HIGH COURT OF SIKKIM

NEWSLETTER

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EDITORIAL BOARD

COMPILED BY

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HIGH COURT OF SIKKIM

EDITORIAL BOARD

Hon'ble Mr. Justice Vijai Kumar Bist,
Chief Justice,
High Court of Sikkim/Patron-in-Chief

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 31.12.2018

Sl. No.	Sanctioned Strength	Working Strength	Vacancies
1.	03	03	NIL

(ii) Vacancies in the District & Subordinate Courts as on 31.12.2018

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 01.10.2018 to 31.12.2018.

Sl. No.	Pending as on 01.10.2018	Institution	Disposal	Pending as on 31.12.2018
	Main Cases	Main Cases	Main Cases	Main Cases
1.	235	50	33	252

(2) Total Institution, Disposal & Pendency of cases in the Subordinate Courts of Sikkim from 01.10.2018 to 31.12.2018.

NAME OF THE COURT		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.10.2018	Institution from 01.10.2018 to 31.12.2018	Disposal from 01.10.2018 to 31.12.2018	Pendency at the end of 31.12.2018	Opening balance as on 01.10.2018	Institution from 01.10.2018 to 31.12.2018	Disposal from 01.10.2018 to 31.12.2018	Pendency at the end of 31.12.2018
East District at Gangtok	Main cases	246	52	70	228	576	200	206	570
	Misc. cases	93	46	85	54	38	115	130	23
West District at Gyalshing	Main cases	27	10	16	21	39	41	38	42
	Misc. cases	15	16	20	11	03	39	42	00
North District at Mangan	Main cases	03	02	03	02	12	19	14	17
	Misc. cases	00	09	04	05	03	09	12	00
South District at Namchi	Main cases	43	15	23	35	167	64	93	138
	Misc. cases	51	26	49	28	03	130	130	03
Family Courts	Main cases	120	49	68	101	52	22	42	32
	Misc. cases	00	00	00	00	14	07	09	12
Fast Track Courts	Main cases	-	-	-	-	12	03	03	12
	Misc. cases	-	-	-	-	00	00	00	00
Juvenile Justice Boards	Main cases	-	-	-	-	10	11	11	10
	Misc. cases	-	-	-	-	01	05	06	00
Total Main Cases		439	128	180	387	868	360	407	821
Total Misc. Cases		159	97	158	98	62	305	329	38

INSTITUTION, DISPOSAL AND PENDENCY OF CASES DISTRICT WISE

(1) Total Institution, Disposal and Pendency of cases in the Subordinate Courts of Sikkim from 01.10.2018 to 31.12.2018

(i) East District at Gangtok.

NAME OF THE COURTS		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.10.2018	Institution from 01.10.2018 to 31.12.2018	Disposal from 01.10.2018 to 31.12.2018	Pendency at the end of 31.12.2018	Opening balance as on 01.10.2018	Institution from 01.10.2018 to 31.12.2018	Disposal from 01.10.2018 to 31.12.2018	Pendency at the end of 31.12.2018
District & Sessions Judge (East)	Main cases	109	36	19	126	236	41	28	249
	Misc. cases	59	36	68	27	28	77	87	18
District & Sessions Judge (Spl. Div.-I)	Main cases	31	1	11	21	10	00	08	02
	Misc. cases	03	00	00	03	00	00	00	00
District & Sessions Judge (Spl. Div.-II)	Main cases	19	00	13	06	07	01	01	07
	Misc. cases	09	00	02	07	00	00	00	00
Chief Judicial Magistrate-cum-Civil Judge (East)	Main cases	04	00	01	03	129	122	100	151
	Misc. cases	01	03	03	01	01	18	17	02
Civil Judge-cum- Judicial Magistrate (East)	Main cases	52	12	18	46	82	30	28	84
	Misc. cases	13	04	05	12	08	18	24	02
Civil Judge-cum- Judicial Magistrate Chungthang Sub-division stationed at Gangtok (East)	Main cases	28	02	08	22	86	01	32	55
	Misc. cases	05	01	04	02	01	00	00	01
Civil Judge-cum-Judicial Magistrate Rangpo Sub-division, East Sikkim	Main cases	03	01	00	04	22	03	08	17
	Misc. cases	03	02	03	02	00	00	00	00
Civil Judge-cum-Judicial Magistrate Rongli Sub-division, East Sikkim	Main cases	00	00	00	00	04	02	01	05
	Misc. cases	00	00	00	00	00	02	02	00
Total Main Cases		246	52	70	228	576	200	206	570
Total Misc. Cases		93	46	85	54	38	115	130	23

(ii) West District at Gyalshing

NAME OF THE COURT		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.10.2018	Institution from 01.10.2018 to 31.12.2018	Disposal from 01.10.2018 to 31.12.2018	Pendency at the end of 31.12.2018	Opening balance as on 01.10.2018	Institution from 01.10.2018 to 31.12.2018	Disposal from 01.10.2018 to 31.12.2018	Pendency at the end of 31.12.2018
District & Sessions Judge (West)	Main cases	06	05	02	09	22	17	09	30
	Misc. cases	11	14	16	09	00	16	16	00
Chief Judicial Magistrate-cum-Civil Judge (West)	Main cases	01	01	01	01	06	17	19	04
	Misc. cases	01	00	01	00	00	14	14	00
Civil Judge-cum-Judicial Magistrate (West)	Main cases	17	02	12	07	02	02	03	01
	Misc. cases	02	00	01	01	03	04	07	00
Civil Judge-cum-Judicial Magistrate, Soreng Subdivision, West Sikkim	Main cases	03	02	01	04	09	05	07	07
	Misc. cases	01	02	02	01	00	05	05	00
Total Main Cases		27	10	16	21	39	41	38	42
Total Misc. Cases		15	16	20	11	03	39	42	00

(iii) North District at Mangan

NAME OF THE COURTS		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.10.2018	Institution from 01.10.2018 to 31.12.2018	Disposal from 01.10.2018 to 31.12.2018	Pendency at the end of 31.12.2018	Opening balance as on 01.10.2018	Institution from 01.10.2018 to 31.12.2018	Disposal from 01.10.2018 to 31.12.2018	Pendency at the end of 31.12.2018
District & Sessions Judge (North)	Main cases	02	02	02	02	02	02	00	04
	Misc. cases	00	07	04	03	00	00	00	00
Chief Judicial Magistrate-cum-Civil Judge (North)	Main cases	00	00	00	00	03	10	09	04
	Misc. cases	00	00	00	00	03	07	10	00
Civil Judge-cum-Judicial Magistrate (North)	Main cases	01	00	01	00	04	04	03	05
	Misc. cases	00	02	00	02	00	01	01	00
Civil Judge-cum-Judicial Magistrate, Chungthang Sub Division, North Sikkim	Main cases	00	00	00	00	03	03	02	04
	Misc. cases	00	00	00	00	00	01	01	00
Total Main Cases		03	02	03	02	12	19	14	17
Total Misc. Cases		00	09	04	05	03	09	12	00

(iv) South District at Namchi

NAME OF THE COURTS		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.10.2018	Institution from 01.10.2018 to 31.12.2018	Disposal from 01.10.2018 to 31.12.2018	Pendency at the end of 31.12.2018	Opening balance as on 01.10.2018	Institution from 01.10.2018 to 31.12.2018	Disposal from 01.10.2018 to 31.12.2018	Pendency at the end of 31.12.2018
District & Sessions Judge (South)	Main cases	26	10	13	23	125	21	37	109
	Misc. cases	45	20	43	22	00	45	45	00
Chief Judicial Magistrate-cum- Civil Judge (South)	Main cases	01	02	02	01	18	28	40	06
	Misc. cases	00	01	01	00	01	52	53	00
Civil Judge-cum- Judicial Magistrate (South)	Main cases	07	02	05	04	07	09	10	06
	Misc. cases	01	04	04	01	00	23	23	00
Civil Judge-cum-Judicial Magistrate, Jorethang Sub Division (South)	Main cases	02	01	01	02	13	02	05	10
	Misc. cases	00	01	01	00	02	05	05	02
Civil Judge-cum-Judicial Magistrate, Yangang Sub Division (South)	Main cases	07	00	02	05	04	04	01	07
	Misc. cases	05	00	00	05	00	05	04	01
Total Main Cases		43	15	23	35	167	64	93	138
Total Misc. Cases		51	26	49	28	03	130	130	03

(i) Family Courts

NAME OF THE COURT		CIVIL CASES				CRIMINAL CASES			
		Opening balance as on 01.10.2018	Institution from 01.10.2018 to 31.12.2018	Disposal from 01.10.2018 to 31.12.2018	Pendency at the end of 31.12.2018	Opening balance as on 01.10.2018	Institution from 01.10.2018 to 31.12.2018	Disposal from 01.10.2018 to 31.12.2018	Pendency at the end of 31.12.2018
Family Court, East at Gangtok	Main cases	80	37	42	75	28	14	19	23
	Misc. cases	00	00	00	00	04	04	03	05
Family Court West at Gyalshing	Main cases	10	01	07	04	05	01	03	03
	Misc. cases	00	00	00	00	00	00	00	00
Family Court North at Mangan	Main cases	02	00	01	01	00	01	01	00
	Misc. cases	00	00	00	00	00	00	00	00
Family Court South at Namchi	Main cases	28	11	18	21	19	06	19	06
	Misc. cases	00	00	00	00	10	03	06	07
Total Main Cases		120	49	68	101	52	22	42	32
Total Misc. Cases		00	00	00	00	14	07	09	12

(ii) **Fast Track Court**

NAME OF THE COURT		CRIMINAL CASES			
		Opening balance as on 01.10.2018	Institution from 01.10.2018 to 31.12.2018	Disposal from 01.10.2018 to 31.12.2018	Pendency at the end of 31.12.2018
Fast Track Court (East & North) at Gangtok	Main cases	12	01	03	10
	Misc. cases	00	00	00	00
Fast Track Court (South & West) at Gyalshing	Main cases	00	02	00	02
	Misc. cases	00	00	00	00
Total Main Cases		12	03	03	12
Total Misc. Cases		00	00	00	00

(i) **Juvenile Justice Boards**

NAME OF THE COURTS		CRIMINAL CASES			
		Opening balance as on 01.10.2018	Institution from 01.10.2018 to 31.12.2018	Disposal from 01.10.2018 to 31.12.2018	Pendency at the end of 31.12.2018
Juvenile Justice Board East, at Gangtok	Main cases	09	05	07	07
	Misc. cases	01	04	05	00
Juvenile Justice Board West, at Gyalshing	Main cases	00	02	01	01
	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	01	04	03	02
	Misc. cases	00	01	01	00
Total Main Cases		10	11	11	10
Total Misc. Cases		01	05	06	00

SOME RECENT JUDGMENTS OF HIGH COURT OF SIKKIM FROM (01.10.2018 to 31.12.2018)

1. **Taramani Devi Agarwal**
v.
M/s. Krishna Company

R.F.A. No. 10 of 2016

2018 SCC OnLine Sikk 205

Decided on: 1st October 2018

A. Gangtok Rent Control Act, 1956 – Object –Section 4 provides that landlord may not ordinarily eject a tenant, however, when grounds enumerated therein are fulfilled which also includes rent in arrears amounting to four months or more, the landlord may evict the tenant by filing a suit for ejectment – The object of the Act of 1956 is to control rent and eviction from accommodation in the precincts of the Gangtok Bazar area. Shortage of accommodation is not a new phenomenon especially in the urban areas and disputes between landlords and tenants rear its head on trivial issues, but the legislation *supra* intervenes to prohibit eviction of the tenant on any frivolous ground.

B. Transfer of Property Act, 1882 – S. 106 – Notice for eviction – Provides that in the absence of a contract or local law or usage to the contract, a lease of immovable property shall be deemed to be a lease from month to month terminable on the part of either a lesser or lessee by fifteen days notice – Gangtok Rent Control Act of 1956 envisages no notice for eviction of a tenant, it merely requires proof of default in rent for four months or more – Notice is not a mandate under the Act of 1956 – Irrespective of lack of demand for payment of rent by the Plaintiff to the Defendant, it was incumbent upon the Defendant to pay the rent either at the end of the month or by the next month as was the practice, even if it was beyond the 10th of the next month.

C. Indian Evidence Act, 1872 – S. 101 – Burden of Proof –Burden of proving a fact always lies upon the person who asserts it. Unless such burden is discharged the other party is not required to be called upon to prove his case – The onus of proof undoubtedly shifts to the tenant to prove by sufficient and satisfactory evidence that they tendered the rent. Unfortunately no evidence whatsoever obtains in this context from the side of the Defendant who has failed to establish by proof that as soon as the rent for the month of December 2010, was refused, efforts were made for payment thereof by way of Money Order or any other available process – There is no documentary evidence or the presence of a witness to fortify the claim of DW-2 that he went to tender the rent to PW-1 and his brother. In the absence of any such proof, the Courts would be beleaguered to accept the verbal testimony.

D. Gangtok Rent Control Act, 1956 – S. 4 –Section 4 nowhere speaks of "wilful default". All that the provision envisages is that the landlord may evict the tenant "when the rent in arrears amount to four months rent or more" – "wilful default" does not find place in the Section and is therefore alien to it. The requirement for eviction under the provision would therefore be rent in arrears for the period specified, and not wilful default as sought to be emphasized by the Learned Trial Court.

2. **Arun Rai**
v.
State of Sikkim

I.A No. 02 of 2018 in Crl. Appeal No. 06 of 2018

2018 SCC OnLine Sikk 214

Decided on: 9th October 2018

A. Code of Criminal Procedure, 1973 – S. 389 – Suspension of sentence pending appeal –The Applicant was convicted by the learned Special Judge for commission of sexual assault upon the victim under Section 8 of the POCSO Act, 2012 and for criminal intimidation and threatening the child under Section 506, IPC on 09.11.2017. Appeal was preferred by the Applicant on 28.03.2018 and is yet to be finally disposed of – The Applicant's appeal having been admitted by this Court and pending final disposal it is clear that the conviction of the Applicant by the learned Special Judge is yet to be confirmed by this Court – Application allowed.

3. **The Branch Manager,**
National Insurance Co. Ltd.
v.
Krishna Bahadur Chettri and Others

I.A. No. 01 of 2018 in MAC App. No. 07 of 2018

2018 SCC OnLine Sikk 216

Decided on: 9th October 2018

A. Motor Vehicles Act, 1988 – S. 173 (1) – Condonation of Delay –The certified copy of the Judgment was ready on 15.12.2017. The copy remained unclaimed by the Appellant Company till 29.12.2017. In the circumstance, it cannot be said that the delay arose out of belated supply of the Judgment. Apart from the above carelessness, evident from the conduct of the Appellant, it is also evident that the dates or the number of days which each office took to consider the matter lacks mention in the Petition. The Appellant Company has deigned it fit only to state that after the certified copy of the Judgment was received, it was forwarded to the Branch Manager, Gangtok. How many days this exercise involved has not been reflected in the Petition – Appeal has been filed on 02.05.2018 leading to a delay of sixty-four days. No explanation yields as to the delay obtained therein. The Counsel has failed to explain what restrained him from filing the Appeal soon after his appointment, besides submitting that he was a new Counsel and that he had not done motor accidents appeal matters – This ground would not merit consideration.

B. Motor Vehicles Act, 1988 – S. 173 (1) – Condonation of Delay –It is a well-settled principle of law that the rules of limitation are not in place to obliterate the rights of the parties but the rules do not intend that the parties resort to dilatory tactics while seeking remedy. The Court is to adjudicate and advance substantial justice to the parties. This Court is alive to the principle that rules of procedure are the handmaids of justice, nevertheless the Court is to weigh whether the delay prejudices the party opposing the application at the same time whether there are *bona fides* for the delay. The delay has to be sufficiently explained, in sum and substance, this means that Courts are to give priority to meting out even handed justice on the merits of a case – It is essential to point out that "sufficient cause" means that there must be adequate cause for the delay – The Claimants are aged parents of the victim, their son, who they have lost in the tragic accident. If the Appellant was of the opinion that the Judgment of the Tribunal was incorrect they ought to have proceeded within time and if they had failed to proceed within time then satisfactory explanation for the delay ought to be put forth which is sadly lacking in the instant matter.

4. **Somnath Sharma**

v.

State of Sikkim

Crl. A. No. 14 of 2016

2018 SCC OnLine Sikk 123

Decided on: 11th October 2018

A. Investigation and Trial – Object Discussed –The process of justice dispensation in a criminal case mandates a thorough and sincere investigation by the investigating agency to place the absolute truth-the inflexible reality before the Court. The Investigating Officer is required to be professional, ethical, unbiased and adept with the laws. The trial of criminal cases must have the paramount objective to establish the truth. The object of investigation would be to bring home the offence to the offender however, without out-stepping from the path of truth. The sole objective of the trial would be to render justice, however harsh the outcome may be. The ultimate object of both investigation and trial is to arrive at the truth. The prosecution as well as the defence lawyers must play a crucial role in the adversarial proceeding. During trial the trial Judge has a fundamental duty to ensure fair play and the acceptance of oral as well as documentary evidence in the manner prescribed by law is fundamental. The understanding of the Indian Evidence Act, 1872, the procedural law as provided in the Code of Criminal Procedure, 1973 and the ingredients of the offence as defined in the substantive law is vital in the process of investigation as well as trial. The Judgment rendered by the Trial Judge must reflect the deep understanding of these laws and the appreciation of the facts that have unfolded during trial. There would be no room for conjectures and surmises or even presumptions save what is permitted. Cogent evidence must lead to precise answers. It is only when there is failure in investigation and prosecution that conjectures and surmises, most unfortunately, are resorted to. That however, would be not only an incorrect but also an illegal approach. Prejudging a case inevitably leads to disastrous consequences. Sound judicial principles must guide the Trial judge while arriving at his conclusion. The adage *"innocent until proven guilty"* is the fundamental principle of criminal jurisprudence. Conviction must be secured by adducing cogent and conclusive evidence by due process of the laws.

B. Indian Evidence Act, 1872 – Evidence –Independent witness means independent of sources which are likely to be tainted. The fact that the deceased who was murdered allegedly by the Appellant was the relative of Deepak Sharma (P.W.1) and Netra Devi Sharma (P.W.2),

and that Pema Chakki Bhutia (P.W.3) was the staff of Netra Devi Sharma (P.W.2) who accompanied her to the Ranipool Police

Station where the alleged extra judicial confession was made by the Appellant was a factor which ought to have been considered by the learned Sessions Judge while examining their evidences. The mere fact that the said prosecution witnesses were relatives of the deceased would not lead to Trial Court throwing out their depositions but their evidence ought to have been carefully scrutinised.

C. Indian Evidence Act, 1872 – S. 25 and 26 –The deposition of Deepak Sharma (P.W.1) that on 22.12.2013 the Appellant made a confessional statement to the police in his presence while the Appellant was in custody; The deposition of Netra Devi Sharma (P.W.2) that the Appellant confessed to his crime in her presence which was recorded by the police at the Police Station; The deposition of Pema Chakki Bhutia (P.W.3) that the Appellant confessed before the police which have been accepted by the learned Sessions Judge as extra-judicial confession would be barred under Sections 25 and 26 of the Indian Evidence Act, 1872 as being confession made to a Police Officer as well as while in the custody of the Police Officer.

D. Code of Criminal Procedure, 1973 – S. 164 –Section 164, Cr.P.C. permits the recording of the statement of a witness or a confession. Confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence – Section 164 Cr.P.C. does not prescribe any method to record admissions of an accused. Section 164 Cr.P.C. does not permit the recording of admission save confessions by an accused. Confessions recorded under Section 164 Cr.P.C. although *stricto sensu* not evidence however, is considered highly reliable because no rational person would make admission against his own interest prompted by his conscience to tell the truth. If the Court finds that the confession was voluntary, truthful and not caused by any inducement, threat or promise it gains a high degree of probability. If a statement recorded under Section 164 Cr.P.C. of an accused is found not to be confessional, its reliability would lose the strength attached to a confessional statement.

E. Indian Evidence Act, 1872 – S. 35 –The Investigating Officer hasexhibited loose sheets of paper as the entries made in the Rangpo check post in two pages and identified the signatures of second officer in-charge-Sub-Inspector Pema Rana as (exhibit-36). Section 35 of the Indian Evidence Act, 1872 provides that an entry in any public or other official book, register or record or an electronic record, stating a fact in issue or relevant fact, and made in performance of a duty

especially enjoined by the law of the country in which such book, register, or record or an electronic record is kept, is itself a relevant fact – Sub-Inspector Pema Rana was not examined. The purported entries from the purported vehicle movement register have not been seized through any seizure memo. The vehicle movement register has also not been placed before the Court. The maker of the entries has also not been examined. The Investigating Officer-Mahendra Subba is definitely not the person who had any personal knowledge about the entries. The loose sheet of pages cannot be accepted as evidence. The prosecution failed to prove the entries.

F. Indian Evidence Act, 1872 – Result of an investigation can never be accepted as substantive evidence – The solitary seizure witness quite candidly admitted that he does not know from whom and where the police recovered the said Nokia mobile phone which was lying on the table of the Investigating Officer – Evidently the prosecution had failed to establish that the said Nokia mobile phone was seized from Mahendra Poudyal (PW-12) leave alone the fact that the said mobile phone belonged to the Appellant and that it was snatched from Chandra Kala Sharma by him. The learned Sessions Judge would quite correctly disbelieve the evidence of the Investigating Officer regarding the text message sent from the said mobile phone but would go on to hold that the evidence tendered by him against the Appellant had remained firm and could not be demolished despite lengthy cross-examination. The learned Sessions Judge failed to appreciate that the Investigating Officer was not a witness to the crime and he was in fact the Investigating Officer of the case. The learned Sessions Judge thus failed to appreciate that the result of investigation can never be accepted as substantive evidence.

G. Indian Evidence Act, 1872 – Last Seen Theory –To apply the last seen theory, it is necessary to establish that the Appellant was last seen with the deceased – Normally, last seen theory comes into play where the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. The time gap between 19.12.2013 and 24.12.2013 is five days. There is no explanation as to what transpired in the interregnum. Sajan Tamang who first saw the dead body and informed the police not being examined it cannot be safely concluded that in between the period there was no possibility of any person other than the Appellant being the perpetrator of the crime. The circumstance of last seen theory cannot therefore be pressed against the Appellant.

H. Indian Evidence Act, 1872 – S. 27 – Disclosure Statement –Exhibit-3 is the disclosure statement of the Appellant. It is recorded in Nepali. The date of the disclosure statement is 22.12.2013 and the time 1400 hours. It is recorded at the Ranipool Police Station. The said disclosure statement bears the signature of the Appellant as well as the signature of two witnesses to the disclosure i.e. Netra Devi Sharma (PW-2) and Pema Chakki Bhutia (PW-3). PW-2 is related to the deceased and PW-3 is Netra Devi Sharma's staff and thereafter their evidence must be carefully examined although admissible. The confession of the Appellant recorded in the disclosure statement heavily relied upon by the learned Sessions Judge in the impugned judgment to hold the Appellant guilty of murder is not admissible – What is admissible is provided in Section 27 of the Indian Evidence Act, 1872 which provides that when any fact is deposed to as discovered in consequence of information received from a person of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved – For the application of Section 27 the Indian Evidence Act, 1872 the disclosure statement must be split into its components to separate the admissible portion if duly proved. Only those components or portions which were the immediate cause of the discovery may be proved. The rest of the portions must be eliminated from consideration. In so doing the only portion of the disclosure statement (Exhibit-3) which may be proved is, as translated "I can show the place I pushed my wife and I can also show the body of my wife if it has not been carried away by the river" after discarding the underlined portion. The words in the above disclosure statement "I pushed my wife" are inadmissible since they do not relate to the discovery of the body of the deceased. Now it would be relevant to examine whether the fact was discovered pursuant to the purported disclosure statement dated 22.12.2013 made by the Appellant – The evidence of a vital witness who is said to have seen the dead body first lying near the bank of river Teesta near Melli, South Sikkim has been withheld from the Court with no explanation. Police Inspector-Karma Chedup Bhutia who is said to have registered the UD Case No. 16 of 2013 was also not examined. The fact that the investigation for the search of the dead body of the deceased was directed towards Melli after the disclosure statement would have been relevant. However, Sajan Tamang the most crucial witness who had admittedly discovered the dead body having not been examined how and under what circumstances the dead body was discovered by him remains unexplained. In such circumstances, it cannot be said that the dead body of the deceased was discovered in consequence of information received from the Appellant – The evidence of the

prosecution fall short of the quality of evidence required in a criminal case. The only person who identified the dead body found at bank of river Teesta was PW-11. The inquest reports do not name him as the person who identified the dead body. The Investigating Officer also throws no light upon this evidence. Even if this Court were to believe the evidence of PW-11 to be true it is certain that there is no evidence to show that the discovery of the dead body at the bank of river Teesta near Yuksom Breweries, Melli on 24.12.2013 was in consequence of the information received from the Appellant in custody of a police officer as required under the mandate of Section 27 of the Indian Evidence Act, 1872 to make it provable and hold against the Appellant.

I. Indian Evidence Act, 1872 – Suspicion however strong cannot substitute legal proof –The chain of circumstances required to be proved in a criminal prosecution establishing the guilt of the accused has not been cogently proved. In fact none of the circumstances stands proved save the fact that the Appellant had eaten vegetable *"momos"* with an unknown girl on the date of the alleged incident i.e.19.12.2013 at Melli. This may create a serious doubt upon the Appellant. However, it is shockingly obvious that the prosecution did not deem it important to conduct the investigation in such a manner that would eliminate all possibility about the innocence of the Appellant. The prosecution seem to have rested its case on procuring statements of the Appellant and Chandra Kala Sharma under Section 164 Cr.P.C. without even realising that both had not confessed to their alleged crimes, a statement of the Appellant under Section 27 of the Indian Evidence Act, 1872 and evidence regarding some investigation done by the relatives of the deceased themselves. No effort has been made to prove vital documentary evidences. Material witnesses to the making of the said documents have been left out. Sajan Tamang the first informant about the recovery of the dead body has also been left out by the Investigating Officer without even an explanation. The offence of murder having not been proved the bare fact that the Appellant went and lodged a missing report after the deceased went missing or that he gave some statement under Section 313 Cr.P.C would not *ipso facto* lead to the conclusion that the said report was false. In the present case the alleged links, save one, in the chain are in themselves not proved and therefore incomplete. Even if the prosecution allegation of a false plea or a false defence is accepted it cannot be called into aid to saddle the Appellant with culpability. The charges have not been proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence. In such circumstances the question of indicting or punishing an accused does not arise, merely being carried away by the presumed heinous nature of the crime or the gruesome

manner in which it was presumed to have been committed. Mere suspicion, however strong or probable it may be cannot substitute legal proof required substantiating the charge of commission of a crime and graver the charge greater ought to be the standard of proof required. The criminal Courts should etch the words of the Supreme Court, so often reiterated, in their memory that there is a long mental distance between *"may be true"* and *"must be true"* and this basic and golden rule only helps to maintain the vital distinction between *"conjectures"* and *"sure conclusions"* to be arrived at on the touchstone of a dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case as well as quality and credibility of the evidence brought on record.

5. **Mangala Mishra @ Dawa Tamang @ Jack**
v.
State of Sikkim

Crl. A. No. 36 of 2017
2018 SCC OnLine Sikk 215
Decided on: 13th October 2018

A. Code of Criminal Procedure, 1973 – S. 154 – First Information Report – The term "First Information" has not been defined in the Code nor is there any mention of such a term however it is now a settled position that information given to a police officer concerning an offence means something in the nature of a complaint or accusation. It may well be information of a crime which sets the criminal law justice system in motion. The provisions of S. 154 of the Cr.P.C. are mandatory and the concerned Police Officer is duty bound to register the case on the basis of information disclosing cognizable offence – The condition which is *sine qua non* for recording a First Information Report is that, there must be information, which must disclose a cognizable offence before the Officer-in-Charge of the Police Station. Upon receipt of such information, the law requires the police officer to reduce the information in writing if given orally which shall be read over to the informant. Where such information is a written complaint or one which has been reduced to writing it shall be signed by the person giving the information. The substance of the information is to be entered in a book to be kept by such Officer in terms of the rules prescribed by the Government. The Section also requires that a copy of the information so recorded under Sub-Section (1) shall be given free of cost to the informant – Incumbent upon the Officer at the Police Station to record a complaint when a cognizable offence is reported and treat it as an FIR.

B. Code of Criminal Procedure, 1973 – S. 154 – Second F.I.R Permissibility –Although two F.I.Rs have not been exhibited herein the evidence on record indeed leads one to such conclusion. The missing report is actually the F.I.R being prior in time to Exhibit 8 which in sum and substance is a report of steps taken by P.W.9 pursuant to the missing report. Exhibit 8 surely does not classify as an F.I.R. The matter being riddled with anomalies, lacking clarity about the lodging of an F.I.R is therefore untenable in the eyes of law – There cannot be two F.I.Rs for the same offence.

C. Indian Evidence Act, 1872 – S. 35 – Relevancy of Entry in Public Record or an Electronic Record made in Performance of Duty – Such entries must be established by necessary evidence. In addition to which the entries must be made by or under the direction of the person whose duty it is to make them at the relevant time. It is essential to show that the document was prepared by the public servant in the discharge of his official duty.

D. Juvenile Justice (Care and Protection of Children) Act, 2015 – S. 94 – Presumption and Determination of Age –Although the said provision for is to gauge the age of a child in need of care and protection or a child in conflict with law and consequently for the use of the Child Welfare Committee or the Juvenile Justice Board, nevertheless this does not debar any Court from taking assistance of the provisions of this Section to assess the age of the victim by the methods prescribed therein – If in the first instance, the date of birth from the school or matriculation certificate of the child is unavailable then resort can be taken to a birth certificate issued by a Corporation or a Municipal Authority. It is only thereafter that the prosecution can rely on the ossification test.

E. Indian Evidence Act, 1872 – S. 45 – Opinions of Experts – Medical evidence as is well settled is an opinion given by an expert and deserves respect by the Court, however, this does not necessarily conclude as always being binding upon the Court. The expert's evidence may be an opinion on facts such as a Doctor giving his opinion as to the cause of a person's death or injury but when calling an expert's evidence, the prosecution must first establish the expertise of the witness by furnishing evidence to convince the Court that the witness is a competent witness.

Goshir Gyaltsab Rinpoche
v.
Karmapa Charitable Trust

CRP No. 8 of 2017

2018 SCC OnLine Sikk 218

Decided on: 29th October 2018

A. Code of Civil Procedure, 1908 – S. 151 – Issue No. 3 *supra* of 27.02.2002 is to be decided on merits and not by mere statement. Even if it is admitted that the Karmapa is 21 years and hence the sole Trustee, the matter is not as simplistic as the Petitioner would have us believe as the prayers in the plaint are manifold as also the issues settled for determination which require specific decision on merits – As rightly pointed out by the learned Trial Court, it is not clear as to why the Petitioner has suddenly raised the issue of the 17th Gyalwa Karmapa having already attained the age of 21 years at this stage when, going by his own claims, the 17th Karmapa had attained the age of 21 years in the year 2006. It is no one's case that they were unaware of the date of birth of the reincarnation. Contrarily, it may be stated that no proof has been furnished before the learned Trial Court to establish that the Karmapa has attained the age of 21 years and the rules of evidence cannot be wished away and the matter decided in slipshod manner on the persuasion of the Petitioner – The coming of age of the Karmapa as the sole Trustee has to be established by evidence – In the matter at hand, learned Counsel for the Petitioner would contend that as the Karmapas on either side have attained the age of 21 years, the Trustees are *functus officio* and in such event the suit does not survive as it cannot be continued in the sole name of the Trust which is not a juristic person. It is to be reiterated here that proof of age of the Karmapas is yet to be adduced and the proceeding cannot be said to have become infructuous in view of the issues involved.

7. **Dawa Phuti Bhutia and Others**

v.

State of Sikkim and Others

W.P (C) No. 05 of 2017

2018 SCC OnLine Sikk 226

Decided on: 2nd November 2018

A. Constitution of India – Article 19 – Article 19 of the Constitution lists a group of rights from clause (a) to (g) which are recognised as fundamental rights. Article 19 (1)(g) extends to every citizen the right to practice any profession or to carry on any occupation trade or business. The rights enumerated under Article 19 are recognised as natural rights and although they may have different underlying philosophies, the consistent common thread however is that the State is empowered to impose restrictions to achieve certain objects – Although Article 19 of the Constitution assures citizens of the rights enumerated therein the rights cannot be absolute, uncontrolled or wholly free from restraint, they are indeed subject to reasonable restrictions as may be deemed necessary by the Government as essential for safety, health, peace, decency and order of the community. The Constitution thus seeks to strike a balance between individual liberty and social control – If the restriction imposed is greater than permitted under clause (2) to (6) of Article 19, the Courts will necessarily declare the same as unconstitutional, as imposition of restrictions limit aperson's enjoyment to the rights guaranteed – Violation of the fundamental rights of one individual by another, without State support is not envisaged in the ambit of Article 19.

B. Constitution of India – Article 19 – Every person is entitled to practice any profession or to carry on any occupation, trade or business as provided under Article 19 (1)(g) of the Constitution and no one can monopolise a business. Merely because one individual apprehends loss of business on the entry of another person into the same business does not clothe him with powers to expect the State to intervene and impose restrictions on the new entrant – The exercise of a fundamental right by an individual is equal for all thus one individual cannot infringe or deter another from exercising his exact same right, unless and until reasonable restriction as found essential by the State are in place – The term "reasonable restrictions" connotes that the restriction imposed on the exercise of the right must have reasonable relation to the object which the legislature seeks toachieve and ought not to be in excess thereof or arbitrary.

C. Constitution of India – Article 21 – No person shall be deprived of his life and personal liberty except according to procedure established by law. Enjoyment of quality life by a person is the essence of the right guaranteed under Article 21 which means not merely survival or animal existence, but the right to live with human dignity and thereby includes all issues of life which involve the making of a meaningful and complete life. Obviously these facets of the right can only be achieved by means of a proper livelihood, thus the right to livelihood is an integral part of the right to life under Article 21 and cannot be infringed by withholding the means of livelihood by any process whatsoever. The action of the State is to be based on reasonableness and cannot deprive the basic human rights afforded under the Constitution. It also includes the right of a citizen to carry on business wherever he chooses or at any time subject to reasonable restrictions imposed by the Executive in the interest of public convenience.

D. Legitimate Expectation – Doctrine –It is generally agreed that "legitimate expectation" gives the applicant sufficient *locus standi* for judicial review. The doctrine does not give scope to claim relief straightway from the administrative authorities as no crystallized right as such is involved. The protection of such legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise – Where a person's legitimate expectation is not fulfilled by taking of a particular decision, then the decision-maker is to justify the denial of such expectation by showing some overriding public interest.

E. Promissory Estoppel – Doctrine –The doctrine of promissory estoppel which is a rule of equity flowing out of fairness, striking on behavior deficient in good faith. While applying this concept, the Court ought to be concerned with the conduct of a party for determination whether he can be permitted to take a different stand in a subsequent proceeding – The doctrine is premised on conduct of a party making a representation to the other to enable him to arrange his affairs in such a manner as if the said representation would be acted upon –The doctrine of promissory estoppel would be applicable in a case where the appellant would suffer a detriment by acting on a representation made by the Government – Documents on record do not indicate any assurance from the Government to the petitioners for construction of toilet. It is the petitioners who have submitted the representations, the prayers of which did not materialize. Legitimate expectation would have arisen if assurances had been made to the petitioners by respondents 1 and 2 – Neither of the doctrines are applicable to the petitioners in the present case.

8. **Bijay Gurung**
v.
State of Sikkim and Others

W.P. (C) No. 57 of 2016
2018 SCC OnLine Sikk 227
Decided on: 12th November 2018

A. Constitution of India – Article 226 –In matters of disciplinary proceedings, the High Court exercises a limited power as the grounds for judicial review are limited and would be reluctant to intervene unless the findings are wholly perverse, illegal, untenable or in prejudice of the statutory provisions or principles of natural justice.

B. Sikkim High Court (Practice and Procedure) Rules, 2011 – Rule 7 – Procedure for Imposing Penalties – A bare reading of the afore-stated provisions would obtain that the role and duties cast upon the disciplinary authority extend from Rule 7(2) to Rule 7(6) – When disciplinary proceedings are to be held against a police officer it becomes incumbent upon the disciplinary authority to draw up the details as laid down in Rule 7(3)(i), (ii)(a) and (b). Thereafter, the disciplinary authority is also to ensure delivery of the documents to the delinquent specifying a time frame within which the delinquent is to file his statement of defence as emanates from Rule 7(4). Written statement is to be received by the disciplinary authority himself and none else as envisaged under Rule 7(5)(a), following which the said authority is to take steps, viz.; where the articles of charge are not admitted then he is to enquire into such of the articles which are not admitted or appoint an inquiry authority under Rule 7(2) for the said purpose. However, where the articles of charge have been admitted by the delinquent the disciplinary authority is clothed with powers to record his findings on each charge after recording evidence as he thinks fit and then take steps as per Rule 7(25) which provides for steps to be taken for imposing penalty instead of inquiring into the matter or causing inquiry.

9. **Nabin Manger**
v.
State of Sikkim

Bail Appln. No. 03 of 2018
2018 SCC OnLine Sikk 231

Decided on: 15th November 2018

A. Sikkim Anti Drugs Act, 2006 – Bail – Consideration –While considering an application for bail, it becomes imperative on the Court to consider the seriousness of the offence apart from the interests of the society at large. It is no secret that the law enforcement agencies in Sikkim are battling with the sale of controlled substances which are brought into the State and sold by unscrupulous people to the young and impressionable. The consumers of controlled substances, it is now widely accepted, are in fact victims but it is essential that the Courts deal with an iron hand with the sellers who encourage addiction and dependence by the consumers on the controlled substances – The interest of the society ought to be treated with priority in the instant matter considering the gravity of the offence in the context of this State.

10. **Shri Deepesh Chandra Sharma**
v.
State of Sikkim and Another

W.P. (C) No. 15 of 2018
2018 SCC OnLine Sikk 244
Decided on: 20th November 2018

A. Constitution of India – Article 226 –It is settled law that in a matter of transfer of a Government employee, scope of judicial review is limited and the High Court should not interfere with the order of transfer lightly, be it at interim stage or final stage. This is so because the Courts do not substitute their own decision in the matter of transfer. It is also settled position of law that an order of transfer is a part of the service conditions of an employee which should not be interfered in exercise of its discretional jurisdiction under Article 226 of the Constitution of India – Government servant has no vested right to remain in a particular place of posting for a long period. He can also not insist that he must be posted at a particular place because the people of that area want him to continue

at the place of posting. Transfer order can be set aside when transfer order is vitiated by violation of some statutory provisions or suffers from *mala fide*. Transfer order can be set aside when same is passed by an authority who is not competent to pass such orders. It can also be set aside when by such order the person is sent to a lower post – The allegations of *mala fide* should not be accepted lightly by the Court.

B. Transfer Policy for Government Employees –The State Government has neither made Transfer Actnor any Rules have been framed in this regard. Even guidelines have also not been framed by the State Government – For proper functioning of Government Departments, at least some guidelines regarding transfer of its employees should be framed by the Government – State Government requested to either frame Guidelines or Rules or Act regarding transfer of its employees at the earliest.

11. M/s Summit Online Trade Solutions (Pvt.) Ltd.and Another
v.
State of Sikkim and Another

W.P. (C) No. 50 of 2018
2018 SCC OnLine Sikk 242
Decided on: 29th November 2018

A. Promissory Estoppel – Doctrine –The doctrine is an equitable doctrine evolved by equity in order to prevent injustice when a promise is made by a person knowing that it would be acted on by the person to whom it was made and in fact has so acted on it. It would in such a circumstance be inequitable to allow the party making the promise to go back upon it.

12. **M/s Pan India Network Limited and Another**

v.

State of Sikkim and Another

W.P. (C) No. 51 of 2018

2018 SCC OnLine Sikk 243s

Decided on: 29th November 2018

A. Promissory Estoppel – Doctrine –The doctrine is an equitable doctrine evolved by equity in order to prevent injustice when a promise is made by a person knowing that it would be acted on by the person to whom it was made and in fact has so acted on it. It would in such a circumstance be inequitable to allow the party making the promise to go back upon it.

13. **Sushil Sharma**

v.

State of Sikkim

Crl. A. No. 08 of 2018

2018 SCC OnLine Sikk 240

Decided on: 1st December 2018

A. Narcotic Drugs and Psychotropic Substances Act, 1985 – Sikkim Anti Drugs Act, 2006 – Fair Investigation and Trial –If informant Police Officer in cases carrying a reverse burden of proof makes the allegation and is himself asked to investigate, serious doubt would arise with regard to his fairness and impartiality and in such cases it is not necessary that bias must actually be proved – The informant and the investigator must not be the same person – Justice must not only be done, but must appear to be done as well – Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof.

B. Sikkim Anti Drugs Act, 2006 –S. 22 – Seizure and Arrest in Public Place – Empowers the authorised officer to detain the suspect, search and seize on his reason to believe that an offence punishable under SADA, 2006 has been committed in any public place – Can also arrest him or any other person in his company if the suspect is in possession of controlled substance which is unlawful – S. 22 does not mandate a search warrant or authorisation. It does not also

require recording of the grounds for his belief that if he does not act in haste, enter, seize and arrest the suspect would have concealed the evidence or escaped – Does not require the authorised officer to forward written grounds of his belief to his immediate superior within seventy-two hours – S. 22 of SADA, 2006 is analogues to S. 43 of the NDPS Act, 1985.

C. Sikkim Anti Drugs Act, 2006 –S. 30 – Report of Arrest and Seizure –S. 30 of SADA, 2006 is in *pari materia* with S. 57 of the NDPS Act, 1985 – By itself not mandatory and if there is non-compliance or if there are lapses like delay etc. then the same has to be examined to see whether any prejudice has been caused to the accused and such failure will have a bearing on the appreciation of evidence regarding arrest or seizure as well as on merits of the case – Prosecution case cannot be thrown out on the failure of the prosecution to comply with the provisions of S. 57 of the NDPS Act, 1985 and S. 30 of SADA, 2006 alone.

D. Sikkim Anti Drugs Act, 2006 – S. 24 – Search of Persons – Conditions –Before searching any person the authorised officer, ***"if possible"***, take such person to the nearest Gazetted Officer of any of the Departments mentioned in S. 21 or to the nearest Magistrate. Therefore, unless it is not possible the authorised officer before searching any person must take such person to the nearest Gazetted Officer or to the nearest Magistrate. If it is not possible the authorised officer must record reasons in writing and forward the same within 72 hours to his immediate superior – S. 50 of the NDPS Act, 1985 however, provides that when any officer duly authorised is about to search any person he shall, ***"if such person so requires"*** take such person without unnecessary delay to the nearest Gazetted Officer of any of the Departments mentioned in S. 42 or to the nearest Magistrate – Under S. 50 of the NDPS Act, 1985 option must be given to the person to be searched – Option given to the accused is only to choose whether he would like to be searched by the Officer making the search or in the presence of the nearest available Gazetted Officer or the nearest available Magistrate. The choice of the nearest Gazetted Officer or the nearest Magistrate has to be exercised by the Officer making the search and not by the accused – There is no requirement for serving a notice under S. 50 of the NDPS Act, 1985 or S. 24 of the SADA, 2006.

E. Sikkim Anti Drugs Act, 2006 – S. 24 –Under S. 50 of the NDPS Act, 1985 and S. 24 of SADA, 2006 the Gazetted Officer or the Magistrate before whom the accused is produced must be neutral, appear to be neutral and the act of conducting the search must be meaningful and not an empty formality – Vital to draw a distinction of a case in which search was conducted on the basis of prior information and search conducted on a chance recovery.

F. Sikkim Anti Drugs Act, 2006 – S. 28 – Keeping the Seized Articles in Safe Custody –The submission of the prosecution that the defence had not raised the objection of the failure of the prosecution to prove the mandatory provisions of search, seizure and safe custody of the seized articles during trial and was thus precluded from raising them at the Appellate stage cannot be accepted – Firstly, the impugned judgment itself records that the learned Special Judge would examine whether the recovery and seizure were done in accordance with the mandatory provisions – Secondly, when the said enactments provide for reverse burden of proof it is imperative that the prosecution establish with cogent evidence the compliance of the mandatory provisions – When the NDPS Act, 1985 and SADA, 2006 requires certain things to be done in a particular manner it must also be shown that it was done in the said manner. Failure to do so would lead to the conclusion that the seized articles were not kept in safe custody.

G. Code of Criminal Procedure, 1973 – Charge –Substance of accusation framed against the Appellant under S. 20(A) of NDPS Act, 1985 lacked clarity. Firstly, it was incumbent upon the learned Special Judge to have framed a separate charge for the offence under S. 20(b) (ii) (A) of the NDPS Act, 1985, separate from the charges under the SADA, 2006. It was also incumbent upon the learned Special Judge to have specified precisely the contravention of any provision of the NDPS Act, 1985 or any Rule or any order made or condition of license granted by possessing the *"ganja"* – Charge framing is a vital aspect of criminal trial and the provisions of Ss. 211 to 224 Cr.P.C. must be carefully complied with. Merely because S. 464 CrPC exist in the statute book does not warrant the Trial Court to frame a charge incorrectly. Clarity in framing the charge has a dual purpose. A properly framed charge would guide the trial to establish the ingredients of the offence. It would also assist the defence to understand the charge correctly and lead their evidence.

H. Indian Evidence Act, 1872 – S. 45 – Opinions of Experts –For the admissibility of experts' evidence, an expert must be within the recognised field of expertise. The evidence given by an expert must be based on reliable principles and must be qualified in that discipline – Expert is neither judge nor jury – Real function to place before the Court all materials together with reasons for the conclusion. It would allow the Court, which may not have the necessary expertise, to form its own judgment by its own observation of those materials placed and the reasons and conclusion provided by an expert.

I. Indian Evidence Act, 1872 – S. 45 – Opinions of Experts – An expert opinion is an opinion. Opinion which reflects the expertise on the subject of an expert and provides the necessary scientific criteria for testing accuracy of conclusions arrived at would inspire confidence upon the Court to rely upon the same and come to its independent judgment. The scientific opinion must therefore necessarily be intelligible and convincing. The credibility of expert's opinion would depend on the reasons stated in support of conclusions and the data and material furnished which form the basis of the conclusion. Mere assertion without material cannot be considered evidence even if it is stated by an expert. When an expert gives no real data in support of what they call their expert opinion, the evidence even though admissible, may be excluded from consideration as it would provide no assistance to the Court to form its judgment.

J. Sikkim Anti Drugs Rules, 2006 – Rule 17 – Possession of Controlled Substances –To establish a charge of possession of controlled substance two ingredients are essential. It must be established that the Appellant was in possession of the controlled substances. It must also be established that the articles seized were controlled substances. In that event unless he is lawfully authorised to possess such controlled substances for any of the said provisions in the Rules, the possession would attract the punishment prescribed by S. 14 of SADA, 2006. Failure to establish either of the two ingredients by the prosecution would result in the charge not being proved.

K. Sikkim Anti Drugs Rules, 2007 – Rule 17 – Possession of Controlled Substances –To establish a charge of possession of controlled substance two ingredients are essential. It must be established that the Appellant was in possession of the controlled substances. It must also be established that the articles seized were controlled substances. In that event unless he is lawfully authorised to possess such controlled substances for any of the said provisions in the Rules, the possession would attract the punishment prescribed by S. 14 of SADA, 2006. Failure to establish either of the two ingredients by the prosecution would result in the charge not being proved.

L. Sikkim Anti Drugs Act, 2006 – S.16 –SADA, 2006 carries a reverse burden of proof under S. 16 thereof. This cannot however be understood to mean that the moment an allegation is made and the F.I.R recites compliance with statutory procedures leading to recovery, the burden of proof from the very inception of the prosecution shifts to the accused, without the prosecution having to establish or prove anything more. The presumption under S. 16 of SADA, 2006 is rebuttable. Only if proof *"beyond reasonable doubt"* after investigation as provided in S. 16 is established *prima facie* by the prosecution would shift the burden to the accused.

M. Sikkim Anti Drugs Rules, 2006 – Rule 9 – Object –S. 9 (b) of SADA, 2006 deals with consumption of controlled substance more as a disease and less as a crime. It provides for compulsory detoxification, rehabilitation and also to remain under observation/probation – The object is to ensure that a person who consumes controlled substance is compulsorily detoxified, rehabilitated and kept under observation to ensure that he does not get back into the habit. The role of the investigating agency in such circumstances is vital. Fair and focused investigation would result in critical evaluation of the person who is alleged to have consumed controlled substance whether he is a onetime consumer or an occasional consumer, addict or a peddler trafficking drugs, psychotropic substance or controlled substance. An addict has been defined under S. 2 (ii) of SADA, 2006 to mean a person who has dependence in any drug having abuse potential and consumes the said drug. The certainty of purpose of the investigating agencies will only ensure that the object for which the provision has been made would be achieved.

N. Sikkim Anti Drugs Act, 2006 – Narcotic Drugs and Psychotropic Substances Act, 1985 – Investigation –In order to meet the challenges faced by society, the investigation of the offences both under the NDPS Act, 1985 and under SADA, 2006 should be focused and the conclusion of the investigation must be arrived at with clinching evidence for the Court to arrive at a decision as how best to deal with the offender. The prosecution and the trial that follows must be done keeping paramount the intention of the legislative in enacting the NDPS Act, 1985 and SADA, 2006 – Only because it is a menace it does not permit the enforcement agencies, the prosecution as well as the judiciary to overlook the stringent requirements of the procedural laws both under NDPS Act, 1985 and SADA, 2006. Securing a conviction by leading cogent evidence proved in the manner provided would help the judiciary to impose the correct sentence focussed on the problem. Accurate identification whether the suspect is a onetime or an occasional consumer, addict or a peddler trafficking drugs, psychotropic substances or controlled substances with certainty is crucial to the resolution of the problem. Otherwise even securing a conviction may not serve the purpose of SADA, 2006. The State is bound to ensure that the addicts and consumers are detoxified, rehabilitated, kept under observation and reintegrated into the society they belong. When SADA, 2006 provides for compulsory detoxification, rehabilitation and observation without adequate and proper detoxification, rehabilitation and observation centres for consumers and addicts, the State enforcement agencies would not be in a position to enforce the mandate of the law. This would amount to failure of the State to implement the SADA, 2006. The Peddlers and the traffickers on the other hand must be dealt with swiftly and sternly. Their proper identification, focused prosecution and

if found guilty imposition of the correct and adequate sentence would help meet the need of the society grappling with the menace today.

14. **Sri Guru Singh Sabha and Another**
v.
State of Sikkim and Others

I.A. No. 11 of 2018 IN W.P (C) No. 49 of 2017
2018 SCC OnLine Sikk 241
Decided on: 1st December 2018

A. Code of Civil Procedure, 1908 – Order 1 Rule 10 (2) –Merely because the applicant is impleaded and heard in the present proceedings would not, as apprehended by the petitioner, give the applicant a fresh cause of action if the action which may be taken by the applicant is barred by limitation. It is true that the petitioner is the *dominus litis* and may choose the parties against whom it wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. However, the Court may at any stage of the proceedings order the name of any party who ought to have been joined, whose presence before the Court may be necessary in order to enable the Court effectively and completely to adjudicate upon and settle all the questions involved in the writ petition, be added. This is the essence of Order 1 Rule 10 (2) of the Code of Civil Procedure, 1908 which is also reflected in Rule 101 of the Sikkim High Court (Practice & Procedure) Rules, 2011.

15. **Old Rumtek Monastery and Others**
v.
Lama Karma Dorjee and Others

RSA No. 02 of 2018

2018 SCC OnLine Sikk 248

Decided on: 7th December 2018

A. Sikkim High Court (Practice and Procedure) Rules 2011 – Rule 13 – Calculation of the Period of Limitation –Once the petition/appeal is filed in the Registry of the High Court and the Registry has made endorsement about the filing of appeal/petition, then it becomes the record of the Registry – Petitions/appeals/documents once filed in the Registry cannot be permitted to be returned to the party. Handing over a petition/appeal/ document to the Counsel for the party for removing defects does not mean that the same is returned permanently. In fact, same is given temporarily to the Counsel for the party to cure the defects in the Office itself. The concerned party/Advocate has to remove or cure the defects within the time provided in the P.P. Rules and for that purpose necessary application can be filed in the Registry or necessary Court fee etc. be supplied in the Registry but petition/appeal once filed in the Registry cannot be given back to the party/Advocate – The date when the petition/appeal/application is filed in the Registry and endorsement is made by the Registry about filing of the case, in that event, that particular date shall be taken as the crucial date for calculating the limitation – I am not in agreement with the view taken by the Hon'ble Judge in the matter of *Tara Kumar Pradhan's* case – The matter is fit to be referred to a larger bench for giving its opinion on the following question: "Whether the date of filing of the appeal in the Registry of the High Court is the crucial date for the calculation of limitation or the date when the defects are cured and appeal is resubmitted in the Registry?"

SOME RECENT MAJOR EVENTS

1. SWEARING-IN-CEREMONY OF HON'BLE MR. JUSTICE VIJAI KUMAR BIST, CHIEF JUSTICE, HIGH COURT OF SIKKIM

The swearing in ceremony of Hon'ble the Chief Justice of the High Court of Sikkim on 30th October, 2018

The Governor of Sikkim, Hon'ble Mr. Ganga Prasad administered the oath of office to the Hon'ble Chief Justice, High Court of Sikkim, on 30th October, 2018 in the presence of Mr. Pawan Chamling, Hon'ble Chief Minister; Hon'ble Speaker of Sikkim Legislative Assembly; Hon'ble Mrs. Justice Meenakshi Madan Rai, Judge, High Court of Sikkim; Hon'ble Mr. Justice Bhaskar Raj Pradhan, Judge, High Court of Sikkim; Hon'ble Cabinet Ministers; and other dignitaries.

2. STATE LEVEL CONSULTATION ON JUVENILE JUSTICE, ISSUES RELATING TO THE SAFETY OF CHILDREN IN CHILD CARE INSTITUTIONS HELD ON 24TH NOVEMBER, 2018

The State Level Consultation on Juvenile Justice held on 24th November, 2018 at Conference Hall, High Court of Sikkim.

The Juvenile Justice Monitoring Committee of the High Court of Sikkim held State Level Consultation of all the stakeholders under the Juvenile Justice (Care and Protection) of Children Act, 2015 on 24th November, 2018 at 2 p.m. in the Conference Hall of the High Court of Sikkim at Gangtok. The meeting was chaired by Hon'ble Mrs. Meenakshi Madan Rai, Judge, High Court of Sikkim and Chairperson, High Court Juvenile Justice Monitoring Committee. The important agendas discussed were as follows: (i) Creation of Juvenile Justice Fund (under Section 105 of the J.J. Act, 2015); (ii) Release of ICPS Budget for running the Child Care Institutions; (iii) Funds of installation of CCTVs in all Child Care Institutions; (iv) Drawings/Blue Print Plan for Juvenile Observation Home in Assam Lingzey, East Sikkim and Boomtar, South Sikkim.

IMPORTANT VISITS & CONFERENCES

1. Hon'ble Mrs. Justice Meenakshi Madan Rai, Judge, High Court of Sikkim attended the "*Sensitization programme for Senior Citizens/Retired Government Officers/Officials at Chungthang under NALSA (Legal Services to Senior Citizens) Scheme, 2016*" on 3rd November, 2018 at Chungthang Sub-Division, North Sikkim.

2. Hon'ble Mrs. Justice Meenakshi Madan Rai, Judge, High Court of Sikkim and Chairperson, Sikkim High Court Committee for Sensitization of Family Court Matters attended the "*1st National Meet of Family Courts of India*" on 17th November, 2018 at Ranchi, Jharkhand.

3. Hon'ble Mrs. Justice Meenakshi Madan Rai, Judge, High Court of Sikkim and Chairperson, Juvenile Justice Committee attended the "*National Round Table Conference*" on 1st December, 2018 at New Delhi.

4. Hon'ble Mrs. Justice Meenakshi Madan Rai, Acting Chief Justice, High Court of Sikkim proceeded Bhopal, National Judicial Academy in connection with imparting training to the Principal District and Sessions Judges on Access to Justice and Legal Aid (P-1144) as a Resource Person from 7th to 9th December, 2018.

5. Hon'ble Mr. Justice Bhaskar Raj Pradhan, Judge, High Court of Sikkim attended the "*2nd National Conference of Computer Committee of High Courts*" on 08th and 09th December, 2018 at Chandigarh, Punjab & Haryana.