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Witnesses can be re-examined only when interest of justice is affected by not doing so

Hearing an application made under Section 482 CrPC against an order under Section 311 CrPC for recalling witnesses already examined and re-examined, the Madhya Pradesh High Court observed that a plain reading of the Section 311 CrPC shows that the expression 'any' has been used as a prefix to 'court', 'inquiry', 'trial', 'other proceeding', 'person as a witness', 'person in attendance though not summoned as a witness', and 'person already examined'. It simply means all that is required to satisfy the court in relation to such evidence that it appears to the court to be essential for the just decision of the case.

A plea was also taken by the applicant under Section 138 of the Evidence Act which talks about the order of examination of witnesses and re-examination. The Court further observed that Section 138 of the Evidence Act provides for the order of examination of witnesses in the Court. So, the re-examination will be conducted as per the order prescribed under Section 138 at the desire of 'any' person referred to in Section 311 CrPC and most importantly, at the satisfaction of the Court suggested by Section 311 CrPC that is, paramount for the just decision of the case. In all, the Court meant to convey that such power of allowing re-examination must be used sparingly as well as judiciously with utmost care and caution, only with the purpose of finding the truth or obtaining proper proof of such facts.

Magistrate cannot suo motu direct further investigation, once cognizance has been taken

The Supreme Court in a recent Judgment held that though the Magistrate has the power to direct investigation under Section 156(3) CrPC at the pre-cognizance stage even after a charge-sheet or a closure report is submitted, once cognizance is taken and the accused person appears pursuant thereto, he would be bereft of any competence to direct further investigation either suo motu or acting on the request or prayer of the complainant/informant. The direction for investigation by the Magistrate under Section 202 CrPC, while dealing with a complaint, though is at a post-cognizance stage, it is in the nature of an inquiry to derive satisfaction as to whether the proceedings initiated ought to be furthered or not. Such a direction for investigation is not in the

worded accordingly to accommodate and ordain the same having regard to the backdrop of the incorporation thereof.

Section 124(1)(i) of Trademarks Act, 1999 not only restricted to cover cases instituted before filing of the suit but even cases instituted in IPAB, till civil court applies its mind

The Punjab and Haryana High Court in a recent judgment ruled on the interpretation and operation of Section 124 of the Trademarks Act, 1999, which provides for *stay of proceedings where the validity of registration of the trade mark is questioned, etc.* The Court observed that an interpretation of Section 124(1)(i) should not be restricted to only cover cases instituted before the institution of the suit but even cases instituted in the IPAB till the precise moment when the civil court applies its mind to the dispute for the first time. The reasoning behind the same can be attributed to the acts which might precede the first time the court takes cognizance, namely (i) service upon defendants (ii) causing an appearance (iii) filing of the written statement. In the present case by the time the trial court took cognizance of the dispute for the first time, the IPAB had already seized the matter. Resultantly, the plea of the defendant for invalidity of registration was still alive.

Companies (Incorporation) Amendment Rules, 2017

The Ministry of Corporate Affairs has notified the Companies (Incorporation) Amendment Rules, 2017, effective from 30.01.2017. Rule 18 of the Companies (Incorporation) Rules, 2014 has been substituted for the following ‘*The Certificate of Incorporation shall be issued by the Registrar in Form No.INC-11 and the Certificate of Incorporation shall mention permanent account number of the company where if it is issued by the Income-tax Department.*’ Form INC-11 has been amended accordingly.

Family Courts not to have jurisdiction over deciding custody of minor children who are living abroad ordinarily

The Karnataka High Court while hearing the appeal of a mother who is seeking the custody of her minor children under the prevailing provisions of the Guardians and Wards Act 1890, agreed on the point made earlier by the Family Court, Belgaum that the respective court did not have jurisdiction to entertain the present case and that ordinary residence as mentioned in Section 9 of the Guardianship and Adoption Act does not include the temporary residence of children.

The Family Court at Belgaum had rejected the plea of the appellant because her children were not ordinarily residents of that place. They used to live with their father at Doha Qatar. Following this rejected petition, the appellant appealed to the High Court where the Court considered the fact of the children’s residence and found no infirmity or illegality in the said order. The Court observed, “On reading of the Section, it can be noticed that the application must be presented before the Court having jurisdiction in the place where the minor ordinarily resides. The word ‘ordinarily’ has got such a meaning that it rules out temporary residence of the children.”

For any clarification or delineation, feel free to contact us.



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