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UTTARAKHAND COURT NEWS

(A Quarterly News letter)

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High Court of Uttarakhand, Nainital

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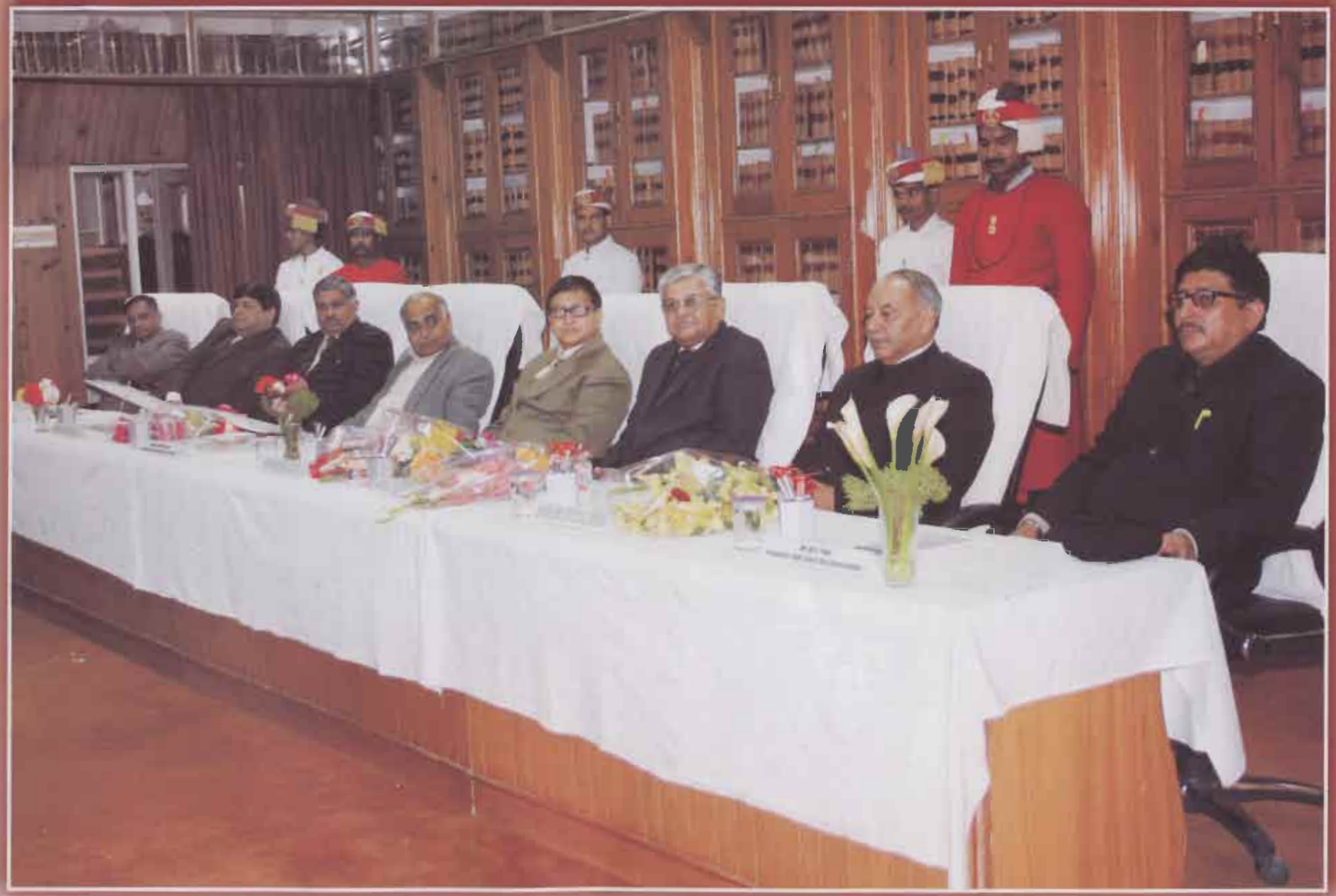

Seminar on "Protection of Human Rights" at High Court on 28th February, 2014

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UTTARAKHAND HIGH COURT

LIST OF JUDGES (As on 31st March, 2014)

SL. No.	Name of the Hon'ble Judge	Date of Appointment (Assumed charge in Uttarakhand)
1.	Hon'ble Mr. Justice Barin Ghosh (Chief Justice)	12.08.2010
2.	Hon'ble Mr. Justice B. S. Verma	15.07.2004
3.	Hon'ble Mr. Justice V.K. Bist	01.11.2008
4.	Hon'ble Mr. Justice Sudhanshu Dhulia	01.11.2008
5.	Hon'ble Mr. Justice Alok Singh	26.02.2013
6.	Hon'ble Mr. Justice Servesh Kumar Gupta	21.04.2011
7.	Hon'ble Mr. Justice Umesh Chandra Dhyani	13.09.2011

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Barin Ghosh

CHIEF JUSTICE
HIGH COURT OF UTTARAKHAND

Nainital – 263001

April 10, 2014

MESSAGE

Law is not static and it continues to evolve. In the recent past a number of directions have been issued by the superior Courts in different kind of cases like in matters pertaining to gender justice, SC/ST cases, disability, children, senior citizens or Representation of People Act, for giving due priority in their speedy disposal. Accordingly, I would like to impress upon all concerned that due attention in this regard be given to various circulars and guidelines issued from time to time. While doing so, if for any unavoidable reason same cannot be adhered to, reasons therefor, as early as possible, may be reported to the High Court for further action.

We have, at present, all necessary infrastructure for smooth running of our District Courts, including manpower as we have made recruitments in all cadres of Judicial Officers as well as in the Ministerial cadre, except that a few ministerial cadre posts are lying vacant in the District Courts, which we are going to fill up very soon.

In the High Court also we are not short of manpower as High Court itself has conducted many examinations in the recent past, for recruitment of Assistant Review Officers, Personal Assistants etc. In the Clerical cadre some vacancies are however still lying vacant, which are to be recruited through Public Service Commission, for which requisition has already been sent sometime back.

In the High Court at the quarter ending March, 2013, there were total 21395 cases pending while at the quarter ending March, 2014, in spite institution of 15,675 new cases during the last on year, the pendency is only of 21,505 cases although the judges' strength is short by two. We are happy to say that we have no cases pending in Division Bench matters for more than five years' period. As soon as we have Judges' strength full in the High Court, I hope and trust that we will be able to bring down pendency in each category of cases, say in single Judges matters also.

For 'Five Plus Zero' Target-2014, our all out efforts will be to ensure its timely achievement before the end of the year, of course with the efforts and co-operation of all concerned.

(Barin Ghosh)

Resi. Chief Justice's House, "Pant Sadan", Mallital, Nainital – 263001, Tele/Fax : 05942 - 231694

INSTITUTION, DISPOSAL AND PENDENCY OF CASES

1. HIGH COURT OF UTTARAKHAND (from 01.01.2014 to 31.03.2014)

						Pendency (At the end of 31.12.2013)		
						Civil Cases	Criminal Cases	Total Pendency
						15269	5417	20686
Institution (01.01.2014 to 31.03.2014)			Disposal (01.01.2014 to 31.03.2014)			Pendency (At the end of 31.03.2014)		
Civil Cases	Criminal Cases	Total Institution	Civil Cases	Criminal Cases	Total Disposal	Civil Cases	Criminal Cases	Total Pendency at the end of 31.03.14
2288	1415	3703	1715	1169	2884	15842	5663	21505

➢ District Courts (from 01.01.2014 to 31.03.2014)

SL. No	Name of the District	Civil Cases				Criminal Cases				Total Pendency at the end of 31.03.14
		Opening Balance as on 01.01.14	Institution from 01.01.14 to 31.03.14	Disposal from 01.01.14 to 31.03.14	Pendency at the end of 31.03.14	Opening Balance as on 01.01.14	Institution from 01.01.14 to 31.03.14	Disposal from 01.01.14 to 31.03.14	Pendency at the end of 31.03.14	
1.	Almora	589	146	132	603	1042	423	313	1152	1755
2.	Bageshwar	123	30	28	125	339	306	250	395	520
3.	Chamoli	382	110	103	389	799	638	561	876	1265
4.	Champawat	176	51	48	179	1088	562	436	1214	1393
5.	Dehradun	11826	3010	3167	11669	55005	18175	16232	56948	68617
6.	Haridwar	7814	2447	2340	8021	29282	15613	14177	30718	38739
7.	Nainital	2644	753	715	2682	7508	5705	5108	8105	10787
8.	Pauri Garhwal	933	257	186	1004	2169	1126	905	2390	3394
9.	Pithoragarh	339	82	55	366	664	429	346	747	1113
10.	Rudraprayag	167	35	44	122	332	425	424	333	455
11.	Tehri Garhwal	380	62	84	358	938	343	270	1011	1369
12.	U.S. Nagar	4673	1182	1189	4666	22316	5271	5096	22491	27157
13.	Uttarkashi	300	48	30	318	762	400	303	859	1177
	Total	30410	8213	8121	30502	122244	49416	44421	127239	157741

Circular Letters/ Notifications

(issued from 01-01-2014 to 31-03-2014)

1. Sri Dayaram, posted as Civil Judge (Jr. Div.) Ukhimath, District: Rudraprayag, in the vacant court pursuant to the Notification No. 63/XXX-1-13-26(23)2007 dated 13-01-2014 of Government of Uttarakhand.

2. Camp Court of Chief Judicial Magistrate, Chamoli at Joshimath for three days in a month which was in force vide Hon'ble Court's Notification No. 101/UHC/Admin.A/2012 dated 21-05-2012 was discontinued.

Events at High Court

Hon'ble Mr. Justice B.S. Verma was appointed as Acting Chief Justice, High Court of Uttarakhand vide notification dated 21/23-1-2014 issued by Department of Justice, Ministry of Law and Justice, Government of India.

Sri. Pradeep Pant, District Judge, took charge as full time Member Secretary, Uttarakhand State Legal Services Authority.

Alternative Dispute Resolution Centre at Rudrapur, Distt: Udham Singh Nagar inaugurated by Hon'ble the Chief Justice, Hon'ble Mr. Justice B. S. Verma, Senior Judge and Executive Chairman, Uttarakhand State Legal Services Authority and Hon'ble Mr. Justice Alok Singh, Administrative Judge, District: Udham Singh Nagar

A seminar was organised by the High Court Bar Association of the subject of "Protection of Human Rights" at High Court Main Conference Hall on 28th February, 2014. The said seminar was presided over by Hon'ble Mr. Justice Cyriac Joseph, Member National Human Rights Commission, New Delhi, Former Judge, Hon'ble Supreme Court of India and Former Chief Justice, High Court of Uttarakhand. Hon'ble Mr. Justice B.S. Verma, Acting Chief Justice and other Hon'ble Judges of the High Court of Uttarakhand attended the seminar. The seminar was attended by Sri. D.P. Gairola, Registrar General, Sri. Pradeep Pant, Member Secretary, Uttarakhand State Legal Services Authority, members of the Registry, President, Secretary and Office Bearers of High Court Bar Association, Senior Advocates, Advocate members of the High Court Bar Association and staff of the High Court.

Some Recent Judgments of Uttarakhand High Court

DIVISION BENCH JUDGMENTS

1. In Criminal Jail Appeal No. 38/2011; ***Kalyan Chand versus State of Uttarakhand;*** the Hon'ble Division Bench while hearing a jail appeal by accused in a case under Section 302 IPC found that the crucial and only ocular witness of the said incident is PW1 Smt. Sunita Devi, who is the elder daughter-in-law (wife of late elder brother of the husband of victim). She was along with the deceased at the relevant time. Both ladies had just left their house to graze the cattle in the jungle. As they walked few steps ahead from the house, they were confronted by the accused Kalyan Chand, who on seeing them began to abuse. Addressing them as prostitutes, he questioned as to where they were going. Deceased Smt. Geeta Devi asked the appellant not to abuse in such manner as they were going to graze the cattle. The accused could not tolerate even this much response on the part of the deceased and became exasperated. He further hurled abuses and marched forward with a baton in his hand towards these two ladies. He gave a blow of the baton on the head of Smt. Geeta Devi. It was so severe as the baton broke into pieces making Smt. Geeta Devi seriously injured. Further the accused caught hold on the throat of Smt. Geeta Devi and made her fell down on the earth. He strangulated her throat. So, she died at the spot. Smt. Sunita Devi made a noise and, at the same time, was attempting to save her younger sister-in-law (deceased). Seeing these gestures on the part of PW1, the accused threatened her also saying that she (Smt. Geeta Devi) has been done away with by him and, now, she (PW1 Smt. Sunita Devi) will be taken on turn. The remaining prosecution witnesses also supported the prosecution story. The defence put up by accused in the evidence of PW-1 was not found trustworthy. Accused Kalyan Chand even in his statement has admitted that he scolded his daughter-in-law, the victim, and on the fateful day of incident, he was repairing the water pipeline on the way where his both daughters-in-law were going to graze the cattles. His statement under Section 313 CrPC that on being checked as to why both of them were going to the jungle to graze the cattles the victim gave a blow of baton upon him, has not been proved by him in any way having some evidentiary value. His conduct that after the incident he ran away from the spot to his home is indicative of falsehood in his statement. In view of what has been stated above, the Hon'ble Court felt that the prosecution had proved the case beyond any shadow of doubt. Accused appellant Kalyan Chand has rightly been convicted by the learned Sessions Judge for the offence of Section 302 IPC.

2. In Criminal Jail Appeal No. 18 of 2011: ***Darpan Ram versus State of Uttarakhand;*** the Hon'ble Division Bench while hearing a jail appeal by accused in a case under Section 302 IPC found that PW1 Smt. Shanti Devi is the eyewitness of the incident. She is the wife of accused. This way, deceased was her father-in-law. She has deposed that at about 8-8:30 PM of the fateful day, the accused, all around quarrelling, drove her from inside to the courtyard of his house. He was armed with a sharp-edged heavy sickle (popularly known in the hill areas as '*Baidiyaad*'), as he was having the intention to kill her. Meanwhile, her father-in-law Tika Ram appeared, who persuaded his son (accused) to maintain his family properly, and asked the reason, why he was keen to kill his wife. Hearing these words of prudence from his father, appellant gave a blow of weapon, which he held in his hand, upon the head of his father, making him fell down instantly. At the same time, PW2 Diwani Ram (informant) also arrived at the place of incident from a local market. He also witnessed the occurrence. Having heard the shouting of PW1, neighbours too assembled there who assisted in shifting the fatally injured to the local hospital and subsequently to the district hospital. But the life of Tika Ram could not be saved and he breathed his last on 13th March, 2010 in the district hospital itself. We are of the view that when the ocular version itself has been testified in the court by the own wife of accused, examined as PW1, then there was hardly any need to produce the minor children in the dock of the court so as to corroborate the eyewitness account put forth by their mother. More so because it is not the case of defence that PW1 had nurtured any animosity against her husband. That apart, the corroboration of incident finds place in the evidence of PW2 Diwani Ram, who is the real brother of deceased. Insofar as the delay in lodging the FIR is concerned, it has been sufficiently explained by PW2 Diwani Ram in his examination-in-chief. He has deposed that since the incident had occurred arising from the family quarrel, hence he did not lodge the report promptly, and remained busy to save the life of his brother. On 13.05.2010 after autopsy and subsequently after cremation, he went to lodge the report but the police personnel did not accept his report and asked him to go before the concerned Patwari (revenue police) as the incident had occurred in that circle. In the evening of 13th May, 2010 itself, when PW2 met with the Patwari concerned, the report still could not be lodged on the pretext that the revenue personnel had boycotted the police work and he was, accordingly, advised to approach the police. Having been shunted by the revenue personnel, he could lodge the report on 14.5.2010 in the noon hours at the police station, which has been proved by this witness as Ex.Ka-1. PW2 has further deposed that prior to this

occurrence too, accused had extended threat to kill his father (deceased). Now, after having a careful perusal of the evidence led by prosecution witnesses, we are of the view that their evidence is natural and believable, inspiring implicit confidence. Nothing could be elicited so as to create any doubt in their testimony. Besides, a very significant incriminating aspect in this case is that the weapon of assault was recovered at the instance of accused which was found bloodstained. The blood was found to be human blood, as is divulged from the report (Ex.Ka-21) submitted by the Forensic Science Laboratory. Memo of recovery of that weapon bears the signature of accused, and when the question was asked from him in this regard u/s 313 Cr.P.C., he has expressed his ignorance about the said recovery. All the more, he has not denied his signatures thereupon. The Hon'ble Court held that the appeal is bereft of any merit and which is liable to be dismissed.

3. In Criminal Appeal No. 128/2012; ***Diwan Singh & Others versus State of Uttarakhand;*** the Hon'ble Court held that it is pertinent to mention that deceased met her end of the life within the precincts of the house of the accused persons and they all were present in the same. So, now, the law casts a burden upon them to speak as to how her life came to an end. The statement of all the accused persons that Smt. Indu has hanged himself in order to commit the suicide is not acceptable in view of the statement of the doctor, who has specifically deposed while facing the cross-examination that injury no. (1) cannot appear in case of hanging. It cannot take place if a person strives to tie his/her neck by a rope because in case of hanging, ligature mark does not appear and on the backside of the neck it rarely appears, but in that case the neck tilts to the back side and no mark appears in the front side of the throat. The clarification put forth by the accused persons in the cross-examination that Smt. Indu suffered the bodily injuries when after cutting the rope her dead body was taken down by the accused persons has also been negated by the doctor because in such case, all the injuries including the one which was appearing on the right thigh were not possible at one time by single such falling. Next argument put forth on behalf of the accused persons is that the FIR was lodged after five days of the incident. So, its benefit should be given to the accused persons. We are unable to agree with the said contention for the reason that in such matters the delay in lodging the FIR is not so significant. Nonetheless, such delay has been well explained by PW2 in his chief examination. On the basis of the evidence, as have been highlighted above, we are of the considered opinion that Smt. Indu's death was a homicidal one. It was not suicidal as claimed by the accused persons. Their culpability to the

crime is obvious in the light of the law as embalmed under Section 106 of the Indian Evidence Act.

4. In Criminal Appeal No. 476 of 2013; ***Nitin Parmar Versus State of Uttarakhand;*** WITH Criminal Appeal No. 309 of 2013; ***Km. Koshi Versus State of Uttarakhand;*** the victim, in the instant case, was the wife of A1. She died of injuries, which were pointed out in the post-mortem report. Her partially burnt body was found in the veranda. A gas burner was found inside the bed room. According to Ramshree (PW2), she alongwith A1 entered the room, when the victim was burning by reason of the burning gas emanating through the pipe attached to the gas cylinder and she stopped the fire by turning off the regulator of the gas cylinder. Unconscious body of A2 was lying inside the room. The Hon'ble Court relied on the judgment of Hon'ble Supreme Court rendered in Akil alias Javed *versus* State (NCT of Delhi), reported in (2013) 7 SCC 125 and held that the evidence given by PW-2 pertaining to presence of A1 is not believable. The Hon'ble Court held that even assuming that A1 was not present at the house at the time of incident, the photographs produced were without any negatives and A1 was not traceable in the photographs. The caller from whom DW2 received the information about the incident was not clear. It was also not clear that A1 had a car or facility of car on the day of incident. The inference is that A1 was present even before PW2 had arrived. A1, though, had a duty to speak as to what he was doing immediately before PW2 had arrived but utterly failed to do so. This duty to speak is cast by Section 106 of the Evidence Act. Failure of discharging such duty entails adverse inference to be drawn. The fact, that A2 was present at the time when the incident had taken place, has not been disputed even by A2. According to her, in answer to questions under Section 313 of the Code of Criminal Procedure, she was a friend of the victim. On the fateful day, she was asked by the victim to visit her and for that matter she came to the house of A1 and found that the victim was lying dead and the infant was crying in the outside room and blood was scattered all around there. Therefore, according to her, A2 entered the house of A1 after the death of the victim and before PW2 entered the house of A1. There is no dispute that A2 became unconscious and she was taken to Hospital by the Ambulance from the place of occurrence in unconscious state. What made A2 unconscious? A2 did not say the same. A2 had marks of injuries on her body. Those were on the front part of the throat. She stated that she fell down in the morning and as a result got those injuries. She fell down in the morning and got those injuries were though asserted but not attempted to be proved. From the place of incident, two mobile phones were taken into

custody by the Police. Those were produced in the Court. A2 accepted one of them to be her. According to her, she was called by the victim over her mobile phone. No Landline telephone was found in the house. The inference will be that the other mobile phone was of the victim, which, however, was not proved by any positive evidence. The hair in the fist of deceased got matched with A2. The clothes of A2 had blood stains of blood group of deceased. No explanation was given as to how the blood of deceased was present on the clothes of A2. Having regard to the nature of evidence, thus brought on record, the court below has taken the view, as expressed in the judgment under appeals convicting both the appellants for the crime in question. We have not been able to persuade ourselves to take a different view. The appeals fail and the same are dismissed.

5. In Writ Petition (PIL) No. 88 OF 2013; **Virendra Singh Panwar Versus The State of Uttarakhand and others;** it was held that right to sue in a public interest litigation survives, even if the petitioner in the public interest litigation is dead, provided the litigation is *bona fide*. In such a case, the Court can proceed by appointing an *Amicus Curiae*. Petitioner filed a writ petition on the same cause of action, but the same was dismissed on the ground that the allegation that unauthorized constructions are being made is not supported by any evidence. Present writ petition has been filed, where similar allegations have been levelled and those are supported by a First Information Report lodged by Nagar Nigam, Dehradun. It has been contended that despite the said First Information Report, illegal construction on the land belonging to Nagar Nigam is continuing. The gist of the First Information Report, which was lodged on 23rd May, 2013, is that, according to the information given on 20th May, 2013, the owner of Hotel Pacific Sri S.S. Bansal is making construction on a part of Khasra No. 15 belonging to Nagar Nigam. The question was not, whether a part of the land, purchased through auction, is in the *Nala* or not? The question was, whether any construction has been made on any part of the land situate in Khasra No. 15? Nagar Nigam, despite getting opportunities, has made no effort to establish the same. In the circumstances, can it be said that the public interest litigation was bona fide and, accordingly, the same should continue to redress the grievances highlighted therein by appointing an *Amicus Curiae*. In the circumstances as above, we cannot come to such a conclusion. The writ petition is, accordingly, dismissed.

SINGLE BENCH JUDGMENTS

6. In ***Smt. Shashi Agrawal Versus State of Uttarakhand & others,*** Writ Petition (MS) No. 962 of 2005; with Writ Petition (MS) No. 963 of 2005 Km. Meenakshi Agarwal & others Versus State of Uttarakhand & others; with Writ Petition (MS) No. 1001 of 2005 Pavan Poplar Limited Versus State of Uttarakhand & others ; with Writ Petition (MS) No. 1002 of 2005 Prag Agro Farm Limited Versus State of Uttarakhand & others it was held that in view of the discussions made, the issue has been crystallized and it is amply clear that the notice in the case has been issued by the Collector under the UP Act No. 1 of 1959, as validated by UP Act No. 28 of 1970. In exercise of power under the said Act, the notice can be issued, but the mistake, which was committed by the Collector, is that the notice was issued referring the area 30 acres, which was mentioned in the proviso of the original un-amended Act. After the amendment by the UP Act No. 28 of 1970, the lessees, who are recorded tenure holders at the time of determination of lease, are entitled to retain the ceiling area. In view of amendment in Section 4(b), the area of 30 acres has been substituted by 'ceiling area', which has to be determined by the Collector. The proviso to Section 4(b) nowhere says that the proceedings of separation of the land would be under the 1960 Act. It is also well settled principle of law that Act will have overriding effect over the Rules. Instead of 30 acres, 'ceiling area' would be read into the rules even if the Rules are not amended. For the purpose of calculation of the ceiling area, the provisions of the 1960 Act would apply. Ceiling area, which has to be determined, has been defined in Section 3 of the UP Act No. 28 of 1970, which says that the expression 'ceiling area' shall have the meaning assigned to it in the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 as amended from time to time. By a conjoint reading of Section 6-A and the definition of 'ceiling area', it is very much clear that the proceedings would be initiated under the UP Act No. 1 of 1959, as validated by UP Act No. 28 of 1970, and the calculation of the ceiling area would be under the provisions of the 1960 Act. It is well settled principle of law that, against law, there is no estoppel. The writ petition before the Allahabad High Court was not decided on merits. Therefore, the statement made by the then Advocate General before the Allahabad High Court is of no help to the petitioners. In view of the provisions of the Constitution as well as the UP ZA & LR Act, the land is a State subject and all the lands situated within the territory of the State are State lands. The only argument advanced by the learned counsel for the petitioners, which can

be said to be acceptable, is that 30 acres area has been wrongly mentioned in the notice and, therefore, on this count, the notice is not valid. The impugned notice issued by the Collector, on this count only, is set aside. Writ Petition No. 962 of 2005 (MS) and Writ Petition No. 963 of 2005 (MS) are partly allowed and the Collector, Udham Singh Nagar, is directed to initiate appropriate proceedings in accordance with law and in view of Section 6-A for determination of the ceiling area and separation of surplus area and to take steps accordingly against those tenure holders, who were recorded at the time of determination of lease or their successors in interest. So far as the petitioners in Writ Petition No. 1001 of 2005 (MS) and Writ Petition No. 1002 of 2005 (MS) are concerned, since they are sub-lessees, in view of Section 4(b), they cannot acquire any hereditary right in the land. The proceedings would be initiated against the successors in interest of the lessees in view of Section 6-A of the amended Act. Therefore, the sub-lessees have no right to continue over the land in dispute. Since the land is separated, their rights from the lease land automatically ceased. Besides this, it is also relevant to mention here that admittedly the sub-leases had been granted by the lessees in favour of these petitioners after the determination of the earlier leases. Therefore, the lessees were not having any right to execute the sub-leases. Therefore, it is directed that the names of these petitioners, if any, recorded in the revenue records on the basis of the sub-lessees be expunged from the revenue records. The notices, which have been issued by the Collector to these petitioners, were not at all required. Therefore, on that count, the impugned notices are set aside. The Collector shall take steps accordingly in accordance with law to correct the revenue records and for taking over possession. Since this land is handed over by the lessees to the sub-lessees and it is not in possession of the lessees, therefore, there is no need for the Collector to issue any fresh notice to the lessees in respect of this land as it is already separated by the lessees themselves by handing over possession to the sub-lessees and it also exceeds the ceiling area.

7. In Writ Petition (MS) No. 134 of 2006 ***The Sunni Central Board of Wakf Versus The Deputy Director of Consolidation & others;*** with Writ Petition (MS) No. 135 of 2006 ***The Sunni Central Board of Wakf Versus The Deputy Director of Consolidation & others.*** On the basis of the rival submissions of the parties, as recorded above, the only controversy which is to be seen in the present case is, whether the land in dispute was given to the wakf or to Sajjadanashin. After the remand of the case by the Allahabad High Court, the learned Deputy Director of Consolidation has considered the Farman, copy of which has been filed, which indicates that, in

village Piran Kaliyar, only 8000 *dam* land, land revenue of which is Rs. 315/-, has been given to Sajjadanashin and his sons as Tarif Maf Grant from Kharif for bearing the expenses of Dargah of Allauddin Ali Ahmad Sabir. The learned Deputy Director of Consolidation has also observed in its order that it is also mentioned in the Farman that the above persons will have right over the entire village by succession. Therefore, it is clear from the Farman that the land was given to Sajjadanashin for the purpose of bearing the expenses of Fakirs, who visit the Dargah. Nowhere, it is mentioned in the Farman that the land was given to Wakf or a trust. It was further observed by the learned Deputy Director of Consolidation that, in the regime of British Government, the land was vested with the British Government and the land revenue was also fixed to be realized from Sajjadanashin. Therefore, the effect of the Farman came to an end. However, once again, by Government Order No. 692 dated 21st May, 1841, written by Assistant Secretary, Northern Western Province to the Board of Revenue, the said land was left for the Dargah without any land revenue. In the regime of British Government, the land of village Piran Kaliyar continued to remain divided into five mohallas and, in the revenue register, the land was mentioned as *lagaan maf* grant, but, at no point of time in the Khewat, the name of Sajjadanashin was mentioned as Manager. The name of Sajjadanashin was recorded in his personal capacity and he was never recorded in the revenue record, at any point of time, either in the regime of Mughal Badshah or British Government, as Mutawalli or Manager of the Wakf. Therefore, it is clear that right from the Government Order of 1841, the said land was never recorded in the name of Dargah or the Wakf. In the Khewat, the names of Sajjadanashin, his successors and the Mujjabars remained always recorded. During the British Regime, in the year 1921 at the time of consolidation, the matter was again considered and the entries regarding land records were retained as they were. In the year 1950, the 1950 Act came into force and all the lands were vested with the State Government under Section 6 of the 1950 Act and new rights were given under Section 18 to the actual cultivators or tenure holders, who were having seer or khudcast lands. Here also, it was nowhere mentioned in any land records that Shah Ejaz Ahmad was holding the disputed land as Manager or Mutawalli. The khatauni of 1346 Fasli indicates only 1/4th share of wakf. Right from the year 1841, no objection was raised by the wakf against the said entries. Thus, the tenure holders, including Sajjadanashin, have perfected their titles under the 1950 Act. Although Sajjadanashin was recorded as a seer khudkast, he acquired bhumidhari

rights under Section 18. Even otherwise, in such a situation, he will, in both ways, get bhumidhari rights.

8. In Writ Petition No.863 of 2009 (M/S), ***Mohd. Aslam & Ors Vs. Harendra Singh Negi,*** it was held that the only issue which is to be decided by this Court is as to whether the suit for injunction is maintainable in the civil court or not and whether it is barred by Section 331 of U.P.Z.A. & L.R. Act. Admittedly, respondent/plaintiff is not a recorded tenure holder on plot no.505B. In Kamla Shanker and others vs. The III Addl. D.J. Mirzapur and others, 1998 (89) RD 484, Hon'ble Allahabad High Court has held if tenure holder is not recorded, suit for injunction is not maintainable in the civil court and would be cognizable by revenue court only. Therefore, the suit is barred by Section 331 of U.P.Z.A. & L.R. Act. This fact is not disputed that consolidation proceedings were initiated in the village and were closed by way of notification issued under Section 52. Therefore, the suit is also barred by Section 49 of C.H. Act. In the light of aforesaid and in view of the above case-law, the writ petition is allowed. Issue no.3 is decided in favour of the petitioner/defendant and it is held that suit is not cognizable by the civil court.

9. In Writ Petition (M/S) No. 413 of 2014; writ Petition (M/S) No. 414 of 2014; Writ Petition (M/S) No. 415 of 2014; Writ Petition (M/S) No. 416 of 2014; Writ Petition (M/S) No. 421-433 of 2014; Writ Petition (M/S) No. 435- 442 of 2014; Writ Petition (M/S) No. 444- 446 of 2014; Writ Petition (M/S) No. 365of 2014; ***M/s Gold Plus Glass Industry Ltd. Vs Chief Controlling Revenue Authority & Another;*** by perusal of the notices given by the Collector as well as the ADM (F), it reveals that there is no mention for levying of the penalty because 2% additional duty was not paid. There is only mention that notices were sent to the petitioner to pay 2% additional duty on account of development charges for which, as mentioned above, he has already given consent to pay the same before the Collector. The order of the Collector to impose penalty has been passed without assigning any reason and in absence of show cause notice. So far as the notices issued by the ADM is concerned, they are also of same footing. Therefore, the order passed by the Collector ADM (F) as well as C.C.R.A, so far it pertains to impose the penalty against the petitioners, are set aside, and the amount of penalty which was deposited under the impugned order by the petitioner, shall be refunded to the petitioner within a period of eight weeks from the date of production of certified copy of the order.

10. In Criminal Misc. Application No. 1059 of 2013; ***Chintamani Thapliyal Vs. State of Uttarakhand and another;*** the Hon'ble Court while considering the order passed by a Court of Special Judicial Magistrate whereby right to submit defence evidence was closed; held that the matter under Section 138 Negotiable Instrument Act is pending in the Court of Special Judicial Magistrate 1st, Dehradun since the year 2007. It is not the case of the applicant that sufficient opportunity was not provided to him for producing defence evidence before the trial Court. From a bare perusal of the order-sheet, it is clear that sufficient opportunity was provided to the applicant, but he failed to lead defence evidence. The matter is very old. The Court held that the learned Magistrate has not committed any manifest error of law in passing the order dated 25th July, 2013.

11. In Criminal Misc. Application No. 84 of 2014; ***Kamla Rana and ors. Versus State of Uttarakhand;*** held that no Court can ask to seek fresh bail for the section, which was added in the charge sheet after the investigation. Once accused were released on bail for the offence shown in the First Information Report and later on if during investigation any other section is added the only order which can be passed by the court concerned is to ask the accused to furnish surety and personal bond for the offence added in the charge sheet. The Hon'ble Court referred to the judgment of Allahabad High Court in the matter of Raj Kumar Vs. State of U.P. reported in 2005 (51) ACC 133. In para 4 of the judgment (supra) the court observed as under:

"4. Now, Section 437 (1) (i) restrains the Court other than High Court or Court of Session (i.e. the Magistrate) from granting bail only in those cases, where a reasonable ground appears for believing that a person is guilty of an offence punishable with death or imprisonment for life. In this view of the matter, there is no fetter on the Magistrate's right to grant bail in this case and the decision of the Apex Court in Prahlad Singh Bhati vs. NCT, Delhi does not come in the way of this Court permitting the revisionists to continue on the earlier bail granted to them by the Magistrate. Accordingly, this revision is allowed to this extent and the revisionists are permitted to continue to remain on bail also under section 307 IPC, provided they furnish fresh bail bonds with sureties to the satisfaction of the Court concerned."

In view of the above, this court expect that learned Trial Court shall not ask the accused persons to seek fresh bail rather shall ask the accused persons to furnish fresh personal bonds and

sureties for the offence added in the charge sheet for the amount to the satisfaction of the Trial Court.

12. In Criminal Misc. Application No. 1222 of 2012; ***Smt. Surekha Rawat W/o Tikaram Rawat Versus Tikaram Rawat S/o Hiralal Rawat;*** the Hon'ble Court held that the respondent is earning Rs. 68,000/- per month as salary, whereas, it is not disputed, rather admitted to respondent that, at present, the respondent is getting a sum of Rs. 46,000/- per month as salary, thus in my view the Revisional Court has not properly appreciated the facts that the respondent is getting a handsome amount per month as salary and the amount of maintenance awarded in favour of the petitioner is too less and inadequate. Even, if the salary of the respondent is accepted as Rs. 46,000/- per month, in that event also, the amount of maintenance awarded to the tune of Rs. 2,800/- per month in favour of petitioner, is too meager. This Court is of the view that the trial Court has rightly awarded maintenance in favour of petitioner to the tune of Rs. 6,000/- per month.

13. In Criminal Misc. Application No. 1378 of 2013; ***Angrez Singh and two others Vs. State of Uttarakhand and another;*** the Hon'ble Court held that from a bare perusal of F.I.R., the role assigned to the petitioner no.1, namely, Angrez Singh is that he assaulted Raju with a GANDASA, petitioner no.2, namely, Puran Singh fired at Raju, which did not hit Raju, but it hit at Mukhtyar Singh, but no specific role is assigned to petitioner no.3 in the first information report. The Hon'ble Court held that upon considering the first information report as also the statement of the witnesses, annexed with the counter affidavit and the entire material available on record, this is not a case where process of law has been misused. It is settled principle of law that High Court should interfere with in rarest of rare case and this is not rarest of rare case. Learned counsel for the petitioners then argued that as far as inclusion of Section 452 IPC is concerned, the proceeding of this Section should be quashed. The Hon'ble Court after perusing the first information report and also considering the statement of the witnesses, held that it is for the trial Court to reach to a particular conclusion and it is always open for the petitioners to lead their evidence, oral or documentary, whatever they intend to lead.

14. /In Writ Petition (M/S) No. 1664 of 2008*;* ***Committee of Management & others Vs. State of Uttarakhand & others;*** With Writ Petition (M/S) No. 1410 of 2009; ***Committee of Management & another Vs State of Uttarakhand & others;*** With Writ Petition (M/S) No. 332 of 2009;

Committee of Management & another Vs State of Uttarakhand & others; With Writ Petition (M/S) No. 735 of 2010***; Committee of Management & another Vs State of Uttarakhand & others;*** With Writ Petition (M/S) No. 878 of 2010; ***Committee of Management & others Vs State of Uttarakhand & others;*** With Writ Petition (M/S) No. 2532 of 2013***; Committee of Management & another Vs State of Uttarakhand & others;*** With Writ Petition (M/S) No. 2529 of 2013***; Committee of Management & another Vs State of Uttarakhand & others;*** With Writ Petition (M/S) No. 134 of 2014; ***Committee of Management & others Vs State of Uttarakhand & others;*** Hon'ble Court considered that the root cause of the present dispute is the so called insistence by the State Authorities that the petitioners must sign and submit the "Model Scheme of Administration" or else the Institutes or elected Management of Committee will not be recognized. These Institutes are Private Education Institutions which are imparting education upto Class XII and have been recognized by the Board of School Education, Uttarakhand, which is the competent authority to grant such recognition. They are, however, under a "Grant-in-Aid" of the State which would mean that the school is being totally funded by the State Government and the entire salary of all the teachers and other staff of members of these Institutes are being provided by the State Government. For this reason, the State Government has some power to control and to regulate these Institutes. The Private Education Institutes are run by Education Society which is a group of individuals, who are registered under the Societies Registration Act. The Management of the Institutes are done by a "Management Committee" which consists of the elected members of the Society. The case of the petitioners is that their Institutions were being run under a duly recognized "Scheme of Administration" even prior to the appointed day i.e 09.11.2000 when the State of Uttarakhand was a part of erstwhile State of Uttar Pradesh. However, in the year 2006, the Uttaranchal School Education Act, 2006 was enacted. From the rival pleadings which have been placed before this Court, it emerges that the petitioners were given a copy of the "Model Scheme of Administration", which they were directed to sign and submit.

The "Model Scheme of Administration" contains two clauses i.e. clause 5 and clause 6(7) on which the petitioners have objection and for this reason they have not signed the "Model Scheme of Administration.

Clause 5 of the "Model Scheme of Administration" on which the petitioners have an objection is that "no office bearer of the Management of Committee shall remain as an office bearer for more than two consequent terms". This Court has been informed by the learned counsel for the respondents that as far as this provision (Clause 5) is concerned, the State Authorities themselves have deleted it. Therefore, nothing further needs to be done in this clause to which the petitioners had earlier objected, as the provision itself stands deleted by the State Government.

However, another clause on which the petitioners had objected is clause 6 (7) of the "Model Scheme of Administration" which states that "no two members of the Management of Committee be related to each other". In other words two members of the same family cannot become member of the Committee of Management. The Education Department insists that their "Model Scheme of Administration" which they want the petitioners to submit is in conformity with the Act and the Rules and the Regulations framed therein and there is no conflict between the "Model Scheme of Administration" and the Act and the Rules and the Regulations framed therein. In fact the "Model Scheme of Administration only seeks to achieve the objects visualize under the Act and the Rules and the Regulations framed therein. Learned counsel for the petitioners on the other hand has argued that two members of the Management of Committee cannot be related to each other is wholly arbitrary and unreasonable restrictions and in violation of Article 19(1)(c) of the Constitution of India. Moreover, the second limb of the argument of the petitioners is that there is no provision in the Act and the Rules and the Regulations framed therein for a "Model Scheme of Administration" and the petitioners, therefore, are not bound to sign the "Model Scheme of Administration". The Hon'ble Court held that both these points are totally misconceived and are rejected for the reasons that As far as violation of Article 19(1)(c) of the Constitution of India is concerned, which is a Fundamental Right "to form associations or unions". It is not an absolute right and comes with certain restrictions contained in Clause (4) of Article 19 of the Constitution of India. The society or the Management of Committee therein which runs an Education Institution is totally funded by the State exchequer, hence State is empowered to regulate and to control such the Management Committee in order to bring it within the purview of the Act. One of the purposes of the Act is that a Management Committee should not be dominated by "a person, caste, creed or a particular family". The so called 'restrictions' contained in the "Model Scheme of Administration" have been formulated in order

to achieve this object, which is that one family does not dominate the Management of Committee, or that a Management of Committee be dominated by "a person, caste, creed or a particular family". So far as the arguments that there is no provision for a "Model Scheme of Administration" in the Act, it must be stated that the petitioners are well aware that the "Model Scheme of Administration" has been invoked not only in the State of Uttarakhand but also when Uttarakhand was a part of erstwhile State of Uttar Pradesh. "Model Scheme of Administration" is only to achieve the object of the Act and the Rules and the Regulations framed therein. The State Authorities have framed a "Model Scheme of Administration" and directed the petitioners to abide by it. The petitioners would have a reason not to sign the "Model Scheme of Administration", as it does not violates any of its rights. On the contrary it only seeks to achieve the objects of the Act. Had he been able to show that the "Model Scheme of Administration" which he is being compelled to sign and submit is in conflict with the Act and the Rules and the Regulations framed therein, then the matter would be different. Since this is not the case or at least this is not what the petitioners have been able to show, the Hon'ble Court found no fault on the part of the State Authorities, who insist upon the petitioners to sign and submit the "Model Scheme of Administration". It was further directed, in case, the petitioners, desire they should remain under the Grant-in-Aid, they must submit their "Model Scheme of Administration" with the Education Authorities within a period of 45 days from the date of receipt of this order, failing which the Education Authorities will be at liberty to pursue the matter against the petitioners, in accordance with law, which shall include, appointment of an "Authorized Controller". On the question of appointment of Authorized Controller, it was held that since what goes to the root of the matter and as we have seen from the narration already stated above in this order, the main reason for which the Education Authorities have finally passed an order appointing Authorized Controller is for the reason that the petitioners have not signed and submitted the "Model Scheme of Administration". Therefore, the petitioners are not free from blame. It was stated that the power exercised by the Additional Regional Director, Education has not been given to him under Section 34 of the Act, but it is under the amended Regulation wherein the Additional Regional Director is empowered to appoint an Authorized Controller in the event when the elections are not held by the Management of Committee in time. The fact remains that the so called elections done by the Committee of Management has been done under the "Scheme of Administration", which is still not recognized by the Education Authorities and it is not in

conformity with the Act, Rules & Regulations as already held in the preceding paragraphs. Since there is no election as contemplated under the law, the same is not liable to be recognized under the law and consequently the Additional Regional Director, Education has rightly exercised the powers for appointing the Authorized Controller. The Hon'ble Court also upheld that vires of the regulation whereby a power, for appointing Authorized Controller, has been given to the Additional Regional Director.

15. In Writ Petition (M/S) No. 1754 of 2013; ***Dr. Ved Prakash Tyagi Vs Union of India & others;*** it was alleged that the Petitioner, an Ayurvedic Doctor, had obtained registration at Uttarakhand by fraud and deceit and the State Government rejected the appeal of the petitioner on the ground that registration of an Ayurvedic doctor in two State Board is not permissible and the petitioner had withheld this material fact from the authorities of Uttarakhand while obtaining the registration in Uttarakhand and, therefore holding that his registration has been rightly cancelled by the Board; the Hon'ble Court held that in view of the language of Section 27 (2) of the Central Act being extremely wide, it is clear that petitioner has a statutory remedy by way of an appeal before the Central Government. The writ petition was dismissed on the ground of alternative statutory remedy.

16. In Writ Petition (M/S) No. 316 of 2009; ***Sri Ram Pal Singh Vs Sri Moti Lal;*** the petition was filed by the tenant challenging the order dated 18.01.1993 and 22.011993 passed by the Rent Control & Eviction Officer, Dehradun under Section 12 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 (*hereinafter referred to U.P. Act No. 13 of 1972*) whereby the shop in question has been declared vacant and thereafter released vide order dated 22.01.1993 in favour of landlord/respondent. He also challenges the order dated 17.02.2009 passed by the Additional District Judge/F.T.C.-2, Dehradun under Section 18 of the U.P. Act No. 13 of 1972 by which the court concerned dismissed the revision of the petitioner/tenant. Be that as it may on the basis of the inspection report, the Rent Control and Eviction Officer had passed a detailed order dated 18.01.1993 stating therein that since the petitioner has himself locked the premises and it is not in use, therefore, it has been declared vacant and landlord requires it for his *bona fide* need and subsequently, he released the shop in question in favour of the landlord/respondent vide order dated 22.01.1993. Both these orders were challenged by way of filing revision before the District Judge, Dehradun, which was dismissed vide order dated

17.02.2009 and the two orders of the Rent Control and Eviction Officer were upheld. Against the said order, the petitioner has preferred the present writ petition. The Hon'ble Court held that it has absolutely no doubt in its parameter that Rule 8 of U.P. Act No. 13 of 1972 have been followed in the present matter. The inspection report dated 12.01.1993 (Annexure No. 9 to the writ petition) clearly indicates that it was carried out not only in the presence of the landlord and the tenant but also in the presence of other persons, whose names have been mentioned in the inspection report as well as in the body of this judgment, who have categorically stated that the petitioner has locked the premises/shop since very long time and he is doing his meat business from the adjacent shop. Therefore, in view of the above fact it is apparently clear that the compliance of Rule 8 of the U.P. Act No. 13 of 1972 has been complied with. The Hon'ble Court was also of the opinion that once the premises in question was locked by the tenant himself and it was not being brought to use as revealed from the inspection report, then such a person i.e landlord has substantially removed his effect from the premises. That being a situation there is absolutely no anomaly in the orders passed by the courts below. Accordingly the writ petition is dismissed.

17. In Writ Petition No. 881 of (MS) of 2003; ***Jagdish Prasad Verma Versus Judge, Fast Track Court and another;*** the Hon'ble Court while interpreting Section 15 and 17 of the U.P. Act No. 13 of 1972 held that as per Section 15 of the Act, landlord is duty bound to intimate the vacancy to the District Magistrate and in the present case, vacancy was intimated to the District Magistrate by the landlord / Trilok Singh on 05.07.1991. As per section 17, if allotment order is not passed by RC & EO within 21 days from the date of receipt of intimation of vacancy, then landlord has right to nominate a person of his choice and in the event of making nomination by landlord after expiry of 21 days from the date of intimation, RC & EO shall pass order of allotment in favour of nominee. Undisputedly, vacancy was, for the first time, intimated, under Section 15 of the Act to the District Magistrate, on 05.07.1991 and no order of allotment was passed under Section 16 of the Act within 21 days from 05.07.1991, therefore, as per Section 17 of the Act, a valuable right accrued in favour of the landlord to nominate a person of his choice and by exercising his right, so accrued in his favour under Section 17 of the Act, landlord had nominated the petitioner vide application dated 30.07.1991, therefore, RC & EO was well within his jurisdiction in passing the order of allotment in favour of the petitioner, which was wrongly set aside by the Revisional Court on the ground that first application for allotment was moved by

respondent no. 2. Law does not provide that first of all, order should be passed on the application moved first for allotment and thereafter, nomination has to be made applicable. Rather Section 17 of the Act mandates that if no allotment order is passed for whatsoever reason within 21 days, a valuable right accrue in favour of the landlord to nominate a person of his choice.

18. In Writ Petition No. 1645 of 2012 (S/S); ***Gopal Ram S/o Sri Dev Ram Versus Union of India and others With Writ Petition No. 352 of 2013 (S/S); Gopal Ram S/o Sri Dev Ram Versus Union of India and others;*** it was held in a matter pertaining to promotion to a particular post having feeder cadre of different posts with different pay-scales and where one candidate was served with chargesheet that in view of the admitted position of law that feeding cadre for the post of Office Superintendent is Accountant / Tax Superintendent/ Revenue Superintendent, therefore, pay scale has no role to play and date of appointment on the respective post shall be given effect to for the purpose of considering inter-se seniority to consider for the promotional post of Office Superintendent. The chargesheet was perused and it was found that none of the charge is serious in nature warranting the grave penalty against the petitioner. Chargesheet was issued against the petitioner for the negligence and absence from the duties of other employees who were subordinate to the petitioner. Be as the case may be. If chargesheet for the minor irregularity not involving moral turpitude is issued, then such employee should not be deprived or in other words should not be kept outside the consideration of promotional post in view of the fact that minor irregularity not involving the moral turpitude shall not warrant any major penalty. Since petitioner was appointed on the post of Revenue Superintendent in the year 2005 and respondent No.3 was appointed on the post of Accountant in the year 2009, therefore, petitioner is quite senior to the respondent No. 3. Therefore, non-consideration of the petitioner's name for the promotional post of Office Superintendent on account of lower pay scale does not sustain in the eyes of law. Likewise, pendency of the alleged disciplinary proceedings for the minor irregularity that too committed by the subordinates of the petitioner should not be made ground to deprive the petitioner for being considered for the promotional post. Therefore, promotion granted to respondent No.3 cannot be held good, legal or sound. Consequently, same was being quashed. Law is now well settled that ordinarily seniormost should be allowed to officiate on the higher post. Ordinarily, junior should not be allowed to officiate on the higher post ignoring the seniority. Respondent authorities were directed to permit the petitioner meanwhile to discharge duties of Office Superintendent in officiating capacity. It was directed that respondent No. 2 shall

conclude the departmental proceedings against the petitioner in any case within three months from today; if departmental proceedings pursuant to chargesheet dated 28.11.2011 is not concluded against the petitioner within three months for no fault on the part of petitioner, chargesheet shall be deemed to have been revoked and non est; thereafter denovo exercise in accordance with law shall be undertaken to fill up the post of Office Superintendent by way of promotion and petitioner, if otherwise is eligible, shall be considered for the promotion.

19. In Writ Petition No. 1060 (MS) of 2005; ***Prem Ballabh Tiwari Versus Nagar Palika, Bhowali and others,*** the Hon'ble Court held that Perusal of Order 9 Rule 9 would demonstrate that on showing sufficient cause, for remaining absent on the date fixed, when the suit was called on and dismissed for want of prosecution, it may be restored to its original number. In my considered opinion, while considering the application under Order 9 Rule 9 CPC, sufficient cause to remain absent on the date fixed when suit was dismissed for non prosecution is only to be seen and not the previous conduct of the plaintiff. In my considered opinion, plaintiff / petitioner, herein could not be made non suited on hyper technical ground and fair opportunity should be granted to both the parties to contest the suit at its own merit. In my further opinion, defendant may be compensated by way of payment of costs, therefore, in the peculiar facts and circumstances, petition is allowed.

20. In Writ Petition No. 636 of 2014 (M/S), ***M/s Revati Print O Pack Versus State of Uttarakhand and others;*** Writ Petition No. 643 of 2014 (M/S); ***M/s Safeguard Industries Vs State of Uttarakhand and others;*** Writ Petition No. 637 of 2014 (M/S) ***M/s Shree Ganesh Industries versus State of Uttarakhand and others;*** Writ Petition No. 650 of 2014 (M/S) ***M/s Genus Innovation Ltd. Versus State of Uttarakhand and others;*** Writ Petition No. 646 of 2014 (M/S) ***M/s Cosmo Electro Industry Pvt. Ltd. Versus State of Uttarakhand and others;*** Writ Petition No. 644 of 2014 (M/S), ***M/s Indo Asian Simon Versus State of Uttarakhand and others;*** Writ Petition No. 642 of 2014 (M/S), ***M/s JDR Construction Pvt. Ltd. Versus State of Uttarakhand and others;*** Writ Petition No. 639 of 2014 (M/S) ***M/s Tehri Plastic Industries Versus State of Uttarakhand and others;*** Writ Petition No. 638 of 2014 (M/S), ***M/s RSG Packing Pvt. Ltd. Versus State of Uttarakhand and others;*** Writ Petition No. 651 of 2014 (M/S), ***M/s Gautam Ploymers Versus State of Uttarakhand and others;*** Writ Petition No. 653 of 2014 (M/S), ***M/s Genus Power Infrastructure Ltd. Versus State of Uttarakhand and others;*** Writ Petition No.

649 of 2014 (M/S), ***M/s SBL Industries Pvt. Ltd. Versus State of Uttarakhand and others;*** Writ Petition No. 645 of 2014 (M/S), ***M/s Vansal Narayan Engineering Works versus State of Uttarakhand and others*** as to whether Zila Panchayat is competent to levy and recover the circumstances and property tax from different industrial units situated in industrial area development, controlled and managed by the State Industrial Development Corporation near B.H.E.L., Haridwar. Undisputedly, SIDCUL is not under the control of Zila Panchayat, Haridwar and all the roads, drains, sewers and street lights are being installed, developed and managed by the SIDCUL within the territory of SIDCUL township Roshanabad Haridwar. No amenity or facility is being provided by the Zila Panchayat within the SIDCUL township Roshanabad, Haridwar. Coordinate Bench of this Court in the case of Kumaon Garhwal Chamber of Commerce and Industry Chamber House Vs. State of Uttarakhand reported in 2011 (1) U.D. 106 also had occasion to deal with the issue and has opined that Zila Panchayat shall have no jurisdiction over the area which falls within the territory of any municipality, town area and notified area or Industrial Area notified, developed and managed by the agencies other than Zila Panchayat. I am in full agreement with the view expressed by the learned Singh Judge in the case of Kumaon Garhwal Chamber of Commerce and Industry Chamber House (Supra). In view of the discussion made hereinbefore, I find that Zila Panchayat has absolutely no authority under the law to impose, levy or collect tax from any industry or person within the area of municipality, town area, notified area or SIDCUL area.

21. In the matter of Writ Petition No. 567 of 2013 (S/S) ***Narendra Singh Rana Versus Uttarakhand Public Service Commission, Haridwar;*** Writ Petition No. 568 of 2013 (S/S), ***Vikash Chandra Ramola Versus Uttarakhand Public Service Commission and another;*** Writ Petition No. 664 of 2013 (S/S), ***Laxmikant Sharma Versus Uttarakhand Public Service Commission, Haridwar***; it was held that as per condition no. 17 (5) & (6) of the advertisement dated 25.8.2011 inviting applications for the post of Junior Engineers, conventional application form would be supplied to the successful candidates in the written examination by the Commission and thereafter were to be submitted before the Commission at any time till the date of interview, therefore, in my considered opinion, it was not open to the Commission to alter this condition by asking the candidates to download main application form from Google Chrome Browser and to submit one form online and another copy by Registered Post. Petitioners were having bona fide belief that they would be provided with conventional application form by Post

and thereafter conventional application form so provided would have to be submitted at any time till the date of interview. Undisputedly, under the interim order dated 23.5.2013, all the petitioners were provided with the application form by the Commission, which were submitted by the petitioners at the time of interview and were checked and found in order and, thereafter, petitioners were permitted to appear in interview provisionally and were ultimately declared successful on merit, therefore, in my considered opinion, application forms submitted by the petitioners at the time of interview were in fact in accordance with the original condition no. 17 (5) & (6) of the advertisement dated 25.8.2011 inviting applications for the posts of Junior Engineers. Not only this, since petitioners have already been declared successful and submission of main forms were found to be in order, therefore, at this stage, rejection of the candidature of the petitioners would amount to great hardship to the petitioners. Therefore, considering the equity, I do not find any reason to reject the candidature of the petitioners. Consequently, writ petitions are allowed with the direction to the respondent that if petitioners are otherwise found eligible and are in the merit list, recommendation shall be made in favour of the petitioners to the State Government for their appointment.

22. In ***Rajesh Rawat Versus State of Uttarakhand and another;*** Criminal Misc. Application No. 108 of 2014, the Hon'ble Court clarified as to what will be consequence of any offence under Indian Forest Act, 1927. The Hon'ble Court held that principle as given in clause 8 of Section 320 of CrPC holds good even for the compoundable offences under the Indian Forest Act, 1927. If the compounding is permissible under any penal statute and the compounding application has been allowed, then the same has the effect of acquittal/discharge of the accused and no further proceedings shall be taken against such person in respect of such offence which has been compounded. If offences other than the offences specified under Section 62 or 63 of the Indian Forest Act, 1927, have been compounded, then, according to Section 68 of the Indian Forest Act, 1927, the same will have the effect of discharge and no further proceedings shall be taken against such person. If any compoundable offence under the Indian Forest Act, 1927, has been compounded against the present applicant and he has deposited compounding fee or damages or assessed compensation, by whatever name it is called, the consequence will be that no further proceedings shall be taken against such person in respect of such offence which has been compounded. Such compounding will not have any bearing on other non-compoundable offence(s).

23. In Criminal Misc. Application No. 133 of 2003; ***Mrs. Suman Singh versus State of Uttarakhand & another;*** with Criminal Misc. Application No. 136 of 2003; ***Ms. A. Vijayasree versus State of Uttarakhand & another;*** the Hon'ble Court was of the view that the news item published in a Hindi daily containing the allegations of assault against the Principal and Vice Principal of the institute were totally false, and were made out of retaliation for ill will and ulterior motives. The same was an after thought. The injuries were also doubtful as the timing of injuries did not match with the statement of Doctor under Section 202 CrPC. The Hon'ble Court held that the narrow inspection hole through which this Court is expected to look into the matter under Section 482 Cr. P.C. is- whether foundation of criminal offence is laid against the applicants? Further, whether the initiation of proceedings by the complainant would result in abuse of the process of the Court? The evidence is not to be evaluated like Trial Court or Appellate Court. But when the very foundation of complaint story falls to the ground, then this Court can certainly interfere in exercise of it's inherent jurisdiction. The Hon'ble Court referred to the illustrious judgment of Hon'ble Supreme Court cited as Pepsi Foods Ltd. and another vs. Special Judicial Magistrate and others, (1998) 5 Supreme Court Cases 749 and held that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. it is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The Hon'ble Court also held that the High Court has been vested with inherent power to achieve a salutary public purpose. The court proceedings ought not to be permitted to degenerate into a weapon of harassment or persecution. The Hon'ble Court concluded that continuation of the criminal complaint case and proceedings emanating therefrom (by the respondent no. 2 against the applicants) will amount to abuse of the process of the Court, primarily on account of three important reasons, viz.,

(a) No witness saw the assault being committed on the complainant. [They only saw bleeding on his head and when enquired, the complainant replied that the same was inflicted by the applicants].

(b) Medical Officer's statement proved to be the last straw on the back of Camel. The medical officer said, in no unequivocal terms, that the injuries were not inflicted at the time, the same were projected in the complaint-story, and

(c) A criminal case of possessing fake and counterfeit currency notes was pending against the complainant, departmental proceedings were initiated against him and present complaint case, filed again 15 days of the incident appears to be counter blast to the said proceedings to divert the attention of superior authorities, gain time and strike a deal, which he finally did. Accordingly, the impugned order was quashed.

24. In Criminal Misc. Application (C-482) No. 1250 of 2010; ***Murtaza Ali versus Aslam***; the Hon'ble Court considered the question of summoning of witnesses, mentioned in the complaint, under Section 311 CrPC in a case under Section 138 Negotiable Instrument Act and at the stage when the case is fixed for arguments. The Hon'ble Court upon perusal of Section 311 Cr PC was of the view that power of Court to recall any witness or witnesses already examined or to summon any witness can be invoked even if the evidence of both sides is closed so long as the Court retains seisin of the criminal proceedings. Any person can be summoned as witness or recalled or re-examined at any stage of proceeding where essential. It is settled in law that if the conditions under this Section are satisfied, the Court can call a witness not only on the motion of either the prosecution or the defence, but also it can do so on its own motion. It is thus crystal clear that the Court is empowered to summon any person as a witness at any stage of inquiry, trial or other proceeding. The Hon'ble Court also considered whether there was any justification on the part of the complainant to summon Salamuddin and Mahmood Hasan as witnesses? The Hon'ble Court held that the complainant is required to prove only what is contained in Section 138 of the Negotiable Instruments Act, 1881, and nothing else. The complainant is not supposed to prove as to where from he collected the money, which was paid to the accused, and in respect of which money, the accused gave a cheque in favour of the complainant. Further, the complainant is also not required to prove in whose presence the cheque was given to the accused. In such a situation, there was no justification for the complainant to have requested the trial court to summon Salamuddin and Mahmood Hasan, from whom the complainant borrowed the money and paid to the accused, and accused, in lieu thereof, gave a cheque to the complainant. Thus although an application under Section 311 of Cr.P.C. was maintainable before the trial court so long as the Court retains seisin of the criminal proceedings, but there was no need for the complainant to examine such witnesses, in as much as he was not required to prove in a case under Section 138 of the Negotiable Instruments Act, 1881, as to where from he collected the

money and in whose presence he gave such money to the accused. The Trial Court was reminded to conclude the trial as per the provisions of law.

25. In the Criminal Misc. Application (C-482) No.398 of 2009; ***Rajkumar Lyall vs. Smt. Manisha Lyall and another;*** the question before Hon'ble Court was that whether the Protection of Women from Domestic Violence Act, 2005 which came into force on 26.10.2006 can have retrospective operation or not? Will it operate retrospectively and will encompass within it's orbit an incident which took place on 01.07.2005? the Hon'ble Court after considering various provisions of the above said Act was of the view that the Act is penal in nature, in as much as, the offences under the same are triable by the Judicial Magistrate, an appeal against the order of Magistrate shall lie to the Court of Session and the proceedings under the Act shall be governed by the provisions of Code of Criminal Procedure, 1973. After referring to Article 20(1) of the Constitution of India , it was held that a penal enactment will not operate retrospectively. Any person can be convicted only in respect of an offence which is declared as such at the time of it's commission.

26. In Criminal Misc. Application (C-482) No. 253 of 2011; ***Captain Mayank Kukreti versus State of Uttarakhand & another;*** with Criminal Misc. Application (C-482) No. 120 of 2011; ***Smt. Pushpa Kukreti versus State of Uttarakhand & another,*** the Hon'ble Court dealt with the question that whether a suspect is entitled to hearing by the revisional court in a revision preferred by the accused persons? After considering and relying on the catena of decisions of Hon'ble Supreme Court including Chandra Deo Singh vs Prakash Chandra Bose and another, (1964) (1) SCR 639; Vadilal Panchal vs Dattatraya Dulaji Ghadigaonker and another, (1961) 1 SCR 1; P. Sundarrajan and others vs R. Vidhya Sekar (2004) 13 SCC 472; A.N. Santhanam vs K E and langovan 2011 (2) JCC 720 (SC) and Manharibhai Muljibhai Kakadia and another vs Shaileshbhai Mohanbhai Patel and others, 2013 (1) NCC 168, accordingly, held that the accused or a person who is suspected to have committed crime is entitled to hearing by the revisional court. The persons who are arraigned as accused in a criminal proceedings have a right to be heard in criminal revision.

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➢ Family Courts (from 01.01.2014 to 31.03.2014)

SL. No	Name of the Family Court	Civil Cases				Criminal Cases				Total Pendency at the end of 31.03.14
		Opening Balance as on 01.01.14	Institution from 01.01.14 to 31.03.14	Disposal from 01.01.14 to 31.03.14	Pendency at the end of 31.03.14	Opening Balance as on 01.01.14	Institution from 01.01.14 to 31.03.14	Disposal from 01.01.14 to 31.03.14	Pendency at the end of 31.03.14	
1.	Dehradun	1347	109	100	1356	791	172	196	767	2123
2.	Rishikesh	135	37	36	136	115	39	37	117	253
3.	Nainital	361	61	61	361	473	92	75	490	851
4.	Hardwar	536	131	99	568	436	96	68	464	1032
5.	Roorkee	430	99	34	495	346	48	17	377	872
6.	Pauri	219	48	67	200	204	59	31	232	432
7.	Udham Singh Nagar	582	160	133	609	556	116	82	590	1199
	TOTAL	3610	645	530	3725	2921	622	506	3037	6762

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MAJOR ACTIVITIES OF UJALA

➢ **Training Programme for newly promoted Judicial Officers:** One month training programme was organized for the Judicial Officers recently promoted in Higher Judicial Service. The programme concluded on 31st January, 2014.

➢ **Training programme on Management skills:** Training programme on management skills was organized by UJALA in association with Indian Institute of Management, Kashipur from 09.02.2014 to 13.02.2014. The said programme was attended by Judicial Officers of District Judge rank and some Judicial Officers of the rank of Additional District Judge.

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Hon'ble Mr. Justice B.S. Verma,
Acting Cbief Justice
addressing the seminar.

Hon'ble Mr. Justice Cyriac Joseph,
Member, National Human Rights
Commission addressing the seminar.

Nainital after Snowfall