



सत्यमेव जयते

# UTTARAKHAND COURT NEWS

(A Quarterly News letter)

Vol-IV Issue No-1 (January-March, 2013)



**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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**Group photograph of Hon'ble Judges of the Court with Hon'ble the Chief Justice after oath taking ceremony of Hon'ble Mr. Justice Alok Singh on 26.02.2013.**



**L to R :**

**Hon'ble Mr. Justice Servesh Kumar Gupta, Hon'ble Mr. Justice Alok Singh, Hon'ble Mr. Justice V.K. Bist, Hon'ble Mr. Justice Prafulla C. Pant, Hon'ble Mr. Justice Barin Ghosh (Chief Justice), Hon'ble Mr. Justice B.S. Verma, Hon'ble Mr. Justice Sudhanshu Dhulia, Hon'ble Mr. Justice U.C. Dhyani.**

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## UTTARAKHAND HIGH COURT

### LIST OF JUDGES (As on 31<sup>st</sup> March, 2013)

SL. No.	Name of the Hon'ble Judge	Date of Appointment
		(Assumed charge in Uttarakhand)
1.	Hon'ble Mr. Justice Barin Ghosh (Chief Justice)	12.08.2010
2.	Hon'ble Mr. Justice Kalyan Jyoti Sengupta	31.10.2012
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 Alok Singh	26.02.2013
8.	Hon'ble Mr. Justice Servesh Kumar Gupta	21.04.2011
9.	Hon'ble Mr. Justice Umesh Chandra Dhyani	13.09.2011

\* \* \* \* \*



*Barin Ghosh*



CHIEF JUSTICE  
HIGH COURT OF UTTARAKHAND

Nainital - 263001  
April 17, 2013

### MESSAGE

In the past quarter, nine Special Courts for disposal of cases under Section 138 Negotiable Instruments Act have been set up in the Districts of Dehradun, Hardwar and Udham Singh Nagar. Presiding Officers of those Special Courts have been appointed w.e.f. 1<sup>st</sup> of March, 2013.

205 vacancies of the Ministerial cadre in all the thirteen District Courts of Uttarakhand have also been supplied during the last quarter.

In the High Court new case data entry software has been installed, which has made case retrieving system more effective and more easy than the earlier one. Many more informations about a case instituted in the Court are now available.

As on 3<sup>rd</sup> January, 2013, 542 cases of rape were pending in the District Courts. The said pendency stood reduced to 344 as on 31<sup>st</sup> March, 2013. As on 28<sup>th</sup> February, 2013 about 270 similar cases were pending in the High Court, of which 125 cases have been disposed of. The above achievements have been accomplished by following the guidelines given by Hon'ble the Chief Justice of India in his letters written to the Court from time to time.

The achievements as reported at various quarters, suggest that we will be able to fulfil all our promises and assurances.

(Barin Ghosh)

**TRANSFERS, PROMOTIONS & APPOINTMENTS OF JUDICIAL OFFICERS**

SL.NO.	Name of the Judicial Officer	From	To	Date of Order
1.	Ms. Deepali Sharma, Additional Civil Judge (Sr. Div.)	Nainital	Civil Judge (Sr. Div.), Haldwani, District Nainital.	28-02-2013
2.	Sri Mahesh Chandra Sharma, Retired H.J.S.	----	Special Judicial Magistrate, Roorkee (for cases u/s. 138 N.I.Act)	01-03-2013
3.	Sri Gyan Prakash-II, Retired H.J.S.	----	Special Judicial Magistrate, Dehradun (for cases u/s. 138 N.I.Act)	01-03-2013
4.	Sri Subhash Chandra, Retired H.J.S.	----	Special Judicial Magistrate, Hardwar (for cases u/s. 138 N.I.Act)	01-03-2013
5.	Sri Narendra Kumar Jain, Retired H.J.S.	----	Special Judicial Magistrate, Dehradun (for cases u/s.138 N.I.Act)	01-03-2013
6.	Sri Aditya Prasad Chauhan, Retired H.J.S.	----	Special Judicial Magistrate, Rudrapur (for cases u/s.138 N.I.Act)	01-03-2013
7.	Sri Ashok Kumar-IV, Retired H.J.S.	----	Special Judicial Magistrate, Dehradun (for cases u/s. 138 N.I.Act)	01-03-2013
8.	Sri Rajendra Singh-II, Retired H.J.S.	----	Special Judicial Magistrate, Kashipur (for cases u/s.138 N.I.Act)	01-03-2013
9.	Sri Satan Lal Rajvanshi, Retired H.J.S.	----	Special Judicial Magistrate, Rishikesh (for cases u/s. 138 N.I.Act)	01-03-2013
10.	Sri Girraj Singh Dubey, Retired H.J.S.	----	Special Judicial Magistrate, Haldwani (for cases u/s. 138 N.I.Act)	01-03-2013

\* \* \* \* \*

## INSTITUTION, DISPOSAL AND PENDENCY OF CASES

### ➤ HIGH COURT OF UTTARAKHAND (from 01.01.2013 to 31.03.2013)

						<b>Pendency</b>		
						<b>(At the end of 31.12.2012)</b>		
						Civil Cases	Criminal Cases	Total Pendency
						13930	6257	20187
<b>Institution</b>			<b>Disposal</b>			<b>Pendency</b>		
<b>(01.01.2013 to 31.03.2013)</b>			<b>(01.01.2013 to 31.03.2013)</b>			<b>(At the end of 31.03.2013)</b>		
Civil Cases	Criminal Cases	Total Institution	Civil Cases	Criminal Cases	Total Disposal	Civil Cases	Criminal Cases	Total Pendency at the end of 31.03.13
2234	1954	4188	1261	1719	2980	14903	6492	21395

\* \* \* \* \*

## ➤ District Courts (from 01.01.2013 to 31.03.2013)

SL. No	Name of the District	Civil Cases				Criminal Cases				Total Pendency at the end of 31.03.13
		Opening Balance as on 01.01.13	Institution from 01.01.13 to 31.03.13	Disposal from 01.01.13 to 31.03.13	Pendency at the end of 31.03.13	Opening Balance as on 01.01.13	Institution from 01.01.13 to 31.03.13	Disposal from 01.01.13 to 31.03.13	Pendency at the end of 31.03.13	
1.	Almora	645	141	126	660	1185	434	477	1142	1802
2.	Bageshwar	130	23	22	131	358	227	256	329	460
3.	Chamoli	451	92	88	455	957	399	381	975	1430
4.	Champawat	146	38	29	155	904	453	446	911	1066
5.	Dehradun	12701	2018	1855	12864	67720	20855	18973	69602	82466
6.	Haridwar	8085	1243	1304	8024	27394	9318	8498	28214	36238
7.	Nainital	2712	841	867	2686	7536	5640	5062	8114	10800
8.	Pauri Garhwal	1090	124	190	1024	1901	1096	863	2134	3158
9.	Pithoragarh	306	82	80	308	689	376	454	611	919
10.	Rudraprayag	206	43	71	178	459	331	360	430	608
11.	Tehri Garhwal	394	81	113	362	1039	489	605	923	1285
12.	U.S.Nagar	4411	773	693	4491	22046	4903	5025	21924	26415
13.	Uttarkashi	315	98	69	344	715	278	361	632	976
	<b>Total</b>	<b>31592</b>	<b>5597</b>	<b>5507</b>	<b>31682</b>	<b>132903</b>	<b>44799</b>	<b>41761</b>	<b>135941</b>	<b>167623</b>

\* \* \* \* \*



## Circular Letters/ Notifications

(issued recently)

➤ C.L. No. 01 / UHC/ Admin. A/ 2012

Dated: January 01, 2013.

**Subject: Regarding Annual Confidential Remarks.**

Sir,

In continuation of earlier Circular Letter No. 02 dated 12.03.2004 on the subject noted above, I am to inform that the Hon'ble Court is pleased to make partial modification at point 2 of Proforma 'A' of the aforementioned Circular Letter and has resolved that henceforth, for the assessment year 2012-2013 and onwards grading will be "Outstanding", "Very Good", "Good" and "Poor".

There will be no grading of "Satisfactory / fair".

You are therefore, informed accordingly.

**Registrar General**

➤ C.L. No. 02 / UHC/D.R.(I)/XVII-I/2013

Dated: January 03, 2013.

**Subject: Expeditious disposal of cases relating to incidents of rape.**

Sir,

On the above noted subject, I have been directed to inform you that Hon'ble the Chief Justice has been pleased to issue following directions for the expeditious disposal of the cases u/s 376 I.P.C. :-

- (1) That the hearing of the pending cases u/s 376 I.P.C. be expedited and such cases be heard on day-to-day basis.
- (2) That once the charge-sheet is filed in the Magistrate Courts, the cases be committed to the Court of Sessions immediately and after framing the charge hearing be done on day-to-day basis.
- (3) That in those districts where the cases u/s 376 I.P.C. are more, the cases shall be distributed amongst various courts so that the disposal of such cases is expedited.
- (4) That preliminary compliance reports containing the steps taken in pursuance of this Circular Letter be sent to the undersigned from time to time.

You are, therefore, requested to communicate the above directions to all the Judicial Officers posted in your Judgeship for strict compliance.

Registrar General

➤ C.L. No. 03 / UHC/Admin. A /2013

Dated: March 01, 2013.

**Subject: Observance of dress code during training programmes in UJALA.**

Sir,

On the above noted subject, I have been directed to inform you that it has come to the notice of the Court that Judges of the Subordinate Courts while participating in various training programmes, seminars and workshop organized by the Uttarakhand Judicial & Legal Academy, Bhowali, do not take due care to observe dress code and sometimes they come with colored coats and even do not put up tie. This is highly objectionable as it affects the discipline of the Academy. The dress code of the Academy is as under:

1. **For inaugural function, valedictory session & other ceremonial occasions for the trainee Judges:**

For Male: Cream or black colour buttoned up suit, black socks and black shoes.

For Female: White/Light colour saree and blouse with cream colour coat with black shoes or sandals.

or

White/Light colour salwar kameez with cream colour coat with black shoes or sandals.

2. **In the training room:**

For Male: White shirt with full sleeve, black pant, black tie, black coat, black socks and black shoes.

or

Black coloured button up suit, black socks and black shoes.

For Female: White/Light colour saree, blouse and black colour coat with black shoes or sandals

or

White/Light colour salwar kameez and black colour coat with black shoes or sandals

or

White shirt with full sleeve, black pant, black tie and black coat with black shoes or sandals

**3. For Yoga, meditation, games & sports:**

For Male: Track suit, socks and white P.T. shoes.

For Female: Track suit/any other comfortable sports dress with socks and white P.T. shoes

Any participant who wishes to wear sweater (half sleeved or full sleeved) inside the coat may wear so but strictly that of black colour.

The trainee judges are required to be decently dressed in places other than mentioned above like the Academy premises, market places, mess etc. and must ensure bringing formal clothing along with the prescribed dress. As the climate of Bhowali is extremely cold, the trainee Judges are required to bring woollen clothes and other warm dressings with them.

You are, therefore, requested to kindly bring to the notice of the all the Judicial Officers posted in your Judgeship to strictly observe the above dress code of the Academy while participating in various training programmes, seminars and workshop organized by the Academy.

**Registrar General**

➤ **C.L. No. 04 /UHC/Admin. A/2013**

**Dated: March 20, 2013.**

**Subject: Nomination of Administrative Judge(s).**

Sir,

In supersession of earlier Circular Letters on the subject noted above, I am to inform that Hon'ble the Chief Justice is pleased to nominate the following Hon'ble Judges as the Administrative Judges Incharge of the District(s) shown against their names in the list given below with effect from 01.04.2013.

1. Hon'ble Mr. Justice K.J. Sengupta - Nainital.
2. Hon'ble Mr. Justice Prafulla C. Pant - Dehradun.
3. Hon'ble Mr. Justice B. S. Verma - Udham Singh Nagar.
4. Hon'ble Mr. Justice V.K. Bist - Haridwar.
5. Hon'ble Mr. Justice Sudhanshu Dhulia - Tehri Garhwal, Uttarkashi & Pithoragarh.
6. Hon'ble Mr. Justice Alok Singh - Bageshwar & Rudraprayag.
7. Hon'ble Mr. Justice S.K. Gupta - Chamoli & Pauri Garhwal.
8. Hon'ble Mr. Justice U.C. Dhyani - Almora & Champawat.

You are therefore, informed accordingly.

**Registrar General**

### NOTIFICATION

➤ No. 35 /UHC/Admin.A/2013

Dated: March 02, 2013.

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 (applicable to Uttarakhand under U.P. Reorganization Act, 2000).

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

1. In General Rules (Civil), 1957 as applicable to the State of Uttarakhand and herein after referred to as the "said Rules"—
  - (a) The words "Civil Judge", "Additional Civil Judge", "Munsif" and "Additional Munsif" wherever appearing in the said Rules shall be read as "Civil Judge (Senior Division)", "Additional Civil Judge (Senior Division)", "Civil Judge (Junior Division)" and "Additional Civil Judge (Junior Division)" respectively;
  - (b) The phrase "High Court" wherever appearing in the said Rules shall mean "High Court of Uttarakhand at Nainital";
  - (c) The word "State" wherever appearing in the said Rules shall mean "State of Uttarakhand";

2. In the Rule-10 of the said Rules-

(a) Para-3 shall be substituted by the following:-

**“District Judges shall be in the court building not later than 10:00 a.m. and shall sit in the Court at the latest by 10:30 a.m. for judicial work. If administrative work remains unfinished by 10:30 a.m., it may be done after 04:00 p.m.”.**

(b) Para- 4 of Rule 10 of said Rules shall be deleted.

3. In Rule 28 of the said Rules, the following proviso is to be added:-

**“Provided that written arguments filed by either party under Order XVIII Rule 2 (3-A) Code of Civil Procedure, 1908 (as amended in 2002), shall be placed on record”;**

4. Rule 112 of the said Rules shall be substituted by following Rule:-

**“112. Processes for service by foreign countries.- A process meant for service in foreign or commonwealth countries shall be sent to Ministry of Law and Justice through High Court in accordance with Circular No. T. 4410/14/2006, dated 30.04.2010 issued by Ministry of External Affairs, Government of India, New Delhi.”**

Provided that where in a foreign territory Political Agent has been appointed or Court has been established in accordance with Order V, Rule 26, the process can also be sent direct by registered post or otherwise to such Political Agent or Court for service.”

5. Existing Rule 122 of the said Rules shall be re-numbered as “122A” and before it the following Rule 122 shall be added as following:-

“122 - Mode of Service –

i. Every summon or process may be served on the defendant or opposite party by adopting modes/means as provided in Order V Rule 9 of Code of Civil Procedure, 1908 (as amended).

ii. In case of service of summons or process by registered post acknowledgment due, declaration as to due service may be made in accordance with the provision of Order 5 Rule 9 (5) of Code of Civil Procedure, 1908.

- iii. **Mode of e-mail service for effecting service of processes should be adopted only when the Court is satisfied that opposite party/defendant has a valid and existing e-mail address."**

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

1. In General Rules (Criminal), 1977 applicable to the State of Uttarakhand and herein after referred as the "said Rules"-
- (a) The phrase "**High Court**" wherever appearing in the said Rules shall mean "**High Court of Uttarakhand at Nainital**";
- (b) The word "**State**" wherever appearing in the said Rules shall mean "**State of Uttarakhand**";
2. Rule 16 of the said Rules shall be substituted with the following:-

**"No legal process of any kind shall be sent for execution in a foreign country, including any Commonwealth country, except through the High Court and to the Ministry of Home Affairs, Government of India in accordance with Circular No. T.4410/14/2006, dated 30.04.2010 issued by Ministry of External Affairs, Government of India."**

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

By Order of the Court

**Registrar General.**

\* \* \* \* \*

## Some Recent Judgments of Uttarakhand High Court

### DIVISION BENCH JUDGMENTS:

1. On 1<sup>st</sup> January, 2013, a Division Bench in *Pramod and others vs. State of Uttarakhand* (Criminal Appeal No. 355 of 2007), while dismissing the appeal of accused-appellants, the Bench observed that the Hon'ble Supreme Court in a catena of rulings, observed that, when there is direct evidence of any fact, motive fades into oblivion. In the face of direct evidence, one is not required to read the minds of the accused persons, as to what transpired in their minds.
2. On 2<sup>nd</sup> January, 2013, a Division Bench in *Vinod Kumar Jindal vs. Union of India and another* (Writ Petition (S/B) No. 1 of 2013), allowing the writ petition observed that a litigant should not suffer for the default or laches on the part of his Advocate, though chosen by him, inasmuch as, the system prevalent compels a litigant to take the assistance of a counsel chosen by him.
3. On 25<sup>th</sup> February, 2013, a Division Bench in *M/s Cyborg I.T. Services Pvt. Ltd. Vs. State of Uttarakhand and others* (Special Appeal No. 47 of 2012), declined to interfere with the order of the Government restraining schools from utilizing public money for payment for the articles to the appellant company observing that it would not be possible to conclude that the software was a separate commodity/article, whereas training and installation were separate therefrom.

In the instant case, software was purchased by the schools from the appellant on the strength of Regulation 8 of Procurement regulations which provides that appropriate authority can procure at his own motion and at his own discretion, any commodity/article not in excess of Rs. 15,000/-. Principals of different schools procured software which costs Rs. 14,900/- from the appellant, but total costs of software, installation, training and updation was Rs. 22,900/-, which was in excess of Rs. 15,000/-, thus violated regulation 8 and therefore State Government restrained schools from making any payment. Hence, the appellant filed this special Appeal.

The Bench observed that by going through the brochure of appellant company, it is evidently clear that software, installation, training and updation are a part of single commodity and rejected the contention of appellant that the commodity/article of training, maintenance, support and updation is a separate commodity/article from the software.

4. On 26<sup>th</sup> February, 2013, a Division Bench in *Dinesh Bhardwaj vs. State of Uttarakhand and others* (Writ Petition (PIL) No. 103 of 2011) disposed of the Public Interest Litigation filed highlighting the fact that Hardwar Development Authority has identified that certain unauthorized constructions made and all such constructions are without any sanction made

within 200 meters from the banks of river Ganges, but Hardwar Development Authority was unable to discharge its public function of demolishing those illegal constructions. The Bench directed the Hardwar Development Authority to ensure that any construction made on the banks of river Ganges subsequent to the year 2000 is removed. The concerned District Magistrates and Senior Superintendent of Police have also been directed to render all necessary help to Hardwar Development Authority to carry out such demolitions.

The State of Uttar Pradesh had issued a notice on 31<sup>st</sup> July, 2000, pursuant to the directions issued by the Hon'ble Allahabad High Court that no construction shall be permitted within 200 meters from the banks of river Ganges.

5. On 27<sup>th</sup> February, 2013, a Division Bench in *Dharam Singh vs. State of Uttarakhand and others* (Special Appeal No. 49 of 2013), observed that alternative efficacious remedy is not a bar to exercise jurisdiction under Article 226 of the Constitution of India. However, if alternative remedy is efficacious, the High Court usually refrains from exercising jurisdiction under Article 226 of the Constitution of India. In cases, where an alternative remedy is available, but it is contended before the High Court successfully that the order is *non est*, it will be unjust on the part of the High Court after having had come to the conclusion that the order is *non est*, or when on the face of the record it is shown that the order is *non est* to relegate the party to avail the alternative remedy.
6. On 1<sup>st</sup> March, 2013, a Division Bench in *Sunil Kumar vs. State of Uttarakhand* (Criminal Jail Appeal No. 46 of 2008), observed that if prosecution is solely based upon the circumstantial evidence, then complete chain of circumstances must be proved beyond reasonable doubt. The Bench laid emphasis on the land mark authority of Hon'ble Supreme Court rendered in the case of **Sharad Birdhichand Sarda vs. State of Maharashtra** reported in AIR 1984 SC 1622, wherein Hon'ble Supreme Court has held as under:

*“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”*



7. On 4<sup>th</sup> March, 2013, a Division Bench in *B.M. Garg vs. State of Uttarakhand and others* (Writ Petition (S/B) No. 201 of 2012), rejected the contention of State Government that the matter pertaining to right to know the annual confidential remarks and right to make representation in respect thereof and the consequence of breach thereof, is pending decision before a larger bench of the Hon'ble Supreme Court and observed that pendency of a matter before a larger bench is not stay of the judgment already rendered by the Hon'ble Supreme Court, which is binding on the State under Article 141 of the Constitution of India. Until such time the larger bench alters the binding judgment of the Hon'ble Supreme Court, the judgment of the Hon'ble Supreme Court is the law of the land. The Bench further observed that if the law pronounced by the Hon'ble Supreme Court, rendered in two judgments, is conflicting with each other, the law obliges the State to follow the latter judgment, until such time, the same is interfered with by yet another judgment of the Hon'ble Supreme Court.
8. On 7<sup>th</sup> March, 2013, a Division Bench in *State of Uttarakhand vs. Vijay Sahu and others* (Government Appeal No. 12 of 2008), while allowing the Government Appeal against the acquittal of accused-respondents, observed that in an appeal against acquittal, if two views are possible and trial court has recorded acquittal, interference by the High Court should be restricted. However, in case, High Court finds the view taken by the trial court was not based on the evidence and it would defeat ends of justice, if the order is not set aside, then High Court, after re-appreciating the evidence and material available on the record, must come forward to set aside the judgment of acquittal and convict the accused. The Bench reiterated principle of law laid down by the Hon'ble Supreme Court in *Beere Gowda vs. State of Karnataka* (2010) 11 SCC 771 and *Sidhartha Vashisht @ Manu Sharma vs. State* (NCT of Delhi) (2010) 6 SCC 1).
9. On 19<sup>th</sup> March, 2013, a Division Bench in *Smt. Prema Shah vs. State of Uttarakhand* (Criminal Appeal No. 70 of 2008), allowing the appeal of accused-appellant against her conviction under Section 20(b)(ii)(c) of The Narcotic Drugs and Psychotropic Substances Act, 1985, observed that the moment narcotic drugs or psychotropic substance, as notified by the Central Government under Sub-Section (1) of Section 52 A of the Act, or commercial quantity of contraband, is seized, the officer-in-charge of the Police Station or the officer empowered under Section 53 of the Act, as the case may be, to whom accused or articles seized were forwarded under Sub-Section (2) or Sub-Section (3) of Section 52, should immediately approach the Magistrate for certification of the inventory so prepared and to take photographs of the contraband and sample thereof should only be drawn in the presence of the Magistrate under his certificate and steps

must be taken for the destruction of such contraband to avoid vulnerability of theft, misuse, interpolation, substitution either in the samples or in the contraband so recovered, soon after the charge sheet is filed in the matter.

The Bench referred principles of law laid down by the Hon'ble Supreme Court in the cases of **Sunderbhai Ambalal Desai vs. State of Gujarat, reported in (2002) 10 SCC 283** and **Kishan Chand vs. State of Haryana, reported in (2013) 2 SCC 502**.

The Bench also directed to forward a copy of the judgment to the Director General of Police, Uttarakhand as well as to all the Sessions Judges of the State, for strict compliance thereof.

### SINGLE BENCH JUDGMENTS:

10. On 3<sup>rd</sup> January, 2013, a Single Judge Bench in **Ashok Kumar and others vs. State of Uttarakhand and others** (Writ Petition No. 2100 of 2012 (M/S)), observed that reading Clause (a) and (b) of Section 34 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 shows that provision of Order 19 Rule 2 of the C.P.C. is adopted by the said Act and the language of Order 19 Rule 2 of C.P.C. is very clear to hold that it is discretionary power and is not a matter of right, but when it is established before the Court that unless cross examination is allowed, there would be a travesty of justice, it becomes a matter of right. The Bench observed that the Court must exercise discretion in that case to allow cross examination.
11. On 2<sup>nd</sup> January, 2013, a Single Judge Bench in **State of Uttarakhand vs. Jhandu** (Criminal Government Appeal No. 1263 of 2001) observed while re-appreciating the evidence on record that the trial court has completely ignored the fact that the accused was apprehended at the spot by the witnesses along with knife used in the crime. The Bench further observed that the trial court has taken shelter of flimsy grounds to doubt the testimony of the injured eye witness and other eye witnesses of the fact.

The Bench rejected the contention on behalf of accused that depth of the injury suffered by the injured is not mentioned in the injury report as such the medical opinion that the injury was dangerous to life cannot be accepted. The Bench having considered the medical evidence opined that had the deadly weapon not been inflicted on the vital part of the body, it could have been said that the want of bringing depth of injury on record, is suggestive that accused might not have intention to kill the injured. But in the present case accused has attacked to the injured with a deadly weapon on the vital part.

12. On 3<sup>rd</sup> January, 2013, a Single Judge Bench in *Anil Kumar and others vs. State of Uttarakhand and others* (Writ Petition No. 10 of 2013 (M/S), restrained the respondent Uttarakhand Power Corporation to discontinue the electric supply line of petitioners for a period of 3 months, who were earlier a part of undivided U.P. and power supply was given to them by respondent corporation, but now after bifurcation they are residing in the territory of U.P., therefore respondent corporation is not bound to supply electricity to them. But, the Bench observing that it is a question of right to life and livelihood both linked with electricity now-a-days and the petitioners have to make arrangement for legal source of electric energy from the counter part of the State of U.P., which cannot be obtained overnight, restrained the respondent to discontinue the supply for a period of 3 months on payment of usual charges.
13. On 5<sup>th</sup> January, 2013, a Single Judge Bench in *Suresh vs. State of Uttarakhand* (Criminal Appeal No. 74 of 2003), rejected the submission put forth on behalf of accused-appellant that the statement of victim, who was a deaf and dumb, recorded by the trial court cannot be said to be true on account of her statement as the interpreter was her own husband who was not an independent person and observed that on going through the statement of the witnesses recorded by the trial court, the court found that while recording the statement of the victim as interpreted by her husband there is specific mention of what kind of gestures and signs made by the victim which clearly indicates that interpretation recorded by the trial court is trust worthy.
14. On 28<sup>th</sup> February, 2013, a Single Judge Bench in *Janardan Singh vs. State of Uttarakhand and another* (Criminal Appeal No. 117 of 2009) observed that Clause (b) of Section 138 of Negotiable Instruments Act, 1881, only requires giving of a notice, in writing, before filing the criminal complaint. The Bench referred judgment of Hon'ble Supreme Court rendered in *V. Raja Kumari vs. P. Subbarama Naidu and another (2004) 8 SCC 774*, wherein interpreting the said provision, the Apex Court has clarified that "giving notice" in the context is not the same as "receipt of the notice". The Bench also laid emphasis on the judgment of Hon'ble Supreme Court rendered in the case of *C.C. Alavi Haji vs. Palapetty Muhammed (2007) 6 SCC 555*, wherein it has been held by the Apex Court that even if there is no actual service of notice on the accused sent under Section 138 (b) of Negotiable Instruments Act, 1881, if the accused fails to pay the amount mentioned in the cheque within 15 days of receiving the summons, he cannot claim that there was no personal service of the notice.

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## **MAJOR EVENTS AND INITIATIVES**

- ❖ **Republic Day celebration:** On 26<sup>th</sup> of January Republic Day was celebrated in the High Court premises with great enthusiasm. On this occasion National Flag was unfurled by Hon'ble Mr. Justice V.K. Bist. Hon'ble Mr. Justice U.C. Dhyani graced the occasion.
- ❖ **Oath ceremony of Hon'ble Mr. Justice Alok Singh:** Pursuant to Notification No. K.11017/01/2013-US.I dated 14.02.2013 issued by the Government of India, Ministry of Law & Justice (Department of Justice), Hon'ble Mr. Justice Alok Singh has assumed charge of office of Judge of the Uttarakhand High Court on 26<sup>th</sup> February, 2013. His Lordship was elevated to the High Court of Uttarakhand on 12.10.2009 as a Judge and on 21.12.2009 transferred to High Court of Punjab & Haryana, Chandigarh. From High Court of Punjab & Haryana, assumed charge of office of Judge of Jharkhand High Court on 13.06.2012.
- ❖ **Awareness programme by Competition Commission of India:** Competition is now universally acknowledged as the best means of ensuring that consumers have access to the broadest range of services at the most competitive prices. To regulate this and to curb monopolies to promoting competition, the Competition Act, 2002 was enacted on 13.01.2003. The objectives of the Act are sought to be achieved through the Competition Commission of India (CCI). The CCI organizes various awareness programme in this regard. One of such programme and precisely taken as first programme organized in any High Court, was organized in the High Court on 16.03.2013. Hon'ble the Chief Justice of High Court of Uttarakhand and Hon'ble Judges graced the programme by their benign presence. On behalf of Competition Commission of India, Dr. Satya Prakash, Director (Law) and Sri Sukesh Mishra, Joint Director (Law) were present.
- ❖ **Recruitment of Ministerial Staff in subordinate judiciary:** Acute shortage of Ministerial Staff and Stenographers in the subordinate judiciary is a matter of great concern. To supply the vacancies in this regard, High Court with the assistance of Uttarakhand Board of Technical Education organized typing & shorthand examination in two phases out of the qualified candidates of the written examination held on 28.10.2012. On the basis of 1<sup>st</sup> phase, 160 candidates in the clerical cadre and 06 candidates in the stenography cadre have been finally selected and process of their appointment at the district level is under way. In 2<sup>nd</sup> phase, 02 candidates in the clerical cadre and 37 candidates in stenography cadre have been declared successful. Process of their appointment will be done at the earliest.

## **MAJOR ACTIVITIES OF UJALA**

- ❖ **Training/Workshop for Additional/Assistant District Government Counsels (Criminal):** To sharpen the skill and update legal knowledge on various aspect of criminal law, a five day training/workshop from 15<sup>th</sup> to 19<sup>th</sup> January, 2013 was organized by the Academy. Total 17 Additional/Assistant District Government Counsels (Criminal) of different districts participated in the said workshop.
- ❖ **Awareness/Sensitization programme on Mediation for Judges and Advocates:** Resolution of disputes through Mediation is gaining acceptance everywhere. But optimum use of this process can be obtained only through proper awareness amongst all stakeholders of this process. In this regard, an awareness-cum-sensitization programme for Judges as well as Advocates was organized by the Academy on 17<sup>th</sup> February, 2013. Total 30 Judges and Advocates participated in the programme.
- ❖ **Training on Ubuntu Operating System:** As a part of Change Management Process under the e-Court project, an awareness-cum-training programme on the Ubuntu-Linux Operating System was organized for the judicial officers and system officers of High Court/District Courts from 23<sup>rd</sup> & 24<sup>th</sup> February, 2013 at the Academy. Total 31 judicial officers and system officers participated in the said programme. From these 31 participants, 05 judicial officers have been identified as Master Trainers.
- ❖ **Workshop on "Protection of Women from Domestic Violence Act, 2005":** A two days' workshop for the Protection Officers of the State of Uttarakhand was organized by the Academy on 26<sup>th</sup> & 27<sup>th</sup> February, 2013. Total 10 Protection Officers from the Department of I.C.D.S., Government of Uttarakhand participated in the said workshop.
- ❖ **Special Training Programme on 'Streamlining the Procedure and for Eliminating Unnecessary Adjudgments':** On the directions of Hon'ble the Chief Justice, specialized training programme are being organized for the judicial officers of State of Uttarakhand to sharpen their skill in eliminating unnecessary adjournments, so that object of expeditious disposal can be achieved. 1<sup>st</sup> phase of such programme for 36 judicial officers has been organized by the Academy on 1<sup>st</sup> & 2<sup>nd</sup> March, 2013.

- ❖ **Intensive Training Programme on Ubuntu-Linux Operating System:** For the selected Master Trainers from the State of Bihar, Himachal Pradesh, Jammu-Kashmir and Uttarakhand, an intensive training programme on Ubuntu-Linux Operating System was organized by the e-Committee, Hon'ble Supreme Court of India at the Academy from 7<sup>th</sup> to 10<sup>th</sup> March, 2013. Total 24 Master Trainers from these four States participated in the intensive training programme. Trainers for the said programme were Sri Talwant Singh, Member (Judicial) and Sri Ashok T. Ukrani, Member (HR), e-Committee, Hon'ble Supreme Court of India. Now these Master Trainers will impart training to all the judicial officers of their respective States.
  
- ❖ **2<sup>nd</sup> Phase of Foundation Training Programme for Newly Appointed Civil Judges (Junior Division):** After the two months long Court training, 2<sup>nd</sup> phase of Foundation Training Programme for Newly Appointed Civil Judges (Junior Division) batch-2011 has been commenced at the Academy from 13<sup>th</sup> March, 2013 and this will continue till 12<sup>th</sup> of July, 2013. Total 32 judicial officers are receiving Foundation Training in the said programme.

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**Hon'ble the Chief Justice Sri Barin Ghosh (Right) administered the oath of office to  
Hon'ble Mr. Justice Alok Singh on 26.02.2013**



**Group Photograph taken on 16.03.2013 at the conference organized by  
Competition Commission of India**



**Sitting (from Left) :** Sri Kurban Ali Secretary High Court Bar Association, Dr. Satya Prakash Director (Law) Competition Commission of India, Sri Ram Singh Registrar General, Sri D.K. Sharma President High Court Bar Association, Hon'ble Sri Justice U.C. Dhyani, Hon'ble Sri Justice Sudhanshu Dhulia, Hon'ble Sri Justice B.S. Verma, Hon'ble the Chief Justice Sri Barin Ghosh, Hon'ble Sri Justice Prafulla C. Pant, Hon'ble Sri Justice V.K. Bist, Hon'ble Sri Justice Alok Singh, Ms. Anjali Bhargava Advocate.

**Standing (from Left) :** Sri Sukesh Mishra Joint Director (Law) Competition Commission of India, Sri Lokendra Dobhal Advocate, Sri S.M.D. Damish Additional Director Uttarakhnad Judicial & legal Academy, Sri R.D. Paliwal Director Uttarakhnad Judicial & legal Academy, Sri B.B. Pandey Additional Registrar, Sri Narender Dutt Registrar (Judicial), Sri Kanwar Amninder Singh Additional Registrar, Sri A.K. Sangal Registrar (Protocol), Sri K.N. Joshi Advocate.