

## NEWSLETTER

ANA/NL/May 2016

### **Supreme Court upholds the Constitutional validity of Criminal Defamation**

<b>Petitioner:</b> Subramanian Swamy & Ors. <b>Versus</b> <b>Respondent:</b> Union Of India And Ors.	<b>Court:</b> Supreme Court Of India <b>Date Of Judgment:</b> May 13, 2016 <b>Case No:</b> Writ Petition (Cri) No. 184 Of 2014 And Ors. and other petitions
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The Supreme Court in this recent judgment has upheld the Constitutional validity of Criminal Defamation in India - Section 499 & 500 of the Indian Penal Code. The Court made the said ruling in Petitions challenging the constitutional validity of criminal defamation law on the ground that rather than protecting individual reputation, these provisions have a chilling effect on free speech.

Dismissing the aforesaid Petitions, the court held that the Right to Life under Article 21 of the Constitution includes the right to reputation. The Bench opined that "Right to life and freedom of speech have to be mutually respected."..... "A person's right to freedom of speech has to be balanced with the other person's right to reputation." Therefore, the balance between the two rights needs to be struck. "Reputation" of one cannot be allowed to be crucified at the altar of the other's right of free speech. One cannot be unmindful that right to freedom of speech and expression is a highly valued and cherished right but the Constitution conceives of reasonable restriction. In that context criminal defamation which is in existence in the form of Sections 499 and 500 IPC is not a restriction on free speech that can be characterized as disproportionate. Right to free speech cannot mean that a citizen can defame the other. Protection of reputation is a fundamental right. It is also a human right. Cumulatively it serves the social interest." In view of the same, the Bench upheld the constitutional validity of Sections 499 and 500 of the Indian Penal Code.

## Damages can be awarded to compensate only injury caused by negligence

<p><b>Appellants:</b> Vohra Sadikbhai Rajakbhai &amp; Ors.</p> <p><b>Vs.</b></p> <p><b>Respondents:</b> State Of Gujarat &amp; Ors.</p>	<p><b>Court:</b> Supreme Court Of India</p> <p><b>Date Of Judgment:</b> May 10, 2016</p> <p><b>Case No:</b> Civil Appeal No. 1866 Of 2016</p>
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The Supreme Court has observed that if damage to a party has resulted from two or three causes, namely, from an act of God as well as a negligent act of a party, the award of damages can be apportioned to compensate only the injury that can be attributed to the negligence of the party. The present appeal was filed before the Supreme Court by certain land owners whose property was flooded due to the release of water from a dam. The Appellants approached the Apex court for damages against the order of the trial court and the High Court stating that the damage occurred is due to 'Act of God' and the dam owners are not liable to compensate the loss occurred to them. The Appellants contended that authorities did not keep the level of water in the dam sufficiently low to take care of the ensuing monsoon rains.

The Court after perusing judicial precedents observed that, "Where a wrong has been committed, the wrong-doer must suffer from the impossibility of accurately ascertaining the amount of damages. Likewise, the party claiming compensation must give the best evidence to prove damages. In the instant case, we find that the loss is not only on account of rain, though a part thereof can be attributed to the nature, but also due to the negligence on the part of the respondent authorities in not taking due precautions in time which could have avoided some loss/damage, if not entirely. If damage has resulted from two or three causes, namely, from an act of God as well as a negligent act of a party, the award of damages can be apportioned to compensate only the injury that can be attributed to the negligent act of the respondents."

## Complaints U/s 138 NI Act not affected by Winding up order

<b>Petitioner:</b> Indorama Synthetics (I) Limited <b>Vs.</b> <b>Respondents:</b> State Of Maharashtra & Ors.	<b>Court:</b> High Court Of Bombay <b>Date Of Judgment:</b> May 06, 2016 <b>Case No:</b> Criminal Writ Petition No.1280 Of 2010
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The Bombay High Court has held that the expression "suit or other proceedings" in Section 446(1) of Companies Act, 1956, does not include criminal complaints filed under Section 138 of the Negotiable Instruments Act, 1881. ("NI Act").

The Bench held that the provisions of Section 446(1) of the Companies Act are to be invoked judiciously only when it has got any concern with either the winding-up proceedings or with the assets of the Company. The expression "suit or other proceedings", therefore, as used in Section 446(1) of the Companies Act, has to be construed accordingly and not to be interpreted so liberally and widely so as to include each and every proceeding of whatsoever nature initiated against the Company, including even the criminal proceedings like for the offence under Section 138 of N.I. Act, which has got no bearing on the winding-up proceedings of the Company and are not concerned with, directly with the assets of the Company, but are mainly dealing with the penal and personal liability of the Directors of the Company. The Bench further added that "The expression "suit or other proceedings" in Section 446(1) under chapter II of Part VII of Companies Act, 1956, does not include criminal complaints filed under Section 138 of the Negotiable Instruments Act, 1881."

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## Res judicata or Estoppel not be applied on an erroneous decision on a pure question of law

<b>Appellants:</b> Satyendra Kumar & Ors. <b>Vs.</b> <b>Respondents:</b> Raj Nath Dubey & Ors.	<b>Court:</b> Supreme Court Of India <b>Date Of Judgment:</b> May 06, 2016 <b>Case No:</b> Civil Appeal Nos.4083-4084 Of 2016 [Arising Out Of S.L.P.(C)Nos.12915-12916 Of 2014]
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The Supreme Court in this case held that when the subsequent suit or proceeding is based upon a different cause of action and in respect of different property though between the same parties, previous proceedings would operate as res judicata only in respect of issues of facts and not on issues of pure questions of law.

The Bench held that; "The distinction drawn by the High Court in the impugned judgment that an erroneous determination of a pure question of law in a previous judgment will not operate as res judicata in the subsequent proceeding for different property, though between the same parties, is clearly in accord with Section 11 of the CPC. Strictly speaking, when the cause of action as well as the subject matter i.e., the property in issue in the subsequent suit are entirely different, res judicata is not attracted and the competent Court is therefore not debarred from trying the subsequent suit which may arise between the same parties in respect of other properties and upon a different cause of action. In such a situation, since the Court is not debarred, all issues including those of facts remain open for adjudication by the competent Court and the principle which is attracted against the party which has lost on an important issue of fact in the earlier suit is the principle of estoppel, more particularly "issue estoppel" which flows from principles of evidence such as from Sections 115-117 of the Indian Evidence Act, 1872 and from principles of equity. As a principle of evidence, estoppel works as an impediment or bar to a right of action due to affected person's conduct or action.

The Apex Court relied on its earlier decision in ***Mathura Prasad Bajoo Jaiswal & Ors vs Dossibai N. B. Jeejeebhoy (AIR 1971 SC 2355)*** wherein it was held that, where the decision is on a pure question of law then a Court cannot be precluded from deciding such question of law differently. Such bar cannot be invoked either on principle of equity or estoppel. No equitable principle or estoppel can impede powers of the Court to determine an issue of law correctly in a subsequent suit which relates to another property founded upon a different cause of action though parties may be same. As explained earlier, in such a situation the principle of res judicata is, strictly speaking, not applicable at all. So far as principle of estoppel is concerned, it operates against the party and not the Court and hence nothing comes in the way of a competent court in such a situation to decide a pure question of law differently if it is so warranted. The issues of facts once finally determined will however, stare at the parties and bind them on account of earlier judgments or for any other good reason where equitable principles of estoppel are attracted."

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## Revisionary Power of Session's court

<p><b>Appellants:</b> BALVEER SINGH &amp; ANR.</p> <p style="text-align: center;"><b>Vs.</b></p> <p><b>Respondents:</b> STATE OF RAJASTHAN &amp; ANR.</p>	<p><b>Court:</b> SUPREME COURT OF INDIA</p> <p><b>Date OF JUDGMENT:</b> MAY 10, 2016</p> <p><b>Case NO:</b> CRIMINAL APPEAL NO. 253 OF 2016</p>
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Refusing to interfere with the order of Sessions Court, the Apex Court held that we find that the order of the Magistrate refusing to take cognizance against the appellants is revisable. This power of revision can be exercised by the superior Court, which in this case, will be the Court of Sessions itself, either on the revision petition that can be filed by the aggrieved party or even suo moto by the revisional Court itself. The Court of Sessions was, thus, not powerless to pass an order in his revisionary jurisdiction. The court added that since the Court of Session is acting as the Court of original jurisdiction under Section 193 of the Criminal Procedure Code, after the committal of proceedings to it by the Magistrate, it is empowered to take cognizance and issue summons and it cannot be treated as taking second cognizance of the same offence.

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### Legal Updates

- While undertaking Corporate Social Responsibility activities under provisions of the Companies Act, 2013 companies shall not contravene any other prevailing laws of the land including the Cigarettes and Other Tobacco Products Act (COTPA), 2003. (MCA Circular No. 5/2016 dated 16<sup>th</sup> May 2016)
- Accounting Standards as amended through the Companies (Accounting Standards) Amendment Rules, 2016 should be used for preparation of accounts for accounting periods commencing on or after date of notification. (MCA Circular No. 4/2016 dated 27<sup>th</sup> April 2016)
- 100% Foreign Direct Investment in Equity Capital in Asset Reconstruction Companies is allowed by way of Automatic Route. (Press Note 4 (2016 Series) issued by the Ministry of Commerce & Industry)
- The Insolvency and Bankruptcy Code, 2015 passed in Lok Sabha on 5<sup>th</sup> May 2016 and in Rajya Sabha 11<sup>th</sup> May 2016.

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