



सत्यमेव जयते

UTTARAKHAND COURT NEWS

(A Quarterly News letter)

Vol-IV Issue No-3 (July-September, 2013)



High Court of Uttarakhand, Nainital

EDITORIAL BOARD

Hon'ble Mr. Justice Sudhanshu Dhulia
Hon'ble Mr. Justice U.C. Dhyani

COMPILED BY

D.P. Gairola,, Registrar General, High Court of Uttarakhand

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Group Photo of Hon'ble Judges while bidding farewell to Hon'ble Mr. Justice Prafulla C. Pant, Chief Justice designate of High Court of Meghalaya.



Hon'ble Mr. Justice U.C. Dhyani, Hon'ble Mr. Justice Sudhanshu Dhulia, 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 Alok Singh.

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[Handwritten Signature]
 Deputy Editor

UTTARAKHAND HIGH COURT

LIST OF JUDGES (As on 30th September, 2013)

SL. No.	Name of the Hon'ble Judge	Date of Appointment (Assumed charge in Uttarakhand)
1.	Hon'ble Mr. Justice Barin Ghosh	12.08.2010
2.	Hon'ble Mr. Justice B. S. Verma	15.07.2004
3.	Hon'ble Mr. Justice V.K. Bist	01.11.2008
4.	Hon'ble Mr. Justice Sudhanshu Dhulia	01.11.2008
5.	Hon'ble Mr. Justice Alok Singh	26.02.2013
6.	Hon'ble Mr. Justice Servesh Kumar Gupta	21.04.2011
7.	Hon'ble Mr. Justice Umesh Chandra Dhyani	13.09.2011

* * * * *



Barin Ghosh



CHIEF JUSTICE
HIGH COURT OF UTTARAKHAND

Nainital - 263001

October 9, 2013

MESSAGE

Under the e-Courts project, launched by the Union Government and guidelines issued in this regard by e-Committee, Supreme Court of India, from time to time, we have computerized the High Court and we are in the process of completing computerization in our District Courts also. For this purpose, necessary training on computers and software is being given to all the Judicial Officers and also to Ministerial cadre staff of the District Courts. This is an important move towards streamlining the administration of justice by this project.

Increase in literacy and awareness of rights and better access to Courts have contributed to the fact that more and more people have turned to courts for enforcing their rights. The court management database under the above project would contain all the information relating to the courts. Based on the stored information, the computer would automatically generate scrutiny report, case register, case assignment report, register of court fees paid and payable etc. etc.

On completion of the project, we would be able to have on-line availability of entire judicial database on National Judicial Data Grid under 'e-Courts portal', which has been launched on August 07, 2013 by Hon'ble the Chief Justice of India. In some of the Districts, current data has been made available upon it and in remaining we are in the process of making it available very soon, which can be viewed at <http://ecourts.gov.in>.

I am certain that the use of technology would accelerate the progress of disposal of cases and, thus, the aid of information technology is bound to enhance the understanding and operation of the legal system to the common man.

(Barin Ghosh)

TRANSFERS, PROMOTIONS & APPOINTMENTS OF JUDICIAL OFFICERS

Sl. No.	Name of the Judicial Officer	From	To	Date of Order
1.	Sri Ram Singh, Registrar General	High Court, Nainital	District & Sessions Judge, Dehradun	29-08-2013
2.	Sri Ramesh Chandra Kukreti, District & Sessions Judge	Rudraprayag	District & Sessions Judge, Udham Singh Nagar	29-08-2013
3.	Sri Dinesh Prasad Gairola, Principal Secretary, Law-cum-L.R., Government of Uttarakhand	Dehradun	Registrar General, High Court of Uttarakhand, Nainital	29-08-2013
4.	Ms. Kumkum Rani, District & Sessions Judge	Pauri Garhwal	District & Sessions Judge, Hardwar	29-08-2013
5.	Sri Vivek Bharti Sharma, District & Sessions Judge	Pithoragarh	District & Sessions Judge, Pauri Garhwal	29-08-2013
6.	Sri Uttam Singh Nabiyal, Judge, Family Court	Udham Singh Nagar	District & Sessions Judge, Rudraprayag	29-08-2013
7.	Sri C.P. Bijalwan, Judge, Family Court	Nainital	District & Sessions Judge, Pithoragarh	29-08-2013
8.	Sri Prem Singh Khimal, Additional Secretary, Law- cum-Additional L.R., Government of Uttarakhand	Dehradun	Additional District & Sessions Judge, Haldwani, District Nainital	29-08-2013
9.	Sri Jaya Dev Singh, District & Sessions Judge	Udham Singh Nagar	Principal Secretary, Law-cum-L.R., Government of Uttarakhand, Dehradun	04-09-2013
10.	Sri Krishan Dutt Bhatt, District & Sessions Judge	Hardwar	Principal Secretary, Legislative & Parliamentary Affairs, Government of Uttarakhand, Dehradun	04-09-2013
11.	Sri Rajendra Joshi, Additional District & Sessions Judge	Nainital	Judge, Family Court, Udham Singh Nagar	30-08-2013

12.	Sri Prashant Joshi, Additional District & Sessions Judge	Haldwani	Judge, Family Court, Nainital	30-08-2013
13.	Sri Manish Mishra, Additional District & Sessions Judge	Tehri Garhwal	Additional Secretary, Law-cum-Additional L.R., Government of Uttarakhand, Dehradun	04-09-2013
14.	Sri Subir Kumar, Additional District & Sessions Judge	Hardwar	2 nd Additional District & Sessions Judge, Roorkee	29-08-2013
15.	Ms. Kusum, Civil Judge (Jr. Div.)	Udham Singh Nagar	4 th Additional Civil Judge (Sr. Div.), Udham Singh Nagar	06-09-2013
16.	Ms. Kusum, 4 th Additional Civil Judge (Sr. Div.)	Udham Singh Nagar	Additional Judge, Family Court, Dehradun	09-09-2013
17.	Ms. Nazish Kaleem	----	Judicial Magistrate-III, Dehradun	11-09-2013
18.	Ms. Rashmi Goyal	----	4 th Additional Civil Judge (Jr. Div.), Dehradun	11-09-2013
19.	Sri Akhilesh Kumar Pandey	----	5 th Additional Civil Judge (Jr. Div.), Dehradun	11-09-2013
20.	Sri Imran Mohd. Khan	----	Judicial Magistrate-II, Hardwar	11-09-2013
21.	Sri Sachin Kumar Pathak	----	Judicial Magistrate-III, Hardwar	11-09-2013
22.	Ms. Durga	----	Judicial Magistrate-II, Haldwani	11-09-2013
23.	Sri Puneet Kumar	----	4 th Additional Civil Judge (Jr. Div.), Hardwar	11-09-2013
24.	Sri Rajesh Kumar	----	Judicial Magistrate-II, Udham Singh Nagar	11-09-2013
25.	Sri Ashish Naithani, District & Sessions Judge	Chamoli	District & Sessions Judge, Rudraprayag	17-09-2013
26.	Sri Uttam Singh Nabiyal, District & Sessions Judge	Rudraprayag	District & Sessions Judge, Chamoli	17-09-2013
27.	Smt. Anjushree Juyal, A.C.J.M. (Railway)	Haldwani	Civil Judge (Senior Division), Haldwani	01-11-2013
28.	Ms. Deepali Sharma, Civil Judge (Senior Division)	Haldwani	A.C.J.M., Haldwani	01-11-2013
29.	Ms. Rajani Shukla, A.C.J.M.	Haldwani	Civil Judge (Senior Division), Tehri Garhwal	01-11-2013

* * * * *

INSTITUTION, DISPOSAL AND PENDENCY OF CASES

➤ **HIGH COURT OF UTTARAKHAND (from 01.07.2013 to 30.09.2013)**

						Pendency (At the end of 30.06.2013)		
						Civil Cases	Criminal Cases	Total Pendency
						14648	5665	20313
Institution (01.07.2013 to 30.09.2013)			Disposal (01.07.2013 to 30.09.2013)			Pendency (At the end of 30.09.2013)		
Civil Cases	Criminal Cases	Total Institution	Civil Cases	Criminal Cases	Total Disposal	Civil Cases	Criminal Cases	Total Pendency at the end of 30.09.13
2621	1604	4225	2443	2223	4666	14826	5046	19872

➤ District Courts (from 01.07.2013 to 30.09.2013)

SL. No	Name of the District	Civil Cases				Criminal Cases				Total Pendency at the end of 30.09.13
		Opening Balance as on 01.07.13	Institution from 01.07.13 to 30.09.13	Disposal from 01.07.13 to 30.09.13	Pendency at the end of 30.09.13	Opening Balance as on 01.07.13	Institution from 01.07.13 to 30.09.13	Disposal from 01.07.13 to 30.09.13	Pendency at the end of 30.09.13	
1.	Almora	619	163	176	606	1054	471	536	989	1595
2.	Bageshwar	135	56	57	134	361	274	250	385	519
3.	Chamoli	433	72	92	413	932	231	278	885	1298
4.	Champawat	171	66	51	186	1045	434	455	1024	1210
5.	Dehradun	12522	2892	3002	12412	71156	21185	23738	68603	81015
6.	Haridwar	8100	2177	2269	8008	28719	12524	11429	29814	37822
7.	Nainital	2795	987	1056	2726	8013	2727	3065	7675	10401
8.	Pauri Garhwal	961	196	220	937	2204	910	903	2211	3148
9.	Pithoragarh	307	110	102	315	642	398	397	643	958
10.	Rudraprayag	167	27	59	135	425	169	203	391	526
11.	Tehri Garhwal	397	153	168	382	957	434	431	960	1342
12.	U.S.Nagar	4592	1047	1139	4500	20777	8673	6565	22885	27385
13.	Uttarkashi	325	77	69	333	690	446	321	815	1148
	Total	31524	8023	8460	31087	136975	48876	48571	137280	168367

Circular Letters/ Notifications**(issued recently)****> C.L. No. 09/XVII-5 /DR(I)/2013****Dated: August 13, 2013**

Subject: RETENTION OF RENT FREE ACCOMMODATION BY THE JUDICIAL OFFICERS ON TRANSFER.

Madam/Sir,

On the above noted subject, I have been directed to say that judicial officers are entitled to rent free Government Accommodation as per the recommendation of the Shetty Commission. An officer is supposed to vacate the residence occupied by him on his transfer before the expiry of the period of joining time (exclusive of journey time permissible to him) as per Rule 18A (5) (a) of the Financial Hand Book Vol. II to IV. However, High Court's C.L. No. 86/5(b)/Admin. Budget dated 13.01.1987 provides that the judicial officers upon transfer or retirement, as the case may be, shall not retain their official residence beyond 45 days on any ground whatsoever without prior permission of the Court. A Judicial officer has to take permission of the Court to retain official residential accommodation beyond 45 days of his handing over charge as per C.L.No.2/Admn. (B-1) Section dated 5.5.1995. If a Judicial officer is allotted rent free accommodation at the new station and he is permitted to retain the official accommodation at the earlier station for some time, the rent has to be paid as per Financial Hand Book. It is generally noticed that that the officers do not vacate the residence within the stipulated period and do not apply for permission of High Court in time.

It is also noticed that after having been permitted to retain the house, the judicial officers do not pay the rent at the old station even though rent free Government accommodation is allotted to them at the new station. This is highly objectionable. In this connection, I have been directed to request you to impress upon the judicial officers not to retain the Government accommodation allotted to them beyond the period of 45 days without the permission of the Court. It is hereby clarified that even after getting permission to retain the house beyond the period of 45 days, the judicial officers are required to pay the rent at the old station as per the provision made in Financial Hand Book (II to IV). Subsidiary Rule 18A (5) (a) and (b) clearly provide as under:

“(5) (a) The incumbent of a post to which a residence is allotted shall vacate the residence occupied by him on his transfer before the expiry of the period of joining time (exclusive of journey time permissible to him). He may be permitted to occupy the residence in his occupation beyond the period of joining time as indicated above on payment of rent as follows:

- (i) normal rent under F.R. 45-A-IV(b) for one month from the date of transfer;
- (ii) the standard rent of the residence for the next two months;
- (iii) double the standard rent for the following two months; and
- (iv) triple the standard for any subsequent period.

(b) In case, however, permission for continued occupation beyond joining time as referred to in sub-paragraph (a) above, is not obtained or is not granted, the occupation will be unauthorised and the incumbent will be liable to action in accordance with the law on the subject.”

The Hon'ble Supreme Court of India and Hon'ble High Court of Allahabad have also deprecated the practice of the Government Official to retain the official accommodation beyond the permissible limit on their transfer or retirement. The Hon'ble Courts have observed that in view of the present shortage of accommodations, it is not at all desirable that a government servant occupies two government accommodations; one at the old station and another at the new station and the successor to the government servant find himself helpless without official accommodation and the government has to bear additional burden by paying the rent.

You are, therefore, requested to kindly impress upon judicial officers to comply with the above directions and direct them to apply in time for permission to retain the Government accommodation on transfer and if permitted to retain the same, to pay the rent as per Rule 18A of Financial Hand Book (II to IV).

Registrar General

Registrar General

> C.L. No. 10/X/b-1/DR(I)/2013 Dated: September 18, 2013

Subject: Quantum of work for the Judicial Officers.

Madam/Sir,

In continuation of C.L. No. 05/X-b-16/Ins/2004 dated 2.4.2004 on the above noted subject, I have been directed to inform you that Hon'ble Court has been pleased to delete existing Para (10) of scheduled 'D' of C.L. No. 05/X-b-16/Ins/2004 dated 2.4.2004 which requires 120% standard for Courts of Chief Judicial Magistrate/Addl. Chief Judicial Magistrate/Civil Judges (J.D.)/Judicial Magistrates and substitute the same as under:-

"10 (a) If the pendency of cases (including all categories) of the court of District and Sessions Judge/Additional District and Sessions Judge at any point of time during the year had been 300 or more, the officer shall be required to give 100% out turn. And if in such court pendency of cases (including all categories) had never been more than 300 cases during the year, proportional out turn in view of the lesser pendency of maximum cases during the year shall be treated 100% for such courts.

(b) If the pendency of all kinds of cases, including criminal cases, in the court of Civil Judges (Senior Division)/ Additional Civil Judges (Senior Division), Civil Judges (Junior Division)/ Additional Civil Judges (Junior Division) is 500 or more at any point of time during the year, the officer shall be required to give 100% out turn. And if such pendency had never been more than 500 cases, proportional out turn in view of the lesser pendency of maximum cases during the year shall be treated as 100%.

(c) In the court of Chief Judicial Magistrate/ Additional Chief Judicial Magistrate/ Judicial Magistrate and Special Judicial Magistrate with the pendency of 1000 cases (including petty cases) at any point of time during the year, the officer would be required to give 100% out turn. And if the pendency in such court had never been more than 1000 cases during the year, proportional out turn in view of the lesser pendency of maximum cases during the year shall be treated as 100%."

You are, therefore, requested to kindly inform all concerned accordingly.

Registrar General

➤ **C.L. No. 12/UHC/Admin. A/2013**

Dated: September 26, 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 immediate effect.

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

You are therefore, informed accordingly.

Registrar General

NOTIFICATION

No. 206/UHC/Admin.A/2013

Dated: October 03, 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 (Criminal), 1977 (applicable to Uttarakhand under U.P. Reorganization Act, 2000).

AMENDMENTS IN GENERAL RULES (CRIMINAL), 1977

The following rules be substituted in place of existing Rule 21 of General Rules (Criminal).

“21 (1) – Every regular criminal case shall be allotted a serial number establishment-wise.

Explanation: In reference to allotment of serial number to the regular criminal case “Establishment” will be of -

(i) **SESSION JUDGE -**

For the Court of Sessions Judge and other Additional Sessions Judges in the District;

(ii) **CHIEF JUDICIAL MAGISTRATE AT HEADQUARTER -**

For the Court of Chief Judicial Magistrate and all other Judicial Magistrates at headquarter;

(iii) **SENIOR MOST JUDICIAL MAGISTRATE AT OUTLYING COURT -**

All the Courts of Judicial Magistrates in that outlying court.

(2) All the police challani/reports and private complaints of regular criminal cases shall be filed in the establishment of Chief Judicial Magistrate at headquarter and of the senior most Judicial Magistrate at the outlying court.

(3) Every regular criminal case received either by way of police challani or private complaint or on committal, will be allotted a serial number in the establishment as per the serial number available in the register of cases of Magistrate and Sessions Court in Form No. 9 and Form No. 15 respectively and such allotted number will not change on transfer of case in the same

Continued..

establishment. However, the serial number of the case will change upon transfer or committal of such case to another establishment and the case shall be numbered afresh there.

- (4) The case to be serial numbered is allotted as aforesaid will be transferred to the concerned court within the establishment as per the jurisdiction determined by the Chief Judicial Magistrate or Session Judge, as the case may be, for taking judicial steps for disposal of case as per law.

21-A(1)- A separate series of number shall run in each court of Magistrate and Session Judge, as the case may be, for miscellaneous criminal case. Such number shall be allotted as per the series of number in register of miscellaneous case in form no.11. Every number in this series shall be followed by a letter "m".

- (2) A separate series of number shall run in each court before which proceedings are laid under section 122 or to which a case is submitted under section 323 or section 325 or section 360 of the Code. Every number in this series shall be followed by the word "referred".

- (3) A separate serial number shall be given to cases tried summarily.

- (4) A Court of Session exercising criminal jurisdiction over two or more district shall keep a separate series of numbers for each district.

- (5) A separate file shall not be prepared for each *panchayatnama* (inquest report). It shall be entered serially in register no.12. At the close of each month all reports in which no further action is required shall be consigned to the record room in a monthly bundle, a note being made in the remarks column against each *panchayatnama*, thus-

"Filed in the monthly bundle for the month of....."

These amendments will come into force with immediate effect.

By order of the Court,

Sd/-

Registrar General

* * * * *

Some Recent Judgments of Uttarakhand High Court

DIVISION BENCH JUDGMENTS:

1. On 4th July, 2013, a Division Bench in *Rakesh Kumar vs. State of Uttarakhand and others* (Special Appeal No. 204 of 2013), allowing the appeal dismissing the contention of respondent that the Special Appeal is not maintainable, observed that Hon'ble Single Bench had no record before him after having had permitted withdrawal of the writ petition to record a prima facie view that Section 420 IPC is not made out in the case and held that an appeal against an order, which has no existence in law, is always maintainable.
2. On 4th October, 2013, a Division Bench in *Smt. Santoshi Devi & another vs. State of Uttarakhand* (Criminal Appeal No. 63 of 2009), while allowing the criminal appeal against the conviction and sentence awarded by the trial court, appreciating the evidence observed that the chain of circumstances was not complete. No motive was assigned for the killing of the victim. Most of the issues were not highlighted by the prosecution. Therefore, it cannot be inferred that the appellants and appellants alone committed murder of victim and the appellants deserve to be given the benefit of doubt.
3. On 4th October, 2013, a Division Bench in *Altaf & another vs. State of Uttarakhand* (Criminal Appeal No. 158 of 2009) refused to interfere in the impugned judgment of trial court convicting and sentencing the appellants observing that minor discrepancies here and there will not adversely affect the 'core' of the prosecution story.
4. On 7th October, 2013, a Division Bench in *Gautam Singh & others vs. State of Uttarakhand* (Criminal Appeal No. 173 of 2009) allowed the appeal in part and held the accused guilty for the offences under Section 147 I.P.C. and Section 304 (Part II) r/w Section 149 I.P.C. instead of Section 302 I.P.C., observing that though all the appellants did not have any intention to cause death of the deceased, but they certainly had the knowledge that their such act may cause death or such fatal bodily injury as was likely to cause his death. Therefore, the appellants, being the members of an 'unlawful assembly', have rightly been held guilty with the application of Section 149 I.P.C. and as the said 'unlawful assembly' did not have any intention to commit the murder of victim, conviction of appellants is fit and proper to be modified from Section 302 I.P.C. to Section 304 (Part II) I.P.C.

5. On 7th October, 2013, a Division Bench in *Narayan Singh vs. State of Uttarakhand* (Criminal Jail Appeal No. 39 of 2010), while dismissing the appeal, observed that undoubtedly, extra judicial confession is a weak piece of evidence and retraction from the extra judicial confession is also a usual phenomenon in criminal cases; however, this by itself would not weaken the case of the prosecution. Evaluation of evidence pertaining to extra judicial confession is required to be made on the touchstone whether it is true and voluntary. The Bench further observed that despite inherent weakness of extra judicial confession as an item of evidence, it cannot be ignored when shown that such confession was made before a person who had no reason to state falsely and it was made in the circumstances which tend to support the statement. The Bench found the extra judicial confession in the present case worth believing as the same was made voluntarily and this was further corroborated by the circumstantial evidence including that of medical evidence.

6. On 9th October, 2013, a Division Bench in *Jai Chand vs. State of Uttarakhand* (Criminal Appeal No. 27 of 2011) set-aside the conviction and sentence awarded by the trial court, placing reliance upon the precedent of Hon'ble Apex Court rendered in the case of *Sujit Biswas vs. State of Assam, reported in 2013 (82) ACC 467*, wherein it has been reiterated that suspicion, however grave it may be, cannot take the place of proof, and there is large difference between something that 'may be' proved, and something that 'will be proved'. The Bench reiterated that in a criminal case, the Court has a duty to ensure that mere conjectures or suspicion do not take the plea of legal proof.

The Bench also placed reliance upon the decades old principle of criminal jurisprudence held out in the case of *Kali Ram vs. State of Himachal Pradesh, reported in AIR 1973 SC 2773*, wherein it was observed that "another golden thread which runs through the web of the administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence.

SINGLE BENCH JUDGMENTS:

7. On 1st of July, 2013, a Single Judge Bench in *Anis vs. State of Uttarakhand* (Criminal Appeal No. 159 of 2010), while allowing the appeal against the conviction and sentence under Section 304-B

I.P.C., observed that as per definition of dowry, any property movable or immovable or valuable security given or agreed to be given either directly or indirectly **in connection with marriage** of parties either at or before or after the marriage shall be known as dowry. There should be an agreement or demand in connection with marriage to deliver either at the time of marriage or before or after the marriage at any time. In the instant case, alleged demand was not found by the Court as a dowry demand in view of definition of dowry, as provided under Section 2 of the Dowry Prohibition Act.

8. On 2nd of July, 2013, a Single Judge Bench in *Iqbal Ahmed vs. Smt. Sudesh Kumari* (Civil Revision No. 21 of 2012), dismissed the revision for non-compliance of Section 17 of Provincial Small Cause Courts Act, 1887. The Bench following the mandate of Hon'ble Supreme Court rendered in the case of **Kedar Nath vs. Mohan Lal Kesarwani (2002) SCC 16**, in which it has been observed that "a bare reading of the provision shows that the Legislature has chosen to couch the language of the proviso in a mandatory form and we see no reason to interpret, construe and hold the nature of the proviso as directory". The Bench held that thus, the proviso to Section 17 of the Provincial Small Cause Courts Act, 1887 is mandatory.
9. On 3rd of July, 2013, a Single Judge Bench in *Ramesh Chand Agarwal vs. Smt. Hema Agarwal* (First Appeal No. 102 of 2011), while dismissing the appeal filed by the Appellant/Plaintiff against the order of dismissing his suit for injunction, held that the suit for injunction was not maintainable against the co-sharer, without claiming the relief of partition. The Bench also observed that the plaintiff did not come with clean hands and therefore, the discretionary and equitable relief of injunction was rightly denied to him.
10. On 9th July, 2013, a Single Judge Bench in *Ajay Bhatt vs. State of Uttarakhand and others* (Writ Petition No. (M/S) 1066 of 2013) while dismissing the petition challenging an Ordinance promulgated by the Governor held that the constitutional validity of an Act/Law can be challenged on two grounds viz., (1) lack of legislative competence and/ (2) or violation of fundamental rights or any other provision of the Constitution. The Bench further observed while reiterating the law declared by the Constitutional Bench of Hon'ble Supreme Court in the case of **Smt. Kanta Kathuria vs. Nanak Chand Surana, reported in 1969(3) SCC 268** that the Parliament and the Legislatures of the States can make their laws operate retrospectively and any law that can be

made prospectively may be made with retrospective operation except that certain kinds of laws cannot operate retrospectively.

11. On 10th of July, 2013, a Single Judge Bench in *Bashir Ahmed and others vs. State of Uttarakhand and others* (Writ Petition (M/S) No. 30 of 2012) dismissed the petition for claiming re-conveyance of the acquired land or any part thereof and observed that when the acquisition has been carried out in consonance with the provisions of the Land Acquisition Act, 1894, the land once acquired, vests in the acquiring authority free from all encumbrances and the erstwhile owners of the land so acquired cannot approach the court of law for re-conveyance of the said land in any manner. The Bench observed that the only way to use the excess land is to utilize the land for some other public purpose or to dispose of the said excess land by way of public auction. The erstwhile owners cannot claim for the re-assignment of the excess land as a matter of right. The only option is that they have to take part in the public auction, if the acquiring authority decides to dispose of the excess land in that manner.

12. On 11th July, 2013, a Single Judge Bench in *C-482 No. 668 of 2013* observed that in almost every criminal case, Presiding Officers, instead of writing Judicial Magistrate, are mentioning their designation as Civil Judges. The Bench directed to circulate the copy of order to all the Judicial Magistrates in State of Uttarakhand, so that they may not mention their designation as Civil Judge in criminal cases. The Bench also directed to circulate judgment of this Court passed in Criminal Appeal No. 372 of 2012 decided on 21.05.2013 with a direction to follow the procedure explained therein to record the confessional statement under Section 164 Cr. P.C.

13. On 12th of July, 2013, a Single Judge Bench in *Lakhvinder Singh vs. State of Uttarakhand* (Criminal Appeal No. 1816 of 2001), while dismissing the appeal against the conviction and sentence under Section 304-B and 498-A of Indian Penal Code, observed that the term 'soon before' under Section 113-B of the Indian Evidence Act, 1972, is not synonymous with the term 'immediately before'. The said term would clearly imply existence of a proximate and live link between the two. Burden to prove innocence is more on the accused under Section 113-B of the Indian Evidence Act, than under Section 113-A of the Indian Evidence Act, 1872, which places a far lighter burden on the accused. In Section 113-A, which relates to Section 306 of IPC, the Court 'may presume', having regard to 'all the other circumstances of the case', but in Section 113-B,

- which relates to Section 304-B of IPC, the Court 'shall presume' and further, there is no reference to the circumstances of the case.
14. On 18th July, 2013, a Single Judge Bench in *U.P. Jal Nigam, Construction Division Hardwar vs. M/s Kanti Prasad Purushottam Das* (Civil Revision No. 80 of 2011), while dismissing the revision, observed that clause 24 of the agreement, which reads as "Decision of Chief Engineer to be final", cannot be said to be an Arbitration Clause and no Arbitrator could have been appointed by taking shelter of said clause. However, from the law laid down by the Hon'ble Supreme Court in the case of *State of Rajasthan vs. Nav Bharat Construction Company (2005) 11 SCC 197*, it is clear that where the parties to agreement have submitted to arbitration and did not raise any objection to the appointment of the Arbitrator, nor questioned his jurisdiction for a long time, rather consented to the appointment of arbitrator, it is not open for them to challenge the final award thereafter.
 15. On 25th of July, 2013, a Single Judge Bench in *Smt. Rita Rana and another vs. Pradeep Kumar and six others* (Appeal from Order No. 544 of 2006), while hearing the appeals directed against the award passed by Motor Accident Claims Tribunal, observed, placing reliance on the pronouncement of Hon'ble Supreme Court in the case of *Sarla Verma and others vs. D.T.C. And others 2009 (2) T.A.C. 677* that in the case of parents of the bachelor, their dependency shall be assessed at 50% of the income of the deceased. The Bench further considering the age of the parents and the principle of law laid down in *Municipal Corporation of Greater Bombay vs. Laxman Iyer and another (2003) 8 SCC 731*, held that at the most, multiplier of 10 can be applied for the parents, as there is always possibility of bachelor son of getting married.
 16. On 1st of August, 2013, a Single Judge Bench in *Mahendra Singh vs. Sri Rahul Dev Shekhavat* (Second Appeal No. 1335 of 2001) observed that no doubt 'readiness' and 'willingness' are two different expressions. 'Readiness' generally refers to the capacity of the plaintiff (as a purchaser) to pay consideration for specific performance of contract, and 'willingness' refers to his conduct in getting executed the sale deed. The Bench further observed that in the present case word 'willingness' is not mentioned in the plaint but it is pleaded as well as proved that the plaintiff from time to time continued to request the defendant to execute the sale deed and also gave notice to the defendant and remained present in the office of the Sub-Registrar on the date for which the written

notice was also sent to the defendant. Hence it is proved on the record that the plaintiff had always been ready and willing and still ready and willing to perform his part of contract.

17. On 1st of August, 2013, a Single Judge Bench in ***Bharat Ram vs. State of Uttarakhand and another*** (Criminal Revision No. 210 of 2008) set-aside the judgment and order convicting and sentencing the accused under Section 51(1-A) of Wild Life (Protection) Act, 1972 and observed that Head Constable was not empowered to make search, seizure and investigation and in view of grave anomalies committed in relation to the search, seizure and investigation, the conviction could not be sustained.
18. On 6th of August, 2013, a Single Judge Bench in ***Meena Devi vs. Ministry of Health Uttarakhand and another*** (Second Appeal No. 18 of 2009), dismissed the appeal filed for compensation against the medical practitioner for conducting her sterilization operation negligently, relied on the law laid down by the Hon'ble Supreme Court in the case of ***State of Punjab vs. Shiv Ram and others (2005) 7 SCC 1***, wherein the Apex Court has observed that "merely because a woman having undergone a sterilization operation became pregnant and delivered a child, the operating surgeon or his employer cannot be held liable for compensation on account of unwanted pregnancy or unwanted child. The claim in tort can be sustained only if there was negligence on the part of the surgeon in performing the surgery. The surgeon cannot be held liable in contract unless the plaintiff alleges and proves that the surgeon had assured 100% exclusion of pregnancy after the surgery and was only on the basis of such assurance that the plaintiff was persuaded to undergo surgery".
19. On 7th of August, 2013, a Single Judge Bench in ***Satbir Sehrawat vs. State of Uttarakhand and others*** (Criminal Misc. Application (C-482) No. 201 of 2013) discussed the very important aspect with regard to trial of cross cases. The Bench observed that it is a salutary practice, when two criminal cases relate to the same incident, they are tried and disposed of by the same court by pronouncing judgments on the same day. Describing the practical reasons for adopting a procedure that such cross cases shall be tried by the same court, the Bench observed that it staves off the danger of an accused being convicted before the whole case is before the court, secondly, it deters conflicting judgments being delivered upon similar facts and thirdly, in reality the case and the counter case are, to all intents and purposes, different or conflicting versions of one incident. The Bench relied upon the pronouncement of Hon'ble Supreme Court rendered in the case of ***Nathi***

Lal & others vs. State of U.P. & another, reported in 1990 (Supp.) SCC 145 and State of M.P. vs. Mishri Lal (dead) and others, reported in (2003) 9 SCC 426.

20. On 8th of August, 2013, a Single Judge Bench in *Rajesh Kumar Mangain vs. Raj Singh and another* (Writ Petition (M/S) No. 2052 of 2011), set-aside the findings given by a Motor Accident Claim Tribunal that application is time barred, relied on the pronouncement of Hon'ble Supreme Court in the case of **New India Assurance Co. Ltd. vs. C. Padma and another, AIR 2003 Supreme Court 4394**, wherein it has been held that "Motor Vehicle Act is a beneficial legislation aimed at providing relief to the victims or their families, if otherwise the claim is found genuine. It is a self contained Act which prescribes mode of filing the application, procedure to be followed and award to be made. The Parliament, in its wisdom, realised the grave injustice and injury being caused to the heirs and legal representatives of the victims who suffer bodily injuries/die in accidents, by rejecting their claim petitions at the threshold on the ground of limitation, and purposely deleted sub-section (3) of Section 166, which provided the period of limitation for filing the claim petitions and this being the intendment of the Legislature to give effective relief to the victims and the families of the motor accidents untrammled by the technicalities of the limitation".
21. On 12th August, 2013, a Single Judge Bench in *Smt. Reena vs. State of Uttarakhand* (1st Bail Application No. 982 of 2013) while discussing the pronouncements of Hon'ble Supreme Court on the issue of arrest and bail, observed that while considering the bail application, Court must see as to whether arrest was at all required as contemplated under Section 41 of Cr.P.C. and as to whether detention of the accused is justified during the trial, in peculiar facts and circumstances of the case. Principles enumerated in Section 41 of the Code and under Sections 437 and 439 of the Code should be kept in mind while deciding the bail application. The Bench further observed that if accused was not arrested during the investigation and he has not misused his liberty and in fact has cooperated with the investigation, his bail application must be considered liberally. Ordinarily, bail should not be denied merely because charge-sheet has been submitted against him. Bail can be denied only when offence is grave, or there is an apprehension that while on bail accused may temper with the evidence or win over the important witnesses or may indulge in criminal activities.
22. On 21st August, 2013, a Single Judge Bench in *Harsh Kapoor and others vs. State of Uttarakhand and another* (Criminal Misc. Application No. 842 of 2013) set-aside the contention of petitioners

that criminal revision is not maintainable against the summoning order passed by a Magistrate, since order issuing summon is a interlocutory order and therefore they have invoked inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure.

The Bench placing reliance on the authorities of Hon'ble Supreme Court rendered in the case of **Om Kumar Dhankar vs. State of Haryana and another**, reported in 2012 (11) SCC 252 and **Rajendra Kumar Sitaram Pande and others vs. Uttam and another**, reported in (1999) 3 SCC 134, wherein, Hon'ble Apex Court has specifically held that order directing issuance of process is not a purely interlocutory order rather it must be held to be intermediately or quasi final order, therefore, revision under Section 397 of the Code would be maintainable .

Following the aforesaid pronouncements, the Bench dismissed the petition under Section 482 of the Cr. P.C., as criminal revision is maintainable under Section 397 before the Sessions Judge against the impugned order issuing process of summon and the inherent jurisdiction of the Court can be exercised when there is no remedy provided in the Code of Criminal Procedure for redressal of the grievance.

23. On 29th August, 2013, a Single Judge Bench in **Vidya Ram & others vs. Navin Mehra** (Criminal Misc. Application C-482 No. 154 of 2009) observed that the accused or a person who is suspected to have committed crime is entitled to hearing by the revisional court. The Bench held that the persons who are arraigned as accused in a complaint have a right to be heard in criminal revision. The Bench relied upon the authority of Hon'ble Supreme Court rendered in the case of **Manharibhai Muljibhai Kakadia & another vs. Shaileshbhai Mohanbhai Patel & others**, reported in 2013 (1) NCC 168.
24. On 2nd September, 2013, a Single Judge Bench in **Ashish vs. State of Uttarakhand** (2nd Bail Application No. 68 of 2013), observed that whenever a person is produced before the learned Magistrate or any Court and question of juvenility is raised, learned Magistrate/Court is duty bound to decide the question of juvenility first and if on the appearance, accused seems to be juvenile, he should not be lodged in regular jail with hard core criminals. The Bench further observed that no trial court shall proceed with the trial unless and until question of juvenility, if raised, is decided under Section 7A of the Act read with Rule 12 of the Juvenile Justice Rules.

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INSTITUTION, DISPOSAL AND PENDENCY OF CASES**➤ Family Courts (from 01.07.2013 to 30.09.2013)**

SL. No	Name of the Family Court	Civil Cases				Criminal Cases				Total Pendency at the end of 30.09.13
		Opening Balance as on 01.07.13	Institution from 01.07.13 to 30.09.13	Disposal from 01.07.13 to 30.09.13	Pendency at the end of 30.09.13	Opening Balance as on 01.07.13	Institution from 01.07.13 to 30.09.13	Disposal from 01.07.13 to 30.09.13	Pendency at the end of 30.09.13	
1.	Dehradun	1275	422	375	1322	815	220	217	818	2140
2.	Rishikesh	117	57	42	132	118	42	39	121	253
3.	Nainital	378	114	100	392	401	78	27	452	844
4.	Hardwar	552	189	190	551	377	145	101	421	972
5.	Roorkee	342	126	104	364	279	79	61	297	661
6.	Pauri	245	67	86	226	180	74	64	190	416
7.	Udham Singh Nagar	535	191	178	548	523	112	93	542	1090
	TOTAL	3444	1166	1075	3535	2693	750	602	2841	6376

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MAJOR EVENTS AND INITIATIVES

- ❖ **Transfer of Hon'ble Mr. Justice Prafulla C. Pant:** Hon'ble Mr. Justice Prafulla C. Pant, Senior Judge of High Court of Uttarakhand has been transferred and appointed as Chief Justice of High Court of Meghalaya.
- ❖ **Celebration of Mahatma Gandhi's Jayanti:** On the occasion of Birth Anniversary of the Father of the Nation, a bust of Mahatma Gandhi has been unveiled by Hon'ble Mr. Justice Barin Ghosh, Chief Justice of High Court of Uttarakhand in the premises of High Court on 2nd of October, 2013. All the Hon'ble Judges, representatives of Bar, Officers and Officials of the High Court were present on the occasion.

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MAJOR ACTIVITIES OF UJALA

- ❖ **Workshop on "Bottlenecks in the Timely Service of Process issued by a Court":** Service of processes issued by the Court is a major hindrance in timely delivery of justice. To identify the issues and to suggest remedy in order to ensure effective service, a one day workshop on 4th of July, 2013 was organized in the Academy. In the workshop, all the stakeholders viz. representatives of Executive, Police and Judiciary had participated. The outcome of the workshop has been implemented in District Nainital as a pilot project and on successful implementation; it will be implemented throughout the State.
- ❖ **Workshop on "Streamlining the Procedure and for Eliminating Unnecessary Adjudgments":** Adjudgments contributes in delaying the disposal of cases. The study suggests that most of the adjournments are of frivolous type and can be termed as unnecessary. Therefore, in order to equipped the Judicial Officers of the State with the latest development in the law dealing with the issue and to interpret just procedure, two days workshop on the subject has been organized by the Academy. All the Judicial Officers of the State had participated in these workshops. 2nd, 3rd & 4th phase of such workshops has been organized on 14th-15th of July, 29th-30th of July and 2nd-3rd of August, 2013.

- ❖ **Workshop for the District Government Counsels (Criminal):** To equip District Government Counsels working in Criminal side with the latest development in law, a four day workshop from 17th of July, 2013 to 20th of July, 2013 was organized in the Academy. Similar workshops for Addl. D.G.C.(s) were also organized from 23rd of July to 27th of July, 2013 and from 5th of August, 2013 to 8th of August, 2013.
- ❖ **Conference on "Criminal Justice Adjudication" for Judicial Officers:** To address various issues and challenges in the Criminal Justice Administration and to guide Judicial Officers, two conferences, one at Nainital for the Judicial Officers posted in Kumaon Division and another at Dehradun for the Judicial Officers posted in Garhwal Division were organized by the Academy respectively on 28th of July, 2013 and 18th of August, 2013.
- ❖ **Training Programme for Assistant Prosecuting Officers:** For the newly recruiting Assistant Prosecuting Officers in the State of Uttarakhand, a 19 days training programme from 12th of August, 2013 to 30th of August, 2013 was organized by the Academy.
- ❖ **3rd Phase of Foundation Training Programme for Newly Appointed Civil Judges (Junior Division):** 32 judicial officers of Civil Judge (Junior Division) batch-2011 were appointed last year and after their joining at their respective districts, 18 months institutional as well as Court training under Foundation Training Programme is going on. After conclusion of 1st & 2nd phase of institutional as-well-as court training, 3rd phase of institutional training is going on w.e.f. 1st of September, 2013, which will complete on 06.12.2013.



Hon'ble the Chief Justice Sri Barin Ghosh paying homage to the Father of the Nation after unveiling his bust in the premises of High Court of Uttarakhand at Nainital on 2nd of October, 2013.



Judicial Officers with Hon'ble the Chief Justice Sri Barin Ghosh and Hon'ble Sri Justice B.S. Verma at Uttarakhand Judicial & Legal Academy, Bhowali at a workshop on "Streamlining the Procedure and for Eliminating Unnecessary Adjournments"



Hon'ble Sri Justice Prafulla C. Pant, Hon'ble Sri Justice B.S. Verma, Hon'ble Sri Justice Sudhanshu Dhulia and Hon'ble Sri Justice Servesh Kumar Gupta at a Conference on "Criminal Justice Administration" organized at Nainital on 28th of July, 2013 for the Officers posted in Kumaon Division.

Hon'ble Sri Justice U. C. Dhyani, Hon'ble Sri Justice V. K. Bist, Hon'ble Sri Justice B. S. Verma, Hon'ble Sri Justice Sudhanshu Dhulia and Hon'ble Sri Justice Servesh Kumar Gupta at a Conference on "Criminal Justice Administration" organized at Nainital on 28th of July, 2013 for the Officers posted in Kumaon Division.



Hon'ble Sri Justice Sudhanshu Dhulia and Hon'ble Sri Justice U.C. Dhyani at a Conference on "Criminal Justice Administration" organized at Dehradun on 18th of August, 2013 for the Officers posted in Garhwal Division.