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Vineet Khand, Gomti Nagar, Lucknow

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TRAINING ACTIVITIES IN THE INSTITUTE

I. Institutional Training Programme for Newly Appointed Additional District Judges by way of Promotion

In compliance of Hon'ble Court's notification dated: Allahabad: November 18, 2023 the Institute proposed four weeks institutional training for newly appointed 48 HJS Officers (by way of promotion) from 03.01.2024 to 02.02.2024.

The refresher training programme covered diverse areas of discussion from power to summon material witness, or examine person present, recall of witnesses for further cross-examination, law relating to anticipatory bail, appreciation & handling of digital evidence/electronic evidence, probate and letter of administration, literature, law & justice, appeal against misc civil orders, civil appeal, criminal appeal, remand in the context of special acts, Witness Protection Scheme, 2018 and Vulnerable Witness Deposition Centre Scheme 2022, role of trial judge during sessions trial and in Judgment writing, principles of sentencing with special reference to the judgment of Hon'ble Apex Court, admission in civil matters, law of arbitration: an overview with special reference to execution proceedings and special reference to Section 34 & 36 of Arbitration Act, 1996 etc.

II. Induction Training Programme for Newly Appointed Civil Judges (Junior Division)

In compliance of the direction of the Hon'ble High Court vide notification number: 07/Admin.(Services)/2024, dated January 04, 2024, the Institute organized first phase induction training programme for 120 newly appointed Civil Judges (Junior Division) of Uttar Pradesh 2022 Batch from 15.01.2024 to 12.04.2024.

The training programme covered diverse areas of discussion from introduction of glorious history of U.P. Judicial Service & Judiciary, manners and etiquettes of judicial officers, basic knowledge of the functioning of the courts in administration of justice, communication and visits to Hon'ble High Court, developing interest in reading general books: biographies, classics, travel books etc., how to conduct yourself while interacting with members of bar, duties of presiding officer during conduct of court proceeding, hierarchy of civil courts & jurisdiction of civil courts, hierarchy & jurisdiction of criminal courts, digest preparation, use of online journals and guidelines for paper presentation, fair trial and criminal justice system, G.R. (civil), integrity and impartiality with special reference to judicial process, judge yourself before judging others, financial management with special reference to leave rules, T.A. rules, C.P.F. and medical re-imburement, pleadings in general, F.I.R./N.C.R., interpretation of statutes vis-a-vis civil laws, inter-personal relationship with bar, staff & litigants etc.

SHORT ARTICLE

हमारा देश

By Dr. Mamta Dwivedi & Sushri Aastha Dwivedi*

निडर हो कर चले आओ हमारी राजधानी है।
यहाँ हर दिन सुनहरा है , यहाँ हर रात चाँदी है
असत्यो का कफ़न ओढ़े यहाँ हर व्यक्ति गांधी है
यहाँ दीपक नहीं जलते , मगर रोशन गली कूचे
हृदय से लोग छोटे है भवन लेकिन बड़े ऊँचे
यहाँ तालाब गहरे है मगर उनमें ना पानी है
निडर होकर चले आओ हमारी राजधानी है

यहाँ घर नमूना है उजाड़ो का बाहरो का
सवेरा पीठ पर लादे यहाँ मेला सितारों का
नमन में मन नहीं मिलता हृदय पर बोझ भारी है
निराशा को महावर दी मगर आशा कुँवारी है
नये हर रोज़ काटे है चुभन लेकिन पुरानी है
निडर होकर चले आओ हमारी राजधानी है ।

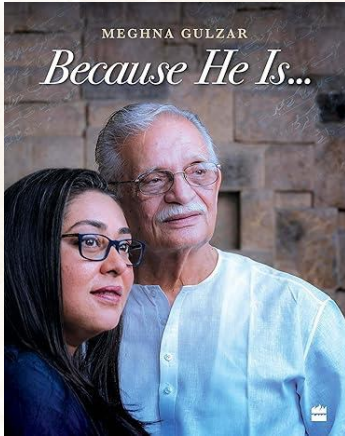
हृदय के राज रोगी है मगर बलवान दिखते है
यहाँ लेखक निशा को भी धवल दिन्माम लिखते है
यहाँ हर काम होता है सफ़ाई से करीने से
श्रमिक का खून सस्ता है किसी महँगे पसीने से
तड़पता भूख से बचपन बहुत प्यासी जवानी है
निडर होकर चले आओ हमारी राजधानी है

जिन्हें रोटी नहीं मिलती जुलूसों में निकलते है
बुरे हर काम के कर्ता भले की ओर चलते हैं
यहाँ जनता बहुत सीधी ज़रा कह दो , जला दे घर
कही संकेत पाने पर सिरो पर मार दे पत्थर
सभी के ओठ बंदी है न्याय की यह कहानी है
निडर होकर चले आओ हमारी राजधानी है ॥

* Civil Judge (J.D.), Azamgarh

BOOK REVIEW

By Anujaya Krishna*



Title of the Book
Because He Is...

Author
Meghna Gulzar

Publisher
Harper Collins India

Year of Publication
2018

What comes to mind when Gulzar is mentioned? Apart from his many iconic lyrics, an image of the writer in a crisp, white kurta immediately comes to the fore. This book tells you about many such quirks of the celebrated writer, straight from his daughter's eyes! For example, how many knew that he was born as Sampooran Singh Kalra, Gulzar is his pen name?!

As the author of the book, Meghna Gulzar, explains at the beginning the process of writing the book involved discussions with her father, with them discovering and rediscovering his life and times, some known and some unknown, and trying to capture the essence of his prolific personality in prose.

The book has thirteen main chapters, apart from a recollection of all of Gulzar's awards and achievements so far.

The first chapter Irshaad is a sneak peek into the writer's early days, the impact the Partition of India had on his family, his reluctance to visit his birth place in Pakistan lest the scars resurface and his education.

Then comes 'Destiny in a Song', capturing his journey from Delhi to Bombay. We discover that the real intent to send him to Bombay had been for him to live under the care of his elder brother and to distract him from his growing fondness for poetry. As fate would have it, the sojourn at Bombay threw the writer right in the midst of some of the greatest writers and poets of that time such as Faiz Ahmed Faiz, Kaifi Azmi, Sahir Ludhianvi, Krishan Chander and others, bringing him closer to his destiny.

'Meanderings and Musings' explores how Gulzar slowly found a footing in the arena of cinema and making films, especially his bond with Bimal Roy.

* Civil Judge (Junior Division), Barabanki

‘Lights... Camera Action!’ elaborates on the growing bond between the writer and actor Raakhee, whom he went on to marry, and how he made a poignant dedication for her in his book Raavi Paar "For Raakhee, the longest short story of my life."

‘And then there were three...’ is where the story of the birth of his daughter Meghna is shared and how he was a hands-on father and treasured moments by preserving them in books he wrote for each year of her birthday, till she was thirteen. This is also where a very dignified take on the writer’s separation from his wife is mentioned.

The next chapter ‘Films, fables and friends looks at the development of Gulzar - the writer and director of films. Many might be aware of some of his iconic works Mausam and Aandhee. But not many know that he simultaneously looked after his daughter on the sets as well. This chapter also delves into the bond between him and legendary musician RD Burman and Sanjeev Kumar. His first visit abroad to London is also discussed where he has a serendipitous encounter with a long-lost neighbour from Delhi.

‘I am, because he is...’ is an endearing account of Gulzar, the father. The author beautifully elaborates on how, despite her parents having separated, they never made her feel that void. Gulzar ensured that she was surrounded by family and friends, doted on her, collecting her little scribbles, never admonishing her for ruining the walls of the house with them, and their exchanging letters and life advice. This chapter also has an interesting anecdote on why the writer kept rozas during Ramzan for a long period of his life.

‘Moondrops on celluloid’ is about Gulzar starting his own production company but then realizing that being good at the number-crunching game is essential in film business as well. It also shows Gulzar as a prolific and tireless writer, and how he values this aspect more than any other hat he may have donned in films. His desire to capture the life of poet Mirza Ghalib also culminated in the making of the serial Mirza Ghalib.

The poet and director comes to the fore in ‘Woh jo shaayar tha’, showing his trysts with commercial success with films like Maachis. The simple yet intricate way in which he organized his daughter’s wedding and also encouraged her with film-making brings tears to the eyes. This chapter also mentions the adorable bond between Gulzar and their pet dog. Pali-how destiny brought them together even though the pet was once stolen.

"As the page turns" shows how when Gulzar became disillusioned with the way his work in Hu Tu Tu was distorted behind his hack, he used that dent in his creative spirit as an impetus to contribute to many other endeavours, including writing songs for over 50 films in 15 years. When he says, "There are more than a hundred books in my head!" he means it.

Family comes full circle in the next chapter ‘Creating circles, completing circles’ with the writer becoming a grandfather.

Déjà vu shows Gulzar soaking in the success of his daughter’s brilliant filmmaking. including in Raazi, learning to adapt to technology under the tutelage of his grandson and his strict routine to this day. As Raakhee is said to have told him once. "Agar aap shaayar na hote, toh bade hi ordinary hote!" (If you weren’t a poet, you would be a very ordinary man!)

The epilogue is Gulzar’s feelings towards this heartfelt tribute by his daughter.

When one first lays eyes on the book, "Because He Is", it may come across as a glossy coffee-table book, written by a daughter for her father. But the book actually holds a mirror to the life of a magician of words and offers a sneak peek into the events that shaped the writer we all have come to know of and love as Gulzar." With Gulzar having been awarded the prestigious Jnanpith Award for literature, the curiosity to know the litterateur and writer Gulzar climbs, for many know him for his lyrics in Hindi films. This book sheds light on the multi-faceted persona that he has.

When it comes to reading books these days, it is no secret that books vie for our attention and often end up on the losing side, compared to screens. But a biography or an autobiography retains that charm. When you read about someone's life- their origins, their childhood, their struggles personal and/or professional, their wins and losses it is like finding an anchor in an untethered sea, finding meaning in madness, taking solace in the fact that it is not just us, everyone has their share of struggles.

The book has befitting ending lines by Gulzar himself (an excerpt) –

"Woh kuchh toh hai jo ubalta rehta hai mere andar
Woh kuchh toh hai jo pighalta rehta hai mere andar
Jo qatra qatra pighalta hai aur main koagazon par sambhalta hoon!"

(There is something that keeps boiling within me
There is something that keeps melting within me
That bit by bit that melts and I save it in papers!)

LEGAL JOTTING

“

“Political differences in a democratic polity have to be worked upon and sorted out with a sense of sobriety and maturity. The dialogue between constitutional functionaries cannot degenerate into a race to the bottom.”

Hon’ble Dr. Justice D.Y. Chandrachud
Chief Justice, Supreme Court of India
State of Punjab v. Principal Secretary to the Governor of Punjab
(2024) 1 SCC 407

”

SUPREME COURT

1. **Reliance Infrastructure Ltd. v. State of Goa, (2024) 1 SCC 479**

Arbitration & Conciliation Act, 1999 - Section 34 – Factual Aspects cannot be re-assessed

The settled legal position in an application under Section 34 is that the court is not expected to act as an appellate court and re-appreciate the evidence. The scope of interference would be limited to grounds provided under Section 34 of the Arbitration Act. The interference would be so warranted when the award is in violation of “public policy of India”, which has been held to mean “the fundamental policy of Indian law”. A judicial intervention on account of interfering on the merits of the award would not be permissible. However, the principles of natural justice as contained in Section 18 and 34(2)(a)(iii) of the Arbitration Act would continue to be the grounds of challenge of an award. The ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the “most basic notions of morality or justice”. It is only such arbitral awards that shock the conscience of the court, that can be set aside on the said ground. An award would be set aside on the ground of patent illegality appearing on the face of the award and as such, which goes to the roots of the matter. However, an illegality with regard to a mere erroneous application of law would not be a ground for interference. Equally, re-appreciation of evidence would not be permissible on the ground of patent illegality appearing on the face of the award.

This is an area of serious concern and “a disturbing tendency” of the Courts in setting aside arbitral awards after dissecting and re-assessing factual aspects. Jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed

2. Mohit Singhal v. State of Uttrakhand, (2024) 1 SCC 417

Section 107 & 306 IPC – Ingredients of Abetment to commit suicide - Explained

Section 306 of the IPC makes abetment to commit suicide as an offence. The question in this case is whether the appellants instigated the deceased to commit suicide. To attract the first clause of Section 107 IPC, there must be instigation in some form on the part of the accused to cause the deceased to commit suicide. Hence, the accused must have mens rea to instigate the deceased to commit suicide. The act of instigation must be of such intensity that it is intended to push the deceased to such a position under which he or she has no choice but to commit suicide. Such instigation must be in close proximity to the act of committing suicide. In the present case, taking the complaint of the third respondent and the contents of the suicide note as correct, it is impossible to conclude that the appellants instigated the deceased to commit suicide by demanding the payment of the amount borrowed by the third respondent from her husband by using abusive language and by assaulting him by a belt for that purpose. The said incident allegedly happened more than two weeks before the date of suicide. There is no allegation that any act was done by the appellants in the close proximity to the date of suicide. By no stretch of the imagination, the alleged acts of the appellants can amount to instigation to commit suicide.

3. Siby Thomas v. M/s. Somany Ceramics Ltd., (2024) 1 SCC 348

Section 138 NI Act – Vicarious Liability – Ingredients of Section 141(1) to be strictly satisfied.

Primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable. Vicarious liability would be attracted only when the ingredients of Section 141(1) of the NI Act, are satisfied. It would also reveal that merely because somebody is managing the affairs of the company, per se, he would not become in charge of the conduct of the business of the company or the person responsible to the company for the conduct of the business of the company. A bare perusal of Section 141(1) of the NI Act, would reveal that only that person who, at the time the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company alone shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished.

The averments in the complaint shall be sufficient to satisfy the mandatory requirements under Section 141(1) of the NI Act. If the averments in the complaint are insufficient to attract the provisions under Section 141(1) of the NI Act, no vicarious liability can be fastened on the accused.

ALLAHABAD HIGH COURT

1. Ram Kumar Mishra v. State Of U.P. and Anr., 2024 (1) ADJ 83

D.V. Act – Section 125 Cr.P.C. - Maintenance – No restriction for wife seeking allowance from her husband on the ground that she has already obtained permanent alimony on the basis of a compromise in a proceeding

Opposite Party No. 2 was married with the revisionist in year 2001 according to Hindu Rites and Rituals. After sometime the relationship between the husband and wife became strained and incompatible and opposite party no.2 refused to join the company of the revisionist and started matrimonial litigation. The Opposite Party No. 2 filed a case under Section 125 Cr.P.C in the Court of Judicial Magistrate, Pilibhit for maintenance. Thereafter the court below in the year 2009 recorded her statement in which she stated that she has received total maintenance amount in one time as Rs.1,50,000/- and due to compromise with the husband she did not want to proceed this case against the revisionist any further.

Thereafter the opposite party no.2 filed a case under Section 23 of Protection of Women From Domestic Violence Act in the year 2017. The complaint case under Section 23 of D.V. Act was allowed with the direction to the revisionist to pay Rs.3,000/- per month as maintenance allowance. The appeal preferred before the District Judge against the order came to be dismissed on merits.

The revisionist argued that opposite party no. 2 is residing separately from the revisionist since 28.07.2009 after making final settlement on the condition to take permanent of alimony of Rs. 1,50,000/- as such, opposite party no. 2 has no right to seek relief under the Act therefore the impugned orders are unreasoned and illegal and the same are liable to be set aside on the sole ground.

On overall evaluation and deeper scrutiny of the records, this Court finds substance in the submissions made by the learned counsel for opposite party no.2 that no provisions of law like Hindu Marriage Act or Protection of Women from Domestic Violence Act restrict any wife to file an application seeking maintenance allowance from her husband on the ground that she has already obtained permanent alimony on the basis of a compromise in a proceedings initiated by her under the provisions of Section 125 of Code of Criminal Procedure.

2. Anil Yadav v. Smt. Puttul Devi, 2024 (1) ADJ 199

Every order passed by a District Judge during the course of probate proceedings - Not amenable to an appeal before the High Court under Section 299.

The question which arose for consideration was to whether every order made by a District Judge during the course of probate proceedings, would be amenable to an appeal before the High Court under Section 299.

There is no dispute with regard to the fact that the Succession Act, 1925 is a special Act and Section 299 of the said Act provides a forum of appeal against every order made by a District Judge by virtue of the powers thereby conferred upon him, before the High Court, in accordance with provisions of the Code, as applicable to appeals.

In a case where a probate proceeding is registered, and is treated as a suit after it becomes contentious and the Court is required to proceed for settlement of issues, a question would arise as to what would be the procedure to be followed. The Act being silent on the procedure to be followed, as of necessity, and in view of Section 268, the provisions under Order XIV of the Code with regard to settlement of issues, would become applicable.

A close reading of the language under Section 299 would indicate that the word 'every' does not govern the word 'order', but it qualifies the entire phrase 'order made by a District Judge by virtue of the powers hereby conferred upon him'. The consequence that follows would be that not every order made by a District Judge would be amenable to appeal under Section 299;

only an order made by a District Judge by virtue of the powers conferred by the provisions of the Act shall be subject to an appeal under the section.

For testing the appealability of an order under Section 299, the order in question must be traceable to a provision under the Act. Only in a situation where the order can be traced to a specific provision under the Act, it would be held to be appealable under the section. In other words, there must be a provision under the Act conferring power to make the order; otherwise the said order would not be appealable.

3. Asim @ Hassim v. State Of U.P. And Anr., 2024 (1) ADJ 125 (DB)

U.P. Gangster Act, 1986 - Provision of Act are stringent - Required to be interpreted strictly so as to prevent their misuse on the part of State authorities

From the provisions of Section 2 (b), 2 (c) and 3 and other provisions of U.P. Gangster Act, 1986 , it is clear that a person can be prosecuted under Section 3 of Gangsters Act only after he falls under the definition of "gangster" being part of the gang which is involved in anti-social activities as mentioned in Section 2(b)(i) to (xxv) of the Act. The purpose of making special provisions of Gangsters Act for dealing with gangsters and for preventing their anti-social activities. The provision of this Act are stringent and are therefore required to be interpreted strictly so as to prevent their misuse on the part of State authorities. Hon'ble Supreme Court, in the case of Gulam Mustafa vs. State of Karnataka; 2023 SCC Online SC 603, has observed that the officers, who institute an FIR, based on any complaint, are duty-bound to be vigilant before invoking any provision of a very stringent statute, like the SC/ST Act, which imposes serious penal consequences on the concerned accused. The officer has to be satisfied that the provisions he seeks to invoke prima facie apply to the case at hand. The F.I.R. in the present case was registered u/s 3(1) Gangsters Act, without mentioning the corresponding provision, mentioning the anti-social activities in which the accused is involved and on the basis of which he was named as gangster. A person cannot be punished without specifying the offence committed by him which would justify his classification as a Gangster. Since the FIR is illegal being contrary to the provision of Gangsters Act by failing to mention the relevant section of the Act, it is hereby quashed.

4. Sanni Mishra @ Sanjayan Kumar Mishra v. State Of U.P. And 2 Others, 2024 (1) ADJ 231 (DB)

U.P. Gangster Act, 1986 - Rule 17 - While forwarding and approving the gang-chart - Competent authorities to apply independent mind - signing the pre-typed satisfaction prohibited

Rule 17 of the Gangster Rules, 2021 further provides that competent authorities, before forwarding the gang-chart must apply an independent mind to the information mentioned in the gang-chart as well as evidence annexed therewith. Rule 17(2) of the Gangster Rules, 2021 further provides that pre-printed rubber seal gang-chart should not be signed by the competent authorities because the same shall amount to not exercising independent mind.

The purpose of prohibiting the signing of pre-printed rubber seal under Rule 17(2) of the Gangster Rules, 2021 is to bind the competent authorities to apply independent mind by mentioning their satisfaction in clear words. Therefore, signing the pre-typed satisfaction will also be prohibited under Rule 17(2) of the Gangster Rules, 2021.

In the present case, all the competent authorities simply signed just below the printed proforma regarding their satisfaction. Therefore, it clearly violates Rule 17 of the Gangster Rules, 2021.

This court is also of the view that while forwarding and approving the gang-chart, it is the duty of the competent authorities to see whether gang-chart has been prepared as per the Gangster Rules, 2021 and all the formalities as required by the Gangster Rules, 2021 have been fulfilled. If from the record, it appears that competent authorities forwarded or approved the gang-chart without looking into the facts that the gang-chart was itself not prepared as per the Gangster Rules, 2021, then this fact will itself amount to non-application of independent mind on the part of competent authority.

In the present case, the date of filing the charge-sheet in the base case was not mentioned in the gang-chart though same is required as per Rule 8(3) of the Gangster Rules, 2021, even then Nodal Officer and Senior Superintendent of Police, Gorakhpur forwarded the gang-chart and District Magistrate, Gorakhpur also approved the gang-chart. This fact clearly establishes that while forwarding as well as approving the gang-chart, competent authorities have not applied independent mind. Therefore, there is a clear violation of Rules 16 and 17 of the Gangster Rules, 2021.

Above facts also show that District Magistrate Gorakhpur while approving the gang-chart did not hold any discussion in a joint meeting with SSP Gorakhpur as required by Rule 5(3)(a) of the Gangster Rules, 2021, though the same is mandatory before approving the gang-chart. Therefore there is a clear violation of Rule 5(3) of the Gangster Rules, 2021.

In view of the above, this court lays down following directions for preparation of gang-chart before lodging FIR under the Gangster Act, 1986:

- i) Date of filing of charge sheet under base case must be mentioned in Column-6 of the gang-chart except in cases under Rule 22(2) of the Gangster Rules, 2021.
- ii) While forwarding or approving the gang-chart, competent authorities must record their required satisfaction by writing in clear words, not by signing the printed/typed satisfaction.
- iii) There must be material available for the perusal of the court which shows that the District Magistrate before approving the gang-chart had conducted a joint meeting with the District Police Chief and held a due discussion for invocation of the Gangster Act, 1986.

By –

Anurag Panwar,
Additional Director (Research), JTRI

ABOUT US

Judicial Training and Research Institute, U.P., Lucknow

The Institute was established by the Government of Uttar Pradesh in pursuance of a decision taken at All India Conference of the Chief Justices of High Courts in August/September, 1985 in New Delhi. This landmark conference which was also attended by the Chief Ministers and the Law Ministers of the States, mooted the idea of providing institutional induction and in-service training to the 'judges of the district courts in the country. The initiative of the state government after being readily agreed to by the Hon'ble High Court of Judicature at Allahabad, saw the Institute coming into existence and becoming functional on 25th April, 1987 with Hon'ble Mr. Justice K.N. Goyal as its first honorary Director. Sri Divesh Chandra Samant is its present Director.

The institute has been established with the overall vision of ensuring ceaseless upgradation of skills and appropriate attitudinal reorientation through induction level and in-service training in consonance with the imperatives of national and global environment.

In the training programmes, case studies, discussion sessions, exercises and activity based studies; book review and case law presentation are used extensively. To make the discussion effective, background material is given before discussion. This helps the trainees to develop analytical skills and decision-making power in addition to enable them in writing orders/judgments.

Judicial reasoning, indeed, is both an art and a science to be cultivated by every judge through study, reflection and hard work. The institute has a beautiful and big library housed into two spacious air-conditioned halls in the 'Training Wing' with one being dedicated to law books, law digest, encyclopedia, commentaries and general books including classics, biographies, fictions (Hindi and English both) memoirs, letters, speeches, words and phrases, books of philosophy, religion, history, politics, computer, management, personality development etc. and the other wing is exclusively meant for storing Journals. This centre of knowledge has more than **25000 books**. The institute has been subscribing **15 Law Journals** of varied nature, **seven newspapers** and **four magazines**. The library has All England Law Reports from 1936 to 2014, Halsbury's Laws of India from 2004 to 2008, Halsbury's Laws of England from 1973 to 1987 and Corpus Juris Secundum from Vol. 1 to 101A, Canadian Law reports, American Law Reports Annotated and Law Commission of India Reports. The institute is working on to develop e-knowledge hub and e-library in near future.