



SAGA LEGAL

COMMUNIQUE

FEBRUARY 2023



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COURTS THIS MONTH

- The Supreme Court in the case of *Common Cause (A Regd. Society) vs. Union of India (Miscellaneous Application No. 1699 Of 2019)* has modified the guidelines for 'advance medical directive' or 'living wills' that was issued in its 2018 judgment whereby, the court had legalized passive euthanasia under certain circumstances. The case had come back to the court after pleas were made that the directions in the 2018 judgment were near impossible to implement on the ground. Strengthening the right 'to die with dignity', the Constitutional Bench comprising of Justice K.M. Joseph, Justice Ajay Rastogi, Justice Aniruddha Bose, Justice Hrishikesh Roy, and Justice C.T. Ravikumar has simplified the process to withdraw or withhold life support for a terminally ill patient by allowing a two-tiered process for authorizing passive euthanasia.
- The Supreme Court in the case of *Juhru and Ors. vs. Karim and Anr. (Criminal Appeal No. 549 Of 2023)* has reiterated that the power of summoning under Section 319 of the Criminal Procedure Code, 1973 ("**Cr.P.C.**") should not be exercised routinely, and the existence of more than a prima facie case is necessary to summon an additional accused. The Bench comprising of Justice Surya Kant and Justice J.K. Maheshwari was dealing with a Criminal Appeal challenging the order of the Punjab and Haryana High Court that had allowed an application seeking to summon an additional accused. The Court observed that *"...the procedural safeguard can be that ordinarily the summoning of a person at the very threshold of the trial may be discouraged and the trial court must evaluate the evidence against the persons sought to be summoned and then adjudge whether such material is, more or less, carry the same weightage and value as has been testified against those who are already facing trial. In the absence of any credible evidence, the power under Section 319 Cr.P.C. ought not to be invoked."*
- In the case of *Anugrah Narayan Singh vs. Harsh Vardhan Bajpayee (Diary No. 31460 of 2022)*, the Supreme Court has observed that providing false information regarding the education qualification of an electoral candidate cannot be termed as a 'Corrupt Practice' within the meaning of Section 123(2) and Section 123(4) of the Representation of People's Act, 1951. The Bench comprising of Justice K.M. Joseph and Justice B.V. Nagarathna were hearing a plea challenging a 2017 Allahabad High Court ruling, dismissing a similarly titled petition to declare the election of a BJP MLA as "null and void". Upon which, the Court has observed that *"No one votes on the basis of educational qualification in India. Maybe, only in Kerala they do."*
- The Supreme Court in the case of *Aparna Ajinkya Firodia vs. Ajinkya Arun Firodia (SLP (C) No.9855 of 2022)* has observed that children have a right to not have their legitimacy frivolously questioned before the Court of Law. While setting aside the order passed by the Bombay High Court, the Bench



- comprising of Justice V. Ramasubramanian and Justice B.V. Nagarathna stated that *“A DNA test of a minor child is not to be ordered routinely, in matrimonial disputes. Proof by way of DNA profiling is to be directed in matrimonial disputes involving allegations of infidelity, only in matters where there is no other mode of proving such assertions... While directing DNA tests as a means to prove adultery, the Court is to be mindful of the consequences thereof on the children born out of adultery, including inheritance - related consequences, social stigma, etc.”*
- The Supreme Court in the matter of *Yogesh Upadhyay vs. Atlanta Limited (Transfer Petition (Criminal) Nos. 526-527 Of 2022)* has stated that under the provisions of Section 406 of the Criminal Procedure Code, 1973 (**“Cr.P.C.”**) the Court has the power to transfer cheque bounce cases from one state to another. The Bench comprising of Justice Dinesh Maheshwari and Justice Sanjay Kumar noted that *“...the fact that the offences therein, under Section 138 of the Act of 1881, had arisen out of one single transaction and found it appropriate and in the interest of justice that all such cases should be tried in one Court. We, therefore, hold that, notwithstanding the non obstante clause in Section 142(1) of the Act of 1881, the power of this Court to transfer criminal cases under Section 406 Cr.P.C. remains intact in relation to offences under Section 138 of the Act of 1881, if it is found expedient for the ends of justice.”*
 - In the matter of *State of Gujarat and Ors. vs. H.B. Kapadia Education Trust and Anr. (CIVIL APPEAL NO. 2837 OF 2022)* the Supreme Court has clarified that under the Grant-in-Aid Code, any school receiving grants from the Government would not be eligible to receive said grants towards the expenditure of those teachers that are employed beyond the age bar stipulated under the Code. The Bench of Justice Dinesh Maheshwari and Justice Bela M. Trivedi while setting aside the order passed by the Gujarat High Court held that *“...If an employee or a teacher is continued in service by the management of any registered minority Secondary School receiving Grant-in-Aid from the State-Government, then such school would not be entitled to receive any 4 grant in respect of the expenditure incurred for continuing such employee or teacher beyond the age of 58 or 60 years, as the case may be.”* *“There is also nothing on record to show that the appellant-State had discriminated against the respondent-institution on the ground that it was under the management of a minority, attracting Article 30(2) of the Constitution of India. The High Court, therefore, had committed gross error in holding that the respondent-institute had a right to continue the Principal of its school beyond his age of 60 years...”*
 - The Supreme Court in the case of *Baini Prasad (D) Thr. LRs. vs. Durga Devi (Civil Appeal No. 6182-6183 of 2009)* has observed that Section 51 of the Transfer of Property Act, 1882 (**“TP**



- Act**”) applies in terms to a transferee who makes improvements in good faith on a property believing himself to be its absolute owner and within the purpose of Section 51, an encroacher cannot be termed as a 'transferee' to seek benefit under the Act. The bench comprising of Justice B.R. Gavai and Justice C.T. Ravikumar stated “...in a case where the owner of the land filed suit for recovery of possession of his land from the encroacher and once he establishes his title, merely because some structures are erected by the opposite party ignoring the objection, that too without any bona fide belief, denying the relief of recovery of possession would tantamount to allowing a trespasser/encroacher to purchase another man’s property against that man’s will...”
- The Supreme Court in the case of *BV Seshaiyah vs. State of Telangana and B. Vamsi Krishna vs. State of Telangana (Special Leave Petition (CRL) NO.7099 & 7100 of 2018)* has stated that the conviction cannot be confirmed by the Court under Section 138 of the Negotiable Instruments Act, 1881 when the parties had entered into a Memorandum of Understanding for amicable settlement of the dispute, leading to compounding an offence. The Bench comprising of Justice Krishna Murari and Justice V Ramasubramanian while setting aside the order passed by the Telangana High Court held that “This is a very clear case of the parties entering into an agreement and compounding the offence to save themselves from the process of litigation. When such a step has been taken by the parties, and the law very clearly allows them to do the same, the High Court then cannot override such compounding and impose its will”
 - The High Court of Tripura in the matter of *Smti. Rubia Bibi and Others vs. Md. Mati Miah and Others (RSA No. 52 of 2022)* has clarified that a certified copy is a piece of secondary evidence within the meaning of Section 63 of the Indian Evidence Act, 1872, which acknowledges the existence, conditions, and contents of the deed, but not of its execution. A Single-Judge Bench comprising of Justice Arindam Lodh was hearing an appeal challenging the order of the Trial Court which had dismissed their suit for declaration of right and confirmation of possession on the ground that plaintiffs had not adduced in evidence the original deed of sale and there was no explanation as to why the original sale deed was not produced. The Court observed that “...the grounds of rejection of the certified copy of the sale deed holding its inadmissibility in evidence as considered by both the learned Courts below, are bad in law, but, then also, as a corollary to above discussion and analysis of law, this second appeal merits no consideration for admission on the ground that the plaintiffs have failed to prove due execution of the sale deed in question.”
 - The High Court of Delhi in the case of *Devendra Kumar & Ors. vs. State (Nct of Delhi) & Ors. (W.P.(C) 16609 of*



2022) has observed that the places of worship cannot encroach on public land and hinder the developmental activities meant for the larger segment of the public. A Single - Judge Bench comprising of Justice Prathiba M Singh noted that the photographs placed on record by the Counsel for the Delhi Government clearly showed how both the places of worship i.e. Mandir and Masjid abutted into the pathway and that there was no uniformity in the pedestrian pathway. The Court directed the concerned Executive Engineer of PWD that *“...Since the wall of both the Mandir and the Masjid are abutting the pedestrian pathway, the walls would be required to be demolished. If upon conferring with the said caretakers, there is a need to make some fresh construction in order to secure the area of the Mandir and the Masjid, the same shall be done at the cost of the PWD.”*

- The High Court of Allahabad in the case of *M/s Radha Fragrance vs. Union of India & Ors. (Writ Tax No. - 427 of 2019)* has ruled that Dealers cannot be allowed to send their goods to different consignees by undervaluing the same to escape tax under the garb of the protection given under Rule 138 of Central Goods and Service Tax Rules, 2017 (“**CGST Rules**”) dispensing the requirement of E-Way bill for the movement of goods valuing below Rs. 50,000/-. While affirming the order of detention of goods and imposition of tax and penalty, a Single-Judge Bench comprising of Justice Rohit Ranjan Agarwal opined that *“...the dealer cannot be permitted to take shelter of*

the fact that no E-Way bill is required in case of goods valued less than Rs.50,000/-. It is a clear case of undervaluation of goods by the dealer who was transporting a huge quantity of Pan Masala and Tobacco showing the negligible value of goods.”

- In the case of *Jai A. Dehadrai and Anr. vs. Government of NCT of Delhi and Anr (W.P.(C) 2108 of 2020)*, the High Court of Delhi has held that the State Government’s decision to cap the total number of visits available to an inmate to two times a week has been taken after careful consideration of all factors, and hence cannot be called completely arbitrary. A Division Bench comprising of Chief Justice Satish Chandra Sharma and Justice Subramonium Prasad was hearing a PIL challenging Rule 585 of Delhi Prison Rules, 2018, and seeking an amendment to allow interviews with legal advisers to be open from Monday to Friday for an appropriate allotted time, with no cap on interviews. Upon which, the Bench observed that *“In matters of policy, the Courts do not substitute its own conclusion with the one arrived at by the Government merely because another view is possible. Therefore, this Court is not inclined to pass any order issuing the writ of mandamus...”*
- In the matter of *Lakshmanan vs. The Secretary- State Human Rights Commission & Ors. (W.P.No.17619 of 2021)*, the High Court of Madras has stated that every instance of casual police inquiry cannot be termed as a human rights violation and observed



that an analysis must be done before holding that there has been an occurrence of Human Rights violation. A Division Bench of Justice V.M. Velumani and Justice R. Hemalatha observed that *“This does not mean that there are no instances of human rights violation in police stations. There are instances. But every instance of a casual police inquiry cannot be termed as a human rights violation. The awareness amongst the public is also lacking. They do not differentiate between civil and criminal matters. More sensitization of the police force in such matters is required. The police force play a vital role in maintaining law and order. Though they need to exercise caution while handling such cases, they cannot be accused of human rights violations at the drop of a hat. It may turn out to be a demoralizing factor to the entire police force”*

- The High Court of Delhi in the case of *Chhote Lal vs. Government of NCT Of Delhi and Ors. (W.P.(C) 10846 of 2015)* has directed the Union Government and State Government to expedite and conclude the process of appointment of ASHA workers preferably within a period of six weeks in the Chilla Khadar locality on the Yamuna bank where around 4250 vulnerable population is

residing in hutments. A Division Bench comprising of Chief Justice Satish Chandra Sharma and Justice Subramonium Prasad was hearing a plea seeking the appointment of two trained ASHA workers or health workers for the distribution of medicines in the Chilla Khadar locality.

- The High Court of Calcutta in the case of *Principal Commissioner of Income Tax, Asansol vs. M/S. The Durgapur Projects Limited (ITAT No. 282 of 2022)* has ruled that the provisions of Section 50C of the Income Tax Act, 1961 cannot be applied in cases of compulsory acquisition of a capital asset being land or building, or both because the question of payment of stamp duty for effecting such transfer does not arise. The Division Bench comprising of Justice T.S. Sivagnanam and Justice Hiranmay Bhattacharyya observed that *“...the property was acquired under the provisions of the National Highways Act 1956. The property vests by operation of the said statute and there is no requirement for payment of stamp duty in such vesting of property. As such there was no necessity for an assessment of the valuation of the property by the stamp valuation authority in the case on hand.”*



NOTIFICATIONS / AMENDMENTS INSIGHTS

- Vide Circular no. SEBI / HO / DDHS / DDHS-RACPOD1 / P / CIR / 2023 / 027 dated 08.02.2023, the Securities and Exchange Board of India, 1992, (“SEBI”) has provided clarification w.r.t. issuance and listing of perpetual debt instruments, perpetual non-cumulative preference shares and similar instruments under Chapter V of the SEBI (Issue and Listing of Non-convertible Securities) Regulations, 2021. Accordingly, the Stock Exchanges and Depositories are advised to make amendments to the bye-laws, rules, and regulations for the implementation of the provisions of the circular, disseminate the same on their website, create awareness amongst the stakeholders, and monitor the compliance of such issuance.
- Vide Circular no. SEBI / HO / DDHS / DDHS-RACPOD1 / P / CIR / 2023 / 028 dated 09.02.2023, the Securities and Exchange Board of India, 1992, (“SEBI”) has issued Clarification in respect of the compliance by the first-time issuers of debt securities under Regulation 23(6) read along with Regulation 2(1)(r) of SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021. Accordingly, the Stock Exchanges are advised to take an undertaking from such first-time issuers that they will ensure that their AoA is amended within a period of six months from the date of the listing of the debt securities. This undertaking may be obtained at the time of granting the principal approval. The issuer shall, within such time, comply and report compliance to Stock Exchanges, which shall periodically monitor/ remind such issuers on doing the needful.
- Vide Circular no. SEBI / HO / MIRSD / MIRSD-PoD-1 / P / CIR / 2023 / 30 dated 15.02.2023, the Securities and Exchange Board of India, 1992, (“SEBI”) has issued the circular for the Maintenance of a website by stock brokers (“SB”) and depository participants (“DP”). SEBI has mandated certain information to be published by SB and DP on their respective websites. As per the said circular, such website shall mandatorily display the basic details such as name and contact details of SB and DP, step-by-step procedures for opening an account, filing a complaint on a designated email id, finding out the status of the complaint, etc. and Details of the Authorized persons.
- Vide General Circular No. 04/2023 and File No. Policy-17/150/2022-CL-V-MCA dated 21.02.2023, the Ministry of Corporate Affairs (“MCA”) has extended the time for filing of forty-five (45) company e-Forms, PAS-03 and SPICE+PartA in MCA 21 Version 3.0 without additional fee. Accordingly, it has been decided to allow further additional time till 31.03.2023 for filing of these forms which were due for filing between 07.02.2023 and 28.02.2023, without additional fees, to the stakeholders. Further, Form PAS-03 which was closed for filing in Version-2 on 20.01.2023 and launched in Version-3 on 23.01.2023, can also be filed without payment of additional fees till 31.03.2023.



- Vide Notification Ref. no. RBI/2022-2023 / 172 of DOR.AML.REC.100 / 14.06.001 / 2022-23 dated 03.02.2023, the Reserve Bank of India (“**RBI**”) has implemented Section 51A of the Unlawful Activities (Prevention) Act, 1967 (“**UAPA Act**”). In terms of which the Regulated Entities (“**REs**”) shall ensure that they do not have an account in the name of individuals / entities appearing in the lists of individuals and entities, suspected of having terrorist links, which are approved by and periodically circulated by the United Nations Security Council (“**UNSC**”). The REs are advised to take appropriate action in terms of sections 51, 52, and 53 of the Master Directions on KYC and strictly follow the procedure laid down in the UAPA Order dated February 2, 2021.
- Vide Notification Ref. no. RBI / 2022-23 / 176 of CO.DPSS.POLC.No.S-1907 / 02.14.006/2022-23 dated 10.02.2023, the Reserve Bank of India (“**RBI**”) has issued All Prepaid Payment Instrument to Foreign Nationals / Non-Resident Indians (“**NRIs**”) visiting India. Accordingly, it has been decided to allow access to Unified Payments Interface (“**UPI**”) to foreign nationals and NRIs visiting India.



DEALS THIS MONTH

- Bengaluru-based Neobank startup Jupiter has acquired sumHR, a cloud-based human resource management software helping SMEs with their HR and payroll processes, marking its second acquisition since its inception. The acquisition will help Jupiter to further magnify its bouquet of innovative banking solutions and directly facilitate employees to open salary accounts through HR tools such as sumHR while leveraging low-cost HR tools with rich features.
- Internovo Ventures Private Limited has acquired Mera Cashier, a technology platform offering 'khata' solutions to small merchants across India in a cash-and-stock deal. By combining fundamental accounting with fully integrated loan arrangement services, the transaction will enable Internovo Ventures to penetrate the small company and merchant categories. Following the acquisition, the Mera Cashier platform will be rebranded as Indibook.
- Lendingkart, a firm that specializes in providing working capital loans has acquired a digital lending platform 'Upwards' for USD 24 million. Founded in 2017, Upwards offers personal loans to salaried professionals and gives facilities such as automated loan underwriting and disbursement to reduce the loan processing time to a few hours. The move will enable Upwards to leverage Lendingkart's credit, capital, and distribution capability to further deepen its presence.
- Tech-enabled Micro-savings platform Sibly has acquired digital chit-fund entity myPaisaa for USD 7.5 million. Hyderabad-based myPaisaa, owned by Finsave Technologies, is a digital online chit and rotating savings and credit association (ROSCA) platform. It claims to have 50,000 registered users at present and a committed savings of Rs 100 crore. The acquisition is expected to help Sibly enhance its existing offerings through myPaisaa's chit-fund distribution platform, enhance its customer base and build on the digital, sachet financial services proposition.
- MediBuddy, a digital healthcare platform has acquired the vHealth by Aetna business (Indian Health Organization Private Limited) in an "all cash deal" for an undisclosed amount. vHealth by Aetna offers subscription-based primary healthcare services such as telehealth consultations, an extensive outpatient network, pharmacy, diagnostics, and dental among other benefits to customers. It currently has around 1.4 million paying subscribers.
- Blue-collar workforce management firm BetterPlace has acquired Indonesia-based company MyRobin, marking its foray into the South East Asia market for an undisclosed amount. With over three million workers in their community, MyRobin provides on-demand, pre-screened, frontline workers on a long and short-term basis to enterprises in Indonesia. The acquisition will help BetterPlace to tap the workforce management market in



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South-East Asia, which it considers to be as large as USD 280 billion.



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