



NATIONAL JUDICIAL ACADEMY INDIA

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WORKSHOP FOR ADDITIONAL DISTRICT JUDGES

15th to 17th November, 2019

Programme Coordinator

Dr. Amit Mehrotra, Assistant Professor,

National Judicial Academy

A three-day workshop for Additional District Judges was organized by the National Judicial Academy, Bhopal from November 15, 2019 to November 17, 2019. Justice Dharnidhar Jha, Justice U.C. Dhyani, Justice Mridula Bhatkar, Justice Ram Mohan Reddy, Justice Roshan S. Dalvi, Justice R. C. Chavan, Justice Joymalya Bagchi, Adv. Vakul Sharma and Prof S.P. Srivastava were the resource persons of the workshop.

The first session was on '*Fair Sessions Trial*'. It was stated that "Every criminal trial is a voyage of discovery in which truth is the quest." As opined in *Ambika Pd. v. State (Delhi Administration)*, 2000 SCC Cr1.522, it was stated that criminal trial is meant for doing justice, not only to the victim but also to the accused and the society at large. The primary object of criminal trial is to ensure fair trial which is guaranteed under Art.21 of the Constitution of India. Various provisions of sessions trial vide Criminal Procedure Code, 1973 (hereinafter referred to as Cr.P.C.) were elaborately discussed.

Various judgments were discussed to substantiate the concept of fair trial. It was emphasized that in trying criminal cases, if in the case two contrasting views possible on the evidence adduced (one pointing to the guilt of the accused and the other to his innocence), the view which is favorable to the accused ought to be accepted. Various cardinal principles of fair trial and respective rights available were explained. The speaker suggested that for a fair session trial, how one conducts the court is important. Various instances of recording witness statements was discussed. It was also emphasized trial should be concluded expeditiously before the memory of the witnesses fades out. It was emphasized that for a fair trial, facts are to be marshalled, evidences are to be considered, judicial mind has to be applied and then judges should reach to a conclusion. Further, various kinds of evidences were discussed. The case of *Sharad Virdhi Chand v. State of Maharashtra* AIR 1984 SC 1622 is considered to be the handbook on 'how to appreciate evidences'. A few other

judgments referred were *Sheikh Abdullah Rehman v. Jagat Ram*, AIR 1969 SC 1111; *Rajendra Prasad v. State of U.P.*, A.I.R. 1979, S.C. 916; *State of Bihar v. Prof. Ramesh Singh*, AIR 1977 SC 2018 and *Shailendra Kumar v. State of Bihar*, Appeal (crl.) 1218 of 2001. The resource person discussed Section 113B of Indian Evidence Act and Section 304-B of Indian Penal Code, 1860 (IPC). The queries of participant judges were entertained, and it was stressed that judiciary should be institutionally protected from undue influence. The resource persons also insisted that for a fair trial, judge should free himself/herself from all prejudices and should always be free from bias. Also, to assure fair trial, the principles of natural justice should be followed.

The second session was on ***Criminal Justice Administration: Appellate and Revision Jurisdiction of District Judges***. The process of criminal justice has some serious consequences on an individual's life, primarily on the right to life and personal liberty. Realizing this aspect, there are certain provisions which have been included in the criminal procedure on appeal against a judgment or order of criminal courts. However, there are certain cases in which there is no right to appeal. Provisions regarding the same were discussed during the discourse. It was stated that petty offences should not be appealable. However, on the quantum of sentence, appeal may be preferred. In this regard, cases of *Bhagwan Singh v. Police Commissioner, Delhi*, AIR 1983 SC 826, *Jaswant Singh v. State of Rajasthan*, 1966 CriLJ 451 and *H.S. Chaudhary v. Janta Dal*, AIR 1993 SC 892 were discussed.

Further, difference between 'Criminal Appeal' and 'Criminal Revision' were discussed. Lastly, the powers of appellate and revision court in criminal justice administration were discussed. It was suggested that public has faith in the judicial system, so judges should use their powers very wisely and perform duties with utmost sincerity.

The third session was on ***Sentencing: Issues and Challenges***. It was stated that judges have discretionary power. Sentencing is one area where they often exercise it. It was emphasized that all facts and evidences of the case should be appreciated with utmost caution. It must be borne in mind by the judges that the punishment has to be proportionate to the crime.

It was suggested that while sentencing a convict, the circumstances, (i.e., aggravating/ incriminating and mitigating) should be weighed properly. In this context, cases of *Sangeet v. State of Haryana*, (2013) 2 SCC 452, *Gagan Kumar v. State of Punjab*, (2019) 5 SCC 154, *Rajendra Prasad v. State of UP*, A.I.R. 1979, S.C. 916, *Bachan Singh v. State of Punjab*, A.I.R. 1980, S.C 898, *Santa Singh v. State of Punjab*, 1976 AIR 2386, *Gurbaksh Singh Sibbia Etc v. State of Punjab*, 1980 AIR 1632 and *Kushal Kawaduji Singanjude v. Ramnarayan Durga Prasad Agarwal*, Cr. Application 201 of 2018 were discussed.

The fourth session was on ***Challenges in Implementation of ADR System in Subordinate Courts***.

It was stated that Alternate Dispute Resolution (ADR) can also be re-coined as Amicable Dispute Resolution. It is a well-accepted fact now that ADR is the need of the hour. ADR can be very precisely defined as a 'diversionary measure to deal with backlog of cases.' The five kinds of ADR are: Arbitration, Conciliation, Mediation, Judicial Settlement and Lok Adalats. Various advantages of ADR were discussed by the resource persons. It was stressed that there are many obstacles on the path of achieving the goal of successful implementation of effective ADR system. It was stated that the objective of mediation is to connect people. Mediation strategy that should be followed is "POS", i.e., identifying Problems, generating Options and reaching to Solutions; and this strategy has to be customized according to the type of cases. The right time of referring a matter for ADR was also discussed. Further, it was also cautioned that there are certain matters which should not be referred to mediation. Stressing upon importance of alternate methods of dispute resolution, it

was stated that as a judge, one should take charge to initiate the process. The position of mediation and arbitration in India and other countries was also analyzed. The speaker also pointed out certain differences between mediation and conciliation.

Further, various challenges that are faced in the process of mediation were elaborated upon. The key factors for mediation as well as reasons behind the failure of this machinery in certain regions were also stated during the discourse. Reference was also made to the cases of *K. Srinivas Rao v. D.A. Deepa*, (2013) 5 SCC 226 and *Afcons Infrastructure v. Cherian*, (2010) 8 SCC 24. The importance of case management was also stressed upon.

The session five was on ***Court and Case Management: Role of Judges***. It was stressed that in today's world, management is very crucial for smooth running of an effective system and judicial system is no exception to this. It was opined certain points which are essential for court management includes, leadership, responsibility, strong and effective communication, quality management and adherence to the 'rule of law' by all stakeholders including the litigants, lawyers and staff.

Marking the importance of administration, it was stated that the staff members and employees working under the judges should be treated in such a way that they have mutual respect and a sense of belongingness for judiciary. In this line, appointment and role of court managers was discussed. Further, the 'Case Flow Management Rules' were discussed. The importance of 'giving right person the right work' was highlighted.

It was pointed out that the main reason for the backlog of cases is mismanagement, thus special attention should be given to court and case management. The essential elements of management as propounded by the management guru, Peter Drucker were pointed out i.e. planning; organizing; directing; coordinating, and controlling. Various procedures for court management were also

discussed. It was emphasized that case management is crucial for improving efficiency, reducing delays and cutting costs.

The session six was on ***Civil Justice Administration: Appellate and Revisional Jurisdiction of District Judges***. At the very first instance, difference was made between Sections and Orders of Civil Procedure Code, 1908 (herein after referred to as CPC). Discussing appeals, Sections 96 to 99-A, 107 to 108 and Order 41 of the CPC were discussed. It was stated that while deciding first appeal, judges should always mention the following in the judgment - points for determination, points of consideration and reason(s) of judgment. In appeal, questions of law and facts both can be agitated. *Suo motu* appeal is not possible. Appeal is a continuation of the suit wherein entire proceedings are open before the appellate authority. Further, discussing about hearing of appeal in absence of an appellant/ revisionist, it was opined that court may hear appeal even in absence of the party. However, ordinarily the court should not pass an *ex-parte* decree. The limitations of power under Rule 33 of Order 41 were pointed out. This was followed by a detailed explanation of O.41, R.27 CPC, i.e., production of additional evidence in appellate court.

In reference to revision jurisdiction it was stated that the scope of revision is limited. Section 115 of CPC provides for revision power. It has to be kept in mind that if a remedy of appeal is available, revision cannot be done. The difference between revision and appeal was explained.

The observations in the case of *Smt. Ganga Bai v. Vijai kumar*, AIR 1974 SC 1126, *Union of India v. Ibrahim Uddin & Another*, 2012 (8) SCC 148, *Banarsi and ors vs. Ram Phal*, (2003) 9 SCC 606, *Union of India v. K.V. Lakshman*, AIR 2016 SC 3139, *Madhukar and ors v. Sangram*, AIR 2001 SC 2171, *Chinthamani Ammal v. Nandagopal Gounder*, (2007) 4 SCC 163 and *Parsotim Thakur & Ors. v. Lal Mohan Thakur & Ors.*, AIR 1931 PC 143 were discussed in detail.

The session seventh was on ***Laws Relating to Cybercrime: Advances and Bottlenecks***. It was stated that 21st century is the century of information technology. Facilitating the deliberation on cybercrime and related laws, the terms like cybernetics, cybercrime, electronic evidences, etc. were discussed in light of various provisions of Information Technology Act, 2000 (herein after referred to as I.T. Act) and Indian Evidence Act. Further, distinctions between cybercrimes and conventional crimes were pointed out. In the same line, the issue of jurisdiction in cybercrimes was also deliberated on. It was also highlighted that cybercrime is growing at a rapid rate in India as well as globally. A prolonged discussion was then made on categories of cyber-crimes, including hacking, cyber stalking, breach of privacy, obscenity, child pornography and trafficking, financial frauds, identity theft and impersonation, salami attacks, skimming, pharming, attacks by malicious software, data theft and modification, intellectual property crimes, cyber-squatting, cyber terrorism and cyber warfare, and espionage.

A discussion followed on issues related to detection, investigation and prosecution of such crimes. In this regard, mention was made of the deep web and the dark web. Further, the power of intermediaries to issue directions regarding intercepting, monitoring, decrypting, blocking, etc. and duties were discussed in light of provisions of the IT Act; Information Technology (Intermediaries Guidelines) Rules, 2011; IT (Guidelines for Cyber Cafe) Rules 2011; Digital Locker Rules 2016. The case *Shreya Singhal v. Union of India*, (2013) 12 SCC 73 was discussed in detail.

The session eight was on the theme of ***Electronic Evidence: Collection, Preservation and Appreciation***. The meaning and nature of e-evidences were discussed in light of various provisions of I.T. Act, 2000. Pressing upon the importance of e-evidences, it was stated that such kind of evidences cannot be discarded on the probability of being manipulated. Meaning, nature and

peculiar features of electronic evidences that distinguish it from real evidences were explained. A lucid discussion was made on the reliability of electronic evidences. Certain ways to ensure authenticity of electronic evidences were explained by the resource persons.

Further, admissibility of contents of electronic evidences and appreciation of CCTV footage as an evidence was discussed. A detailed explanation of Section 65B of the Indian Evidence Act, 1872 was given by the resource persons. A practical demonstration was given to the participants as to what information the numbers in an IP Address serve.

Various judgments of Hon'ble Supreme Court of India viz. *State (NCT of Delhi) v. Navjot Sandhu*, (2005) 11 SCC 600, *Anvar P.V v. P.K. Basheer*, (2014) 10 SCC 473, *Vikram v. State of Punjab*, (2017) 8 SCC 518, *Sonu v. State of Haryana*, (2017) 8 SCC 570, *Shafhi Mohammad v. State of U.P.*, (2018) 1 SCC (Cri) 860, *State of Karnataka Lokayukta Police Station, Bengaluru v. R. Hiremath*, Criminal Appeal No. 819 of 2019, *Tarun Tyagi v. Central Bureau of Investigation*, (2017) 4 SCC 490 and *Mohammed Ajmal Mohammad Amir Kasab v State of Maharashtra & Ors*, (2012) 9 SCC 1 were discussed during the discourse.

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