



सत्यमेव जयते

UTTARAKHAND COURT NEWS

(A Quarterly News letter)

Vol-III Issue No-1 (January-March, 2012)



High Court of Uttarakhand, Nainital

EDITORIAL BOARD

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

COMPILED BY

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Hon'ble the Chief Justice Sri Barin Ghosh presenting a set of 34 legal-aid books to Sri J. S. Pandey, Director General of Police on 28.02.2012 in presence of Hon'ble Mr. Justice Tarun Agarwala, Sr. Judge/Executive Chairman, SLSA to mark the beginning of distributing 26,000 such sets to police personnel of State of Uttarakhand

CONTENTS

❖	Hon'ble Judges of Uttarakhand High Court	4
❖	From the Desk of Chief Justice.	5
❖	Transfers, Promotions & Appointments of Judicial Officers.	6-8
❖	Institution, Disposal & Pendency of cases in High Court.	9
❖	Institution, Disposal & Pendency of cases in District Courts.	10
❖	Circular Letters/ Notifications (issued recently).	11-15
❖	Some Recent Judgments of Uttarakhand High Court.	16-21
❖	Major Events and Initiatives.	22-23
❖	Major Activities of UJALA.	23

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UTTARAKHAND HIGH COURT**LIST OF JUDGES (As on 31st March, 2012)**

SL. No.	Name of the Hon'ble Judge	Date of Appointment
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



सत्यमेव जयते

CHIEF JUSTICE
HIGH COURT OF UTTARAKHAND

Nainital – 263001
April 16, 2012

MESSAGE

Though the present pendency in our Courts is not that alarming, but it is to be noted that a substantial part of the pendency consists of those cases which are pending for more than five years. Each Presiding Officer of the Court under the able guidance of the District Judges is required to devise some means by which at the end of 2012, there will be no pending cases in our Courts which are more than five years old.

One of the measures that may be adopted for achieving the above target is utilization of, as much as possible, the mechanism of mediation. A Presiding Officer of the Court, successfully bringing to an end pending cases before him through mediation will earn good credit, not only in the estimation of litigant public, but also from the peers of the judiciary.

Keeping that in mind, let us try to achieve the target set forth above.

(Barin Ghosh)

TRANSFERS, PROMOTIONS & APPOINTMENTS OF JUDICIAL OFFICERS

SL.NO.	Name of the Judicial Officer	From	To	Date of Order
1.	Sri Kawer Sain, Presiding Officer, Labour Court	Hardwar	District & Sessions Judge, Almora	04-04-2012
2.	Sri Kanta Prasad, District & Sessions Judge	Almora	District & Sessions Judge, Tehri Garhwal	04-04-2012
3.	Sri Alok Kumar Verma, District & Sessions Judge	Tehri Garhwal	Presiding Officer, Labour Court, Hardwar	Will be issued later on by the State Government
4.	Sri Prashant Joshi, Registrar (Inspection)	High Court of Uttarakhand, Nainital	Additional District & Sessions Judge, Haldwani	04-04-2012
5.	Sri Rajendra Joshi, Additional District & Sessions Judge/1 st F.T.C.	Nainital	Additional District & Sessions Judge, Nainital	04-04-2012
6.	Ms. Kahkasha Khan, Additional District & Sessions Judge	Haldwani	Additional District & Sessions Judge/ 1 st F.T.C., Nainital	04-04-2012
7.	Sri Harish Kumar Goel, V th Additional District & Sessions Judge	Hardwar	Additional District & Sessions Judge, Almora	04-04-2012
8.	Sri Kaushal Kishore Shukla, Additional District & Sessions Judge/ 1 st F.T.C.	Dehradun	Special Judge (E.C. Act), Nainital	04-04-2012
9.	Sri Amit Kumar Sirohi, Additional District & Sessions Judge/1 st F.T.C.	Kashipur	Additional District & Sessions Judge/ 1 st F.T.C., Dehradun	04-04-2012
10.	Sri Varun Kumar, Chief Judicial Magistrate	Pauri Garhwal	Chief Judicial Magistrate, Hardwar	04-04-2012
11.	Sri Sayan Singh, Chief Judicial Magistrate	Nainital	Chief Judicial Magistrate, Dehradun	04-04-2012

12.	Smt. Shadab Bano, Chief Judicial Magistrate	Udham Singh Nagar	Chief Judicial Magistrate, Tehri Garhwal	04-04-2012
13.	Sri Nandan Singh, Chief Judicial Magistrate	Tehri Garhwal	Civil Judge (Sr. Div.), Tehri Garhwal	04-04-2012
14.	Sri Rakesh Kumar Singh, Civil Judge (Sr. Div.)	Tehri Garhwal	Additional Civil Judge (Sr. Div.), Tehri Garhwal	04-04-2012
15.	Sri Naseem Ahmad, Chief Judicial Magistrate	Dehradun	Civil Judge (Sr. Div.), Bageshwar	04-04-2012
16.	Sri Sujeet Kumar, Civil Judge (Sr. Div.)	Nainital	Chief Judicial Magistrate, Nainital	04-04-2012
17.	Sri Abdul Qayyum, Civil Judge (Sr. Div.)	Vikas Nagar	Civil Judge (Sr. Div.), Nainital	04-04-2012
18.	Sri Sanjeev Kumar, Chief Judicial Magistrate	Hardwar	Asstt. Sessions Judge [Civil Judge (Sr. Div.)]/F.T.C., Almora	04-04-2012
19.	Smt. Archana Sagar, Civil Judge (Sr. Div.)	Pauri Garhwal	Additional Chief Judicial Magistrate, Hardwar	04-04-2012
20.	Ms. Deepali Sharma, Civil Judge (Sr. Div.)	Laksar	Additional Civil Judge (Sr. Div.), Nainital	04-04-2012
21.	Sri Mahesh Chandra Kaushiwa, Joint Registrar (Judicial & Admin.)	Public Service Tribunal, Dehradun	Chief Judicial Magistrate, Pauri Garhwal	04-04-2012
22.	Sri Ashutosh Kumar Mishra, Civil Judge (Sr. Div.)	Kashipur	Chief Judicial Magistrate, Udham Singh Nagar	04-04-2012
23.	Sri Vivek Dwivedi, Additional Chief Judicial Magistrate	Kashipur	Civil Judge (Sr. Div.), Kashipur	04-04-2012
24.	Sri Manindra Mohan Pandey, Civil Judge (Jr. Div.)	Srinagar	1 st Additional Civil Judge (Jr. Div.), Udham Singh Nagar	04-04-2012

25.	Sri Dharendra Bhatt, Civil Judge(Jr. Div.)	Karanprayag	1 st Additional Civil Judge (Jr. Div.), Kashipur	04-04-2012
26.	Sri Shazad Ahmad, 1 st Additional Civil Judge (Jr. Div.)	Kashipur	2 nd Additional Civil Judge (Jr. Div.), Kashipur	04-04-2012
27.	Ms. Ekta Mishra, 2 nd Additional Civil Judge (Jr. Div.)	Kashipur	3 rd Additional Civil Judge (Jr. Div.), Kashipur	04-04-2012
28.	Sri Rahul Kumar Srivastava, Judicial Magistrate	Hardwar	Civil Judge (Jr. Div.), Nainital	04-04-2012
29.	Ms. Gajan Devi, Civil Judge (Jr. Div.)	Haldwani	1 st Additional Civil Judge (Jr. Div.), Dehradun	04-04-2012
30.	Sri Mohd. Yusuf, 1 st Additional Civil Judge (Jr. Div.)	Udham Singh Nagar	Civil Judge (Jr. Div.), Tehri Garhwal	04-04-2012
31.	Sri Ramesh Singh, Civil Judge (Jr. Div.)	Gopeshwar	Civil Judge (Jr. Div.), Karanprayag	04-04-2012

INSTITUTION, DISPOSAL AND PENDENCY OF CASES

➤ HIGH COURT OF UTTARAKHAND (from 01.01.2012 to 31.03.2012)

Institution (01.01.2012 to 31.03.2012)						Disposal (01.01.2012 to 31.03.2012)			Pendency (At the end of 31.03.2012)		
Civil Cases	Criminal Cases	Total Institution	Civil Cases	Criminal Cases	Total Disposal	Civil Cases	Criminal Cases	Total Pendency at the end of 31.03.12			
2299	1556	3855	1416	1195	2611	13992	6515	20507			

Pendency (At the end of 31.12.2011)		
Civil Cases	Criminal Cases	Total Pendency
13109	6154	19263

➤ District Courts (From 01.01.2012 to 31.03.2012)

SL. No	Name of the District	Civil Cases				Criminal Cases				Total Pendency at the end of 31.03.12
		Opening Balance as on 01.01.12	Institution from 01.01.12 to 31.03.12	Disposal from 01.01.12 to 31.03.12	Pendency at the end of 31.03.12	Opening Balance as on 01.01.12	Institution from 01.01.12 to 31.03.12	Disposal from 01.01.12 to 31.03.12	Pendency at the end of 31.03.12	
1.	Almora	719	104	137	686	1311	386	415	1282	1968
2.	Bageshwar	127	26	44	109	243	178	165	256	365
3.	Chamoli	399	41	43	397	949	419	662	706	1103
4.	Champawat	152	53	35	170	746	498	374	870	1040
5.	Dehradun	12959	3355	3549	12765	50395	22607	16371	56631	69396
6.	Haridwar	8055	1341	1500	7896	23104	8063	6245	24922	32818
7.	Nainital	2841	575	667	2749	8708	3196	3505	8399	11148
8.	Pauri Garhwal	1341	138	180	1299	1936	823	727	2032	3331
9.	Pithoragarh	283	80	66	297	703	374	456	621	918
10.	Rudraprayag	189	41	64	166	384	362	440	306	472
11.	Tehri Garhwal	498	87	113	472	1183	548	544	1187	1659
12.	U.S.Nagar	4276	958	854	4380	23226	6280	6572	22934	27314
13.	Uttarkashi	347	81	64	364	660	429	345	744	1108
	Total	32186	6880	7316	31750	113548	44163	36821	120890	152640

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Circular Letters/ Notifications

(issued recently)

NOTIFICATION

- **No. 307/UHC/Admin.A/2011** **Dated: December 30, 2011.**

In exercise of the powers conferred by Clause (2) of Article 229 of the Constitution of India and all other powers enabling in that behalf, Hon'ble the Chief Justice is pleased to make the following amendment in the Allahabad High Court Officers and Staff (Conditions of Service and Conduct) Rules, 1976, applicable to High Court of Uttarakhand, Nainital under U.P. Reorganization Act, 2000:-

Rule 9 Sub-rule (ii) be substituted by the following Rule:

9 (ii) Assistant Review Officers

- “1. He/She must possess a Bachelor's degree of a University established by law in India or qualification recognized equivalent thereto.
2. He/She must possess Diploma in Computer Science from recognized Institute/University or O-level certificate from DOEACC Society and a speed of minimum 9000 key-depression per hour in English typing would be essential.”

This amendment will come in to force with immediate effect.

By Order of Hon'ble the Chief Justice,

(Ram Singh)

Registrar General.

- **No. 03/VIII-a-1/Stationery/UHC/2012** **Dated: January 10, 2012**

The Court shall remain closed on 11.01.2012 to 13.01.2012 (Wednesday to Friday) and in lieu thereof the Court will remain open on 19.05.2012, 04.08.2012 & 06.10.2012. Registry will also remain closed w.e.f. 11.01.2012 to 13.01.2012 and will remain open on 19.05.2012, 04.08.2012 & 06.10.2012.

By order of the Court

Sd/-

Registrar General

• C.L. No. 01/UHC/Admin.A/2012

Dated: March 23, 2012.

Subject: Annual transfer of Judicial Officers.

In supersession of earlier Circular Letters on the subject noted above, I am to inform that Hon'ble Court has laid down the following guidelines regarding annual transfer of Judicial officers in Uttarakhand.

1. As far as possible the annual transfers of all officers except District Judges will be made with effect from 15th April of every year whereas annual transfers of District Judges will be made with effect from 1st May of every year.
2. Ordinarily a Judicial Officer will be due for transfer on completion of three years posting. However, a Judicial Officer may be transferred at any time on administrative reasons or in the exigencies of service.
- 2A. A Judicial officer posted in an outlying court and serving in such post for the full term of three years, shall not be posted in any other outlying court for next two postings.
3. For premature transfer or for over stay beyond three years due to special reasons, Judicial Officers should submit their representations by 15th March of the year.
4. Judicial Officers are at liberty to express their choice of three stations for transfer by 15th March. However, the High Court will have the right to post the Judicial Officers at any other place.
5. No Judicial Officer will be posted in his/her home district.
6. As far as possible, officers posted in the plains should get next posting in hilly areas and vice versa.
7. As far as possible, Judicial Officers should be posted from Garhwal Commissionerary Region to Kumaon Commissionerary Region and vice versa.

8. No officer shall be posted in the same district within a span of six years except on deputation post.
9. When Officers are transferred prematurely on their request, they will not be allowed the transfer traveling allowance.
10. While submitting representation, as mentioned in guideline/clause no.3, the Officers are required to furnish details like their hometown, blood relations, the place where they had practiced or had received education etc.
11. The Officers on deputation will also be due for transfer on completion of three years on deputation. However, the Officers posted in the Registry of the High Court and Secretariat (Sachivalaya) may be allowed to continue on deputation beyond the period of three years at the discretion of the Hon'ble Chief Justice.
12. An Officer on deputation may be recalled at any time, even before completing the period of three years, for administrative reasons or in the exigencies of service.
13. The districts of the State are divided in three categories, "A", "B" and "C" in the following manner:-
 - Category 'A' :-** District Dehradun, District Hardwar and District Udham Singh Nagar District Nainital.
 - Category 'B' :-** District Tehri Garhwal, District Pauri Garhwal and District Almora; and
 - Category 'C' :-** District Champawat, District Uttarkashi, District Rudraprayag, District Chamoli, District Bageshwar and District Pithoragarh.
14. As far as possible each officer should serve equally in each category of districts.
You are therefore, informed accordingly.

Registrar General

• C.L.No./IX-f-1 D.R,(I)/2012

Dated: 03 April, 2012

Subject: USE OF RED AND BLUE LIGHT BY THE JUDICIAL OFFICERS

In continuation of C.L.No. 13/Admn. Staff car dated July 25,2002 and C.L.No. 4/2004/DR(Ins) dated March 25, 2004 on the subject noted above, I am directed to communicate you that it has come to the notice of the Court that some of the Judicial Officers of the State Judiciary, Uttarakhand are using Red / Blue Light on their private cars, which is highly objectionable and against the spirit of judgment and order dated 24.08.1993 passed in writ petition no. 29356 of 1993 passed by Allahabad High Court whereby the District Judge as well as the Registrar General of the Court and other officers of the Rank of District Judge are permitted to use Red light on the staff car and the Chief Judicial Magistrate may use Blue light above the wind screen of his staff car.

The instructions with regard use of Red / Blue light by Judicial Officers have been communicated to the District Judges vide Circular letter No. C-82/Confidential/1993 dated 22.12.1993 issued by Allahabad High Court and vide CL No. 13 / Admn. Staff Car dated 25.07.2002 and CL No. 4 / 2004 / D.R. (Ins.) dated 25.03.2004 issued by this High Court. In Circular Letter dated 25.03.2004 (direction no. 1), it has been clearly mentioned that Civil Judge (JD), JM, Civil Judge (SD), CJM and Additional District Judge are not entitled for the Red Light. If such officers use staff car with Red light it should be covered with some cap. The Red light will not be used on the pooled cars except by the District Judge. In direction no. 4 it has been clearly mentioned that if any Judicial Officer is found using the Red light / Blue light on the private car the court may take adverse view against him.

You are once again directed to ensure compliance of the above mentioned circular letters in letter and spirit. If any judicial officer is found disobeying the directions issued with regard to use of red/blue light, a report be sent to this Court without any delay and stern action including suspension will be taken against the erring officer, by the Court.

Registrar General

• C.L. No. 03/UHC/Admin. B/XVII-122/2012

Dated: 04 April, 2012,

Subject: Regarding personal use of Government Vehicle.

In reference to G.O. No. 4511-T/30-4-4-JB-77 dated 24.10.1988 and in continuation of C.L. No. 5/UHC-2001, dated 13.03.2001 on the aforesaid subject, I am directed to say that on obtaining prior permission to leave the headquarter you are granted suo-moto permission to use the Government vehicle, provided you submit copies of logbook of the Government vehicles along-with the copies of the treasury challan for the extra personal journey every month, if any.

Further, you are requested to deal with the logbooks and applications for the personal use of Government vehicle of the subordinate judicial officers at your own end and submit copies of the logbook of your official vehicle only to this Court. And as per C.L. No. 57/IV-905/Admin. (A), dated 24.04.1990, you are not required to obtain prior permission to take the staff Car outside the district on official duty.

You are therefore, requested to inform all concerned accordingly, and ensure compliance as above.

Registrar General

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Some Recent Judgments of Uttarakhand High Court

DIVISION BENCH JUDGMENTS:

1. On 3rd January, 2012, a Division Bench in *Rajkeeya Ayurved Avem Yunani Chikitsa Seva Sangh, Uttarakhand Vs. State of Uttarakhand and another* [Writ Petition No. 184 of 2004 (S/B)], setting aside the contention of petitioner association that a person is entitled to count his seniority from the date he starts discharging his duties in the post in respect whereof he is seeking his seniority to be counted, the Bench observed that Rule 2 of the Uttaranchal Regularisation of Ad Hoc Appointments (on posts within the purview of the Public Service Commission) Rules 2002 provided that seniority of the persons shall be determined from the date of their substantive appointments. Therefore, until the time, persons are substantively appointed, in terms of the mandate contained in the Rules, no one could claim seniority. With this observation, the Bench dismissed the petition filed by the Association.

2. On 22nd March 2012, a Division Bench in *Commissioner, Commercial Tax, Uttarakhand, Dehradun Vs. M/S Adarsh Tube Company, Kichha* (C.T.R. 28 of 2012) while dealing with a delay condonation application filed by the Government department, the Bench observed that we have to live with the real situation prevalent. Allowing the delay condonation application, the Bench concluded that in the circumstances, while looking into the laches on the part of one government official or the other, the most important thing to be looked in is, whether a genuine and a good case of Government would be lost for sheer laches on the part of one or more of its employees. Applying the said test, the Bench found that a good case for condonation of delay has been made out in as much as, a substantial question of law has been raised in the instant revision application.

3. On 22nd March, 2012, a Division Bench in *Dr. Kapil Sharma Vs. State of Uttarakhand and others* (writ petition (S/B) no. 184 of 2011) and other writ petitions involving the same question, set-aside the decision dated 04.11.2010 of Government, by which the posts of Ayurvedic Chikitsaks were withdrawn from the purview of ongoing recruitment.

process on the basis that these 227 posts would be supplied by contractual appointees, appointed up to 2008. The Bench observed that the State Government by taking the decision-dated 04.11.2010 breached its obligation towards the people of the State and, in particular, to those, who were and are otherwise entitled to be considered for appointment in these posts. The Bench further observed that while taking a decision under Article 162 of the Constitution of India, the State Government is required by the mandate of the Constitution of India to comply with the provisions contained in Part-III of the Constitution of India read with Part-IV.

SINGLE BENCH JUDGMENTS:

4. On 2nd January, 2012, a Single Judge Bench in *Surendra Singh and others Vs. A.D.J./1st Fast Track and others* (writ petition (M/S) No. 798 of 2003), while quashing the order of trial and revisional Court allowing the application of third party moved under Section 146 of Civil procedure Code in a dismissed suit, observed that once a suit has been dismissed, it can only be recalled under Order 9 Rule 9 of the C.P.C. by the plaintiff alone and cannot be recalled at the instance of the third party. A third party can move an application under section 146 C.P.C. during the pendency of the suit. In the instant case, the application filed by third party was only filed during the pendency of the miscellaneous case under Order 9 Rule 9 which was also dismissed. The Bench observed that consequently, the application filed by third party under Section 146 C.P.C. had virtually become infructuous and could not be adjudicated in a suit which had already been dismissed.
5. On 4th January, 2012, a Single Judge Bench in *Rafat Araa Vs. Kamar Mirja* (Criminal Misc. Application (C-482) No. 600 of 2011, while dealing with various terms under Protection of Women from Domestic Violence Act, 2005, observed that from the definition of 'Aggrieved person', 'domestic relationship' and 'shared household', it is clear that aunt (bua) and her nephew can not be said to be the persons, living together in a 'shared household', under the domestic relationship.
6. On 6th January, 2012, a Single Judge Bench in *Smt. Kamla Vs. State of Uttarakhand and Another* (Criminal Revision No. 60 of 2007), while dismissing the revision setting aside

the contention of revisionist, who placed reliance upon a precedent of Hon'ble Apex Court rendered in the case of **Pyla Mutyalamma @ Satyavathi vs. Pyla Suri Demudu & another reported in 2011 (2) N.C.C. 566**, wherein it has been held that law presumes in favour of marriage and against concubinage. When a man and woman have cohabitated continuously for a number of years and when the man and woman are proved to have lived together as man and wife, the law will presume, unless the contrary is clearly proved, that they were living together in consequence of a valid marriage and not in a state of concubinage. In the instant case, revisionist, as per her own statement, continued to be the wife of Than Singh and was living with him till the end of 1998. The Bench observed that in the circumstances, she couldn't attain the status of wife of Naresh Kumar since 25.01.1994 till the end of 1998.

7. On 31st January, 2012, a Single Judge Bench in **V.P.Singh Vs. State of Uttarakhand and another** (Criminal Misc. Application No. 66 of 2012), considering the contention of petitioner that under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, it is only the special courts constituted by the State Government which are competent to take cognizance in the matter, observed by placing reliance on the case law pronounced by Hon'ble Supreme Court in **M.A. Kuttappan Vs. E. Krishna Nayannar [(2004) SAR (Cri) 308 S.C.]** that Section 14 of the Act imposes an interdict on all courts of sessions against taking cognizance of any offence as court of original jurisdiction.

8. On 3rd February, 2012, a Single Judge Bench in **Babu Khan and others Vs. State of Uttarakhand and another** (Criminal Miscellaneous Application No. 61 of 2012), dismissed the plea of accused that once the bail has been granted to the accused under minor offences indicating the bailable in nature, then after submission of the chargesheet by the Investigation Officer under a graver offence does not require the accused to seek further bail for such an added offence. The Bench while deviating from the precedent rendered in **Jamil Vs. State of Uttaranchal**, reported in 2005 (3) U.C. 1698, placed reliance on the observation of Hon'ble Apex Court made in case of **Prahlad Singh Bhati Vs. NCT, Delhi, reported in 2001 (4) SCC 280** and **Hamida Vs. Rashid @ Rasheed & Others, reported in 2007 AIR SCW 3123** --"if the logic that a person once released on

bail need not surrender any further to seek fresh bail for the added offence is accepted for every eventuality, then it will create total anarchy in the society.” The Bench observed that after a careful reading of the ratio laid down in *Jamil Vs. State of Uttaranchal* reveals that this Court too did not lay down that the accused persons should be enlarged on the same bail bonds and sureties for any graver offence whatsoever it may be.

9. On 23rd February, 2012, a Single Judge Bench in *Raj Kishore Goel Vs. Additional District Judge and others* (Criminal Misc. Application No. 31 of 2006), while dismissing the petition moved against the order of trial Court for framing the charge under Section 302 I.P.C. against the accused, following the Section 221 of Criminal Procedure Code, reiterated the observation of Hon’ble Apex Court in *Rajbir @ Raju and another Vs. State of Haryana (Crl.M.P. No. 23051 of 2010)* that in a case where two offences are covered, it is always desirable for the trial Court to level alternative charge of Section 302 I.P.C., so that if such charge is not proved at the end of trial then it is always open for the trial Court to convict the accused person for the offence of lesser gravity, that is to say, if charge of Section 302 I.P.C. is levelled against the accused and eventually, it is not proved, then the course open for trial Court is to acquit the accused from the charge of offence under Section 302 I.P.C. and hold him guilty (if evidence so indicates) for the offence under Section 306 I.P.C.
10. On 24th February, 2012, a Single Judge Bench in *Lok Pal Singh Vs. State of Uttarakhand* (Criminal Jail Appeal No. 359 of 2008), while dismissing the appeal filed by accused against the conviction recorded by the trial court, placed reliance on the authority of Hon’ble Apex Court (Full Bench) in the case of *Sajan Abraham Vs. State of Kerala, reported in 2001 Cr. L.J. 4002 (2001 SCCr. R. 884)*, wherein Hon’ble Apex Court while interpreting Sections 21, 42 and 57 of the Narcotic Drugs and Psychotropic Substances Act, 1985 held that “the Court while construing such provisions strictly should not interpret it so literally so as to render its compliance impossible.
11. On 19th March, 2012, a Single Judge Bench in *State Vs. Abid and others* (Government Appeal No. 1871 of 2001 old no. 1293 of 1999), while dismissing the appeal preferred by the State against Judgment and order of trial Court acquitting the accused from the charges under Section 363, 366A, 376 I.P.C., observed that in the normal circumstances,

ocular evidence must prevail over medical evidence, if there is any contradiction between them. However, while accepting ocular evidence over medical evidence, one has to be absolutely careful and must come to the conclusion that the ocular evidence is such that there is no just reason to disbelieve the same. In the instant case, the Bench observed that two prosecution stories ran parallel. One of such parallel stories cannot be accepted rejecting the other. Such parallel stories give birth to doubt. The Bench concluded that in a situation of this nature, ocular evidence of one of the prosecution witnesses, though it may be the victim, couldn't be accepted contrary to the evidence led by the other prosecution witnesses.

12. On 26th March, 2012, a Single Judge Bench in *Jarnail Singh and another Vs. State of Uttarakhand* (Criminal Appeal No. 125 of 2010), while appreciating the evidence, set aside the argument advanced on behalf of appellants that ingredients of offence punishable under section 397 of I.P.C., are not made out, as neither there is any grievous injury, nor it can be said that deadly weapon was used. The Bench observed that merely using a deadly weapon attracts Section 397 I.P.C.. If hockey and rods are used while committing the crime, it is sufficient to constitute the offence, even if grievous injury is not caused. The word "Or" is used between the expressions "uses deadly weapon" and "Causes grievous injuries" in the Section. The Bench observed that a small rod by itself may not be called a deadly weapon but if a stick like that of hockey is used, and blow is given on the vital part, it could be said that deadly weapon is used for commission of the crime.

13. On 27th March, 2012, a Single Judge Bench in *Lal Singh Vs. State of Uttarakhand* (Criminal Misc. Application No. 46 of 2011), quashed the proceedings pending against the petitioner under section 295A I.P.C. with the observation that sub-section (1) of section 196 Cr.P.C. provides that no Court shall take cognizance of any offence punishable under section 295A of Indian Penal Code except with the previous sanction of the Central Government and the State Government. The Bench observed that as the sanction was obtained by the complainant from the Central Government or from the State Government, the impugned proceedings of the criminal case are directly hit by sub-section (1) of section 196 Cr.P.C..

14. On 29th March, 2012, a Single Judge Bench in **Radha Krishna Agarwal Vs. Krishna Lal** (First Appeal No. 112 of 2005) (under section 96 of C.P.C.), while dismissing the appeal rejected the submission of appellant that the property in question is of much more value than the amount for which, it was agreed to be sold and in view of section 20 of Specific Relief Act, the plaintiff is not entitled to the grant of decree of specific performance merely because it is lawful to do so. The Bench observed that explanation (I) of section 20 of Specific Relief Act, provides that mere inadequacy of consideration or mere fact that the contract is onerous to the defendant shall not be deemed to constitute the unfair advantage to the plaintiff. The Bench observed that the value of the property is required to be seen, as it existed at the time, when the party executed the agreement of sale. In every case, after some period, the value of the immovable property normally increases and on such ground the decree of specific performance cannot be refused lightly to the purchaser.

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MAJOR EVENTS AND INITIATIVES

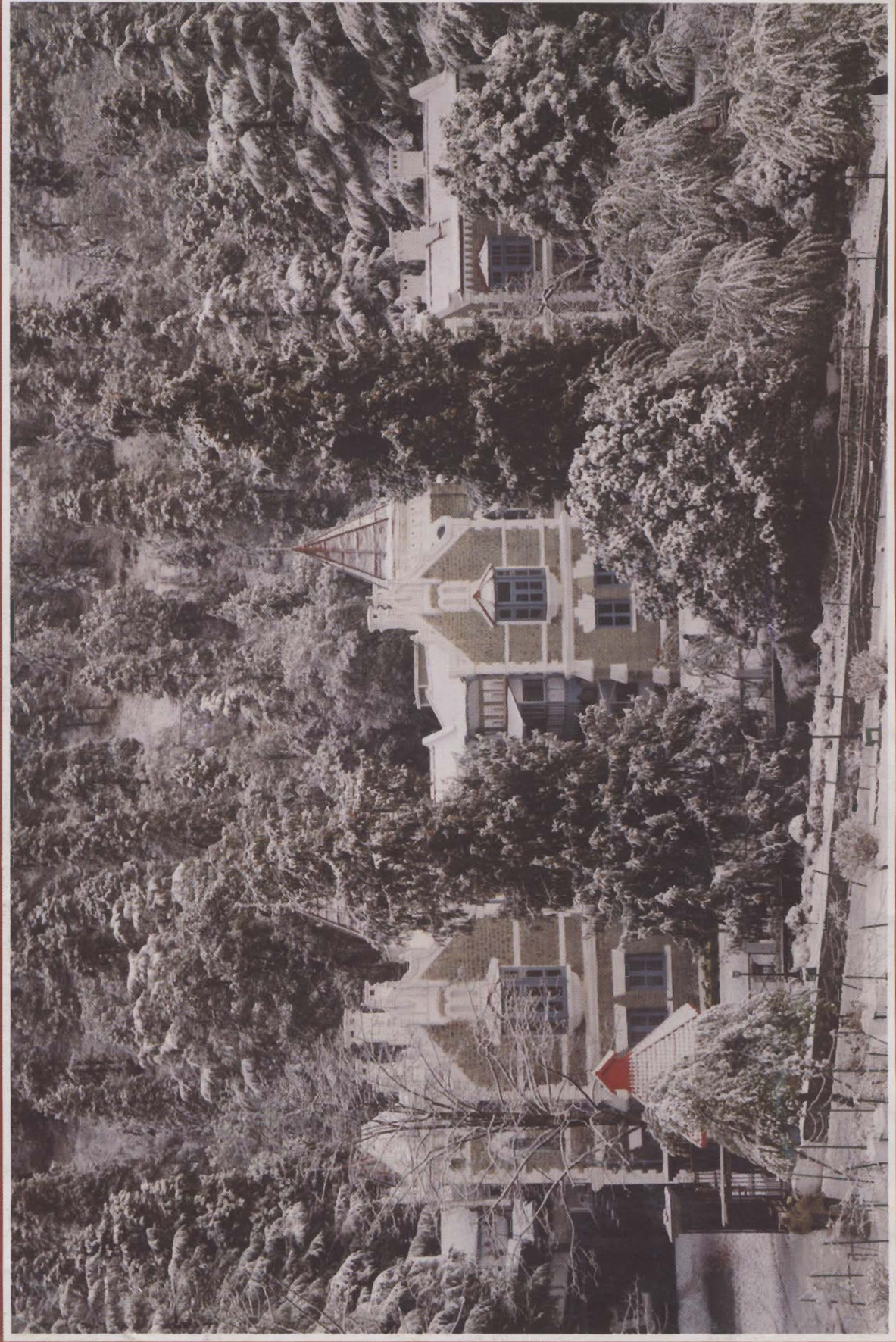
- ❖ **Republic Day Celebration:** On the occasion of Republic Day (26th of January) hoisting ceremony was performed in the High Court premises. Hon'ble Mr. Justice V. K. hoisted the National Flag in the benign presence of Hon'ble Mr. Justice Servesh Kumar G Registrar General Sri Ram Singh, Officers and officials of High Court, members of High C Bar Association were present at the function. After the flag hoisting, preamble of Constitution of India read over to reiterate and emphasize the objectives enshrined in Constitution.
- ❖ **Visit of Hon'ble Judges to NJA:** To attend the National Conference of High C Justices on Human Rights and Civil Liberties, Hon'ble Mr. Justice Prafulla C. Pant visi National Judicial Academy, Bhopal from 21.01.2012 to 22.01.2012. From 16.03.2012 18.03.2012, Hon'ble Mr. Justice Umesh Chandra Dhyani participated in the Nation Conference of Newly Elevated High Court Judges organized by National Judicial Academy Bhopal. Again to attend the Annual calendar meeting to develop NJA's Annual Calendar & t Integrated National Judicial Calendar for the Academic Year 2012-2012, Hon'ble Mr. Justi Prafulla C. Pant visited National Judicial Academy, Bhopal on 24.03.2012.
- ❖ **Legal Aid Books to Police Personnel:** To equip police machinery of State c Uttarakhand with General Awareness on Law of the Land, 26,000 sets of Legal Aid Book: 'Saral Kanooni Gyan Mala' (each set containing 34 Books), published by State Legal Service Authority, Uttarakhand have been provided to Police Department to distribute amongst each police personnel of State of Uttarakhand. To begin with, first such set has been handover to Sr J.S.Pandey, Director General of Police, Uttarakhand by Hon'ble the Chief Justice Sri Barin Ghosh on 28.02.2012 in a brief function organized in the chamber of Hon'ble the Chief Justice Hon'ble Mr. Justice Tarun Agarwala, Senior Judge & Executive Chairman, Uttarakhand State Legal Services Authority graced the occasion.
- ❖ **Recruitment of Ministerial Staff in subordinate judiciary:** For the recruitment o Ministerial Staff in the subordinate judiciary, recruitment process-2011 has been completed and 23 candidates for clerical posts have been finally selected. Appointment process in various districts is in progress.

- ❖ **Post decade celebration issue of the Souvenir:** To preserve the memories of celebrations organized from 09-11-2010 to 13-11-2010 commemorating 10 years of establishment of High Court of Uttarakhand, the High Court has released a post decade issue of Souvenir. In this post decade issue speeches of Hon'ble dignitaries, messages and photographs of various events organized in the series of celebrations have been published.

MAJOR ACTIVITIES OF UJALA

- ❖ **Workshop for Panel Lawyers (Criminal):** To refresh and update the legal skill of Panel lawyers (Criminal), a four-day workshop has been organized from January 17th to 20th of January 2012. In all 19 Panel lawyers across the State participated in the workshop.
- ❖ **Training/Workshop for Additional/Assistant District Government Counsel (Criminal):** To strengthen the legal skill of Government Counsels, a six days training programme/ workshop has been organized from January 23rd to January 28th, 2012. In all 13 Government Counsels participated in the programme.
- ❖ **Workshops on "Effective Investigation":** For enhancing the investigation skill of Uttarakhand Police, two five days' workshops on Effective Investigation has been organized in the Academy, first from February 14th, 2012 to February 18th, 2012 and second from March 13th to March 17th, 2012. In all 67 investigating officers of Uttarakhand Police Department participated in both the workshops
- ❖ **Workshop on "Service Jurisprudence":** For the officers working in Uttarakhand Secretariat, a three days' workshop on Service Jurisprudence has been organized from February 24th to February 26th, 2012. In all 09 Secretariat Officers participated in said workshop.
- ❖ **Foundation Training Programme for Newly Appointed A.D.J.(s):** In November 2011, three direct recruited H.J.S. officers were recruited and they have been appointed as Additional District & Sessions Judges in Uttarakhand. Their two months long foundation training programme has been commenced in the Academy from March 1st. The foundation-training programme will last up to April 30th, 2012.

High Court of Uttarakhand



“Snow Covered building of High Court after snow fall on 10th January, 2012”