



सत्यमेव जयते

# UTTARAKHAND COURT NEWS

(A Quarterly News letter)

Vol-II Issue No-4 (October - December, 2011)



## High Court of Uttarakhand, Nainital

### EDITORIAL BOARD

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

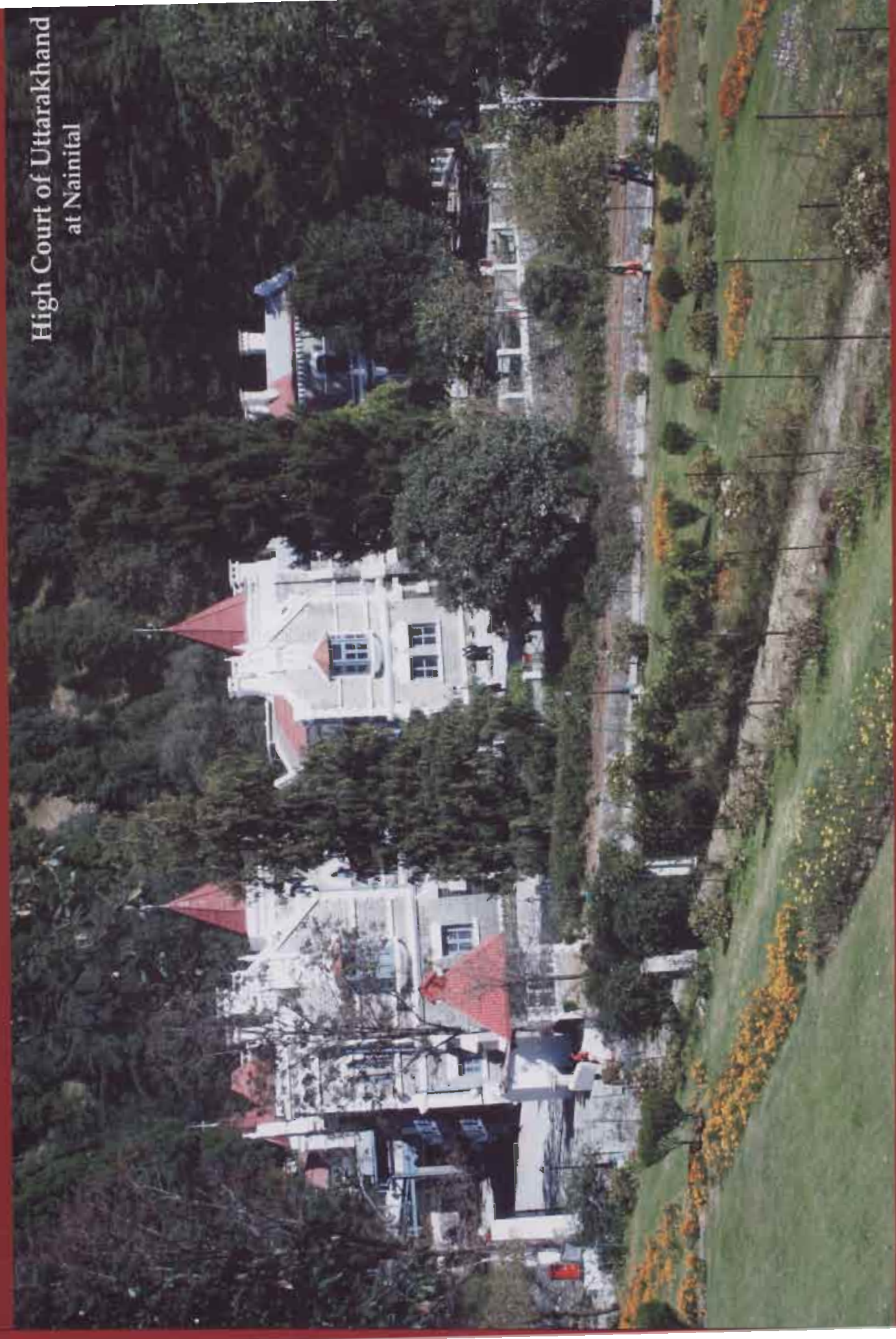
### COMPILED BY

Ram Singh, Registrar General, High Court of Uttarakhand

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High Court of Uttarakhand  
at Nainital



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**UTTARAKHAND HIGH COURT****LIST OF JUDGES (As on 31<sup>st</sup> December, 2011)**

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

\* \* \* \* \*



Barin Ghosh



CHIEF JUSTICE  
HIGH COURT OF UTTARAKHAND

Nainital – 263001  
December 30, 2011

### MESSAGE

We are at the end of 2011, during which year we have achieved a little but could not achieve of which we could boast. While pendency in the District Courts has come down during the year, pendency in the High Court has increased by about 1,000 main cases. In the High Court, there are still more than 3,000 main cases pending, which were instituted before 31<sup>st</sup> of December, 2005. Despite all out efforts, those could not be attended to. The principal reason for increase in the arrears, appears to be increase in institution, inasmuch as disposal rate is better than the previous year.

Having regard to the experience earned during the year 2011, little changes are envisaged for the year 2012, so as to ensure that at the end of 2012 no case instituted until 31<sup>st</sup> December, 2006 is pending in the High Court. Similar efforts are also being made to ensure that by the end of 2012, the cases instituted in the subordinate courts upto 31<sup>st</sup> December, 2006 are also disposed of.

In order to achieve the said target, all out co-operation is required from all quarters. An earnest request in that regard is being solicited.

Good wishes and Happy New Year 2012.

(Barin Ghosh)

**TRANSFERS, PROMOTIONS & APPOINTMENTS OF JUDICIAL OFFICERS****(in the quarter ending 31<sup>st</sup> December, 2011)**

SL.NO.	Name of the Judicial Officer	From	To	Date of Order
1.	Sri Ravi Prakash, 4 <sup>th</sup> Addl. Civil Judge (Jr. Div.)	Hardwar	Civil Judge (Jr. Div.), Laksar, Distt. Hardwar	02-11-2011
2.	Sri Dhananjay Chaturvedi, Additional Registrar	High Court of Uttarakhand, Nainital	6 <sup>th</sup> Addl. District & Sessions Judge, Hardwar	02-11-2011
3.	Sri Srikant Pandey, Addl. District & Sessions Judge/ 1 <sup>st</sup> F.T.C.	Roorkee	Addl. District & Sessions Judge/ 1 <sup>st</sup> F.T.C., Hardwar	02-11-2011
4.	Sri Ajay Chaudhary, Chief Judicial Magistrate	Uttarkashi	Addl. District & Sessions Judge/F.T.C., Almora	02-11-2011
5.	Sri Subir Kumar, Chief Judicial Magistrate	Tehri Garhwal	Addl. District & Sessions Judge/ 1 <sup>st</sup> F.T.C., Roorkee	02-11-2011
6.	Ms. Neetu Joshi, Civil Judge (Sr. Div.)	Champawat	Addl. District & Sessions Judge, Vikasnagar, Distt. Dehradun	02-11-2011
7.	Sri Bindhyachal Singh, Chief Judicial Magistrate	Almora	Addl. District & Sessions Judge, Khatima, Udham Singh Nagar	02-11-2011
8.	Smt. Rama Pandey, Chief Judicial Magistrate	Chamoli	Addl. District & Sessions Judge, Kotdwar, Distt. Pauri Garhwal	02-11-2011
9.	Sri Pankaj Tomar (Direct recruited H.J.S.)	-----	Addl. District & Sessions Judge/ 5 <sup>th</sup> F.T.C., Dehradun	02-11-2011
10.	Sri Sushil Tomar (Direct recruited H.J.S.)	-----	Addl. District & Sessions Judge/ 6 <sup>th</sup> F.T.C., Dehradun	02-11-2011
11.	Sri Manish Mishra, Chief Judicial Magistrate	Udham Singh Nagar	Addl. District & Sessions Judge, Tehri Garhwal	02-11-2011

12.	Smt. Neena Aggarwal, Civil Judge (Sr. Div.)	Roorkee	Addl. District & Sessions Judge/ 2 <sup>nd</sup> F.T.C., Udham Singh Nagar	02-11-2011
13.	Sri Brijendra Singh, Chief Judicial Magistrate	Champawat	Addl. District & Sessions Judge/ 3 <sup>rd</sup> F.T.C., Nainital	02-11-2011
14.	Sri Kanwar Amninder Singh, Chief Judicial Magistrate	Dehradun	Additional Registrar, High Court of Uttarakhand, Nainital	02-11-2011
15.	Sri Bharat Bhushan Pandey, Civil Judge (Sr. Div.)	Udham Singh Nagar	Addl. District & Sessions Judge/F.T.C., Pauri Garhwal	02-11-2011
16.	Sri Arvind Kumar, Civil Judge (Sr. Div.)	Almora	Addl. District & Sessions Judge/ 3 <sup>rd</sup> F.T.C., Udham Singh Nagar	02-11-2011
17.	Sri Rajeev Kumar, Addl. Chief Judicial Magistrate	Kashipur	Chief Judicial Magistrate, Uttarkashi	02-11-2011
18.	Sri Mohd. Sultan, Civil Judge (Sr. Div.)	Dehradun	Chief Judicial Magistrate, Almora	02-11-2011
19.	Sri Nandan Singh, Civil Judge (Sr. Div.)	Kashipur	Chief Judicial Magistrate, Tehri Garhwal	02-11-2011
20.	Sri Rajoo Kumar Srivastava, Addl. Chief Judicial Magistrate	Hardwar	Chief Judicial Magistrate, Champawat	02-11-2011
21.	Sri Ashutosh Kumar Mishra, 3 <sup>rd</sup> Addl. Civil Judge (Sr. Div.)	Udham Singh Nagar	Addl. Chief Judicial Magistrate, Kashipur	02-11-2011
22.	Sri Manish Kumar Pandey, Addl. Chief Judicial Magistrate (Railway)	Haldwani	Chief Judicial Magistrate, Chamoli	02-11-2011
23.	Smt. Sujata Singh, Addl. District & Sessions Judge/F.T.C.	Tehri Garhwal	Addl. Judge, Family Court, Roorkee	04-11-2011
24.	Sri Rahul Garg (Direct recruited H.J.S.)	-----	Addl. District & Sessions Judge/ 4 <sup>th</sup> F.T.C., Hardwar	14-11-2011

25.	Sri Ram Singh, District & Sessions Judge	Hardwar	Registrar General, High Court of Uttarakhand, Nainital	18-11-2011
26.	Sri Krishan Datt Bhatt, Registrar General	High Court of Uttarakhand, Nainital	District & Sessions Judge, Hardwar	18-11-2011
27.	Ms. Kahkasha Khan, 3 <sup>rd</sup> Addl. District & Sessions Judge	Udham Singh Nagar	Addl. District & Sessions Judge, Haldwani, Distt. Nainital	30-11-2011
28.	Sri Mithilesh Jha, Civil Judge (Jr. Div.)	Bageshwar	Civil Judge (Sr. Div.), Almora	23-12-2011
29.	Sri Dharmendra Singh Adhikari, Joint Secretary (Law), Govt. of Uttarakhand	Dehradun	Joint Secretary (Law) (in the cadre of Civil Judge(Sr. Div.)	23-12-2011
39.	Ms. Anuradha Garg, Special Judicial Magistrate (C.B.I.)	Dehradun	1 <sup>st</sup> Addl. Civil Judge (Sr. Div.), Dehradun	23-12-2011
31.	Sri Shiva kant Dwivedi, Judicial Magistrate-I	Dehradun	2 <sup>nd</sup> Addl. Civil Judge (Sr. Div.), Dehradun	23-12-2011
32.	Sri Vivek Dwivedi, Civil Judge (Jr. Div.)	Ranikhet	Addl. Chief Judicial Magistrate, Kashipur	23-12-2011
33.	Smt. Geeta Chauhan, Civil Judge (Jr. Div.)	Tanakpur	Civil Judge (Sr. Div.), Champawat	23-12-2011
34.	Ms. Meena Deopa, Civil Judge (Jr. Div.)	Roorkee	Addl. Civil Judge (Sr. Div.), Roorkee	23-12-2011
35.	Ms. Rajani Shukla, Civil Judge (Jr. Div.)	Nainital	Civil Judge (Sr. Div.)/F.T.C., Haldwani	23-12-2011
36.	Sri Vinod Kumar Burman, 2 <sup>nd</sup> Addl. Civil Judge (Jr. Div.)	Udham Singh Nagar	Civil Judge (Jr. Div.), Ranikhet	23-12-2011
37.	Sri Rajeev Dhavan, 3 <sup>rd</sup> Addl. Civil Judge (Jr. Div.)	Kashipur	Civil Judge (Jr. Div.), Roorkee	23-12-2011
38.	Sri Mohd. Yakub, 2 <sup>nd</sup> Addl. Civil Judge (Jr. Div.)	Haldwani	Civil Judge (Jr. Div.), Tanakpur	23-12-2011

\* \* \* \* \*



## INSTITUTION, DISPOSAL AND PENDENCY OF CASES

➤ **HIGH COURT OF UTTARAKHAND (from 01.10.2011 to 31.12.2011)**

<i>Institution</i> (01.10.2011 to 31.12.2011)						<i>Pendency</i> (At the end of 30.09.2011)		
						Civil Cases	Criminal Cases	Total Pendency
						<b>13035</b>	<b>6339</b>	<b>19374</b>
<i>Institution</i> (01.10.2011 to 31.12.2011)			<i>Disposal</i> (01.10.2011 to 31.12.2011)			<i>Pendency</i> (At the end of 31.12.2011)		
Civil Cases	Criminal Cases	Total Institution	Civil Cases	Criminal Cases	Total Disposal	Civil Cases	Criminal Cases	Total Pendency at the end of 31.12.11
<b>2085</b>	<b>1283</b>	<b>3368</b>	<b>2011</b>	<b>1468</b>	<b>3479</b>	<b>13109</b>	<b>6154</b>	<b>19263</b>

\* \* \* \* \*

➤ District Courts (From 01.10.2011 to 31.12.2011)

SL. No	Name of the District	Civil Cases				Criminal Cases				Total Pendency at the end of 31.12.11
		Opening Balance as on 01.10.11	Institution from 01.10.11 to 31.12.11	Disposal from 01.10.11 to 31.12.11	Pendency at the end of 31.12.11	Opening Balance as on 01.10.11	Institution from 01.10.11 to 31.12.11	Disposal from 01.10.11 to 31.12.11	Pendency at the end of 31.12.11	
1.	Almora	715	146	142	719	1236	520	445	1311	2030
2.	Bageshwar	117	45	35	127	237	181	175	243	370
3.	Chamoli	396	66	63	399	841	295	187	949	1348
4.	Champawat	138	47	33	152	710	370	334	746	898
5.	Dehradun	12860	3206	3107	12959	46417	14457	10479	50395	63354
6.	Haridwar	8029	1189	1163	8055	22988	8763	8647	23104	31159
7.	Nainital	2829	758	746	2841	9309	2225	2826	8708	11549
8.	Pauri Garhwal	1369	149	177	1341	2219	655	938	1936	3277
9.	Pithoragarh	283	79	79	283	731	352	380	703	986
10.	Rudraprayag	168	56	35	189	406	237	259	384	573
11.	Tehri Garhwal	509	188	199	498	1164	498	479	1183	1681
12.	U.S. Nagar	4182	2022	1928	4276	23764	7527	8065	23226	27502
13.	Uttarkashi	365	75	93	347	629	435	404	660	1007
	<b>Total</b>	<b>31960</b>	<b>8026</b>	<b>7800</b>	<b>32186</b>	<b>110651</b>	<b>36515</b>	<b>33618</b>	<b>113548</b>	<b>145734</b>

\* \* \* \* \*

## Circular Letters/ Notifications

(issued in the quarter ending 31<sup>st</sup> December, 2011)

### NOTIFICATION

• No. 220/UHC/Admin.A/2011

Dated: October 21, 2011

In exercise of powers conferred by Article 227(2) of the Constitution of India, the High Court of Uttarakhand, Nainital with the approval of the Governor of Uttarakhand, is pleased to make the following amendments in General Rules (Civil), 1957 and General Rules (Criminal), 1977.

#### AMENDMENTS IN GENERAL RULES (CIVIL), 1957

- (i) In Rule 41 G.R. (Civil) the word **“Urdu”** written after the word ‘Hindi’, and before the word ‘or English’ shall be omitted.
- (ii) In Rule 105-A G.R. (Civil) in sub-clause (a), the word **“four rupees”** written after the words ‘corresponding rank’ and before the words ‘a day’ shall be substituted by the words **“Rs. Thirty to Rs. Fifty”** and after the words ‘a day’, the words **“as the court may direct”** shall be added.
- (iii) In Rule 105-A G.R. (Civil) in sub-clause (b), the words **“six rupees to twelve rupees”** written after the words ‘corresponding rank’ and before the words ‘a day’ shall be substituted by the words **“Rs. forty to Rs. sixty”**.
- (iv) In Rule 105-A G.R. (Civil) in sub-clause (c), the word **“eight rupees to twenty four rupees”** written after the words ‘corresponding rank from’ and before the words ‘a day’, shall be substituted by the words **“Rs. fifty to Rs. eighty”**.
- (v) In Rule 131 the word **“eight”** written after the words ‘within the’ and before the word ‘Kilometer’, shall be substituted by the word **“fifty”**.
- (vi) In Rule 401 (4) G.R. (Civil) **in column 2** the words **“Prosecution/Complainant”** be added after the word **“Plaintiff”**.
- (vii) In Rule 401 (4) G.R. (Civil) **in column 3** the word **“Defence”** be added after the word **“Defendant”**.

- (viii) In Rule 401 (4) G.R. (Civil) after column 4, a new column no. 5 with the heading "P.S." be inserted.
- (ix) In Rule 401 (4) G.R. (Civil) after new column no. 5, a new column no. 6 with the heading "Sections" be inserted.
- (x) In Rule 401 (4) G.R. (Civil) existing Columns no. 5, 6, 7 & 8 be renumbered as 7, 8, 9 & 10.

**AMENDMENTS IN GENERAL RULES (CRIMINAL), 1977**

- (i) Rule 5-B General Rules (Criminal) be modified as follows:

"A court diary shall be maintained in the Form given below Rule 401 (4) General Rules (Civil) by the Presiding Officer doing criminal work, in which last two columns shall be filled up in his own handwriting."

- (ii) Form given below Rule 5-B General Rules (Criminal) shall be deleted.

- (iii) In Rule 62 General Rules (Criminal), in the heading, the word "**Civil Surgeon, Lucknow**" written after the words 'expert opinion of', shall be substituted by the word "**Chief Medical Officer, Dehradun**".

- (iv) In Rule 62 General Rules (Criminal), in the first para the word "**C.M.O., Lucknow**" written after the word 'opinion to the' and before the word 'in his capacity', shall be substituted by the word "**Chief Medical Officer, Dehradun**".

- (v) In Rule 62 General Rules (Criminal), the word "Gandhi Memorial and Associated Hospital, Lucknow" written after the words 'X-ray department of the', shall be substituted by the word "Doon Hospital, Dehradun"

**These amendments will come into force with immediate effect.**

By Order of the Court

Sd/-

**Registrar General.**

• C.L. No. 10/UHC/Admin.A/2011

Dated: November 18, 2011

**Subject: Amendment in Circular letter No. 61/Admn. (A) dated 06.09.1989**

With regard to above-mentioned Circular Letter regarding furnishing information towards the purchase of movable property, the amount of Rs. 10,000.00 contained in the Circular Letter is replaced by Rs. 50,000.00.

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

**Registrar General**

\* \* \* \* \*

## Some Recent Judgments of Uttarakhand High Court

### FULL BENCH JUDGMENTS:

1. On 21<sup>st</sup> December, 2011, a Full Bench, in *Uttarakhand Van Vikash Nigam and another Vs. Suresh Chandra Auli* (Special Appeal No. 7 of 2011), examined the question, whether the dependants of such daily wage employees who have though put in long years of service, are entitled for compassionate appointment under the Dying in Harness Rules ? The Bench observed that dependants of a daily wage employees are not covered under the definition of a "Government Servant" as defined under Section 2(a)(iii) of the Dying in Harness Rules. Hence, they are not liable to be given employment on compassionate ground under the Rules, irrespective of the numbers of the years such an employee had put in service, prior to his death.

The Bench observed that for the purposes of Compassionate appointment under Dying in Harness Rules, a person who had put in three years continuous service though not regularly appointed, can be termed as Government Servant but rider is that such continuous service should be in regular vacancy in such employment and a regular vacancy is the one which arises within the cadre strength.

Further, on Compassionate appointments, the Bench observed that as the very name suggests these are appointments based on "sympathy", which is shown in a given contingency. While making such appointments on sympathetic grounds, the Courts cannot loose sight of the fact that where there is one person before the Court who may need a sympathetic view, yet there are many others who though are not before the Court yet are waiting in the long queue, seeking public employment and an unjust appointment to one would mean violating the rights of another, who may have a greater hardship than the petitioner.

With the above observation, the Full Bench dismissed the Special Appeal.

### DIVISION BENCH JUDGMENTS:

2. On 11<sup>th</sup> November, 2011, a Division Bench in *Ramesh Chilwal alias Bombayya Vs. State of Uttarakhand* (Criminal Appeal No. 15 of 2006), while dismissing the appeal of accused against the conviction and sentences recorded by the trial court, observed on evaluating the evidence led by the Prosecution that if certain discrepancies are there in the statement of witnesses, they are

natural. Every person looks at the thing in his own way. Every person has his own way of describing the things. The Intelligence Quotient (IQ) of every person is not the same. He replies to the question as per his own understanding. On witnessing an incident, some persons are stunned, some become speechless, some stand uprooted from the spot. There are no fixed set of rules of natural reaction. Life is stranger than fiction. The Court has to visualize the things according to the understanding of the witness. The Courts have great role to play in appreciating the evidence.

On a plea of enmity put by the defence, the Bench observed that it is true that enmity is a double edged weapon. One can commit crime out of the enmity and there is also a possibility that a person can be falsely implicated on the pretext of enmity.

The Bench further observed that when direct evidence is there and the murder has taken place in broad day light, the ocular version of the eyewitness is trustworthy and wholly reliable, the motive goes into the hind-sight.

On a plea of contradiction in ocular and medical evidence, the Bench observed that it is a settled principle of law that in case of contradiction in the ocular version and the medical evidence, the ocular version shall prevail unless and until the medical evidence does not completely rule out the oral testimony.

3. On 15<sup>th</sup> November, 2011, a Division Bench in *Arvind Kumar Vishnoi Vs. State of Uttarakhand* (Criminal Appeal No. 12 of 2002), while placing reliance on the judgment of Hon'ble Supreme Court in *State of U.P. Vs. Roop Singh*, 1955 SCC (Cri.) 403, observed that where there is a prompt FIR and witness is able to show cogent reasons for his presence near the scene of occurrence, his testimony cannot be disbelieved. In the instant case, occurrence has taken place on way to Bus Station in an open road, the Bench set-aside the contention of defence that two eyewitnesses are chance witnesses, rather termed them the most natural witnesses. The Bench observed whosoever is travelling on the road or standing thereby or waiting for the bus is a natural witness and not a chance witness.
4. On 15<sup>th</sup> November, 2011, a Division Bench in *Dr. Radhey Shyam Vs. State of Uttarakhand and others* (Writ Petition (S/B) No. 44 of 2010), while allowing the petition, set-aside the order of Director of Higher Education, Uttarakhand for withholding payment of salary to the petitioner on the ground that he is not a domicile of Uttarakhand, observed that Sub-Article (2) of Article

16 of the Constitution of India debars, amongst others, discrimination on the ground of residence in the matter of public employment. The Bench observed that it is now well settled by a large number of judgments rendered by the Hon'ble Supreme Court that there is no concept in India of domicile of a person in the State within the Union of India. A citizen of India is domicile in the territory of India.

### SINGLE BENCH JUDGMENTS:

5. On 11<sup>th</sup> October, 2011 a Single Judge Bench in *Pankaj Tomar Vs. State of Uttarakhand & another (Criminal Misc. App. No. 84 of 2007)*, while dismissing the contention of applicant that when the Magistrate recorded the finding of acquittal and dismissed the complaint in default, then second complaint with same set of facts and relating to same offence was not maintainable, observed that filing of the second complaint is barred only when the first one has resulted in conviction or acquittal or even discharge of the accused on merits. Merits can be judged only after the conclusion of the trial.
6. On 11<sup>th</sup> October, 2011, a Single Judge Bench in *Brij Mohan Vs. State of Uttarakhand & others (Criminal Misc. Application No.493 of 2007)*, while quashing the proceedings of trial against the applicant under Section 7/16 Prevention of Food Adulteration Act, 1954, placed reliance on the Full Bench Judgment of Hon'ble Apex Court rendered in case of *Dwarka Nath & Another v. The Municipal Corporation of Delhi* (Criminal Appeal No. 264 of 1968). In the said authority, Hon'ble Apex Court at paragraph 23 has observed as under:

“There is no definition of the expression “batch number” or “code number” either in the Act or the Rules. It is also admitted that even assuming that the batch or code number has to be given, there is no further obligation to specify in the label the date of packing and manufacture of the article of food or the period within which the article of food has to be utilized, used or consumed. In the absence of any obligation to give the particulars mentioned by us above, the public or the purchaser will not be able to find out even the freshness of the contents of a container. Therefore, it follows that merely giving an artificial batch number or code number will not be of any use to the public or to the purchaser. In view of all these circumstances we are of the opinion that rule 32(e) is beyond the rule making power even under Section 23(1)(d) of the Act. The appellants could not be convicted for any violation of clause (e) of rule 32 as the said provision as pointed out above, is invalid.”



7. On 12<sup>th</sup> October, 2011, a Single Judge Bench in *Rajani Kant Uniyal Vs. State of Uttarakhand and others* (Criminal Revision No. 38 of 2007), while dismissing the revision observed that “well founded proposition of law is that pendency of civil litigation by itself is not a ground for barring the launching of the criminal prosecution but it is also not always necessary that in every civil litigation there would be necessarily be an element of the criminal liability in the transaction of the sale and purchase. The Bench also observed that it is also well accepted cardinal principle that buyer should be aware at the time of making purchase, passing consideration and verifying the genuineness of the subject matter of sale.
8. On 19<sup>th</sup> October, 2011, a Single Judge Bench in *Lala Srimandar Das Jain and others Vs. 1<sup>st</sup> Additional Civil Judge, Dehradun and others*, examined the question, whether by non-substitution of the legal heirs of deceased appellants in appeal, the appeal would abate or survive? While reiterating the principle of law laid down by Hon’ble Apex Court in *Budh Ram and others Vs. Bansi and others* (2010 AIR SCW, page 5071), held that due to non-substitution of some of the appellants as mentioned in the application in question, the appeal is bound to abate in toto.

In the case of *Budh Ram*, Hon’ble the Apex Court has held as under:-

“The law on the issue stands crystallised to the effect that as to whether non-substitution of L.R.s of the defendants/respondents would abate the appeal in toto or only qua the deceased defendants/respondents, depend upon the facts and circumstances of an individual case. Where each one of the parties has an independent and distinct right of his own, not inter-dependent upon one or the other, nor the parties have conflicting interest inter se, the appeal may abate only qua the deceased respondent. However, in case, there is a possibility that the Court may pass a decree contradictory to the decree in favour of the deceased party, the appeal would abate in toto for the simple reason that the appeal is a continuity of suit and the law does not permit two contradictory decrees on the same subject-matter in the same suit. Thus, whether the judgment/decree passed in the proceedings vis-à-vis remaining parties would suffer the vice of being a contradictory or inconsistent decree is the relevant test”.

9. On 21<sup>st</sup> October, 2011, a Single Judge Bench in *State Vs. Jeet Singh and another* (Government Appeal No. 194 of 2001) (old Number 122 of 1998), while setting aside the finding of innocence of the accused persons as concluded by the trial court, throw light on some very important

aspects of Criminal Jurisprudence on appreciation of Evidence. Placing reliance on the judgment of Hon'ble Apex Court in *Ambika Prasad Vs. Delhi State* reported in 2000 AIR SC 718, the Bench reiterated that "It is known fact that independent persons are reluctant to be a witness or to assist the investigation. Reasons are not far to seek. Where even injured witnesses or the close relative of the deceased are under constant threat and they dare not depose truth before the Court, independent witnesses believe that their safety is not guaranteed. That belief cannot be said to be without any substance.

The Bench further reiterating the observation of Hon'ble Apex Court in *Himachal Pradesh Vs. Lekh Raj and another* reported in 1999(3) A.Cr.R 2754 that Criminal trial cannot be equated with a mock scene from a stunt film. The legal trial is conducted to ascertain the guilt or innocence of the accused arraigned. In arriving at a conclusion about the truth, the courts are required to adopt a rational approach and judge the evidence by its intrinsic worth and the animus of the witnesses. The hypertechnicalities or figment of imagination should not be allowed to divest the court of its responsibilities of sifting and weighing the evidence to arrive at the conclusion regarding the existence or otherwise of a particular circumstances keeping in view the peculiar facts of each case, the social position of the victim and the accused, the larger interests of the society particularly the law and order problem and degrading values of life inherent in the prevalent system. The realities of life have to be kept in mind while appreciating the evidence for arriving at the truth.

10. On 1<sup>st</sup> November, 2011, a Single Judge Bench in *Anand Singh Bisht and others Vs. State of Uttarakhand* (Criminal Miscellaneous Application No. 464 of 2007), while quashing the chargesheet files against the applicants under Section 3(1) of the U.P. Gangster and Anti Social Activities (Prevention) Act, held that the definition of 'gang' refers to indulgence in anti-social 'activities'. In the same manner, the definition of 'gangster' in Section 2(1) also uses the word 'activities'. The use of plural 'activities' clearly indicates that a single act of anti-social activity cannot turn a person into a gangster. The Bench observed that a person can be said to be the member belonging to a group called 'gangster' only when he is indulged in more than one anti-social activity, and not on the basis of single anti-social activity. As such, plurality of the anti-social activity is must.

11. On 3<sup>rd</sup> November, 2011, a Single Judge Bench in *Prem Singh Vs. State of Uttarakhand & another* (Criminal Revision no. 99 of 2007), while allowing the substitution application, observed that in the instant controversy, Prem Singh although was an accused in the trial before the Magistrate, but for the release of the seized logs of wood, he was the applicant while moving the application in pursuance of the directions issued by the Magistrate for the release of seized goods. As such, he stood on the analogous position vis-à-vis to the complainant. The Bench held that although there is no provision in the Cr.P.C., either for substitution or for continuance of the revision, at the death of revisionist, but after taking all the facts and circumstances into consideration, the revision can be heard. (Placed reliance on the authority of Hon'ble Supreme Court in *Pranab Kumar Mitra Vs. State of West Bengal and another*, AIR 1959 SC 144).
12. On 9<sup>th</sup> November, 2011, a Single Judge Bench in *Swami Sachidanand and others Vs. State of Uttarakhand and another* (Criminal Misc. Application No. 581 of 2007), while quashing the entire proceedings of criminal case pending in trial court, observed that the well-accepted position of law on taking cognizance on the protest petition is that, learned Magistrate, having received the final report from the police, has three options;
- (a) He can accept that final report, dropping the further proceedings in the matter, or
  - (b) He can analyze and appreciate the evidence collected by Investigating Officer and make up his mind to take cognizance in the matter, after finding sufficient reasons for taking cognizance, or
  - © If he has not done so and has considered the protest petition moved by the complainant then it is incumbent upon him to examine the complainant and his witnesses under Section 200 and 202 of Cr.P.C. and then he can take cognizance under Section 190(1)(a) Cr.P.C. after rejecting the final report.
13. On 11<sup>th</sup> November, 2011, a Single Judge Bench in *Ashutosh Pandey and others Vs. Smt. Anupama Pandey and others* (Criminal Misc. Application No. 950 of 2006), while interpreting the words "was required to be returned or accounted for", in Section 181(4) of Cr.P.C., observed that the construction of this phrase should be made to read it as a whole, alongwith the phrases, which have been used by the Legislature hitherto. The territorial jurisdiction by the complainant cannot be stretched to any place across the country/continent where he/she is settled. Under the

garb of this phrase, which has been used and relied upon by the learned counsel for respondent, the sub-section, as a whole, has to be read and its meaning and interpretation cannot be discerned in a utopian fashion, as to give liberty to the complainant to file the complaint at any place, asking her property to be returned where she is settled.

14. On 15<sup>th</sup> November, 2011, a Single Judge Bench in *Jasbir Singh Vs. State of Uttarakhand and another* (Criminal Misc. Application No. 428 of 2007), set-aside the contention of petitioner that complaint filed by the respondent under Negotiable Instrument Act is not maintainable as it does not disclose the date of issuance of notice under Section 138(b) of Negotiable Instrument Act and also the date of service of this notice. Placing reliance on the judgment of Hon'ble Supreme Court in the case of *C.C. Alavi Haji Vs. Palapetty Muhammed and another* reported in 2007(6)SCC 555, the Bench reiterated that when it is argued that no notice was sent or received, as envisaged under Section 138(b) of the Act, but the accused received copy of complaint with summons then it is incumbent upon him to make payment of the cheque within 15 days of the receipt of the summons and then submit to the Court for rejection of the complaint and in case, he did not do so, then accused cannot be permitted to contend that there was no proper service of notice.
15. On 2<sup>nd</sup> December, 2011, a Single Judge Bench in *Alok Mehrotra Vs. Government of NCT of Delhi, through The Secretary (Labour), Delhi and others* (Civil Revision No. 29 of 2009), while hearing a revision under Section 25 of the Provincial Small Cause Courts Act, placed reliance on the judgment of Hon'ble Supreme Court in case of *Booz Allen and Hamilton Inc. (2011) 5 Supreme Court Cases, 532* and observed that since suit for eviction of a tenant is action in rem, the approach of trial court that the matter of eviction is an arbitral dispute is not at all justified and directing the parties for arbitration is not sustainable in the eye of law.
16. On 2<sup>nd</sup> December, 2011, a Single Judge Bench in *Acharya Bal Krishna Vs. C.B.I. and another* (Criminal Writ Petition No. 632 of 2011), while granting stay on the arrest of the petitioner till filing of chargesheet, made observation on importance of Liberty and necessity of arrest as under:

“Liberty is a fundamental right guaranteed under the Constitution of India. Article 21 of the Constitution of India provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Arrest of a person is deprivation of his personal liberty. Arrest of a person causes a dent in the reputation of that person. Reputation is a part and parcel of the personal liberty guaranteed under Article 21 of the Constitution, but it does not mean that the person cannot be arrested in accordance with the provision of law.

Section 41 of the Code of Criminal Procedure provides that a person could be arrested by any police officer without an order from the Magistrate and without a warrant. Normally, arrest is part and parcel of the investigation which follows when a First Information Report is lodged. When an investigation begins, an Investigating Officer is empowered to make an enquiry and, in the facts and circumstances of that particular case, if the situation so warrants, the Investigating Officer has a discretion and could arrest the person in furtherance of the investigation.

The police officer is not expected to act in a mechanical manner and arrest an accused in all cases where a report is lodged. In appropriate cases, after some investigation, the Investigating Officer is required to make up his mind as to whether it is necessary to arrest the accused person or not. Since the power is discretionary, the Investigating Officer is not bound to arrest an accused even if the allegation against him is of having committed a cognizable offence. This is on account of the fact that the arrest is in the nature of encroachment of the liberty of that person and it does affect the reputation and status of that person. Consequently, the power of arrest has to be exercised cautiously and it depends mostly on the nature of the offence and the type of the persons who are accused of committing a cognizable offence.

The protection of liberty and the power to arrest is separated by a thin line. The investigation team is required to act with care and with circumspection and only exercise the power of arrest where it is necessary to do so and, is not required to exercise its power of arrest in a routine manner in each and every case on the lodging of the First Information Report”.

17. On 7<sup>th</sup> December, 2011, a Single Judge Bench in *Pawan Singh and others Vs. State of Uttarakhand and others* (Writ Petition No. 1053 of 2011 (S/S), set-aside the decision of Public Service Commission, Uttarakhand in applying the carry forward principle in case of horizontal reservation for women candidates for the post of Junior Engineer (Civil and Technical) in Irrigation Department. The Bench placed reliance on the landmark judgment of Hon'ble

Supreme Court in case of Indra Sawhney and others Vs. Union of India and others (1992) Supp. (3) SCC 217 and Jitendra Kumar Singh and others Vs. State of Uttar Pradesh and others (2010) 3 SCC 119 and held that posts earmarked to be filled in case of horizontal reservation, the carry-forward rule would not be applicable. The Bench directed to revise the result in respect of Combined Junior Engineer Selection Examination, 2005 by considering the male candidates in order of merit against the vacancies falling under quota of horizontal reservation meant for women candidates.

\* \* \* \* \*

## MAJOR EVENTS AND INITIATIVES

- ❖ **Mega Lok Adalat:** On 02-12-2011, a Mega Lok Adalat was organized in the High Court premises. Total 33 cases disposed of in the Lok Adalat. As many as three families were united by amicably settlement of their disputes. In Motor Accident Claim Cases, Maintenance cases and other claims, total Rs. 64,16,509/- were awarded to the parties.
- ❖ **Recruitment in Higher Judicial Service:** In the H.J.S. direct recruitment quota from the Bar, 03 candidates were declared successful and after the notification issued by the Government, they have been posted in different districts as Addl. District & Sessions Judges. Apart from this, 11 candidates from Civil Judge (Sr. Div.) cadre are promoted to H.J.S. cadre and they have also been posted in various districts as Addl. District & Sessions Judges.
- ❖ **Recruitment of Ministerial Staff in subordinate judiciary:** For the recruitment of Ministerial Staff including Stenographers in the subordinate judiciary, recruitment process is in progress. After the written examination on 28-08-2011, type and short-hand examination has been conducted in the High Court in two phases, one from 14-11-2011 to 18-11-2011 and the second from 13-12-2011 to 17-12-2011. Result is expected soon.
- ❖ **Post decade celebration issue of the Souvenir:** In the year 2010, a Souvenir was released commemorating 10 years of establishment of High Court of Uttarakhand. Hon'ble Judges of Supreme Court, Her Excellency the Governor, Hon'ble Chief Minister and Hon'ble Judges of other High Courts graced the main function on 13-11-2010 and blessed with their blessings. Apart from the main function, various events were organized in the series of celebrations from 09-11-2010 to 13-11-2010, as Exhibition, Cultural function, Blood donation camp, Mega Lok Adalat, Sports Activities etc. To preserve these blessings and memories of other events, it is decided to come out with a post decade celebration issue of the Souvenir. Editorial Board comprising of Hon'ble Mr. Justice Prafulla C. Pant and Hon'ble Mr. Justice Sudhanshu Dhulia is devoted in shaping this post decade issue and release is expected soon.

## **MAJOR ACTIVITIES OF UJALA**

- ❖ **Workshop on “Effective Investigation”**: For enhancing the investigation skill of Uttarakhand Police, a workshop on Effective Investigation has been organized in the Academy from November 28<sup>th</sup>, 2011 to December 1<sup>st</sup>, 2011. Total 32 investigating officers of Uttarakhand Police Department participated in the workshop.
- ❖ **Mediation Training for Judges**: System of Alternate Dispute Resolution is gaining popularity amongst the Litigants, Lawyers and every associate of Justice Dispensation System. But this system can not achieve its objectives unless the stakeholders are well-versed with the mechanism of the system. In this regard, to sharpen the skill of Judges of Subordinate Courts, a day long workshop was organized in the Academy on December 3<sup>rd</sup>, 2011. Total 16 Judges across the State participated in the workshop.
- ❖ **Mediation Training for Advocates**: No system can perform effectively unless all the organs required to perform the system effectively are well-equipped with the system. Advocates are an important wing to make Alternative Dispute Resolution System, meaningful. To upgrade the skill of this wing, a four days training programme for Advocates organized in the Academy from December 4<sup>th</sup>, 2011 to December 8<sup>th</sup>, 2011. Total 13 Advocates from various districts participated in the training programme.
- ❖ **Expansion of UJALA Infrastructure**: To provide better facilities to trainees, resource persons, faculty & staff of UJALA, infrastructural facilities are being expanded at UJALA. In this regard, construction of an Auditorium, Recreation Centre, Guest House, Hostel and residential buildings for the faculty & staff of the Academy is in full swing. To monitor the progress of construction work, Governing Council of UJALA headed by Hon'ble the Chief Justice and Hon'ble Mr. Justice Prafulla C. Pant visited UJALA on 10-12-2011 and saw the progress at the site.
- ❖ **UJALA-MANUPATRA**: To keep all the judicial officers of Uttarakhand abreast of the case law and other relevant aspects, UJALA in association with MANUPATRA provided MANUPATRA legal data base with facility of on-line updating to each judicial officer of the State.



# HIGH COURT OF UTTARAKHAND CALENDAR-2012 (SUBORDINATE COURTS)



**JANUARY**

S	M	T	W	T	F	S
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**FEBRUARY**

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**MARCH**

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**APRIL**

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**MAY**

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**JUNE**

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**JULY**

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**AUGUST**

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**SEPTEMBER**

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**OCTOBER**

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**NOVEMBER**

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**DECEMBER**

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## LIST OF HOLIDAYS

SL. NO.	NAME OF HOLIDAY	MONTH & DATE	DAYS OF THE WEEK	NO. OF DAYS
1.	New Year's Day	January 1	Sunday	1
2.	Guru Govind Singh Jayanti	January 5	Thursday	1
3.	Republic Day	January 26	Thursday	1
4.	*Barawafat (Miliad-Un-Nabi)	February 5	Sunday	1
5.	Maha Shivratri	February 20	Monday	1
6.	Holi	March 7 & March 8	Wednesday & Thursday	2
7.	Ram Navami	April 1	Sunday	1
8.	Mahavir Jayanti	April 5	Thursday	1
9.	Ambedkar Jayanti	April 14	Thursday	1
10.	Buddha Purnima	May 6	Sunday	1
11.	Raksha Bandhan	August 2	Thursday	1
12.	Janmashtami	August 10	Friday	1
13.	Independence Day	August 15	Wednesday	1
14.	*Idu'1 Fitr	August 20	Monday	1
15.	Gandhi Jayanti	October 2	Tuesday	1
16.	Dussehra (Vijay Dashmi)	October 24	Wednesday	1
17.	*Idu'1 Zuha	October 27	Saturday	1
18.	Deepawali	November 12 to November 14	Monday to Wednesday	3
19.	*Moharram	November 25	Sunday	1
20.	Guru Nanak's Birthday and Kartik Purnima	November 28	Wednesday	1
21.	Christmas & Winter Holidays	December 25 to December 31	Tuesday to Monday	7

**Note:**  
 1. The holidays marked with (\*) can be relaxed according to the vicinity of the town.  
 2. April 6<sup>th</sup> (Good Friday) & August 1<sup>st</sup> (Last Friday of Ramadan) will be Restricted Holidays for Christians & Muslims respectively.  
 3. The District Judge may declare these local holidays in consultation with the District Magistrate.  
 4. There will be Winter Vacation from January 1 to January 30 for the Civil Courts in districts Almora, Bageshwar, Chamoli (except Tehri court), Champali, Nainital (except Nainital and Ramnagar outlying courts), Pithoragarh, Pant Garhwal (except Koldwar outlying court), Rudrapur, Tehri Garhwal and Uttarakhand Districts as shown in the table.  
 5. There will be summer vacation from June 1 to June 30 for the Civil Courts in districts Dehradun, Haridwar and Udhampur Singh Nagar and outlying court of Haridwar and Ramnagar (District Nainital), outlying court of Koldwar (District Pant Garhwal) and outlying court of Tehri Garhwal (District Champali) as shown in the table.  
 6. The Courts will remain closed on the dates shown by **Red**.  
 7. There is a separate list of holidays for the High Court.  
 By order of the Court  
 (K. D. Bhat)  
 Registrar General

# HIGH COURT OF UTTARAKHAND

## NAINITAL CALENDAR 2012



**JANUARY**

S	M	T	W	T	F	S
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**FEBRUARY**

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**MARCH**

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**APRIL**

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**MAY**

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**JUNE**

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### LIST OF HOLIDAYS

NO.	NAME OF HOLIDAY	MONTH & DATE	DAY OF THE WEEK	NO. OF CASES
1.	New Year's Day	January 1	Sunday	1
2.	Winter Vacation	January 16 to February 17	Monday to Friday	23
3.	Republic Day	January 26	Thursday	1
4.	Good Friday (Mithila/Dohaba)	February 8	Sunday	1
5.	Maha Shivratri	February 25	Monday	1
6.	Holi	March 7 to 9	Monday to Wednesday	3
7.	Ram Navami	April 1	Sunday	1
8.	Maharaj Jayanti	April 5	Thursday	1
9.	Good Friday	April 8	Friday	1
10.	Anantnagar Jayanti	April 14	Saturday	1
11.	Buddha Purnima	May 8	Sunday	1
12.	Summer Vacation	May 28 to June 2	Monday to Saturday	6
13.	Raksha Bandhan	August 2	Thursday	1
14.	Jatnashanti	August 15	Friday	1
15.	Independence Day	August 15	Wednesday	1
16.	Vali Piv	August 20	Monday	1
17.	Nandeshanti	August 23	Tuesday	1
18.	Ganesh Jayanti	October 2	Monday	1
19.	Dussehra (Vijay Dashmi)	October 2 to October 27	Monday to Saturday	6
20.	"Shil" Zubhi	October 27	Saturday	1
21.	Deepavali	November 12 to November 17	Sunday to Saturday	6
22.	Guru Nanak's Birthday and Kartik Purnima	November 25	Sunday	1
23.	Christmas	December 25	Wednesday	1
24.			Thursday	1

- NOTES**
- The holidays marked with (\*) shall be notified according to the visibility of the moon.
  - January 5<sup>th</sup> (Guru Govind Singh Jayanti) for Sikhs, August 17<sup>th</sup> (Last Friday of Ramzan) for Muslims, A September 10<sup>th</sup> (Nehru's) will be observed as holidays.
  - There is a separate list of holidays for the subordinate Courts.
  - The Registry will remain open during the Winter Vacation.
  - The Registry will remain closed during the summer Vacation.
  - The Registry will remain open for half day on Saturday which have been underlined.
  - The Courts will remain closed on the dates shown by **red**.

By order of the Court  
(K. D. Bhandari)  
Registrar General

**JULY**

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**AUGUST**

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**SEPTEMBER**

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**OCTOBER**

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**NOVEMBER**

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**DECEMBER**

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