



सत्यमेव जयते

# UTTARAKHAND COURT NEWS

(A Quarterly News letter)

Vol-III Issue No-3 (July - September, 2012)



## High Court of Uttarakhand, Nainital

### EDITORIAL BOARD

Hon'ble Mr. Justice Prafulla C. Pant  
Hon'ble Mr. Justice Sudhanshu Dhulia

### COMPILED BY

Ram Singh, Registrar General, High Court of Uttarakhand

A quarterly newsletter published by High Court of Uttarakhand, Nainital  
Also available on our website : [www.highcourtofuttarakhand.gov.in](http://www.highcourtofuttarakhand.gov.in)

# Group Photograph taken on 24<sup>th</sup> August, 2012



om Left :

Hon'ble Mr. Justice U.C. Dhyani, Hon'ble Mr. Justice Sudhanshu Dhulia, Hon'ble Mr. Justice B. S. Verma, Hon'ble Chief Minister Mr. Vijay Bahuguna, Hon'ble the Chief Justice Mr. Barin Ghosh, Hon'ble Mr. Justice V. K. Bisti and Hon'ble Mr. Justice Servesesh Kumar Gupta



UTTARAKHAND HIGH COURT

CONTENTS

❖	Hon'ble Judges of Uttarakhand High Court	4
❖	From the Desk of Chief Justice.	5
❖	Transfers, Promotions & Appointments of Judicial Officers.	6-7
❖	Institution, Disposal & Pendency of cases in High Court.	8
❖	Institution, Disposal & Pendency of cases in District Courts.	9
❖	Circular Letters/ Notifications (issued recently).	10-13
❖	Some Recent Judgments of Uttarakhand High Court.	14-19
❖	Major Events and Initiatives.	20-21
❖	Major Activities of UJALA.	21-22

\* \* \* \* \*

10<sup>th</sup> October 2012

*[Signature]*

*[Name]*

**UTTARAKHAND HIGH COURT****LIST OF JUDGES (As on 30<sup>th</sup> September, 2012)**

<b>SL. No.</b>	<b>Name of the Hon'ble Judge</b>	<b>Date of Appointment</b>
1.	<b>Hon'ble Mr. Justice Barin Ghosh (Chief Justice)</b>	<b>12.08.2010</b>
2.	<b>Hon'ble Mr. Justice Tarun Agarwala*</b>	<b>25.09.2009</b>
3.	<b>Hon'ble Mr. Justice Prafulla C. Pant</b>	<b>29.06.2004</b>
4.	<b>Hon'ble Mr. Justice B. S. Verma</b>	<b>15.07.2004</b>
5.	<b>Hon'ble Mr. Justice V.K. Bist</b>	<b>01.11.2008</b>
6.	<b>Hon'ble Mr. Justice Sudhanshu Dhulia</b>	<b>01.11.2008</b>
7.	<b>Hon'ble Mr. Justice Servesh Kumar Gupta</b>	<b>21.04.2011</b>
8.	<b>Hon'ble Mr. Justice Umesh Chandra Dhyani</b>	<b>13.09.2011</b>

\* Hon'ble Mr. Justice Tarun Agarwala has been transferred to Hon'ble High Court of Judicature at Allahabad vide Notification No. K.11017/11-13/2010-U.S.I (ii) dated 03.10.2012, issued by Ministry of Law & Justice (Department of Justice), Government of India. His Lordship has to assume charge of his office in the Allahabad High Court on or before 17<sup>th</sup> of October 2012.

\* \* \* \* \*



Barin Ghosh



CHIEF JUSTICE  
HIGH COURT OF UTTARAKHAND

Nainital – 263001  
October 1, 2012

### MESSAGE

In the beginning of the year, we had set up a target for ourselves that by the end of 2012, there will be no pending cases in our Courts, which are more than five years old. There has been encouraging achievement during the year. Three months are left only. I hope that you would keep to your words and complete the mission by the year-end.

Many steps have been taken to expedite disposal of cases. One of them is mediation, which is though a late starter in our State but is doing wonders. More and more cases are being referred for mediation by the courts. This is a good trend.

Special Courts for disposal of cases in respect of offences punishable under Section 138 Negotiable Instruments Act are being set up in three Districts, namely, Dehradun, Hardwar and Udham Singh Nagar. Hopefully by the month of October, 2012 Presiding Officers of those Courts would be appointed. Setting up of those Courts would also ensure speedy disposal of such cases, pending in the aforementioned three districts.

We have made significant improvement in computerization of our District Courts. Complete computerization of our District Courts will be completed by 31<sup>st</sup> March, 2014. Once that target is achieved, information pertaining to cases pending or disposed of will be a button away.

Inasmuch as, initial examination for supply of ministerial cadre is already over, it is hoped and expected that all the vacancies in the said cadre in the District Courts will be supplied by the end of this year.

The Officers working in the State Judiciary, despite many constraints, have taken great efforts in achieving the target, they have set for themselves. I personally feel privileged to be a part of that effort.

(Barin Ghosh)



**TRANSFERS, PROMOTIONS & APPOINTMENTS OF JUDICIAL OFFICERS**

S.No.	Name of the Judicial Officer	From	To	Date of Order
1.	Sri U.S. Nabiyal	Rishikesh	Udham Singh Nagar	12-07-2012
2.	Sri C.P.Bijalwan	Roorkee	Nainital	12-07-2012
3.	Sri Pradeep Pant	Dehradun	Hardwar	12-07-2012
4.	Sri H.S.Bonal	Kashipur	Pauri Garhwal	12-07-2012
5.	Sri Nandan Singh	Tehri Garhwal	Rishikesh	12-07-2012
6.	Sri Mithilesh Jha	Almora	Roorkee	12-07-2012
7.	Sri Nitin Sharma	Haldwani	Dehradun	12-07-2012
8.	Ms. Kahkasha Khan	Nainital	Ranikhet	13-07-2012
9.	Sri Dharam Singh	Nainital	Dehradun	13-07-2012
10.	Sri Rajeev Kumar Khulbe	Hardwar	Rishikesh	13-07-2012
11.	Sri Subir Kumar	Roorkee	Hardwar	13-07-2012
12.	Sri S.M.D. Danish	Udham Singh Nagar	UJALA, Bhowali	13-07-2012
13.	Sri Bharat Bhushan Pandey	Pauri Garhwal	High Court, Nainital	13-07-2012
14.	Smt. Pritu Sharma	Haldwani	Dehradun	13-07-2012
15.	Sri Seash Chandra	Dehradun	Laksar	13-07-2012
16.	Sri Manindra Mohan Pandey	Udham Singh Nagar	Dehradun	28-09-2012
17.	Sri Shahjad Ahmad Wahid	Kashipur	Udham Singh Nagar	28-09-2012

Pursuant to Notification No. 1511/XXX-1-2012-28 (1) 11 dated 28.09.2012, issued by the Government of Uttarakhand, 28 newly recruited following candidates have been appointed and posted as Civil Judges (Junior Division)/Judicial Magistrates in different districts of the State of Uttarakhand. These Officers are likely to join in the month of October 2012.

S.No.	Name of the Officer	Place of posting
1.	Ms. Chhavi Bansal	Dehradun
2.	Ms. Ritika Semwal	Haldwani, Distt. Nainital
3.	Ms. Vibha Yadav	Udham Singh Nagar
4.	Sri Sanjay Singh	Srinagar, Distt. Pauri Garhwal
5.	Sri Sayyad Gufran	Kashipur, Distt. Udham Singh Nagar
6.	Sri Vivek	Kirtinagar, Distt. Tehri Garhwal
7.	Sri Manoj Kumar Dwivedi	Rudraprayag
8.	Ms. Niharika	Rishikesh, Distt. Dehradun
9.	Sri Harsh Yadav	Roorkee, Distt. Hardwar
10.	Sri Ravi Shankar Mishra	Roorkee, Distt. Hardwar
11.	Sri Sandeep Kumar Tewari	Ramnagar, Distt. Nainital
12.	Ms. Shachi Sharma	Haldwani, Distt. Nainital
13.	Ms. Shweta Pandey	Nainital
14.	Sri Abhishek Kumar Srivastava	Gangolihat, Distt. Pithoragarh
15.	Ms. Shweta Rana Chauhan	Dehradun
16.	Sri Avinash Kumar Srivastava	Dharchula, Distt. Pithoragarh
17.	Ms. Tricha Rawat	Hardwar
18.	Sri Sachin Kumar	Pratap Nagar, Distt. Tehri Garhwal
19.	Ms. Lalita Singh	Champawat
20.	Sri Sanjeev Kumar	Tharali, Distt. Chamoli
21.	Ms. Simranjeet Kaur	Bageshwar
22.	Sri Sandeep Singh Bhandari	Gairsain, Distt. Chamoli
23.	Ms. Shama Nargis	Hardwar
24.	Ms. Neha Kushwaha	Bageshwar
25.	Ms. Anita Kumari	Hardwar
26.	Sri Akram Ali	Chakrata, Distt. Dehradun
27.	Sri Neeraj Kumar	Gopeshwar, Distt. Chamoli
28.	Sri Ashok Kumar	Dwarahat, Distt. Almora

## INSTITUTION, DISPOSAL AND PENDENCY OF CASES

### ➤ HIGH COURT OF UTTARAKHAND (from 01.07.2012 to 30.09.2012)

						<b>Pendency (At the end of 30.06.2012)</b>		
						Civil Cases	Criminal Cases	Total Pendency
						14105	6528	20633
<b>Institution (01.07.2012 to 30.09.2012)</b>			<b>Disposal (01.07.2012 to 30.09.2012)</b>			<b>Pendency (At the end of 30.09.2012)</b>		
Civil Cases	Criminal Cases	Total Institution	Civil Cases	Criminal Cases	Total Disposal	Civil Cases	Criminal Cases	Total Pendency at the end of 30.09.12
2305	1431	3736	2232	1717	3949	14178	6242	20420

\* \* \* \* \*



➤ **District Courts (From 01.07.2012 to 30.09.2012)**

SL. No	Name of the District	Civil Cases				Criminal Cases				Total Pendency at the end of 30.09.12
		Opening Balance as on 01.07.12	Institution from 01.07.12 to 30.09.12	Disposal from 01.07.12 to 30.09.12	Pendency at the end of 30.09.12	Opening Balance as on 01.07.12	Institution from 01.07.12 to 30.09.12	Disposal from 01.07.12 to 30.09.12	Pendency at the end of 30.09.12	
1.	Almora	692	241	280	653	1193	660	592	1261	1914
2.	Bageshwar	107	31	25	113	303	258	210	351	464
3.	Chamoli	404	98	78	424	1001	388	437	952	1376
4.	Champawat	177	43	66	154	828	470	414	884	1038
5.	Dehradun	12974	3977	3833	13118	60861	17336	10853	67344	80462
6.	Haridwar	8021	2730	2779	7972	25448	11372	10520	26300	34272
7.	Nainital	2739	1223	1270	2692	8396	2839	2823	8412	11104
8.	Pauri Garhwal	1212	201	267	1146	1937	768	770	1935	3081
9.	Pithoragarh	329	87	93	323	654	443	440	657	980
10.	Rudraprayag	170	70	40	200	407	459	330	536	736
11.	Tehri Garhwal	483	184	242	425	1104	584	648	1040	1465
12.	U.S.Nagar	4390	1729	1767	4352	22124	6343	6128	22339	26691
13.	Uttarkashi	357	98	118	337	670	363	360	673	1010
	<b>Total</b>	<b>32055</b>	<b>10712</b>	<b>10858</b>	<b>31909</b>	<b>124926</b>	<b>42283</b>	<b>34525</b>	<b>132684</b>	<b>164593</b>

## Circular Letters/ Notifications

(issued recently)

**C.L. No. 07/UHC/Admin. A/2012**

**Dated: July 06/07, 2012.**

**Subject: Recess during Civil Court's vacation.**

In continuation to earlier circular letter Nos. 4/W/Admn.(A) dated 13/01/1983, 22/Admn.(A)-UHC/2002 dated 20/12/2002 and 03/UHC/Admin.a/2009 dated 04.07.2009, I am to inform that Hon'ble the Chief Justice is pleased to direct that an officer can avail the recess only once in a year not two times, even if, he works at two separate zones permitting leave during different periods of the year.

You are therefore, requested to bring it to the notice of all the Judicial Officers working under your administrative control.

**Registrar General**

**C.L. No. 08/XVII -24/D.R. (I)/2012**

**Dated: July 13, 2012**

**Subject: Awarding inadequate sentence in criminal cases.**

On the subject noted above, I have been directed to inform you that it has come to the notice of the Court that while holding the accused guilty, the Judicial Officers do not adhere to the law prescribing the minimum sentence. They should not forget that the criminal trial is held in the public interest with the twin objectives of punishing the wrong doers and discouraging others from following their footsteps. Inadequate sentences should, on no account be passed especially in heinous crimes. In the event, a Judicial Officer does not adhere to the law prescribing the minimum sentence, the same may tantamount to misconduct on his/her part.

The Court therefore, wishes to impress upon Sessions Judges and the Officers working under them to follow the penal statutes in letter and spirit. A lesser sentence than what is prescribed by a statute can in no case be awarded even in the wake of the existence of mitigating circumstances, unless provided for the same.

**Registrar General**

**C.L. No: 09 /U.H.C./Admin. B/ 2012,**

**Dated: 17 September, 2012.**

**Subject: Providing mobile facility to all the Judicial Officers of the rank of District Judges of the State Judiciary, Uttarakhand.**

In suppression of the earlier letter no. 1/Camp Hardwar/UHC.-Admin. (B) Sect. Dated November 09, 2001 on the subject noted above, I am desired to say that the Court has been pleased to provide the facility of Mobile Phone to all the Judicial Officers of the rank of District Judges of the State Judiciary, Uttarakhand. The Court has issued following directions in this regard:-

1. The Judicial Officers of the rank of District Judges of the State Judiciary, whether they are posted as District Judge or on deputation, are permitted to purchase a hand set for a mobile phone out of the funds of contingency and the cost of the hand set should not exceed Rs. 8,000/-
2. The officers are permitted to purchase SIM Card of any company preferably of Bharat Sanchar Nigam Limited (BSNL) from their available funds.
3. The officers will use Mobile Phone for the official purposes and the calls used for the official purposes will be paid from the budget of the establishment.
4. In case the calls are made by the officer for his private use, the payment of such calls will be made by the officer concerned.
5. While making use of Mobile Phone, the officers will take economic measures and they will follow the rules applicable to the Government Officers using such mobiles. The expenses towards the payment of calls will not exceed Rs. 2,000/- per month.

You are, therefore, informed accordingly for further necessary action in this regard at your end.

**Registrar General**



**NOTIFICATION****No. 125/ UHC/Admn. -B/XI-C/2005****Dated: July 07, 2012****Alternative Dispute Resolution (Amendment) Rules –2012**

(To amend the Civil Procedure Mediation Rules, 2007)

**1:- (a)** These Rules may be called the Civil Procedure Mediation (Amendment) Rules, 2012.**(b)** These Rules shall come into force with immediate effect.**2:-** Rule 24 of the Civil Procedure Mediation Rules,2007 (original Rules) shall be amended as under -

<b>Existing Rule</b>	<b>Amended Rule</b>
Rule 24 (1): At the time of referring the disputes to mediation, the court shall, fix the fee of the mediator, and shall be payable by the parties as directed by the Court.	Rule 24 (1): The fee of the mediator shall be paid on case basis and not on meeting basis. The fee as fixed from time to time, shall be paid by State Legal Services Authority or District Legal Services Authority as the case may be.
Rule 24 (2): As far as possible a consolidated sum may be fixed rather than for each session or meeting.	Rule 24(2): The mediator shall be paid fee as per following scale: a. Successful Mediation: Rs. 5000/- per case. b. Unsuccessful Mediation: Rs. 1,000/- per case.
Rule 24(3): Each party shall bear the cost for production of witnesses on his side including experts, or for production of documents.	Rule 24 (3): The cost of mediation shall be borne by the State Legal Service Authority or District Legal Service Authority, as the case may be.

<p>Rule 24(4): The mediator may, before the commencement of mediation, direct the parties to deposit equal sums, tentatively, to the extent of 40% of the probable costs of the mediation, as referred to in clause (1) and (3). The remaining 60% shall be deposited with the mediator, after the conclusion of mediation. For the amount of cost paid to the mediator, he shall issue the necessary receipts and a statement of account shall be filed by the mediator in the Court.</p>	<p>Rule 24(4): The mediator shall be paid the fee at the conclusion of the mediation as per clause (2) and upon a certificate issued by the Court.</p>
<p>Rule 24(5): The expenses of mediation including fee, if not paid by the parties the Court shall on the application of the mediator or parties direct the concerned party to pay and if they do not pay the Court shall recover the said amounts as if there was a decree for the said amount.</p>	<p>Rule 24(5): Delete.</p>
<p>Rule 24(6): Where a party is entitled to legal aid under section 12 of the Legal Services Authority Act, 1987, the amount of fees payable to the mediator and costs shall be paid by the concerned Legal Services Authority under the Act.</p>	<p>Rule 24(6): Delete.</p>

**Registrar General**

\* \* \* \* \*

## Some Recent Judgments of Uttarakhand High Court

### FULL BENCH JUDGMENTS:

1. On 18<sup>th</sup> September, 2012, a Full Bench in *Sri Har Singh Gusain Vs. State of Uttarakhand through Secretary Rural Development and others* [Writ Petition No. 872 of 2011 (S/S)] considered the following two questions:-
  - (i) Whether a District Rural Development Agency (DRDA) is an autonomous body or not?
  - (ii) Whether an employee of one DRDA can be transferred to another DRDA within a State?

The Bench answered Question No. 1 in negative by observing that DRDA cannot be said to be an autonomous body, as it has no law or rules making powers, for self governance.

On the Question No. 2, the Bench referred the Government Order No. 2350/30-1-94-41-9-92 Rural Development Section 1 Lucknow, dated 17.03.1994, issued by the Government of Uttar Pradesh (applicable to State of Uttarakhand), which provides that the incumbents of the post in which His Excellency the Governor or the Commissioner, Rural Development Department is the appointing authority, in DRDA, can be transferred from one DRDA to another. The natural consequence thereof is where the employee of DRDA whose appointing authority is neither the Governor, nor Commissioner Rural Development, can be transferred only in exceptional circumstances, and the transfer order must speak of the exceptional circumstances in which the transfer was necessary.

### DIVISION BENCH JUDGMENTS:

2. A Division Bench in *Akhilesh Kumar Vs. Smt. Sarita* (First Appeal No. 42 of 2012), dismissing the appeal, preferred against the order of Family Court for awarding of lump sum permanent alimony of Rs. 7 lac to the respondent, observed that appellant did not evince any grievance against the order of this Court to give a sum of Rs. 5,000/- per month to the respondent and also not denied the fact that he inherited immovable property. The Bench observed that Maintenance, when divorce has not been granted, under any law, should be deemed to be maintenance for the time being. Such maintenance should be around 1/3<sup>rd</sup> of



the income of the person directed to shoulder the maintenance. Therefore, the logical conclusion would be that the appellant was having at least an income of Rs. 15,000/- per month, requiring him to file income tax returns. The Bench found that having regard to the conduct on the part of the appellant in the matter of concealing the facts, in particular, his income and properties, the award of permanent alimony of Rs. 7 lac has been correctly capitalized of the proportion of his income.

3. On 16<sup>th</sup> July, 2012, a Division Bench in *Amarmani Tripathi Vs. State (through CBI)* (Criminal Appeal No. 517 of 2007), while dismissing the appeals filed by accused persons and allowing the appeal of CBI against acquittal of one of the accused, observed that when an accused person reported to be last seen with the deceased immediately before murder and there is no explanation from the accused, law requires a prudent person to take adverse inference against the accused in order to come to the conclusion that he was one of the assailants of the deceased.

The Bench also observed while appreciating the evidence that when the caller and the receiver of mobile phone plead ignorance of each other and denied having had even talked to each other over phone, an inference can be drawn that the subject matter of the talk was such that, if the same is disclosed, that will go against them.

On further appreciation of letters of victim tendered by the prosecution under Section 32(1) of the Evidence Act, the Bench observed that the trial Court, correctly did not accept the said letter under Section 32(1) of the Evidence Act, but observed that the Court should have looked into the contention of the said letters only for the purpose of ascertaining what was passing through the mind of the victim immediately before she was murdered as to her relationship with the accused, by taking recourse to Section 32(2) of the Indian Evidence Act.

4. On 18<sup>th</sup> July, 2012, a Division Bench in *Dhan Singh Vs. State of Uttarakhand* (Criminal Appeal No. 01 of 2007), reported in 2012(2) U.D. 203, while appreciating the evidence, allowed the appeal of accused/appellants by observing that if from the prosecution story, two views are possible, then it would be proper to give the accused/appellants benefit of reasonable doubt.

5. On 16<sup>th</sup> August, 2012, a Division Bench in *Roshan Vs. State of Uttarakhand* (Criminal Appeal No. 262 of 2007), while dismissing the appeal filed by the appellant-husband against the judgment and order passed by the trial court convicting the accused/appellant for the offence under Section 302 I.P.C. in connection with murder of his wife, observed that appellant miserably failed to show his absence from his residence at 11:30 a.m. of the fateful date. In the circumstances, the conclusion would be that the appellant was at home when the death took place. It is neither the case of the prosecution, nor it is the case of the defence, that, apart from the appellant, there was any other able-bodied person capable of strangulating the deceased, present in the house of the appellant at the relevant time. Undisputedly, as reported by the doctor, the death has taken place by reason of strangulation. In a situation of this nature, if the appellant keeps silence over the matter, the Court is competent to take adverse inference against him.
6. On 10<sup>th</sup> September, 2012, a Division Bench in *Pyaru alias Pyare Lal Vs. State of Uttarakhand* (Criminal Jail Appeal No. 238 of 2008), while dismissing the appeal preferred by the accused-appellant/father of the victim, observed that appellant in her statement under Section 313 Cr.P.C. denied the allegations and pleaded ignorance including as to the age of victim (his own daughter). He pleaded ignorance about the sexual assault committed on the victim. He was the father/protector of his daughter, yet he pleaded ignorance about some questions, which should have been in the knowledge of appellant. He appears to have a guilty mind and therefore, he absconded soon after the incident. He raised a plea of alibi, but could not substantiate the same.

#### **SINGLE BENCH JUDGMENTS:**

7. A Single Judge Bench in *Radha Krishana Agarwal Vs. Krishna Lal* (First Appeal No. 112 of 2005), reported in AIR 2012 Uttarakhand 64, while dismissing the appeal, discussed some important aspect of law on specific performance. The Bench observed that the Agreements in question are registered documents executed before the Sub-Registrar, where the defendant had admitted receiving the payments including the part payment of consideration. The acknowledgement and receipts are rightly believed by the trial court in the light of the statement of plaintiff and as such mere oral denial on the part



of the defendants of such documents was not sufficient to rebut the strong documentary evidence filed by the plaintiff, which is proved on record.

Further the Bench did not find force in the argument of the appellant that the suit is barred by limitation. The Bench observed that the period of limitation for Specific Performance of Contract is three years as provided in item No. 54 of part (II) of Schedule of the Limitation Act. The period of limitation starts from the date fixed for performance and where no such period is fixed, from the refusal of the performance, on notice by the plaintiff.

The Bench also set-aside the contention of appellant that in view of Section 20 of Specific Relief Act, the plaintiff is not entitled to the grant of decree of specific performance merely because it is lawful to do so. The Bench observed that the Explanation (I) of Section 20 of Specific Relief Act, provides that mere inadequacy of consideration or mere fact that the contract is onerous to the defendant shall not be deemed to constitute the unfair advantage to the plaintiff. The value of the property is required to be seen as it existed at the time, when the agreement of sale was executed by the party. In every case, after some period, the value of the immovable property normally increases, and on such ground, the decree of specific performance cannot be refused lightly to the purchaser.

8. On 20<sup>th</sup> July, 2012, a Single Judge Bench in *Rajdhani Plywood Industries (Pvt.) Ltd. Vs. Director of U.P. Rajya Mandi Parishad and another* (Writ Petition No. 7488 of 2001(M/S), reported in 2012(2) U.D. 221, considered the question, whether “veneer” manufactured from logs remains a wood and consequently an agricultural produce or not? The Bench reiterating the principle of law laid down by the Hon’be Supreme Court in *Krishi Utpadan Mandi Samiti, Kanpur Vs. Ganga Dal Mill & Company 1984(4) SCC 516*, observed that from a reading of the definition of “agricultural produce” as set out in Section 2(a) of the Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964, the term agricultural produce has to be given a wide meaning in as much as the definition indicates that an agricultural produce could be an admixture of two or more items specified in the Schedule as also any such item in its processed form. With the above



observation the Bench held that since veneer is an agricultural produce, the Mandi Samiti was justified in imposing mandi fee on the sale of veneer made by the petitioner.

9. On 25<sup>th</sup> July, 2012, a Single Judge Bench in *Prakash Chandra Khanduri Vs. Garhwal Anushuchit Janjati Vikas Nigam Ltd. and Anr.* (Writ Petition No. 4168 of 2001(S/S), reported in 2012(2) U.D.217, allowing the writ petition, issued a writ of Mandamus directing the respondents to pay to the petitioner the salary of a senior clerk. The Bench observed that the respondents, being an instrumentality of the State, as contemplated under Article 12 of the Constitution of India, was adopting unfair labour practice and is not acting as a model employer. The respondents have continued to take the work of senior clerk from the petitioner but did not release the salary of the post on which he was working. The Bench further observed that it is settled principle of law that the employee is entitled to be paid the salary of the post on which he was working.
10. On 22<sup>nd</sup> August, 2012, a Single Judge Bench in *Mahendra Singh Vs. Karam Singh* (Writ Petition No. 1222 (M/S) of 2012), while dismissing the petition in limine, observed, on the powers of Court to extend time for incorporating amendment allowed by the Court, that the Court has ample power under Section 151, 148 and 153 Code of Civil Procedure to extend the time for incorporating amendments in the pleadings. The Bench observed that no party should be permitted to amend the pleadings after the prescribed period as provided in Order 6 Rule 18 of C.P.C., unless the time is extended by the Court.
11. On 24<sup>th</sup> September, 2012, a Single Judge Bench in *Mohd. Sarfaruz Vs. State of Uttarakhand and others* (Criminal Revision No. 187 of 2012), overturned the order of trial court to adjourn the delivery of judgment on the pretext that all the prosecution witnesses have not been examined in the trial under Section 25 Arms Act, observing that there were three sessions trial, one of them is under Section 25 Arms Act. All the three files of these sessions trials were consolidated *de facto* and evidence was recorded in one of the sessions trial (leading case). All the accused had got sufficient opportunity to cross-examine every prosecution witness on each charge leveled against them. The Bench observed that it was simply a technical flaw that specific order had not been passed. So there was no justification for calling all the prosecution witnesses again.

12. On 16<sup>th</sup> August, 2012, a Single Judge Bench in *Nirmal Jeet Kaur Vs. State of Uttarakhand and other* (Criminal Misc. Application No. 833 of 2010), considered the question, that whether in the light of expression "its own procedure for disposal of an application" as prescribed in Section 28(2) of Protection of Women from Domestic Violence Act, 2005, can a Magistrate recall its order passed under Section 23 of the Act or not? The Bench observed that what aforesaid expression authorizes a Magistrate is that he can adopt a procedure which is in consonance with basic principles of judicial procedure. The Bench observed that proceeding based on an application moved under Section 12 of the Act are not the proceeding of trial of an offence but quasi civil in nature, similar to one under Section 125 of Cr.P.C. Section 126(2) of Cr.P.C. empowers the Magistrate to recall an ex-parte order. Similarly Order IX Rule 7 of the C.P.C. empowers the Court to set-aside the order directing to proceed ex-parte. Under Order IX Rule 13 of C.P.C., Courts have powers to set-aside the ex-parte decree on sufficient cause being shown by the defendant. Therefore, setting aside of ex-parte order by the Magistrate under Protection of Women from Domestic Violence Act, 2005 cannot be said to be arbitrary or against the basic principles of judicial procedure.
13. On 24<sup>th</sup> September, 2012, a Single Judge Bench in *Shyamveer Vs. State of Uttarakhand and another* (Criminal Miscellaneous Application No. 328 of 2010), discussed the exercise of powers of Court as provided by Section 319 of Cr.P.C. By referring the principle of law laid down by the Hon'ble Supreme Court in *Sarabjit Singh and Anr. Vs. State of Punjab and Anr., reported in 2009(2) UC 1105*, observed that the statements recorded by the Investigation Officer under Section 161 of Cr.P.C. cannot have precedence and dominance over and above the statement recorded by the trial court where a witness deposes on oath. The trial Court while exercising its extraordinary powers under Section 319 Cr.P.C. has to be satisfied enough to the hilt whether the names of the person sought to be summoned have been taken, either in the FIR or in the statement before the Court, on account of sheer animosity, or they were really involved in the commission of crime. The trial court will have to express strong reasons in writing for recording his satisfaction that there exists a real possibility that the accused so summoned is in all likelihood would be convicted.

\* \* \* \* \*

## **MAJOR EVENTS AND INITIATIVES**

- ❖ **Independence Day Celebration:** On the occasion of Independence Day on 15<sup>th</sup> August, 2012, Flag Hoisting ceremony was organized in the premises of High Court of Uttarakhand. On the occasion, Hon'ble the Chief Justice Sri Barin Ghosh hoisted the tri colour flag and gave his best wishes. Hon'ble Mr. Justice Tarun Agarwala, Hon'ble Mr. Justice Prafulla C. Pant, Hon'ble Mr. Justice B.S.Verma, Hon'ble Mr. Justice Sudhanshu Dhulia, Hon'ble Mr. Justice U.C.Dhyani, Sri Ram Singh, Registrar General, Sri Narendra Dutt, Registrar (Judicial), Sri Kanwar Amninder Singh, Additional Registrar-I, Sri Bharat Bhushan Pandey, Additional Registrar-II, members of the High Court Bar Association, officers and staff of the High Court were present at the function.
- ❖ **Visit of Hon'ble the Chief Minister:** On 24<sup>th</sup> August, 2012, Hon'ble Chief Minister of State of Uttarakhand Sri Vijay Bahuguna visited the High Court of Uttarakhand and met Hon'ble the Chief Justice and Hon'ble Judges and discussed various issues concerning administration of justice in the State of Uttarakhand. In the honour of Hon'ble Chief Minister, a dinner was also organized by the High Court at the residence of Hon'ble the Chief Justice.
- ❖ **Visit of Hon'ble Judges to NJA:** National Judicial Academy at Bhopal has organized a National Conference of High Court Judges on "Human Rights and Civil Liberties" from 15.09.2012 to 16.09.2012. Hon'ble Mr. Justice B.S.Verma participated in the said conference on behalf of High Court of Uttarakhand.
- ❖ **Laying of Foundation Stone of ADR centre at Tehri Garhwal and Pauri Garhwal:** Settlement of disputes through alternative dispute resolution method is gaining momentum in whole of the country and the State of Uttarakhand is no exception to that. Central Government and Hon'ble Supreme Court are emphasizing regularly on establishment of Alternate Dispute Resolution Centre in each district. In the chain of establishing ADR centers, after Hardwar, Udham Singh Nagar and Uttarkashi, foundation stone of ADR centers has been laid on 22.09.2012 in district Tehri Garhwal and on 23.09.2012 in district Pauri Garhwal. On this occasion Hon'ble the Chief Justice Sri Barin Ghosh, Hon'ble Mr. Justice Tarun Agarwala, Sr. Judge and Executive Chairman, Uttarakhand State Legal Services Authority and Hon'ble Mr. Justice Servesh Kumar Gupta were present to grace the occasion by their benign presence.



- ❖ **Mega Lok Adalat in High Court:** On 22.09.2012, a Mega Lok Adalat has been organized in the premises of High Court of Uttarakhand under the banner of High Court Legal Services Committee. Hon'ble Mr. Justice V.K.Bist, Chairman, High Court Legal Services Committee presided over the Lok Adalat. Total 24 cases of different categories disposed off in the Lok Adalat. Two families were united. In Motor Accident Claim Petition and other cases, compensation to the tune of Rs. 36,09,720/- was awarded.

## **MAJOR ACTIVITIES OF UJALA**

- ❖ **Workshops on "Effective Investigation":** Criminal Trial in a Court solely rests on Investigation skills of Investigation officer. For enhancing the investigation skill of Uttarakhand Police, a five days' workshops on Effective Investigation was organized in the Academy, from July 2<sup>nd</sup>, 2012 to July 6<sup>th</sup>, 2012. Total 28 investigating officers of Uttarakhand Police Department participated in this workshop.
- ❖ **Workshop on "Negotiable Instruments Act, 1881":** Cheque bounce cases have become a major problem for the judicial system of the country. A large number of such cases are awaiting disposal across the country. The situation is so grave that High Court of Uttarakhand has decided to create special Courts of Magistrates to deal with these cases exclusively. On their part, Uttarakhand Judicial & Legal Academy is organizing regularly special workshops for judicial Magistrates especially in this branch of law. 3<sup>rd</sup> and 4<sup>th</sup> phase of such workshops were organized in the Academy from 21<sup>st</sup> of July, 2012 to 24<sup>th</sup> of July, 2012 and from 4<sup>th</sup> of August, 2012 to 07<sup>th</sup> of August, 2012. Total 34 judicial officers of the State participated in these workshops.
- ❖ **Workshop on "Matrimonial Laws":** Matrimonial dispute is another branch of law, which is contributing in the mounting arrears of cases in the country. These disputes are so sensitive in nature that requires special skills and knowledge. Therefore, to sensitize Judges of subordinate courts in this branch of law, special workshops are being organized by the Academy. One such workshop was organized from 28<sup>th</sup> of July, 2012 to 31<sup>st</sup> of July, 2012. Total 14 judicial officers participated in the workshop.

- ❖ **Reflective Training Programme for Civil Judges (Junior Division):** In the year 2011, 07 new judicial officers had joined the Uttarakhand Judicial Service as Civil Judges (Junior Division). At the time of joining, three months foundation training was imparted to them. Thereafter, all these officers were assigned regular judicial work in their respective districts. Now with a view to have feedback and to solve their problems, one month reflective training programme has been organized by the Academy from 1<sup>st</sup> of August, 2012 to 31<sup>st</sup> of August, 2012.
- ❖ **Workshop on offences under Wild Life Protection Act, 1972:** State of Uttarakhand possesses vast variety of wild life. To preserve the precious wild life, stringent laws have been enacted, but offences against the wild life are growing rapidly. Therefore, at the instance of Hon'ble the Chief Justice, special workshops are being organized by the Academy for the judicial officers of the State to equip them with up-to-date knowledge on various laws governing wild life. Two phases of such workshops were organized by the Academy from 22<sup>nd</sup> August to 24<sup>th</sup> August, 2012 and from 9<sup>th</sup> September to 11<sup>th</sup> September, 2012. Total 50 judicial officers across the State participated in these workshops.
- ❖ **Mediation Training Programme:** Dispute resolution through mediation is an excellent process, by which peace and harmony in the society can be maintained. But mediation cannot be made successful without active and supportive cooperation of Advocates. In order to explain method and process of mediation and its advantage, regular training programme on mediation are being organized by the Academy for the Advocated and for referral Judges. Two phases of each such programme were organized by the Academy in the months of August and September, 2012.
- ❖ **Workshops for District Government Counsels (Criminal) & Circle Officers/Dy. Superintendent of Police:** To update the legal knowledge on various aspect of criminal law, two workshops were organized by the Academy, one from 19<sup>th</sup> September to 22<sup>nd</sup> September, 2012 for the D.G.C.(s) (Criminal) and another from 26<sup>th</sup> September to 28<sup>th</sup> of September, 2012 for the Circle Officers/Deputy Superintendent of Police, Uttarakhand.

\* \* \* \* \*



# HIGH COURT OF UTTARAKHAND CALENDAR 2013 (Subordinate Courts)



## List of Holidays

Sl. No.	Name of Holiday	Month & Date	Days of the Week	No. of Days
1	Guru Govind Singh Jayanti	January 18	Friday	1
2	*Barawafat (Milad-Un-Nabi)	January 25	Friday	1
3	Republic Day	January 26	Saturday	1
4	Maha Shivratri	March 10	Sunday	1
5	Holi	March 26 & 27	Tuesday & Wednesday	2
6	Ambedkar Jayanti	April 14	Sunday	1
7	Ram Navami	April 19	Friday	1
8	Mahavir Jayanti	April 24	Wednesday	1
9	Buddha Purnima	May 25	Saturday	1
10	*Id-UI-Fitr	August 9	Friday	1
11	Independence Day	August 15	Thursday	1
12	Raksha Bandhan	August 20	Tuesday	1
13	Jannashatami	August 28	Wednesday	1
14	Gandhi Jayanti	October 2	Wednesday	1
15	Dussehra (Vijay Dashmi)	October 13	Sunday	1
16	*Id-UI-Zuha	October 16	Wednesday	1
17	Deepawali	November 2 to 4	Saturday to Monday	3
18	*Moharram	November 14	Thursday	1
19	Guru Nanak's Birthday and Kartik Purnima	November 17	Sunday	1
20	Christmas & Winter Holidays	December 25 to December 31	Wednesday to Tuesday	7

**Note:**  
 1- The Holidays marked with (\*) can be refused according to the visibility of the moon.  
 2- March 29<sup>th</sup> (Good Friday) & August 2<sup>nd</sup> (Last Friday of Ramadan) will be Restricted Holidays for Christians & Muslims respectively.  
 3- The District Judge may declare three local holidays in consultation with the District Magistrate.  
 4- There will be Winter Vacation from January 2<sup>nd</sup> to January 31<sup>st</sup> for the Civil Courts in districts Almor, Bageshwar, Champawat (except Tanakpur outlying court), Chamoli, Nainital (except Haldwani and Rampur outlying courts), Pithoragarh, Pant Garhwal (except Rudwar outlying court), Udham Singh, Tehri Garhwal and Uttarakhand Districts as shown in blue.  
 5- There will be summer Vacation from June 1<sup>st</sup> to June 30<sup>th</sup> for the Civil Courts in districts Dehra Dun, Haridwar and Jammu and Kashmir (outlying Court District Champawat) as shown in green.  
 6- The Courts will remain closed on the dates shown by **Red**.  
 7- There is a separate list of holidays for the High Court.

### January

S	M	T	W	T	F	S
	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

### February

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

### March

S	M	T	W	T	F	S
31						
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

### April

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

### May

S	M	T	W	T	F	S
	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

### June

S	M	T	W	T	F	S
30						
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29						

### July

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

### August

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

### September

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

### October

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

### November

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

### December

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

By order of the Court  
(Hem Singh)  
Registrar General



# HIGH COURT OF UTTARAKHAND

## NAINITAL

### CALENDAR 2013



January

S	M	T	W	T	F	S
	1	2	3	4	5	
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

February

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28		

March

S	M	T	W	T	F	S
31					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

April

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

May

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

June

S	M	T	W	T	F	S
30						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29

July

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

August

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

September

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

October

S	M	T	W	T	F	S
	1	2	3	4	5	
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

November

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

December

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

### List of Holidays

Sl. No.	Name of Holiday	Month & Date	Days of the Week	No. of Days
1	Winter Vacation	January 14 to February 15	Monday to Friday	13
2	*Baramahal (Mild-Ur-Nah)	January 25	Friday	1
3	Republic Day	January 26	Saturday	1
4	Maha Shivratri	March 10	Sunday	1
5	Holi	March 25 to March 28	Monday to Thursday	4
6	Good Friday	March 29	Friday	1
7	Anushkar Jayanti	April 14	Sunday	1
8	Ram Navami	April 19	Friday	1
9	Mahesh Jayanti	April 24	Wednesday	1
10	Buddha Purnima	May 25	Saturday	1
11	Summer Vacation	June 3 to June 7	Monday to Friday	5
12	*U-U-Thu	August 9	Friday	1
13	Independence Day	August 15	Thursday	1
14	Janaushadhi	August 28	Wednesday	1
15	Nandohitani	September 11	Friday	1
16	Gandhi Jayanti	October 2	Wednesday	1
17	Dussehra (Vijay Dashmi)	October 10 to October 15	Thursday to Tuesday	6
18	*U-U-Taha	October 16	Wednesday	1
19	Deepavali	November 1 to November 8	Saturday to Friday	7
20	*Moksham	November 14	Thursday	1
21	Guru Nanak's Birthday and Karla Purnima	November 17	Sunday	1
22	Christmas	December 25	Wednesday	1

- Notes:
- The Holidays marked with (\*) can be refixed according to the visibility of the moon.
  - January 18<sup>th</sup> (Guru Gobind Singh Jayanti) for Sikhs, August 2<sup>nd</sup> (Last Friday of Baramahal) for Muslims & September 27<sup>th</sup> & 28<sup>th</sup> (Ashoka-Nashika) will be Restricted Holidays.
  - There is a separate list of holidays for the subordinate Courts.
  - The Registry will remain open during the Winter Vacation & Summer Vacation.
  - The Registry will remain open for half day on Saturdays, which have been underlined.
  - The Courts will remain closed on the dates shown by **Red**.

By order of the Court  
**(Raman Singh)**  
 Registrar General