

NEWSLETTER**ANA/NL/February 2016****Registration of FIR is mandatory when a Magistrate orders investigation U/S 156(3) of CrPC**

Appellant: Hamant Yashwant Dhage	Court: Supreme Court Of India
Respondent: State Of Maharashtra And Others	Date Of Judgment: February 10, 2016
	Case No: Criminal Appeal No. 110 Of 2016 (Arising Out Of Special Leave Petition(Crl.) No. 3251 Of 2012)

The Supreme Court in this case, held that to enable the police to start investigation, it is open to the Magistrate to direct the police to register an F.I.R. and even where a Magistrate does not do so in explicit words but directs for investigation under Section 156(3) of the Code, the police should register an F.I.R. The Court relied upon the judgment of the Supreme Court in **Mohd. Yousuf vs Afaq Jahan (Smt.) and another** wherein it was held as follows, "registration of an F.I.R. involves only the process of recording the substance of information relating to commission of any cognizable offence in a book kept by the officer in charge of the concerned police station. The law was further elucidated by pointing out that to enable the police to start investigation, it is open to the Magistrate to direct the police to register an F.I.R. and even where a Magistrate does not do so in explicit words but directs for investigation under Section 156(3) of the Code, the police should register an F.I.R. Because Section 156 falls within chapter XII of the Code which deals with powers of the police officers to investigate cognizable offences, the police officer concerned would always be in a better position to take further steps contemplated in Chapter XII once F.I.R. is registered in respect of the concerned cognizable offence."

Terms of contract should be understood in the way the parties intended them to be

Appellant: Bharat Aluminium Company	Court: Supreme Court Of India
Respondent: Kaiser Aluminium Technical Services Inc.	Date Of Judgment: January 29, 2016.
	Case No: Civil Appeal No. 7019 Of 2005 With Civil Appeal No. 3678 Of 2007

The Supreme Court in this case held that one should not strain too much to interpret an agreement between two parties as in the case of a statutory interpretation. The approach in analysing the terms of agreement should be straight and plain but at the same time cohesive and logical. While interpreting a contract executed between the two parties, the court cannot adopt an approach for interpreting a statute. The terms of the contract will have to be understood in the way the parties wanted and intended them to be. In that context, particularly in agreements of arbitration, where party autonomy is the grundnorm, how the parties worked out the agreement, is one of the indicators to decipher the intention, apart from the plain or grammatical meaning of the expressions and the use of the expressions at the proper places in the agreement. The Court held that, "It has hence, while interpreting an agreement, to be kept in mind that the parties, intended to avoid impracticable and inconvenient processes and procedures in working out the agreement."

'Sale' is co-terminus with registration of a new motor vehicle

<p>Appellant: Commissioner of Commercial Taxes, Thiruvananthapuram, Kerala</p>	<p>Court: Supreme Court Of India</p>
<p>Respondent: M/s K.T.C. Automobiles</p>	<p>Date of Judgment: January 29, 2016</p>
	<p>Case No: Writ Petition No.1727 Of 2015</p>

The Supreme Court, in this case ruled that though in practical terms sale precedes the event of registration, in normal circumstances and as the law stands, it is co-terminus with registration of a new motor vehicle. The Court observed that transfer of possession from Dealer to purchaser can take place only when the vehicle reaches the place where the registering authority will be obliged to inspect for the purpose of finding out whether it is a roadworthy and register-able motor vehicle and whether its identification marks tally with those given in the sale invoice and the application for registration. With the handing over of the possession of a specific motor vehicle just prior to registration, the dealer completes the agreement of sale rendering it a perfected sale. The purchaser as an "owner" under the Motor Vehicles Act is thereafter obliged to obtain certificate of registration which alone entitles him to enjoy the possession of the vehicle in practical terms by enjoying the right to use the vehicle at public places, after meeting the other statutory obligations of Insurance etc. The Court further observed that *"technically though the registration of a motor vehicle is a post-sale event, the event of sale is closely linked in time with the event of registration. Neither the manufacturer nor the dealer of a motor vehicle can permit the intended purchaser*



having an agreement of sale to use the motor vehicle even for taking it to the registration office in view of the statutory provisions already noticed. Hence lawful possession with the right of use is permissible to be given to the intended owner only after reaching the vehicle to the office of Registering Authority." The Court further added that a motor vehicle remains in the category of unascertained or future goods till its appropriation to the contract of sale by the seller is occasioned by handing over its possession at or near the office of registration authority in a deliverable and registrable state.

A woman can be the 'karta' of a Hindu Undivided Family (HUF)

Plaintiff: Anonymous	Court: High Court of New Delhi
Defendant: Anonymous	Date of Judgment: December 22, 2015
	Case No: CS(OS) 2011/2006

The Delhi High Court has recently held that the woman of an Hindu Undivided Family (HUF) can be its 'Karta'. The Court observed that, "Section 6 of the Hindu Succession Act is a socially beneficial legislation; it gives equal rights of inheritance to Hindu males and females. Its objective is to recognize the rights of female Hindus as coparceners and to enhance their right to equality apropos succession. Therefore, Courts would be extremely vigilant apropos any endeavor to curtail or fetter the statutory guarantee of enhancement of their rights. Now that this disqualification has been removed by the 2005 Amendment, there is no reason why Hindu women should be denied the position of a Karta. If a male member of an HUF, by virtue of his being the first born eldest, can be a Karta, so can a female member. The Court finds no restriction in the law preventing the eldest female co-parcener of an HUF, from being its Karta."

It was further added by Court, "It is rather an odd proposition that while females would have equal rights of inheritance in an HUF property, this right could nonetheless be curtailed when it comes to the management of the same. The clear language of Section 6 of the Hindu Succession Act does not stipulate any such restriction. Therefore, the submissions on behalf of defendant Nos. 1 to 4 which are to the contrary are untenable."

Women who has attained motherhood through surrogacy is entitled to maternity leave



Petitioner: Anonymous	Court: High Court of Bombay
Respondent: Anonymous	Date of Judgment: January 29, 2016
	Case No: WRIT PETITION NO.1727 OF 2015

In the present case, the Bombay High Court granted maternity leave to a woman who had attained motherhood through surrogacy. The Court, relied upon the judgment of Nagpur Bench of Bombay High Court in the case of *Dr. Mrs. Hema Vijay Menon v. State of Maharashtra & Ors., Writ Petition No.3288 of 2015*, wherein it was held, "A woman cannot be discriminated, as far as maternity benefits are concerned, only on the ground that she has obtained the baby through surrogacy. Though the petitioner did not give birth to the child, the child was placed in the secured hands of the petitioner as soon as it was born. A newly born child cannot be left at the mercy of others. A maternity leave to the commissioning mother like the petitioner would be necessary. A newly born child needs rearing and that is the most crucial period during which the child requires the care and attention of his mother. There is a tremendous amount of learning that takes place in the first year of the baby's life, the baby learns a lot too. Also, the bond of affection has to be developed. A mother, as already stated hereinabove, would include a commissioning mother or a mother securing a child through surrogacy. Any other interpretation would result in frustrating the object of providing maternity leave to a mother, who has begotten the child." Having considered Rule 551 (C) and (E) of Child Adoption Leave and Rules, the Court ruled that there is nothing in the said provisions which would disentitle maternity leave to a women who has attained motherhood through surrogacy procedure.

Legal Update:

- The Ministry of Corporate Affairs has clarified that HUF or its Karta cannot become partner or designated partner in LLP (MCA Circular dated 2/2016 dated 15/January/2016).
- Forms such as Advance Remittance Form (ARF) which is used by the companies to report the FDI inflows to RBI; FCGPR Form which a company submits to RBI for reporting the issue of eligible instruments to the overseas investor against the above mentioned FDI inflow; and FCTRS Form which is submitted to RBI for transfer of securities between resident and person outside India are now required to be submitted by way of online filing of e-Biz portal of



Reserve Bank of India (RBI/2015-16/303 A.P. (DIR Series) Circular No. 40 dated 01/February/2016).

- Cheques bearing a date as per National Calendar (Saka Samvat) for payment will be accepted, if otherwise found in order (RBI/2015-16/297 DCBR.BPD.(PCB/RCB) Cir. No. 9 /12.05.001/2015-16. Dated 21/January/2016)

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