



SAGA LEGAL

COMMUNIQUE
JULY 2023



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COURTS THIS MONTH

- The Hon'ble Supreme Court in the case of *Chennupati Kranthi Kumar vs. The State of Andhra Pradesh & Ors. (Criminal Appeal Nos.1601–1602 of 2023)* has held that as per the provisions of Section 10 of the Passport Act, 1967, the Passport Authority without impounding, cannot unauthorisedly retain a passport handed over by the Police, in the name of a pending criminal case. The Bench comprising of Justice Abhay S Oka and Justice Rajesh Bindal was dealing with an Appeal filed by a husband whose passport was handed over to the Passport Authority by the Police as he was being arraigned for offenses under Sections 498-A, 403, and 406 of the Indian Penal Code, 1860 and Sections 3 and 4 of the Dowry Prohibition Act, 1961 in a complaint filed by his wife. The Bench observed that *"...As there was neither a seizure nor impounding of the passport, it was unauthorisedly retained by the 3rd respondent... As the High Court permitted the appellant to travel abroad, this condition was imposed to ensure that the appellant comes back as per his undertaking to attend the trial. But, the direction to the appellant to return the passports of the appellant's son and wife was not supported by law. Therefore, the High Court ought to have directed the 3rd respondent to return the passport..."*
- The Hon'ble Supreme Court in the case of *Pawan Bhasin vs State of U.P. and Anr. (Criminal Appeal No. 1807 of 2023)* has clarified that the interim compensation in cheque dishonor cases under the Negotiable Instruments Act, 1881 ("**NI Act**") can only be directed to be paid after the accused has pleaded not guilty as per Section 143A(1) of the NI Act. The Bench comprising of Justice Ravindra Bhat and Justice Aravind Kumar noted that *"As is evident from a plain reading of Section 143A (1)(a), it is only where the accused "pleads not guilty" of the accusation made in the complaint that interim compensation under Section 143A (1) can be granted. In the present case, the Magistrate did not issue the order after the plea of the accused was entered, but before that i.e. after he answered the summons. The parties counsels were present at an intermediate stage of proceedings, but before the plea of "not guilty" was entered."*
- In the case of *P. Yuvaprakash vs. State Represented by Inspector of Police (Criminal Appeal No(s). 1898 of 2023)*, the Hon'ble Supreme Court has opined that the school transfer certificate and extracts of the admission register cannot be the foundation to determine the age of a person under the Juvenile Justice Act, 2015 ("**JJ Act**"). The Bench comprising of Justices S. Ravindra Bhat and Justice Aravind Kumar while acquitting the accused observed that the only piece of evidence accorded with Section 94 of the JJ Act was the medical ossification test, where the doctor had opined that the age of the victim was between 18-20 years. The Court further held that *"...the documents produced, i.e., a transfer certificate and extracts of the admission register, are not what Section 94 (2) (i)*



mandates; nor are they in accord with Section 94 (2) (ii) because DW-1 clearly deposed that there were no records relating to the birth of the victim, M. In these circumstances, the only piece of evidence, accorded with Section 94 of the JJ Act was the medical ossification test...

- The Hon'ble Supreme Court in the case of *Bhim Rao Baswanth Rao Patil vs. K. Madan Mohan Rao & Ors. (Special Leave Petition (C) No. 6614 Of 2023)* has emphasized the importance of transparency in the democratic process, asserting that every voter has the right to be fully informed about a candidate's history. The Bench comprising of Justice S Ravindra Bhat and Justice Aravind Kumar while upholding the Order passed by the Telangana High Court that had dismissed an application seeking the rejection of an Election petition filed against a Bharat Rashtra Samithi (BRS), observed that *"The elector or voter's right to know about the full background of a candidate evolved through court decisions- is an added dimension to the rich tapestry of our constitutional jurisprudence. Keeping this in mind, this court is of the opinion that if the appellant's contentions were to be accepted, there would be a denial of a full-fledged trial, based on the acknowledgment that material facts were not suppressed..."*
- The Hon'ble Supreme Court in the matter of *Bharatiya Kamgar Karmachari Mahasangh vs. M/s. Jet Airways Ltd. (C.A. NO. 4404 of 2023)* has

emphasized the significance of the Industrial Employment (Standing Orders) Act, 1946 (**"the Act"**) as beneficial legislation and clarified that no agreement, contract, or settlement that waives the rights of the employees can override the benefits provided to the employees under the Act. The Bench comprising of Justice Abhay S. Oka and Justice Sanjay Karol while analyzing relevant clauses of the Bombay Model Standing Order noted that *"...a workman who has worked for 240 days in an establishment would be entitled to be made permanent, and no contract/settlement which abridges such a right can be agreed upon, let alone be binding. The Act being the beneficial legislation provides that any agreement/contract/settlement wherein the rights of the employees are waived off would not override the Standing Orders."*

- The Hon'ble Supreme Court in the matter of *Commissioner of Service Tax-IV vs. Prime Focus Ltd. (C.A. No. 4529 of 2023)* has clarified that the 3D conversion services such as 'imparting special effects', 'post-production service', 'digital asset management, and content service' and 'digital restoration service', will not fall under the ambit of 'videotape production' under Section 65(120) of the Finance Act, 1994. The Bench comprising of Justice B.V. Nagarathna and Justice Ujjal Bhuyan while upholding the order of the Customs, Excise, and Service Tax Appellate Tribunal opined that *"On a conjoint reading of the definitions of the 'Video Production Agency' and*



‘VideoTape Production’, we find that the services such as editing, cutting, coloring, etc. are only after recording is done of any program, event or function on a magnetic tape or any other media or device. This is clear from the use of the words “services relating thereto” and such a Video-Tape Production when done by any professional videographer or any 2 commercial concern engaged in the business of rendering such services is a ‘Video Production Agency’.”

- The High Court of Kerala in the case of *Aryadan Shouketh & Anr. vs. Union of India & Ors. (W.P.(C) NO. 24828 of 2023)* has directed the State Authorities to provide basic facilities such as food, drinking water, and medical treatment to the tribal families in Pothugal, Vazhikadavu, and Karulai Villages in Nilambur Taluk, which were severely affected by the Floods that occurred in 2018 and 2019. The Division Bench comprising of Chief Justice A.J. Desai and Justice V.G. Arun was dealing with a plea filed by the former Chairperson of Nilambur Municipality, Aryadan Shouketh, and a social worker residing in Vaniyampuzha colony in Pothugal Grama. The Court observed that *“...These tribal families are facing starvation, lack of drinking water, lack of shelter, lack of education center for the tribal children and also lacking sufficient health center/hospital attend their medical needs. The disruption of bridges and houses has resulted in significant challenges for the residents of these colonies.”*
- While setting aside the order of the Income Tax Appellate Tribunal, the High Court of Karnataka in the case of *M/s. Vodafone Idea Limited vs. Deputy Director of Income Tax (ITA No. 160 OF 2015)* has held that as per the provisions of the Double Taxation Avoidance Agreement, the Assessee i.e. Vodafone India was not liable for TDS on connectivity & bandwidth charges. The Division Bench comprising of Justice P.S. Dinesh Kumar and Justice Ramachandra D. Huddar observed that *“...Admittedly, the NTOs have no presence in India. Assessee’s contract is with Belgacom, a Belgium entity which had made certain arrangement with Omantel for utilisation of bandwidth. In substance, Belgacom has permitted utilisation of a portion of the bandwidth which it has acquired from Omantel. It is also not in dispute that the facilities are situated outside India and the agreement is with a Belgium entity which does not have any presence in India. Therefore, the Tax authorities in India shall have no jurisdiction to bring to tax the income arising from extra-territorial source.”*
- In the case of *The Registrar, Mahatma Gandhi Medical College and others vs. D Rajasree and others (W.A.Nos. 2310, 2313 & 2200 of 2021)*, the High Court of Madras has held that the medical colleges have the statutory liability to pay a stipend to the postgraduate students, and the same cannot be denied to them on the basis of equitable set-off, even when the amount is not ascertained yet. The Division Bench comprising of Chief



Justice S.V. Gangapurwala and Justice P.D. Audikesavalu observed that *“In the present case, the claims between the parties are not arising out of a commercial transaction. The liability to pay stipend on the part of the Colleges to the students is under a statutory regulation. The amount payable by the College to the petitioners / students as stipend is an ascertained sum of amount. No dispute exists with regard to the payment of amount as stipend. Whereas, the dispute with regard to the payment of fees still subsists...”*

- In the case of *Garima Singh vs. Pratima Singh and another (First Appeal No. 623 of 2022)*, the High Court of Allahabad has upheld the right of the first wife for seeking a declaration of her husband’s second marriage as void (not valid) under Section 11 (void marriages) of the Hindu Marriage Act, 1955. The Division Bench comprising of Justice Saumitra Dayal Singh and Justice Vinod Diwakar observed that *“In the process of beneficial construction, the Court should lean towards an interpretation that serves the interests of justice and aligns with the broader objectives of the law. By doing so, the Court can ensure that the remedies available under section 11 are not unduly limited, and individuals seeking relief are not unjustly deprived of their rights. The ultimate aim of granting a decree of nullity is to annul a marriage that is found to be invalid from its inception, effectively treating it as if it never existed. Therefore, it is essential to interpret the relevant provisions in a*

manner that facilitates a fair and just outcome for the parties involved.”

- The High Court of Delhi in the matter of *ABC vs. XYZ (MAT.APP.(F.C.) 127 of 2022)* has provided relief to an estranged wife while holding that merely because the wife has taken recourse to law by initiating legal action and filing petitions will not amount to cruelty against the husband. The Division Bench comprising of Justice Sanjeev Sachdeva and Justice Manoj Jain was hearing an Appeal under Section 19 of the Family Courts Act, 1984. the Court observed that *“Taking recourse to law, cannot be, by any stretch of imagination, labeled as an instance of cruelty...A careful perusal of all the grounds taken in the new petition would, as already noted, clearly suggest that his petition is based on the same cause of action. The only additional ground taken is that Appellant took recourse to law. Appellant had to take recourse to law as the Respondent and his family wanted to enter into the residential house where the Appellant was residing. Mere taking recourse to law by filling petitions/ applications before court of law, by his estranged spouse, would not, in itself, give him any fresh ground to file a new petition.”*
- The High Court of Himachal Pradesh in the case of *Sandeep Kaur vs. the State of HP and Ors. (CWP No. 4304 of 2023)* has struck down the requirement of furnishing a ‘Bonafide Himachali Certificate’ for obtaining a compassionate appointment, observing



that such a condition is in violation of Article 16(2) of the Indian Constitution, which prohibits discrimination on the basis of residence. The Division Bench comprising of Chief Justice M.S. Ramachandra Rao and Justice Ajay Mohan Goel held that *“As per Art.16(2) of the Constitution no citizen can be discriminated on the basis of residence. So insisting that petitioner produces such a certificate when it is undisputed that she is an Indian citizen and daughter of the deceased employee of the 2nd respondent cannot be countenanced.”*

- The High Court of Orissa in the case of *Bapun Singh vs. State of Odisha (JCRLA No. 57 of 2019)* while upholding a rape conviction observed that a convict should not be sentenced both under Section 363 (punishment for kidnapping) and Section 366 (kidnapping, abducting or inducing woman to compel her for marriage, etc.) of the Indian Penal Code, 1860 (“I.P.C.”) as Section 366 squarely covers the substantive punishment which is prescribed under Section 363. A Single-Judge Bench comprising of Justice Sangam Kumar Sahoo observed that *“...The substantive*

offence as provided under section 363 of the I.P.C. is squarely covered under section 366 of the I.P.C., which is a higher offense. Therefore, in view of the mandate under section 71 of the I.P.C., there is absolutely no need to award separate sentence under section 363 of I.P.C. as it has merged in the sentence imposed under Section 366 I.P.C.”

- The High Court of Kerala in the case of *Bipin Sunny vs. State of Kerala & Ors. (Bail Appl. No. 4416 of 2023)* while deprecating the practice of filing subsequent anticipatory bail applications before the Sessions Court has clarified that if the High Court denies anticipatory bail to a person, the successive applications citing a change in the circumstances should also be filed before the High Court and not before the Sessions Court. A Single-Judge Bench comprising of Justice A. Badharudeen observed that *“Coming to the question regarding filing of anticipatory application before the Sessions Court, after dismissal of anticipatory bail plea by the High Court, that too, after suppressing the adverse order from the High Court, cannot be justified for any reason...”*



NOTIFICATIONS / AMENDMENTS INSIGHTS

- Vide Circular no. 14 of 2023 and F.No. 22SI79 / 2019-ITA-II dated 27.07.2023, the Central Board of Direct Taxes (“**CBDT**”) has issued a Standard Operating Procedure (SOP) for making an application for recomputation of total income of a co-operative society engaged in the business of manufacture of sugar, as provided for in the Section 155(19) of the Income-tax Act, 1961. The said circular provides that *“in the case of a sugar mill cooperative, where any deduction in respect of any expenditure incurred for the purchase of sugarcane has been claimed by an assessee and such deduction has been disallowed wholly or partly in any previous year commencing on or before 01.04.2014, the Assessing Officer shall, on the basis of an application made by such assessee in this regard, recompute the total income of such assessee for such previous year.”*
- Vide Circular no. 07 of 2023, and file no. EGov-04/10/2021 -O/o Director (e-Gov)-MCA, dated 12.07.2023, the Ministry of Corporate Affairs (“**MCA**”) has issued recommendations for Merger of Multiple User IDs in V-2 Portal with new User ID in V-3 and deactivation of old User ID in V-2 Portal. Accordingly, it has been decided that all such members who are not able to create a user ID in the new MCA21 V3 portal due to an existing ID about which either they do not have any knowledge, or they do not remember that such an ID has been or was created in existing V2 portal may approach the respective institutes with their credentials and the institute shall make recommendations for merging the same.
- Vide Circular no. 13 of 2023 and F.No. 173 / 2112023-ITA-I dated 26.07.2023, the Central Board of Direct Taxes (“**CBDT**”) has issued a condonation of delay under clause (b) of sub-section (2) of section 119 of the Income Tax Act, 1961 (“**the Act**”) for returns of income claiming deduction under Section 80P of the Act for various assessment years from AY 2018-19 to AY 2022-23. Accordingly, the CBDT has directed the Chief Commissioners of Income-tax / Directors General of Income tax to admit all pending as well as new applications for condonation of delay in furnishing returns of income claiming deduction u/S 80P of the Act, filed either in the Board or in field formation for the assessment years 2018-19 to 2022-23 and decide such applications on merits in accordance with the law where such person is required to get his accounts audited under respective State Laws.
- Vide Circular no. 12 of 2023 and F.No. 22SI79/2019-ITA-II dated 12.07.2023, the Central Board of Direct Taxes (“**CBDT**”) has issued clarification regarding the taxability of income earned by a non-resident investor from off-shore investments in an investment fund routed through an Alternate Investment Fund. Accordingly, the CBDT has amended the definition of ‘investment fund’ which is to be read as under:



“3. Chapter XI/-FB contains special provisions relating to tax on income of investment funds and income received from such funds...Category II Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012, made under the Securities and Exchange Board of India Act, 1992 (15 of 1992) or regulated under the International Financial Services Centres Authority (Fund Management) Regulations, 2022 made under the International Financial Services Centres Authority Act, 2019 (50 of 2019). Thus provisions of section 115UB apply only to

Category I or Category II AIFs regulated by the Securities and Exchange Board of India (SEBI) or International Financial Services Centres Authority (IFSCA).”

- Vide Circular no. SEBI/HO/IMD/IMD-I – PoD1 / P / CIR / 2023 / 126 dated 26.07.2023, the Securities and Exchange Board of India, 1992, (“SEBI”) has provided Resources for Trustees of Mutual Funds. Accordingly, the Trustees shall have standing arrangements with independent firms for special-purpose audit and/or to seek legal advice in case of any requirement as identified and whenever considered necessary.



DEALS THIS MONTH

- Reliance Brands Limited, a part of Reliance Industries' arm Reliance Retail Ventures, is all set to acquire actor Alia Bhatt's kidswear brand Ed-a-Mamma for an undisclosed amount. Founded in 2020, Ed-a-Mamma which is owned by Eternalia Creative and Merchandising is a one-stop-shop for all kids' fashion wear. It specializes in providing sustainable clothing options for children at affordable rates. The kidswear brand operates primarily online but is also sold through some big retail chains.
- **US-based Cilio Technologies, a SaaS solutions provider to installers, contractors, retailers, and manufacturers within the home improvement industry, has acquired Noida-based AutomationFactory.AI, an end-to-end digital transformation and product development firm for an undisclosed amount. With this acquisition, the new entity would become Cilio Automation Factory (CAF), Cilio's global engineering hub focused on innovation for the field service management space.**

Online youth fashion brand Styched has acquired Flatheads, a direct-to-customer (D2C) casual sneaker startup in an all-equity deal. Styched marks this as a strategic move to establish itself as

a significant startup in the fashion industry. Founded in 2018, Flatheads is a lifestyle brand that specializes in designing all-day wear casual / comfortable sneakers for the urban audience. With this acquisition, Styched will foray and expand into the footwear sector.

- Toprankers, a digital learning platform in India, has announced the acquisition of Indore-based legal test prep startup The Lex Guru, marking the transition to Judiciary Gold's new center in the city. With this deal, Toprankers had secured its commitment to the legal test prep sector alongside its existing platform LegalEdge. The acquisition will enable Toprankers to expand its presence in Madhya Pradesh, Chhattisgarh, and other neighboring regions.
- Packaged consumer goods company Marico Limited has acquired a majority stake in Satiya Nutraceuticals Private Limited, the owner of the plant-based nutrition brand Plix, a digital-first brand offering non-GMO, vegan, gluten-free, and cruelty-free products. The said acquisition will enable Marico to expand its total addressable market in the nutrition segment and build up its presence in the health and wellness category.



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- 📍 DELHI OFFICE: A - 55, FIRST FLOOR, HAUZ KHAS, NEW DELHI - 110 016.
 - 📍 CHAMBER: 238, M.C. SETALVAD CHAMBERS, SUPREME COURT OF INDIA, BHAGWAN DASS RD, NEW DELHI - 110 001.
 - 📍 BENGALURU OFFICE: 88 BOREWELL ROAD, OPP. WHITEFIELD POST OFFICE, WHITEFIELD, BENGALURU - 560 066.
- ☎ +91 11 41066969 | +91 11 41076969 ✉ office@sagalegal.in | admin@sagalegal.in 🌐 www.sagalegal.in

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