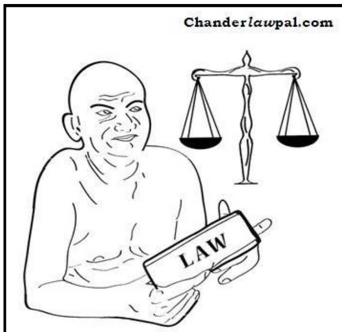

Spreading Legal and Economic Awareness

A Social Initiative by
Charanjeet Chanderpal
Edited by Harjot Kaur

For private circulation only
Free of cost

Inside this issue:

Special points of interest:

- SC settles Rs 50 crore family dispute giving credit to lawyer
- Joyrides may soon be a thing of past
- Need help in efiling your returns?
- Find out how you can carry goods from abroad
- How govt pleaders and public prosecutors differ

Chanderlawpal's Knowledge Law and Economics

Volume I, Issue 9, Special Issue **September 2015**

Supreme Court Ends 50 cr Family Dispute with 57 Cases, Gives Credit to Founder of this Newsletter

(SLP No.3695/2015. Cr App No.1166/2015 dt7/9/2015)

In our previous publications, we had indicated that Alternate Dispute Resolution can be an effective in ending disputes as Court procedures are long drawn. This includes mediation. The founder of this newsletter Advocate Charanjeet Chanderpal had proposed a mediation to the High Court which fizzled out on small points. At the Supreme Court, Chanderpal once again stated that settlement was possible. The Supreme Court used its powers under Article 136 read with Article 142 of the Constitution and directed that criminal cases be quashed and other cases be considered disposed off. The Apex court also noted the culture of the parties and the lawyers paragraph and the contribution of the founder of this news letter to the cause. Chanderpal stated that mediation settlement is possible at the High Court and district court too, but the parties and their lawyers should be willing to do it and once the consent terms are entered, cases can be worked out. The relevant parts of the referred supreme court order are produced herein below:

"**Heard Mr. Charanjeet Chanderpal, learned counsel for the petitioner.** It is submitted by him that the High Court, by interim order, has protected the respondent which is not permissible in law. Ordinarily, we would not have issued notice. However, a suggestion has come from the learned counsel for the petitioner that though the methe high court level, regard being had to the undertaking given by the elder brother, the accused in this case, the petitioner is prepared to discuss and settle the matter.

x—x—x—x—x—x—x—x—x—x

In view of the acceptance of the settlement by this Court, the civil cases pending inter se between the parties shall be deemed to have been disposed of. As far as the criminal cases are concerned, which find mention at paragraph 42 of the settlement stand quashed. We must put on record the culture of settlement reflected by the petitioner and respondent no.3 as well as their counsel and Mr. Puneet Kumar, who has guided as Mediator to arrive at such a settlement. In view of the aforesaid, the judgment and order of the High Court is set aside. The appeal is disposed of in above terms.

Dipak Misra J & Prafulla C Pnt J

Joy Rides on Horses

Victorias and Plight of Horses under Scanner

A petition filed by Animals and Birds Charitable Trust against the Municipal Corporation of Greater Mumbai (reported in 2015 (4) Bom CR (OS) 1) before the Bombay High Court has resulted in the licenses issued for keeping Horses and Stables coming under scanner as the horses/ victorias are being used for joy rides and not for any public conveyance. Unhygienic and cramped conditions of horse stables are directed to be cancelled immediately as none of them have a license. The stables do not fulfil the conditions- neither of sanitation and upkeep of the horses nor of the neighbouring public. The same have to be shut down immediately and the licenses which are being renewed for the Horses, Victorias issued as matter under the guise of public conveyance would be subject to the final outcome of the petition. However the High Court of Bombay has also asked the Municipal authorities and the State to come up with a scheme to rehabilitate 700 odd families who may lose their livelihood as a result of this trade which may soon languish or may even stop, unless of course the State Government comes up with a new law permitting Joy Rides which may not be under the label of public conveyance.

Understanding Government Pleader and Public Prosecutor

Under the Code of Civil Procedure 1908, a "Government pleader" includes an officer appointed by the State Government to perform all or any of the functions expressly imposed by this Code on the Government Pleader and also any pleader acting under the directions of the Government Pleader.

Under definition under the Code of Criminal Procedure 1973 a "Public Prosecutor" means any person appointed under Section 24, and includes any person acting under the directions of a Public Prosecutor; Corresponding old law- Section 4 (t) of the Code (V of 1898).

Public Prosecutors are appointed by governments to conduct criminal litigation in courts on behalf of the state and similarly for civil litigations government pleaders are appointed. Public Prosecutors and government pleaders are public servants and it is their duty to protect the interest of the citizens. However, many of the government pleaders treat citizens as opponents and blindly support the state. The state also seems to be responsible for this as government pleaders and public prosecutors who support the citizens are mistakenly interpreted as being anti-state. In our country State is a major litigant. In 60 to 70% per cent cases, State itself is a party.

If government pleaders and public prosecutors play a meaningful role in litigation process by not only protecting interests of the State but at the same time balancing the process by appreciating the grievances of the masses and putting forth proposals to the State to mitigate the sufferings of the citizens (which is the purpose of Welfare State), the litigation in Courts would reduce and India would be a much happier place to liver in- at least in its judicial environment. Public Prosecutors and Government Pleaders must undergo a strict aptitude test along with academic questioning before being appointed for the job. They must have the courage and conviction to uphold the cause and call a spade- a spade. Only then will they be able to help in the Judicial Process.

However the number of such prosecutors are less. Many times we see that many Courts pass strictures on prosecutors and government pleaders because they are unable to provide assistance. This is because of lack of proper selection procedure.

Drawer Discharging Liability of a Company through Personal Cheque Would be Liable under the Negotiable Instruments Act

Reported in 2015 (5) B. C. R. 1 (supreme Court)- Maimuddin Abdul Sattar Sheikh versus Vijay D. Salvi Criminal Appeal no. 1472 of 2009 decided on 06. 07. 2015, an employee of a company drew his cheque of his personal account for the amount payable by the incorporated company (his employer). This was as regards refund of booking amount of a flat at Kharghar, Navi Mumbai. The logic applied by the Apex Court in its order was that the liability under Section 138 of the Negotiable Instruments Act 1881 is always on the drawer of the cheque. The Apex Court applied the judgment in the case of R. Vijayan Vs. Baby and anothers (2012) 1 SCC 260. **Though this is for the knowledge of the readers of this newsletter and they must always bear in mind that the cheque must be issued to the payee from the business account of the entity and not from any personal account,** at the same time our conscience may not restrict us from stating that in the days to come this judgment may once again come up for re consideration before a larger bench of the Supreme Court, as the judgment may require a serious correction. Though liability may be fastened on the drawer but in absence of the employer, the complaint would definitely suffer from a serious lacunae. This is because the whole trial even under the Negotiable Instruments Act 1881 is to determine as to who is liable to pay. With this kind of a judgment, an employee who may not be connected with the management or board of directors and who may have issued the cheque in good faith also may get stuck up. Therefore, a great deal of care would be required by the lower courts before applying this judgment to any case. Stated with all due respects to the Supreme court, as of now this judgment will be treated as law under Article 141 of the Constitution of India.

Classification of Offences-A Descriptive Note

Under section 2(a) of the Code of Criminal Procedure "bailable offence" means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and "non-bailable offence" means any other offence.

Under Section 2 (c) of the Code of Criminal Procedure "cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant.

Under Section 2 (l) "non-cognizable offence" means an offence for which, and "non- cognizable case" means a case in which, a police officer has no authority to arrest without warrant;

Under the Indian Penal Code, there are classifications of crimes into cognizable crimes and non cognizable crimes which are further classified into compoundable and non compoundable. Cognizable Crimes are those where police can arrest and full fledged First Information Report is taken under Section 154 of the Code of Criminal Procedure where as in a non cognizable crime, the a short First Information Report under Section 155 is taken. In the case of a cognizable crime, the police completes the investigation and submits a report to the Magistrate and in non cognizable offence, a private complainant has a right to approach the Magistrate. Cognizable Crimes are further classified into bailable offences and non- bailable offence. Bailable offences are those where police can grant bail to a person. In Mumbai, the police has named this bail as "table bail". In Non Bailable cases only the Magistrate or the Sessions Court can grant bail. Another important classification of offences is Compoundable and Non Compoundable Offences. The definitions are not found under Section 2 of the Code of Criminal Procedure but the offences are classified in the Schedule. Compoundable offence means an offence which can be settled by the victim with the person who has committed the crime. In some cases Magistrates too intervene and grant compensation or make observations as this regards in their order. Once an offences is compounded, the accused is deemed acquitted. However in serious cases, Indian Law does not permit settlement. They include cases like murder, rape, dacoity etc. These kinds of serious crimes have to depend on the natural outcome and result in a trial.

To sum up: cognizable offences, non bailable offences and non compound offences are serious offences. An offence can be cognizable but bailable but non compoundable or compoundable. The Penal Law can give varied permutations and combinations in the classification of offences, in terms of its seriousness or in terms of its general importance. The strictness and intensity varies with the seriousness of the case and situation.

What is Green Channel and Red Channel ?

If a person does not have goods, on which duty is payable (those goods which are either exempt from duty or are duty free), can go through the green channel at international airports. However he would require to submit a baggage declaration form along with an arrival card w.e.f. 01. 03. 2014. If the details filled are incorrect, the goods can be confiscated. Customs officer has a right to interrupt and inspect. However, A person carrying dutiable goods has to pass through the Red Channel. He or she has to submit a declaration. The declaration given in the disembarkation card can be accepted, but the baggage can be (usually is) inspected by the Customs Officer. **For example,** laptops/ computers are exempt from duty and no duty is payable if brought in as baggage by a person over 18 years of age, other than the member of the crew. Person returning to India, after one year or person transferring his residence into India after two years' stay abroad, is eligible for concessional rates and is another example.

Gold brought as baggage by a passenger of Indian Origin or a person holding Indian Passport coming to India after a period of at least 6 months is 2 % for gold other than tola bars, bearing manufacturer's or refiner's serial number and weight expressed in metric units, and gold coins having gold content not below 99.5%. In case of Gold other than above, the duty rate is 5 %. The maximum quantity allowable is 10 Kgs. considering the period of six months, short visits upto 30 days shall be ignored if the passenger had not availed the exemption during those short visits. This gold can be brought by the passenger himself or imported within 15 days of his arrival in India. Counter Veiling Duty, known as CVD, which is additional customs duty, is not payable but Education Cess @ 2 % and Secondary and High Secondary Education Cess of 1 % of duty is payable.

Silver brought as baggage by a passenger of Indian Origin or a person holding Indian Passport coming to India after a period of at least 6 months is 6% for silver in any form, including ornaments, but excluding ornaments studded with stones and pearls. The maximum quantity allowable is 100 Kgs. While considering the period of six months, short visits upto 30 days shall be ignored if the passenger had not availed the exemption during those short visits. This silver can be brought by the passenger himself or imported within 15 days of his arrival in India.

E-filing of Returns: Detailed Note, Tips for filing

The Central Board of Direct Taxes New Delhi on 01. 10. 2015 give an official press release that the time limit for Tax Audit Reports under section 44 AB read with the filing of Income Tax Returns in form ITR 4 (ITR IV) have been extended to 31. 10. 2015. The press release states that the extension of time had become necessary to maintain fairness to all in the wake of several writ petitions being filed in various States in India and some High Courts passing directions to extend the date and other High courts not extending the same. T

The press release also sites the difficulty of filing a Special Leave Petition at the Supreme Court due to paucity of time.

Our inputs and information to help you:

E- fling of returns is mandatory when the Taxable Income is more than Rs. 5 lakhs. Taxable income less than Rs. 5 lakhs can be filed manually and audit reports also under Section 44 AB of the Income Tax Act where taxable income of the assessee is less than Rs. 5 lakhs can be filed manually.

Digital Signature has to be obtained by way of a "pen drive" instrument through an agent officially authorised by the Government of India. What you get is a digital signature code (DSC) and after filling in the form on the internet vide E filing the Digital Signature would have to be uploaded on the official web site of the income tax department– www.incometaxindiaefiling.gov.in. Tax Deducted Source information, Tax Collected at Source information and any information pertaining to your Permanent Account Number can be directly obtained from this site, and you no longer have to wait for the officer or the deductor or collector to give you hard copies.

Tax Deduction at Source Information can be obtained from Form 26 AS which is system generated from the official web site. In the form ITR 4 (ITR IV) even if one does not fill up the unique Tax Deduction Certificate Number column, the same is accepted by the system with the other particulars. The system matches the Tax Deduction Account Number and the Permanent Account Number through Form 26 AS.

The process of obtaining the DSC, has off late become lengthy and may take minimum two days but may extend to 4 or 5 days. The return of income would go under the assessee's DSC and not the DSC of the Chartered Accountant.

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A law and economics knowledge sharing initiative

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Please visit us at www.chanderlawpal.com

Chanderlawpal.com is an online legal advisory portal, for people from all over the world, seeking legal advice on Indian or/and international laws.

This newsletter is an initiative by Advocate Charanjeet Chanderpal for making public aware about the laws that exist in India for protection of common man. Legal jargons and financial language are seldom understood by laymen and this causes public to lose faith in legal and economic (financial) systems.

-An attempt to restore this faith and to help peo-

Efiling Income Tax Returns (Contd..)

The Tax audit Report in Form 3 CB and Form 3 CD would be filled by the Chartered Accountant under his own DSC. The submission of the Tax Audit Report would however, require the manually signed and stamped Profit and Loss Account and Balance Sheet of the Chartered Accountant as well as the assessee to be uploaded along with the Tax Audit Report in Form 3 CB and Form 3 CD. After the form is accepted by the official web site of the Income Tax Department, the acknowledgement email is mailed to the assessee's email id as well as the Chartered Accountant's email id. The email, both in soft and hard copy form can be preserved.

Please note that in case taxable income is less than Rs. 15 lakhs and Tax Audit Report is not required. Then DSC is not required however in case Taxable Income is less than Rs. 15 lakhs but Tax Audit is mandatory, then the DSC would still be required.

In the case of the Return form, after the Income Tax Return is uploaded and digitally signed and submitted to the abovementioned official income tax site, then your email id will get an e-generated acknowledgment in the form of ITR 5 (ITR V).

This along with your receipt email must be preserved both on your lap top/ desk top computer as well as in your email id with a hard copy with all necessary hard and soft copies for your records.