be sought for and the evidence evaluated carefully. This is a rule of prudence and the evidence of child witness cannot be rejected *per se* on the presumption that they are likely to

have been tutored. The tender age of a child alone cannot be a ground to discard the evidence of a child.

G. Evidence – Appreciation of Evidence of Child Victim – A victim of sexual assault is not an accomplice to the crime but a victim of another person's lust – Stands at a higher pedestal than even an injured witness as she/he suffers from emotional injury. In cases of injured witnesses there is injury on the physical form, while in the cases of an injured victim the injury is physical, psychological and emotional – Child victim is a competent witness. Court may convict the accused on the sole testimony of a child victim if it has no reason to doubt its truthfulness and veracity. Corroboration is only a matter or prudence and not a rule – Corroboration can be dispensed with if, in the particular circumstances of a case the Court is satisfied that it is safe to rely upon the sole testimony of a child victim – Where the Court deems it proper to seek corroboration it must be kept in mind that it is not necessary that there should be independent confirmation of every material circumstance. Some additional evidence rendering it probable may be required to come to the conclusion that it is reasonably safe to act upon the testimony of the child victim as to the guilt of the accused – Corroboration need not be direct – Circumstantial evidence is sufficient if it connects the accused to the crime. Since the victim is a child and therefore may be susceptible to be swayed by what others tell them the Court must remain conscious and assess whether the statement of a child victim is the voluntary expression of the victim and that she was not under influence of others.

H. Protection of Children from Sexual Offences Act, 2012 – Special and landmark legislation addressing the issue of child sexual abuse in India which had been shrouded in secrecy. Due to negative social conditioning, there is hesitation in reporting sexual abuse on children – Child sexual abuse if not dealt appropriately, the central purpose of the POCSO Act, i.e., the interest of the child would be jeopardised – It must be well remembered that in every case of child sexual abuse is the story of the child who has been abused. Who else can relate the story better than the child herself/himself? Due to the stigma attached as well as the fright of the unknown, it is extremely difficult for a child to come out in the open to narrate the story of her/his abuse – The central narrative and account of the crime often comes from the child victim. The child victim and the accused are, in most instances, the only ones present when the crime is committed. In such situation to insist upon yet another direct witness to

corroborate the child victim's story would result in equating the victim to an accomplice in crime – Also to be remembered that a skilful cross-examination is almost certain to confuse a child victim even while telling the truth which can lead to inconsistencies in their testimony – Peculiar perspective of the child victim can also affect their recollection but the Courts' duty to assess the evidence in context can only reveal the actual truth. To unnecessarily stigmatise the evidence of the child victim without proof of influence of tutoring would not fulfil the purpose of the POCSO Act sought to be achieved – Tutoring is always a question of fact which requires evidence to prove it. There is no reason to presume that a child would falsely implicate the accused merely because of her/his tender age – To the contrary, the POCSO Act prescribes a mandatory presumption where a person is prosecuted for committing or abetting or attempting to commit any offence under Ss. 3, 5, 7 and 9 that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved.

I. Evidence – Appreciation of Evidence of Child Victim – Presumption that children are more prone to false memory reports than adults and therefore their testimony less reliable no longer holds good – According to current scientific evidence, such views seems to be quite indefensible – It is now quite convincingly argued that adults are more susceptible to false memories compared to children as children depend more heavily on that part of the mind which records what actually happened while adults depends on another part of the mind which records the meaning of what happened – Presumptive unreliability of a child witness and more so a child victim solely on the basis of their tender age therefore, cannot be a general rule for it is equally true that adults are also susceptible to external influences. Today children are perceived to be generally more honest than adult witnesses – Credibility assessment of honesty, memory, suggestibility and communication ability must be applied to all witnesses regardless of age. The development of children's memory as compared to that of adults may require this assessment to be a little different for a child. This is where the Court must ensure proper evaluation on examination of the proved circumstances.

J. Evidence – Minor discrepancies brought out by clever cross-examination in the present case cannot be equated to substantial infirmities in the evidence of the victim – When there is a variance between direct evidence of the victim tested by cross-examination and the

evidence of a witness who heard the victim it is the direct evidence which must be given due weightage.

K. Indian Evidence Act, 1872 – S. 101 – Burden of Proof – One who alleges must prove the alleged fact. S. 101 harnesses the burden of proving the existence of facts which he asserts on the person who asserts the said fact – It was not the case of the prosecution that there were number of shops in the vicinity where the offence occurred and therefore the cry of the victim during the abuse ought to have been heard by people. It was the defence who desired the Court to give judgment on the existence of the said facts which they asserted and thus it was incumbent upon the defence to discharge the said burden – This burden cannot be harnessed upon the prosecution which did not assert the said facts.

L. Indian Penal Code, 1860 – S. 71 – Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished the offender shall not be punished with the more severe punishment than the Court which tries it could award for any one of such offences – For the same set of facts, the Appellant has been sentenced under S. 8 of the POCSO Act as well as S. 354, I.P.C – In view of S. 71, I.P.C it is impermissible to impose the sentence under S. 354, I.P.C since the Learned Special Judge has imposed the sentence under S. 8 of the POCSO Act which is more severe – Sentence under S. 354, I.P.C set aside – Order on sentence dated 29.12.2016 modified.

2. **Branch Manager, Shriram General Insurance Co. Ltd.**

v.

Shri Navin Chettri and Others

I.A. No.01 of 2018

IN

MAC Appeal No. 04 of 2018

2018 SCC OnLine Sikk 139

Decided on 18th July, 2018

A. Motor Vehicles Act, 1988 – S. 173 (1) – Condonation of Delay – The statute of limitation is founded on public policy – Aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression – Seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale.

B. Motor Vehicles Act, 1988 – S. 173 (1) – Condonation of Delay – Law of limitation not enacted with the object of destroying the rights of the parties but to ensure that they approach the Court without unreasonable delay – Every remedy should remain alive only till the expiry of the period fixed by the legislature.

C. Motor Vehicles Act, 1988 – S. 173 (1) – Condonation of Delay – An unlimited limitation would lead to a sense of insecurity and uncertainty – Limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches.

D. Motor Vehicles Act, 1988 – S. 173 (1) – Condonation of Delay – Sufficient Cause – Expression construed liberally in keeping with its ordinary dictionary meaning as adequate or enough – Any justifiable reason resulting in vacation has to be understood as sufficient cause – Necessarily implies an element of sincerity, *bona fide*, and reasonableness – Liberal construction of the expression "sufficient cause" is intended to advance substantial justice – Expression used in statutes is elastic enough to enable the Courts to apply the law in meaningful manner which serves the ends of justice – Expression "sufficient cause" implies

the presence of legal and adequate reasons. The word "sufficient" means adequate enough, as much as may be necessary to answer the purpose intended – The test of "sufficient cause" is purely an individualistic test. It is not an objective test. Therefore, no two cases can be treated alike – The statute of limitation has left the concept of "sufficient cause" delightfully undefined, thereby leaving to the Court a well-intentioned discretion to decide the individual cases whether circumstances exist establishing sufficient cause.

E. Motor Vehicles Act, 1988 – S. 173 (1) – Condonation of Delay – Even though a liberal and justice-oriented approach is required to be adopted, the courts cannot become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.

F. Motor Vehicles Act, 1988 – S. 173 (1) – Condonation of Delay – The party should show that besides acting *bona fide*, it had taken all possible steps within its power and control and had approached the Court without any unnecessary delay – In case a party is found to be negligent, or for want of *bona fide* on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No Court could be justified in condoning such an inordinate delay by imposing any condition whatsoever.

G. Motor Vehicles Act, 1988 – S. 173(1) – Condonation of Delay – Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes – Court has no power to extend the period of limitation on equitable grounds.

H. Motor Vehicles Act, 1988 – S. 173(1) – Condonation of Delay – Sufficient Cause – Two important considerations – First is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties – Second, is that this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed.

3. **Anish Rai**

v.

State of Sikkim

Crl. A. No. 35 of 2017

2018 SCC OnLine Sikk 141

Decided on 20th July, 2018

A. Indian Evidence Act, 1872 – S. 67 – Proof of Signature or Handwriting – The definition of "evidence" and "proved" elucidated in S. 3 must be read along with S. 67 which requires that the signature purporting to be that of a particular person must be established by specific evidence.

B. Indian Evidence Act, 1872 – S.35 – Relevancy of Entry in Public Record made in Performance of Duty – A given document may be admissible under S. 35 but the Court is not barred from taking evidence to test the authenticity of the entries made therein – Admissibility of a document is one thing, while proof of its contents is an altogether different aspect – Entries in the School Register/School Leaving Certificate require to be proved in accordance with law, demanding the same standard of proof as in any other criminal case.

C. Indian Evidence Act, 1872 – Ss. 45 and 51 – Expert Opinion – The opinion of person specially skilled in a particular field being experts are relevant facts – Medical evidence given by an expert has to be given the weight it deserves and ought not to be brushed aside – This is however not to say that the opinion of an expert is always binding on the Court. The evidence so furnished has to be appreciated in accordance with law and accepted only if found to be trustworthy – The opinion of an expert although relevant would carry little weight with the Court unless it is supported by a clear statement of what he noticed and on what basis his opinion was formed. The expert is required to give an account of the experiments performed by him for the purpose of forming his opinion – The Court is required to be circumspect when accepting the opinion of a Medical Officer especially when unsupported by reasons for the opinion.

4. **Md. Ibraj Alam**

v.

State of Sikkim

Crl. A. No. 19 of 2017

With

Crl. A. No. 20 of 2017

2018 SCC OnLine Sikk 142

Decided on 24th July, 2018

A. Indian Penal Code, 1860 – S. 361 – S. 361, I.P.C intended for security and protection of minors and persons of unsound mind – Use of the words "takes" or "entices" makes the intention of the legislation clear – To constitute the offence of kidnapping there is no necessity of force or fraud. No one who is responsible for taking or enticing a child from the keeping of his or her guardian, whether physical or by inducement should escape the penalty of law.

B. Indian Penal Code, 1860 – S. 34 – Intended to meet circumstances in which it may be difficult to distinguish between the acts of the individual members of a party or to prove exactly what part was taken by each of them in furtherance of the common intention – Is a principle of joint liability in committing a criminal act – To invoke the provisions of S. 34, I.P.C, at least two factors must be established: (i) common intention, and (ii) participation of the accused in the commission of an offence – Does not necessitate overt act to be attributed to the individual accused but before a person is convicted by applying the doctrine of vicarious liability, not only his participation in the crime must be proved but presence of common intention must be established – For proving formation of common intention, direct evidence may not be always available – It is not necessary that the acts of the accused persons charged with commission of the offences jointly must be the same or identically similar. It could be different in character but must have been influenced by one and the same common intention in order to attract the provision of S. 34.

C. Indian Evidence Act, 1872 – Evidence – Minor contradictions which do not go to the root of the evidence and make it doubtful should not deter the Court from accepting evidence which is otherwise reliable, cogent and truthful.

D. Indian Evidence Act, 1872 – Child Witness – Appreciation of Evidence – The law recognises the child as a competent witness. The evidence of a child witness can be considered under S. 118 of the Indian Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof – Child witness if found competent to depose to the facts and is a reliable one, his evidence could form the basis of conviction – Tender age of a child witness may make them susceptible to be swayed by what others tell them and may fall easy prey to tutoring and thus, although not as a general rule to be applied in every case but as a precautionary measure, in cases in which there is an element of uncertainty, corroboration may be sought for and the evidence evaluated carefully. This is a rule of prudence – Evidence of child witness cannot be rejected *per se* on the presumption that they are likely to have been tutored.

E. Indian Evidence Act, 1872 – Evidence – The victim stands at a higher pedestal than even an injured witness as he suffers from emotional injury. In cases of injured witnesses there is injury on the physical form, while in the cases of an injured victim the injury is physical, psychological and emotional – Court may convict the accused on the sole testimony of a child victim if it has no reason to doubt its truthfulness and veracity. Corroboration is only a matter or prudence and not a rule – In a case relating to a child victim corroboration can be dispensed with if, in the particular circumstances of a case the Court is satisfied that it is safe to rely upon the sole testimony of a child victim – Where the Court deems it proper to seek corroboration, it must be kept in mind that it is not necessary that there should be independent confirmation of every material circumstance – Corroboration need not be direct and circumstantial evidence is sufficient if it connects the accused to the crime.

F. Indian Penal Code, 1860 – Common Intention – Evidence – Conspiracy most is always hatched in secrecy and it is seldom that one finds direct evidence to prove it. Such intention can only be inferred from the circumstances appearing from the proved facts of the case.

5. **Suman Rai**

v.

State of Sikkim and Ors.

WP (C) No. 35 of 2017

2018 SCC OnLine Sikk 144

Decided on 26th July, 2018

A. Sikkim Government Establishment Rules, 1974 – Rule 8 (d) – *Inter se* seniority – 'Merit' as per the Cambridge English Dictionary would be "the advantages something has compared to something else" while the 'date of joining' obviously is the date on which a person would join duty – Merely because a person who is placed lower in the merit list joins duty promptly on issuance of appointment letter would not entitle that person placement at a higher position than what he/she was placed on selection on merit – Date of joining cannot be reckoned for computing seniority – *Inter se* seniority cannot be meddled with once determined.

B. Regulation of Seniority – The argument that no Rules were available to guide the Respondents on the question of seniority deserves no consideration and cannot be countenanced in view of the Regulation of Seniority Rules 1980 and the Establishment Rules 1974 – Undoubtedly, the aforestated Rules ought to have guided the Respondent on determination of seniority even in the absence of the Nursing Service Rules which came to be enacted only in 1997 and applied in *proprio vigore* with regard to the *inter se* seniority of the persons selected.

C. Sikkim State Nursing Service Rules, 1997 – Respondent 7 and 18 have been redesignated as "Sister-in-Charge" of different Wards not promoted – As per the Concise Oxford English Dictionary, Twelfth Edition, Oxford University Press, the meaning of "redesignate" would be "give (someone or something) a different official name, description or title" while, the meaning of "promotion" would be "the action of raising someone to a higher position or rank" – Redesignation is surely not equivalent to promoting a person and there ought not to be any confusion on the nomenclature employed.

6. **Phurba Tenzing Bhutia**

v.

State of Sikkim

Crl. A. No. 24 of 2016

2018 SCC OnLine Sikk 147

Decided on 1st August, 2018

A. Code of Criminal Procedure, 1973 – S. 154 – F.I.R – The first information of the commission of a cognizable offence is sufficient to constitute the first information report. The object of F.I.R is to set the criminal law in motion and it nowhere envisages a narration of the entire details of the offence.

B. Code of Criminal Procedure, 1973 – S. 161 – Under this Section, the police investigating the matter can examine witnesses acquainted with the facts of the case and reduce them to writing without oath or affirmation. However, merely because a particular statement made by the witness before the Court does not find place in the statement recorded under S. 161, does not merit the evidence being thrown out.

C. Evidence – Merely because the Prosecution witnesses belong to one political party does not relegate their evidence to unreliability neither can the truth be attenuated – The Court is vested with the task of separating the chaff from the grain and only on such exercise can the evidence be considered trustworthy or otherwise.

D. Indian Penal Code, 1860 – S. 300 – Murder – The act was committed indubitably without premeditation, in a sudden fight, in the heat of passion upon a sudden quarrel and without the appellant having taken undue advantage or acted in a cruel or an unusual manner – This assumption arises from the circumstance that he struck the victim only once on his head and did not repeat the act – The offence would fall under *Exception-4* of S. 300, I.P.C – Trial Court has failed to explain in detail the reasons for arriving at a conclusion that the offence fell under S. 304-Part I of the I.P.C – Appellant is guilty of the offence under S. 304-Part II of the I.P.C.

7. **Tanam Limboo**

v.

State of Sikkim

Crl. A. No. 16 of 2017

2018 SCC OnLine Sikk 149

Decided on 2nd August, 2018

A. Code of Criminal Procedure, 1973 – S. 154 – F.I.R – Does not envisage that a particular person is to lodge the F.I.R. All that the Section requires is that information relating to commission of a cognizable offence must be reported to the concerned Officer-in-Charge of a Police Station, the primary object of such a step being to set the criminal law in motion.

B. Code of Criminal Procedure, 1973 – Ss. 161 and 164 – Statements made under Ss. 161 and 164 are not substantive evidence. The statement under S. 161 of the Cr.P.C. can be utilised for the limited purpose of contradicting a witness in the manner prescribed in the proviso to S. 162(1) of the Cr.P.C – A statement recorded under S. 164 of the Cr.P.C. can be used for the purposes of either contradiction or corroboration.

C. Protection of Children from Sexual Offences Act, 2012 – S. 29 – Presumption as to Certain Offences – Where a person is prosecuted for committing or abetting or attempting to commit any offence under Ss. 3, 5, 7 and 9 of the POCSO Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved – Where the victim is a child below the age of 16 years, the Special Court shall presume that the accused has committed the offence unless the contrary is proved – The statute provides that the statement of the victim has to be given the sanctity it deserves when an accused is prosecuted for any of the offences detailed there under.

8. **Ram Krishna Jana**

v.

State of Sikkim

Crl. A. No. 38 of 2017

2018 SCC OnLine Sikk 157

Decided on 9th August, 2018

A. Protection of Children from Sexual Offences Act, 2012 – Determination of Age – It is settled law that parents would give the best evidence of their child's age – It is not the appellant's case that the victim was an adolescent thereby warranting a suspicion about her actual age. She is undoubtedly a child, aged about 5 years, a student of Upper Kindergarten and clearly falls within the ambit of S. 2 of the POCSO Act.

B. Evidence – The evidence of the victim being cogent and consistent, minor anomaly should not be made a ground on which the evidence can be rejected in its entirety – *A. Shankar* v. *State of Karnataka, (2011) 6 SCC 279* referred.

9. **Chetan Sharma**

v.

Januki Pradhan and Anr.

R.F.A. No. 01 of 2017

2018 SCC OnLine Sikk 160

Decided on 13th August, 2018

A. Code of Civil Procedure, 1908 – Order I Rule 10 – Impleadment of necessary party – Every person who had or has an interest in the suit property is not a necessary party. The question of adding a party would only arise if the rights of a party are likely to be affected if he is not added as a party.

B. Sikkim State Rules, Registration of Document Rules, 1930 – Rule 20 – If the document was not produced within four months from the date of execution for its registration thereof, it is not for the appellant to raise the issue but it was for the concerned authorities to have declined to accept the document or to register the said property or demand payment of fine.

10. **The Principal Secretary,**
Department of Commerce & Industries,
Government of Sikkim

v.

M/s Snowlion Automobile Pvt. Ltd.

W.A. No. 01 of 2018

2018 SCC OnLine Sikk 173

Decided on 28th August, 2018

A. Sikkim High Court (Practice and Procedure) Rules, 2011 – Rule 148 – Letter Patent Appeals – An Appeal would lie to the Division Bench from the judgment of a Judge of the High Court sitting singly – The impugned judgment passed by the learned Single Judge is not a judgment passed in exercise of Appellate Jurisdiction in respect of a decree or order made by a Court subject to the superintendence of the High Court – The contention raised that the exceptions to those judgments appealable under Rule 148 would include a judgment passed by the High Court in exercise of the Article 227 of the Constitution of India emphasizing only on the words "superintendence of the High Court" therein must be straightaway rejected. The said words cannot be read in isolation and must necessarily be read in the context of the sentence it is used in. It is also not a sentence or order made in exercise of Criminal Jurisdiction. An order made in the exercise of revisional jurisdiction also falls within the exception of Rule 148 of the said Rules and therefore, no Appeal would lie from such orders – It is quite clear that the Appellant while preferring the Writ Petition sought to invoke both Article 226 as well as Article 227 of the Constitution of India. However, the learned Single Judge did not exercise the power of superintendence under Article 227 of the Constitution of India while passing the impugned judgment. The learned Single Judge examined the law relating to exercise of the extraordinary jurisdiction of the High Court and in the facts and circumstances of the case declined to exercise its writ jurisdiction under Article 226 of the Constitution of India. In such circumstances, it is quite evident that the impugned judgment does not fall within the exception carved out for the exercise of Letter Patent Appeals under Rule 148 of the said Rules as it is not an order made in exercise of revisional jurisdiction also.

B. Constitution of India – Article 227 – Article 227 of the Constitution of India relates to the power of superintendence over all Courts by the High Court in relation to which it exercised jurisdiction. As quoted in paragraph 20 of the impugned judgment of the learned Single Judge the scope of Article 227 of the Constitution of India has been succinctly enunciated by the Supreme Court in re: ***Surya Dev Rai v. Ram Chander Rai & Ors.*** It has been held that supervisory jurisdiction under Article 227 of the Constitution of India is exercised for keeping the Subordinate Court within the bounds of their jurisdiction. When the Subordinate Court has

assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasion thereby, the High Court may step in to exercise its supervisory jurisdiction.

C. Arbitration and Conciliation Act, 1996 – S. 34 – Limitation Act, 1963 – S. 14 – Sufficient Cause – The Appellant received a certified copy of the arbitral award dated 12.06.2015 on 13.06.2015. S. 34(3) of the said Act permits the making of an application for setting aside an arbitral award within three months from the date on which the party making the application had received the arbitral award. The proviso to S. 34(3) of the said Act allows the Court to condone the delay beyond the three months if it is satisfied that the Applicant was prevented by "sufficient cause" from making the application within the said period of three months. However, the said proviso also mandates that this power cannot be used to condone the delay thereafter. The judgments of the Supreme Court in re: ***Western Builders*** and ***Popular Construction Co.*** would settle the issue. The records reveal that the Appellant had initially approached this Court under S. 34 of the said Act on 27.11.2015 only after expiry of 166 days from the receipt of the certified copy of the arbitral award on 13.06.2015. The application before the learned District Judge for setting aside the arbitral award under S. 34 of the said Act was made on 04.12.2015 after expiry of 173 days from the receipt of the certified copy of the arbitral award on 13.06.2015. The maximum time condonable by the Court as per the provision of S. 34(3) of the said Act is 120 days. In such circumstances, the learned District Judge had rightly rejected the application under S. 34 of the said Act as being barred by limitation. The Supreme Court has held that S. 14 but not S. 5 of the Limitation Act, 1963 would apply in proceedings under the said Act. Although it is neither pleaded nor argued even if we were to exclude the time during which the Appellant had sought to prosecute another proceeding it is quite evident that the Appellant had approached this Court under S. 34 of the said Act beyond the period of 120 days as prescribed by S. 34(3) of the said Act and thus even S. 14 of the Limitation Act, 1963 would not come to the Appellant's rescue.

D. Constitution of India – Writ Jurisdiction – The fact that Section 34(3) of the said Act prohibited the Court to condone delay beyond the prescribed period as well as the judgment of the Supreme Court in re: ***Western Builders*** would be known to the Appellant at least on receipt of the impugned order passed by the learned District Judge. The act of the Appellant thereafter does not reflect its *bona fides*. The withdrawal of the Appeal filed under S. 37 of the said Act, the filing of the Writ Petition without even attempting to explain the apparent delay in approaching the District Court under S. 34 of the said Act and completely skirting the issue, the failure to do so even in the present Writ Appeal and in fact not even attempting to explain the delay beyond prescribed period does not reflect that the Appellant had approached this Court under Article 226/227 of the Constitution of India with clean hands and had put forward

all the facts before the Court without concealing or suppressing anything and sought appropriate relief. The impugned judgment records that an application was filed for condonation of delay before the learned District Judge along with an application under S. 34 of the said Act. The fact was that an application for condonation of delay was not preferred before the learned District Judge and it was only on the objection raised by the Respondent that the Court examined the delay. This fact was categorically confirmed by the learned Counsel for the Appellant when a specific query was raised by this Court during the hearing. In fact even at the Writ Appeal stage this Court is unable to fathom the reasons for the delay in approaching the District Court under S. 34 of the said Act.

E. Constitution of India – Article 226 – Arbitration and Conciliation Act, 1996 – S. 34 – The ostensible reason as stated in the Writ Petition is the illegality of the said order and arbitral award. The real hurdle the Appellant seeks to get over by filing the Writ Petition was the mandatory provision contained in S. 34(3) of the said Act which does not permit the Court to condone the delay beyond the prescribed period. The question is whether the Appellant could do so by merely filing a Writ Petition on the merits without even an attempt to explain the delay and skirting the procedure prescribed under the said Act? The answer, we are certain, is a definite no. The extraordinary and discretionary relief cannot be obtained in this manner. The impugned judgment which holds that there is no gross failure of justice or grave injustice warranting the exercise of the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India, even while appreciating that the scope of jurisdiction of the High Court in exercise of power under Article 226 of the Constitution, is not affected in spite of alternative statutory remedies cannot be faulted.

11. **Sikkim Manipal University and Another**

v.

Union of India and Others

WP (C) No. 42 of 2017

with

WP (C) No. 43 of 2017

WP (C) No. 44 of 2017

WP (C) No. 51 of 2017

2018 SCC OnLine Sikk 183

Decided on 30th August, 2018

A. Indian Medical Council Act, 1956 – S. 11 – Postgraduate Medical Education Regulations, 2000 – Regulation 6(2) – Recognition of Medical Qualifications granted by University or Medical Institution – Oversight Committee – The question before the Court was whether the impugned Corrigendum dated 06.06.2017 is to be set aside and the Gazette Notification dated 25.04.2017 restored thereby granting recognition to the degrees awarded by the Petitioner-University from 2014 onwards for the courses in MD (Paediatrics), MD (General Medicine) and MS (ENT) and for MD (Psychiatry) Course from 2015 onwards? – Hon'ble Supreme Court vide order dated 02.05.2016 in *Modern Dental College and Research Centre and Others* v. *State of Madhya Pradesh and Others* directed constitution of an Oversight Committee to oversee the functioning of the MCI and all other matters considered by the Parliamentary Committee till the Central Government acted upon the Expert Committee report – Oversight Committee reconstituted vide order dated 18.07.2017 in *Amma Chandravati Educational and Charitable Trust and Others* v. *Union of India and Another* – Petitioners have no objection if the matter is referred to the newly constituted Oversight Committee – Held, the Central Government shall afford reasonable opportunity to the Petitioners to be heard with regard to the communication dated 22.06.2017. Thereafter, necessary steps shall be taken before the Oversight Committee in terms of the functions assigned to it in *Amma Chandravati Educational and Charitable Trust* (supra). All necessary steps before the concerned Authority(s) shall be completed within two months.

12. **Purna Kumar Gurung**

v.

Ankit Sarda

Crl. A. No. 29 of 2017

2018 SCC OnLine Sikk 180

Decided on 30th August, 2018

A. Negotiable Instruments Act, 1881 – S. 138 – Dishonour of Cheque – Ingredients – A complaint under S. 138 of the NI Act must necessarily reflect the ingredients as laid down by the Section which is elucidated herein below:

(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability.

(ii) that cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier.

(iii) that cheque is returned by the bank unpaid, either because the amount of money standing to the credit of the account is insufficient to honour the cheque or that the cheque amount exceeds the amount arranged to be paid from that account by an agreement made with the bank;

(iv) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(v) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

B. Negotiable Instruments Act, 1881 – S. 138 – For the discharge of any Debt or other Liability – The term "debt" according to Black's Law Dictionary, 10th edition is "Liability on a claim; a specific sum of money due by agreement or otherwise." The explanation to S. 138 of the NI Act clarifies that the term "debt" referred to in the Section means "legal debt", that is

one which is recoverable in a Court of law, e.g. as debt on a bill of exchange, a bond or a simple contract – The term "liability" as per Black's Law Dictionary, 10th edition is "The quality, state or condition of being legally obligated or accountable." "Liability" otherwise has also been defined to mean all character of debts and obligations, an obligation one is bound in law and justice to perform; an obligation which may or may not ripen into a debt, any kind of debt or liability, either absolute or contingent, express or implied.

C. Negotiable Instruments Act, 1881 – S. 139 – Presumption in favour of the holder – Unless the contrary is proved, the Court shall presume that the holder of a cheque received the cheque of the nature referred to in S. 139 for the discharge, in whole or in part of any debt or other liability. It would appear that the presumption under S. 139 of the NI Act is an extension of the presumption under S. 118 (a) of the NI Act which provides that the Court shall presume a negotiable instrument to be one for consideration – If the negotiable instrument happens to be a cheque, S. 139 raises a further presumption that the holder of the cheque received the cheque in discharge in whole or in part of any debt or other liability. S. 118 of the NI Act uses the phrase "until the contrary is proved" while S. 139 of the NI Act provides "unless the contrary is proved". S. 4 of the Indian Evidence Act, 1872 which defines "may presume" and "shall presume" makes it clear that presumptions to be raised under both the aforesaid provisions are rebuttable.

D. Negotiable Instruments Act, 1881 – S. 139 – Presumption in favour of the holder – If the Respondent did not consider the amount as a liability, if not a debt, towards the Appellant then what was the purpose of issuing the cheque to the Appellant. The moment the cheque was issued, it provides evidence of the acceptance of his liability and the presumption under S. 139 of the NI Act kicks into place. Inasmuch as the Section provides that it shall be presumed unless the contrary is proved that the holder of a cheque received the cheque, of the nature referred to in S. 138 of the NI Act or the discharge in whole or in part of any debt or other liability.

E. Negotiable Instruments Act, 1881 – S. 138 – The stand taken by the Appellant in his examination under S. 313 of the Cr.P.C. was that the cheque was issued by way of security only and not for encashment. On this aspect, we may look into the meaning of "security". As

per the Oxford Dictionary "security" *inter alia*, means "a thing deposited or hypothecated as pledge for fulfilment of undertaking or payment of loan to be forfeited in case of failure". The circumstances of the matter at hand in no way fulfil the ingredients of security as defined *supra* neither was an attempt made to furnish evidence on this aspect by the Respondent – This Court is aware that the proof so demanded in offences under S. 138 of the NI Act is not to be beyond a reasonable doubt but only extending to a preponderance of probability. This too, was not established by the Respondent.

F. Negotiable Instruments Act, 1881 – S. 138 – Plea of Fraud – It is irrelevant for the purposes of S. 138 of the NI Act to put forth a plea of fraud in the transaction, the only consideration is of the cheque being dishonoured.

13. **NHPC Ltd. Rangit Power Station, South Sikkim**
Represented by Shri Rajesh Kumar
(Manager Mechanical)
v.
State of Sikkim,
Through the Public Prosecutor,
High Court of Sikkim

W.P. (Crl.) No. 01 of 2018

2018 SCC OnLine Sikk 182

Decided on 30th August, 2018

A. Code of Criminal Procedure, 1973 – S. 451 – Order for Custody and Disposal of Property Pending Trial – S. 451 Cr.P.C. provides for an order for "proper custody and disposal of property" pending trial and not determination of title after a civil trial. The Criminal Court only provides for "proper custody" having regard to the nature of such property. The entrustment of the property to rival claimants does not amount to adjudication of any competing rights of the claimants. S. 451 Cr.P.C. provides for interim custody of the property produced before the Court during the trial. An order passed under this provision is temporary and intended to protect the property pending the trial. The person who is entrusted with the property even if he be the actual owner acts as a representative of the Court.

B. Code of Criminal Procedure, 1973 – S. 451 – The rejection of the release petition admittedly preferred by the Complainant has not been challenged – The pendency of the investigation may not be a ground to fulfil the mandate of S. 451 Cr.P.C. Failure to determine the ownership of the machine has led to the learned Judicial Magistrate declining the release petition filed by the Petitioner Corporation as well as the Complainant. Failure of the Petitioner Corporation to make the Complainant a party should not have deterred the learned Judicial Magistrate to issue summons upon the Complainant and hear him for the just determination of the case. The machine is not a small item which can be safely kept in a Bank for safe custody. If the machine is not regularly started, used and maintained the machine may become useless before the determination of the present investigation. Admittedly neither the Complainant nor the Petitioner Corporation has approached any Court for adjudication upon the title of the machine. Both insist that the machine belongs to them. The Registration

Certificate if any of the machine has not been produced by anyone. However, the Complainant has admitted that he came to learn that the machine has been registered in the name of the Petitioner Corporation. In spite of summons being issued to the Complainant who is represented by learned Counsel no steps were taken to challenge the rejection of the release petition – The Complainant in fact would submit that he had no objection to the release of the machine to the Petitioner Corporation if it assured that the said machine would not be used by them. The very purpose of release of the machine would be lost if such a condition is imposed. The object of S. 451 Cr.P.C. appears to be that where the property which is the subject matter of the offence alleged is seized by the police it ought not to be retained in the custody of the Court or of the police for anytime longer than what is absolutely necessary. Damage due to failure to maintain it or keep it properly during investigation can lead to loss of valuable property.

14. **State of Sikkim**

v.

Ram Nath Choudhary

Crl. A. No. 09 of 2017

2018 SCC OnLine Sikk 181

Decided on 31st August, 2018

A. Protection of Children from Sexual Offences Act, 2012 – S. 10 of – Ingredients – The victim was 14 years old and depended on her father who instead of offering her protection and being an anchor to all her emotional needs perpetrated continuous sexual assault on her in the presence of her 11 year old brother. One cannot even imagine the trauma that the child suffered and the indelible adverse imprint and scar that the incestuous act has left in her psyche – Held, in view of the facts and circumstances sentence enhanced.

15. **Mahesh Kumar Trivedi**

v.

Kamala Prasad (since deceased and substituted by LRs) and Ors.

R.F.A. No. 02 of 2014

with

C.O. No. 02 of 2015

2018 SCC OnLine Sikk 184

Decided on 4th September, 2018

A. Code of Civil Procedure, 1908 – Order XLI Rule 1 and 2 – It is the duty of the Appellate Court to appreciate the entire evidence and arrive at its own independent conclusions, for reasons assigned, either of affirmation or difference. The jurisdiction of the First Appellate Court while hearing the First Appeal is very wide like that of the trial Court. It is the final Court of fact, ordinarily, and therefore, the parties are entitled to an independent consideration of all points on both facts and law.

B. Specific Relief Act, 1963 – S. 16 – Personal Bars to Relief – It is trite that the averments in the plaint must be read as whole and not isolated sentences to understand the nature of the pleadings – Appellant has failed to plead in the Appeal that he was ready and willing to pay the entire consideration amount as agreed vide Exhibit-1. In fact even in the written submission filed by the Appellant on 05.07.2018 before this Court, the aforesaid pleading regarding readiness and willingness to pay the remaining amount after adjustment of ₹ 58,501/- is reiterated. Held, the conduct of the Appellant having regard to the entirety of the pleadings as also the evidences brought on record, the readiness and willingness of the Appellant if at all was conditional and therefore in terms of S. 16(c) of the Specific Relief Act, 1963, specific performance of Exhibit-1 even if it was to be considered to be an "agreement" could not be granted in favour of the Appellant.

C. Specific Relief Act, 1963 – S. 20 – Discretion as to Decreeing Specific Performance – S. 20 of the Specific Relief Act, 1963 provides that the relief for specific performance is discretionary and is not given merely because it is lawful to do so. The discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of

correction by a Court of appeal – When the Appellant who seeks specific performance waivers on the most crucial aspect i.e. the ownership of the suit property which he desires to own by seeking specific performance of Exhibit-1, the discretionary relief as contemplated by the Specific Relief Act, 1963 cannot be granted to the Appellant.

D. Limitation Act, 1963 – Article 54 – Provides the period of limitation for specific performance of a contract to be three years from the date fixed for the performance, or if no such date is fixed, when the plaintiff has notice that performance is refused. Exhibit-1 provided that if Late Kamala Prasad is unable to register sale deed within 04 years then the Appellant can institute legal action against him and have full right over the said land and the shop. It is seen that the Exhibit-1 is dated 02.11.1999. Four years from 02.11.1999 would be 02.11.2003. Admittedly, no sale deed relating to Exhibit-1 was registered on or before 02.11.2003. The cause of action for filing the suit for a specific performance would thus arise only on the expiry of the four years period on 02.11.2003.

E. Code of Civil Procedure, 1908 – Order XIV Rule 1 – Framing of Issues – While framing issues it must be kept in mind that issues are framed when one party asserts a fact which is denied by the other. While framing issues the Court must necessary fix the burden of proof of the specific issue on the party who asserts it. The findings rendered thereon must always be based on the evidence adduced.

F. Code of Civil Procedure, 1908 – Order VIII Rule 6A – Counter-claim by Defendant – The plea of the Appellant that eviction suit cannot be in the form of a counter-claim in a suit for specific performance of contract has no legal basis in view of the provision of Order VIII 6A CPC which provides that a Defendant in a suit may, in addition to his right of pleading a set-off under Rule 6, set up, by way of counter-claim against the claim of a Plaintiff, "any right or claim in respect of a cause of action accruing to the defendant against the plaintiff ..." – The language of Order VIII Rule 6A CPC is wide enough to include a counter- claim for eviction and arrears of rent.

G. Indian Evidence Act, 1872 – S. 17 – Admission – The word "statement" appearing in S. 17 of the Indian Evidence Act, 1872 not being defined the ordinary dictionary meaning is

required to be applied. Thus, "statement" would mean something that is stated. An admission must be clear and unambiguous to permit waiver of the requirement of proof.

H. Indian Evidence Act, 1872 – S. 58 – Deals with admissions during trial, i.e., "at or before the hearing." Proof of such facts is not required for the reason that facts admitted require no proof. S. 58 deals with judicial admission. The Section governs admission by pleadings. Admission in the manner contemplated under this Section is a substitute for evidence and a waiver or dispensation with the production of evidence by conceding for the purposes of litigation that the proposition of fact alleged by the opponent is true – The proviso to S. 58 of the Indian Evidence Act, 1872 however, provides for discretion upon the Court to require even the facts admitted to be proved otherwise than by such admissions.

I. Indian Contract Act, 1872 – S. 10 – What Agreements are Contracts – An agreement to sell is necessarily a bilateral contract as there must be a meeting of mind between the seller and the purchaser. The seller must agree to sell and the purchaser must agree and be willing to purchase for a lawful consideration. There must be free consent of the parties. Only those agreements which are enforceable by law are contracts.

J. Code of Civil Procedure, 1908 – In view of the settle position of law that an altogether new case cannot be set up which is inconsistent with the defence taken in the written statement and that no amount of evidence contrary to the pleading can be relied on or accepted it was not permissible for Late Kamala Prasad to have taken the plea of joint ownership of the suit property in spite of the clear plea taken by him in his written statement that he was in fact the owner of the said suit property having become the owner through a family partition – Held, the learned District Judge erred in travelling beyond the pleadings and rendering findings based on surmises and conjectures.

K. Specific Relief Act, 1963 – S. 21 – Learned District Judge would opine that neither the Appellant nor the Respondents are entitled to any relief or the relief prayed for although the learned District Judge had given the option to the Appellant to take appropriate proceedings for the money advanced by him to Late Kamala Prasad and to the Respondents to seek eviction of the Appellant before the appropriate Court which option in effect would amount to granting reliefs not prayed for to the Appellant as well as the Respondents – The impugned

order to the extent it grants liberty to initiate appropriate proceedings for the money advanced by him to Late Kamala Prasad in pursuance of Exhibit-1 against the property left behind him is also not permissible as no specific relief for realization of money advanced has been sought for in the plaint.

16. **Dipendra Adhikari**

v.

State of Sikkim and Others

I.A No. 01 of 2018 in W.P. (C) No. 27 of 2018

2018 SCC OnLine Sikk 211

Decided on 7th September, 2018

A. Sikkim High Court (Practice and Procedure) Rules, 2011 – Rule 101 – Joinder of Respondents – Necessary party is one without whom no order can be made effectively and a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding – The relief is claimed against the State of Sikkim, the SPSC, Department of Personnel, Administrative Reforms, Training & Public Grievances and Respondent No.4 who had been appointed as Under Secretary and they are all arrayed as Respondents. The said Respondents are the necessary parties to be impleaded against whom the reliefs are sought and in whose absence no effective decision can be rendered by this Court.

B. Sikkim High Court (Practice and Procedure) Rules, 2011 – Rule 101 – Joinder of Respondents – All the candidates who have passed the written examination and obtained certain percentage of marks would have a legitimate expectation to be selected for the interview based on the marks obtained. The selection of the candidate against each vacant post must be purely on the basis of merit of their performance in the written examination as well as viva-voce. It is in these circumstances that the computation of marks obtained by each of these candidates would have a direct bearing on the ultimate selection – Any person who may be adversely affected by the grant of the reliefs prayed for by the Petitioner must be impleaded as party because in his absence an effective order may be made but whose presence is necessary for a complete and final decision on the question involved in the proceedings.

17. **The Branch Manager,**
Shriram General Insurance Co. Ltd.
v.
Dik Bir Damai and Ors.

I.A. No. 01 of 2018 in MAC App. No. 08 of 2018

AND

I.A. No. 01 of 2018 in MAC App. No. 09 of 2018

2018 SCC OnLine Sikk 190

Decided on 17th September 2018

A. Motor Vehicles Act, 1988 – S. 173 (1) – Condonation of delay beyond 90 days in entertaining appeal – The cardinal point in condoning delay is that the Court ought to be satisfied that the Appellant was prevented by sufficient cause in preferring the Appeal on time – The Appellant has to put forth *bona fide* grounds for the delay besides establishing that there was no negligence on their part in initiating steps. The length of the delay is not the consideration while exercising discretion by the Courts, in certain circumstances, a delay of one day may not be condoned lacking acceptable explanation, whereas in other cases inordinate delays can be condoned if the explanation afforded is satisfactory – Each case is distinguishable from the next and must exhibit some *bona fides* and grounds for exercise of discretion by the Court tilted in favour of the Appellant/Petitioner – In a plethora of Judgments the Hon'ble Supreme Court has held that sufficient cause should be given a liberal interpretation to ensure that substantial justice is done, but that is only so long as negligence, inaction or lack of *bona fides* cannot be imputed to the party concerned. While considering a Petition for condonation of delay it is relevant to bear in mind that the expiration of the period of limitation prescribed for making an Appeal gives rise to a right in favour of the decree-holder. This right which has thus accrued should not be lightly disturbed on account of a lapse of time.

B. Motor Vehicles Act, 1988 – S. 173 (1) – The legislation invoked by the Respondents is benevolent and for the welfare of the family/dependents of the deceased/victim and should not be kept in limbo for the inaction of the Appellant manifesting as injustice to the Respondents-Claimants when compensation for the loss of a member of the family has been computed and granted – Petitions have been filed with a nonchalant attitude reflecting negligence, inaction and lack of *bona fides* and being devoid of merit do not deserve the indulgence of this Court.

18. **Shrish Khare**

v.

C. B. Basnett and Anr.

Crl. M.C. No. 15 of 2017

2018 SCC OnLine Sikk 188

Decided on 18th September, 2018

A. Code of Criminal Procedure, 1973 – S. 203 – Dismissal of Complaint – S. 254 – Discharge of Accused – On 25.05.2016 the learned Chief Judicial Magistrate would examine the complaint and register a private complaint case and list it for examination of the complainant – On 09.06.2016 the complainant would be examined – On 07.07.2016 and 22.07.2017 the complainant witnesses would be examined – From the records of the order passed by the learned Chief Judicial Magistrate, it would be evident that the proceeding under S. 204 Cr.P.C. had been completed and summons to the accused issued – On 05.09.2016 the learned Counsel for Respondent Nos.1 and 2 would file applications under S. 197 Cr.P.C. which was heard on 04.10.2016 and order reserved. On 25.10.2016, the impugned order would be passed by the learned Chief Judicial Magistrate *"quashing"* the Criminal complaint for lack of sanction under S. 197 Cr.P.C – Being dissatisfied with the impugned order dated 25.10.2016, a revision would be preferred before the Sessions Court by the Petitioner. The learned Sessions Judge vide impugned order dated 29.08.2017 would decline to interfere with the order passed by the learned Chief Judicial Magistrate – The question for consideration is whether the impugned order dated 25.10.2016 passed by the learned Chief Judicial Magistrate *"quashing"* the complaint filed by the Petitioner would amount to a discharge under S. 245 (2) Cr.P.C. – In re: *Iris Computers Ltd.* the Supreme Court would opine that Cr.P.C. does not provide for any provision affording opportunity to the accused until the issuance of process to him under S. 204 Cr.P.C Before issuing summons under S. 204 Cr.P.C. the Magistrate must be satisfied that there exists sufficient ground for proceeding with the complaint and a *prima facie* case is made out against the accused. The said satisfaction should be arrived at by conducting an inquiry as contemplated under Ss. 200 and 202 Cr.P.C. The first stage of dismissal of the complaint before the issuance of process arises under S. 203 Cr.P.C., at which stage the accused has no role to play. After the issuance of process, the question of the accused approaching the Court by making an application under S. 203

Cr.P.C. for dismissal of the complaint is impermissible because by then the stage of S. 203 is already over and the Magistrate has proceeded further to S. 204 stage – Held, the impugned order of the Chief Judicial Magistrate dated 25.10.2016 amounts to an order of discharge against Respondent No. 1 and 2 under S. 245(2) Cr.P.C. for want of sanction under S. 197 Cr.P.C.

B. Code of Criminal Procedure, 1973 – S. 203 – Dismissal of Complaint – The applications of Respondent No. 1 and 2 sought for dismissal of the complaint under S. 197 Cr.P.C. The learned Chief Judicial Magistrate instead "quashed" the complaint – There is a fundamental difference between dismissal and quashing. To dismiss would imply to terminate without further hearing and to quash would mean to annul or make void.

C. Code of Criminal Procedure, 1973 – S. 197 – Prosecution of Public Servants – S. 245 – Discharge of accused – The application filed by Respondent No. 1 and 2 is under S. 197 Cr.P.C which mandate that no Court shall take "cognizance" if the offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty is done by a person who is a public servant not removable from his office save by or with the sanction of the Government – The procedure to be followed in a complaint case for trial of warrant cases after the process under S. 204 Cr.P.C. is provided in Ss. 244 and 245 Cr.P.C. The application seeking dismissal of the complaint on the ground of lack of sanction filed by Respondent Nos.1 and 2 ought to have invoked the provision of S. 245 Cr.P.C – Merely because Respondent Nos. 1 and 2 failed to specify the source of power i.e. S. 245 (2) Cr.P.C. or for that matter even if a wrong provision had been invoked would not disentitle the Court to exercise the power it had to render justice. The learned Chief Judicial Magistrate may have not used the appropriate word by holding "the complaint against accused nos. 1 and 2 stands quashed for want of sanction under Section 197, Cr.P.C., 1973" but the very fact that the learned Chief Judicial Magistrate decided to proceed against the accused No. 3 in the same complaint makes it evident that in effect Respondent Nos. 1 and 2 had been discharged.

D. Code of Criminal Procedure, 1973 – S. 197 – Prosecution of Public Servants – Whether on the allegations made against Respondent Nos.1 and 2, sanction as mandated under S. 197 Cr.P.C. was required – Allegations made in the complaint against Respondent No.1 shows that the same were allegedly done "acting or purporting to act in the discharge of

his official duty." – There is an elementary difference between public servant committing a criminal act *per se* and the doing of an act in his official duty or purporting to be in his official duty which may and could be construed as a criminal act – Perusal of the complaint as well as the pre-summoning deposition of the petitioner as well as his witnesses does not even *prima facie* indicate any conspiracy between Respondent Nos. 1, 2 and accused No. 3 – A criminal accusation is a serious thing. Not only the accusation must be specific but *prima facie* material must be brought on record. If no such material is available the Court is fully within its jurisdiction to discharge the accused and if it is done there would be no reason for the Revisional Court or the High Court in exercise of its inherent powers to interfere with such an order of discharge – Even if in doing their official duty, Respondent Nos.1 and 2 acted in excess of their duty, but there is a reasonable connection between the act and the performance of the official duty, the excess would not be a sufficient ground to deprive them of the protection as they were admittedly public servants.

19. **Michael Kami**

v.

State of Sikkim

Crl. A. No. 34 of 2016

2018 SCC OnLine Sikk 197

Decided on 24th September 2018

A. Protection of Children from Sexual Offences Act, 2012 – S. 42 – Alternate Punishment – S. 42 of the POCSO Act, 2012 provides that where an act or omission constitute an offence punishable under POCSO Act, 2012 and also under S. 354B, I.P.C, amongst others, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment under POCSO Act, 2012 or under the I.P.C as provides for punishment which is greater in degree – The impugned sentence dated 30.09.2016 sentencing the Appellant under S. 354B, I.P.C is thus liable to be set aside in view of the clear provision of S. 42 of the POCSO Act, 2012 – The learned Special Judge has punished the Appellant for the offence under S. 354, I.P.C for the same act falling under the definitions of the provisions of S. 7 and 9 (m) the POCSO Act, 2012 which was not

permissible in view of S. 71, I.P.C – The learned Special Judge had also found the Appellant guilty of the offence under S. 354B/511, I.P.C. Since the learned Special Judge had held the Appellant guilty under S. 354B, I.P.C the question of punishing the Appellant for an attempt to commit the said offence as well did not arise. Thus, the conviction and sentence of the Appellant under S. 354B/511, I.P.C is also not sustainable and liable to be set aside.

B. Sikkim Compensation to Victims or his Dependents Schemes, 2011 – Learned Special Judge even while holding the Appellant guilty for sexual assault and aggravated sexual assault upon the victims has failed to consider that the victims were liable to be compensated under the Sikkim Compensation to Victims or his Dependents Schemes, 2011. Accordingly, the Sikkim State Legal Services Authority is directed to pay an amount of ₹ 50,000/- each to the victims as compensation. The said amount of ₹ 50,000/- shall be kept in fixed deposit in the name of each of the victims payable to them on their attaining majority.

20. **Narendra Kumar Chettri**

v.

Ashok Kumar Pradhan and Anr.

MAC. Appeal No. 06 of 2018

2018 SCC OnLine Sikk 198

Decided on 25th September 2018

A. Motor Vehicles Act, 1988 – S. 169 – Procedure of Claims Tribunals in holding any inquiry under S. 168 – Sikkim Motor Vehicles Rules, 1991 – S. 169 makes it abundantly clear that an inquiry is required to be held under S. 168 of the said Act. While doing so, subject to any rules that may be made in this behalf, summary procedure as the Claims Tribunal thinks fit is required to be followed – In exercise of the powers conferred by the said Act, the State Government made the Sikkim Motor Vehicles Rules, 1991 – Chapter VIII of the said Rules relates to the establishment of Claims Tribunal – Rules 247 to 265 of the said Rules govern an application for compensation under S. 166 of the said Act – An application in the case of a claim under Chapter X of the said Act, which includes a claim under S. 140 is however, governed by Rules 268 to 275 of the said Rules – Summary trial procedure as per the Code

of Criminal Procedure, 1973 is required to be followed for the purpose of adjudicating and awarding a claim under Chapter X of the said Act.

B. Motor Vehicles Act, 1988 – S. 169 – Procedure of Claims Tribunals in holding any inquiry under S. 168 – Sikkim Motor Vehicles Rules, 1991 – Even for determination of the liability under S. 140 of the said Act the procedure prescribed for coming to a conclusion must be undertaken by the Claims Tribunal before awarding the claim or rejecting it. The procedure for the determination of a claim under S. 140 of the said Act is not as exhaustive as a claim under S. 166 of the said Act. Although the procedure prescribed provides for a summary procedure under the Cr.P.C. the orders which need be passed is not of conviction or acquittal but for determining whether the claimant is entitled to the award under S. 140 of the said Act. The claim under Chapter X of the said Act is of civil nature although the said Rules prescribe a summary trial procedure applicable in criminal cases.

C. Sikkim Motor Vehicles Rules, 1991 – Rule 274 – It provides that the Claims Tribunal, before whom an application for compensation liability arising out of the provisions of Chapter X has been made, shall dispose of such application within 45 days from the date of receipt of such application. The mandate of the Rule 274 must be strictly followed – The afore-quoted Rules provide "*summary procedure*" for determining the liability under S. 140 of the said Act.

D. Motor Vehicles Act, 1988 – S. 140 – No Fault Liability – The no fault liability of the owner is absolute under S. 140. Between the owner and owners of the motor vehicle or motor vehicles, the liability is also joint and several. However, when the owner claims to have been indemnified by the insurer against the said liability under S. 140 the Claims Tribunal is required to issue notice upon the insurer, if not already done, hear the claimant, owner and the insurer to determine if no fault liability of the owner has in fact been indemnified by the insurer by execution of the policy following the procedure laid down. In that event it would be open to the insurance company to plead and prove that it is not liable at all.

E. Motor Vehicles Act, 1988 – S. 169 – Procedure of Claims Tribunals in holding any inquiry under S. 168 – Sikkim Motor Vehicles Rules, 1991 – The expression "*subject to*" conveys the idea of the said Rules yielding place to the "*summary procedure*" as the Claims Tribunal "*thinks fit.*" This was the procedural law which was required to be followed by the

Claims Tribunal while determining whether or not the Claimant was entitled to an "*award*" under S.140 – When the Rules provide for the procedure to be followed to determine the claim under S. 140, it was incumbent upon the Claims Tribunal to have followed the said procedure.

F. Motor Vehicles Act, 1988 – S. 140 – A bare reading of S. 140 reflects that without a determination about the factum of "*death*" or "*permanent disablement*" resulting from an accident arising out of the use of a motor vehicle the "*owner*" of the vehicle cannot be held liable to pay compensation in respect of such "*death*" or "*permanent* disablement" in accordance with the provisions of the said section. The determination as to who is the "*owner*" of the said motor vehicle is also imperative – To attract the liability of the "*owner*" under S. 140, all that is required is an accident arising out of the use of a motor vehicle leading to "*death*" or "*permanent disability*" of any person. The liability of the "*owner*" is without fault but the fact of ownership of the motor vehicle is also required to be determined. The inquiry to award the compensation under S. 140 is limited but the inquiry is a must – Without determining whether the "*death*" or "*permanent disablement*" has been caused as a result of an accident arising out of the use of the motor vehicle or motor vehicles and is owned by the "*owner*" no order under S. 140 may be passed.

G. Motor Vehicles Act, 1988 – S. 140 – The order to be passed under S. 140 must be passed urgently but cautiously to meet the requirement of the law i.e. to award compensation to the person who has suffered due to the accident without determination of any fault or negligence – An order passed under S. 140 without following the procedure prescribed would have no sanctity in the eyes of law – The impugned order dated 23.2.2018 does not reflect that the Claims Tribunal had even *prima facie* determined the ingredients of S. 140 *vis-à-vis* the facts of the present case. The Claims Tribunal records that a perusal of the FIR dated 23.4.2016 reveal that the Claimant sustained "*severe injuries*". Whether the severe injuries resulted in "*death*" or "*permanent disablement*", which is the *sine-qua-non* of S. 140 is not reflected in the impugned order.

H. Sikkim Motor Vehicles Rules, 1991 – Claims Tribunal must always remember that procedural and substantive laws need to work together to ensure that justice is not only done but also seen to be done. Following the prescribed procedure ensures fairness and avoids

arbitrariness in the process of determination. Procedural law engrafted in Rules 268 to 275 of the said Rules would ensure due process which is fundamental to justice dispensation – Procedural due process is a right of the parties who may be affected by the award passed under S. 140. Procedural due process embodies the notion of legal fairness. It is equally important to keep in mind that the fundamental facts, as laid down above, being the ingredients of S. 140 must be determined before passing an award under the said provision even if it is interim in nature.

21. **Himalaya Distilleries Limited**

v.

State of Sikkim and Ors

W.P. (C) No. 60 of 2017

Decided on 26th September, 2018

A. Sikkim State Rules Registration of Document Rules, 1930 – Rule 7 – Procedure for Presenting Elucidated – (1) On execution of deeds, the person(s) executing the deed or his or their authorised representative with one or more witnesses to the execution of the deed is to attend the Registrar's Office – (2) These persons are required to prove by solemn affirmation before the Registrar the due execution of the deed – (3) Upon such affirmation the Registrar shall cause an exact copy of the deed to be entered in the proper register – (4) After the copy is carefully compared with the original, the Registrar shall attest the copy with his signature – (5) He shall also cause the parties or their representatives in attendance to subscribe their signatures to the copy – (6) The Registrar shall then return the original with a certificate under his signature endorsed therein specifying the date on which such deed was so registered – (7) For this purpose reference has to be made to the book containing the registration thereof, and the page and number under which the same shall have been entered therein.

B. Sikkim State Rules Registration of Document Rules, 1930 – Rule 7 – Procedure for Presenting – Rule 7 nowhere prescribes that the copies of the deed shall contain the details, *viz.*, serial number, book number or date of registration – Those details are to be entered in the original Deed – Rule 7 mandates that a copy is to be attested by the Registrar with his signature. He is required to cause the parties or representatives to subscribe their signatures on the copy – Annexure P-1 is a "certified to be true copy" of the original Sale Deed. The

original is allegedly untraceable. The reverse of the document records "CERTIFIED TO BE TRUE COPY", below which an illegible signature appears and bears the stamp of the "Registration Clerk" and the date 05.12.1984 – The specific requirement of Rule 7 pertaining to copies of deeds is that the Registrar shall attest the copy with his signature and not that of the "Registration Clerk" as appears to have been done in the instant matter. In absence of the Registrar's signature, a niggling doubt ensues as to the authenticity of the document. The document also ought to bear the signature of the parties or their authorised representative(s) which are non-existent on Annexure P-1 – Does not fulfil any of the requirements as envisaged by Rule 7.

C. Sikkim State Rules Registration of Document Rules, 1930 – Makes express provisions for registration of documents in the State of Sikkim – The Registering Authority is debarred from making an enquiry into title, this falls in the domain of the Civil Courts.

D. Sikkim State Rules Registration of Document Rules, 1930 – Rule 20 – Rule 20 specifically lays down that the period of limitation within which the document is to be produced for registration is four months from the date of execution thereof and six months at the maximum, this too subject to deposit of penalty as prescribed in the Rules – The original document is alleged to have been presented in 1983 – The Petitioner has approached the Sub-Divisional Magistrate/Sub-Registrar in the year 2009, no reasons have been given for the delay in approaching the Registering Authority. No explanation issues on what transpired between 1983 and 2009 and why necessary steps as envisaged by Rule 20 were not taken up by the Petitioner. The argument that the Petitioner learnt of the transfer of land to other persons in 2009 when they went to pay land taxes is rather frail apart from the argument of payment of taxes being non-existent in the pleadings.

SOME RECENT MAJOR EVENTS

1. INDEPENDENCE DAY CELEBRATION

Flag being unfurled by Hon'ble Mrs. Justice Meenakshi Madan Rai, Acting Chief Justice, High Court of Sikkim

The High Court of Sikkim celebrated the 72nd Independence Day on 15th August, 2018. The National Flag was unfurled by Hon'ble Mrs. Justice Meenakshi Madan Rai, the Acting Chief Justice, High Court of Sikkim. A Cultural Programme was presented by the staff of the High Court of Sikkim, the Bar Association of Sikkim, children from local NGOs including: Reeyaaz Sangeetalaya, Balika Niketan (CCI Homes), Neil Tara Academy School, Ujjwal Kala Kendra and Culture Department, Government of Sikkim.

The occasion was graced by Hon'ble Mrs. Justice Meenakshi Madan Rai, the Acting Chief Justice of the High Court of Sikkim, Hon'ble Mr. Justice Bhaskar Raj Pradhan, Judge, High Court of Sikkim; Hon'ble Mr. Justice A.P. Subba, Former Judge, High Court of Sikkim; Sir Roger R. Rai, Madam Priya Darshani Pradhan and Madam Asha Rani Subba. The Judicial Officers, Senior Advocates, Members of the Bar, Officers and Staff of the Registry and Media persons were also present.

Performance by Children displaying the Indian flag

Participant being awarded by Hon'ble the Acting Chief Justice

Participant being awarded by Hon'ble Judge, Mr. Justice Bhaskar Raj Pradhan

2. DELIVERING OF OATH OF THE NEW GOVERNOR OF SIKKIM

Hon'ble Mrs. Justice Meenakshi Madan Rai, Acting Chief Justice delivering the oath to the new Governor of Sikkim, Hon'ble Mr. Ganga Prasad

The new Governor of Sikkim, Hon'ble Mr. Ganga Prasad took oath as the Governor of Sikkim on 27th August, 2018. Hon'ble Mr. Ganga Prasad succeeded Shriniwas Dadasaheb Patil as the 16th Governor of Sikkim. Hon'ble Mrs. Justice Meenakshi Madan Rai, Acting Chief Justice, High Court of Sikkim administered the oath of office to the Governor in the presence of Mr. Pawan Chamling, Hon'ble Chief Minister; Hon'ble Speaker of Sikkim Legislative Assembly; Hon'ble Mr. Justice Bhaskar Raj Pradhan, Judge, High Court of Sikkim; Hon'ble Cabinet Ministers; and other dignitaries.

IMPORTANT VISITS & CONFERENCES

1. Hon'ble Mrs. Justice Meenakshi Madan Rai, Acting Chief Justice, High Court of Sikkim attended the "*Foundation Stone Laying Ceremony of De-Addiction-cum-Rehabilitation Centre for Substance Abuse with Livelihood School*" at Kitchu Dumru, South Sikkim held on 7th July, 2018.

2. Hon'ble Mr. Justice Bhaskar Raj Pradhan, Judge, High Court of Sikkim attended the "*Meeting of National Judicial Academy*" at Supreme Court of India, New Delhi held on 11th July, 2018.

3. Hon'ble Mrs. Justice Meenakshi Madan Rai, Acting Chief Justice, High Court of Sikkim attended the "*Conference on National Initiative to Reduce Pendency and delay in Judicial System*" at Pravasi Bhartiya Kendra, Chanakyapuri, New Delhi held on 27th and 28th July, 2018.

4. Hon'ble Mrs. Justice Meenakshi Madan Rai, Acting Chief Justice, High Court of Sikkim attended the "*Fourth Round of Consultations of Effective Implementation of Juvenile Justice Act, 2015*" at Assam Administrative Staff College, Beltola Bazaar Road, Jawaharnagar, Resham Nagar, Khanapara, Guwahati, Assam held on 05th August, 2018.