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BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

भारतीय नागरिक सुरक्षा संहिता, 2023

(Upon enforcement would repeal - Code of Criminal Procedure, 1973)
(Enforcement date - 1st July 2024)

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FOREWORD

Manupatra Information Solutions Pvt. Ltd. has released this e-book of Bharatiya Nagarik Suraksha Sanhita, 2023 in an e-book format for ecological reasons. The team at Manupatra is committed to deliver such content and legal-tech solutions that drive the change and development in the field of law.

The e-book carries a lot of features and can be opened on Google Chrome or Adobe PDF Reader for best utilization and reading experience. Use the side index/bookmarks feature to navigate the document comfortably.

The team at Manupatra will be updating its users about the Bharatiya Nagarik Suraksha Sanhita, 2023 for the period of 1 year through email (subject to terms and conditions). Manupatra will be using the email that the user has provided at the time of download.

The book was curated by the team at Manupatra and is open to human errors. Please refer to this book with the knowledge that there can be errors or omissions in the same, though dedicated care has gone in to ensure that it does not happen.

Our team is eager to hear your thoughts on this. Please share your feedback at academy@manupatra.com.

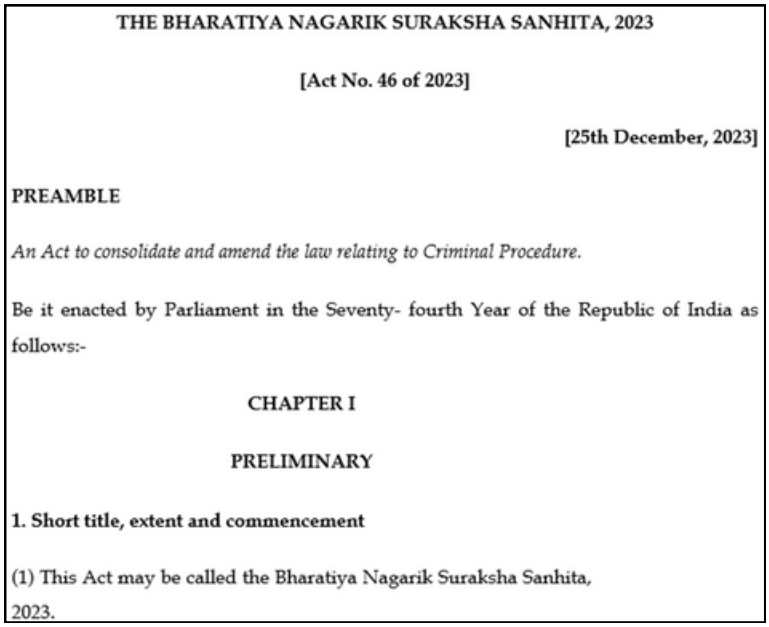
DETAILS OF THE ACT

Act Title (English):	Bharatiya Nagarik Suraksha Sanhita, 2023
Act Title (Hindi):	भारतीय नागरिक सुरक्षा संहिता, 2023
Enactment Date:	25th December, 2023
Act Number:	46 of 2023
Act Year:	2023
Preamble:	An Act to consolidate and amend the law relating to Criminal Procedure.
Enforcement Date:	1st July 2024
Act Repealed: **(from the date of enforcement)**	The Code of Criminal Procedure, 1973 (Act No. 2 OF 1974)

GUIDE ON HOW TO MAKE THE MOST OF THIS E-BOOK!

01

The e-book has the complete Bharatiya Nagarik Suraksha Sanhita, 2023.



THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

[Act No. 46 of 2023]

[25th December, 2023]

PREAMBLE

An Act to consolidate and amend the law relating to Criminal Procedure.

Be it enacted by Parliament in the Seventy- fourth Year of the Republic of India as follows:-

CHAPTER I

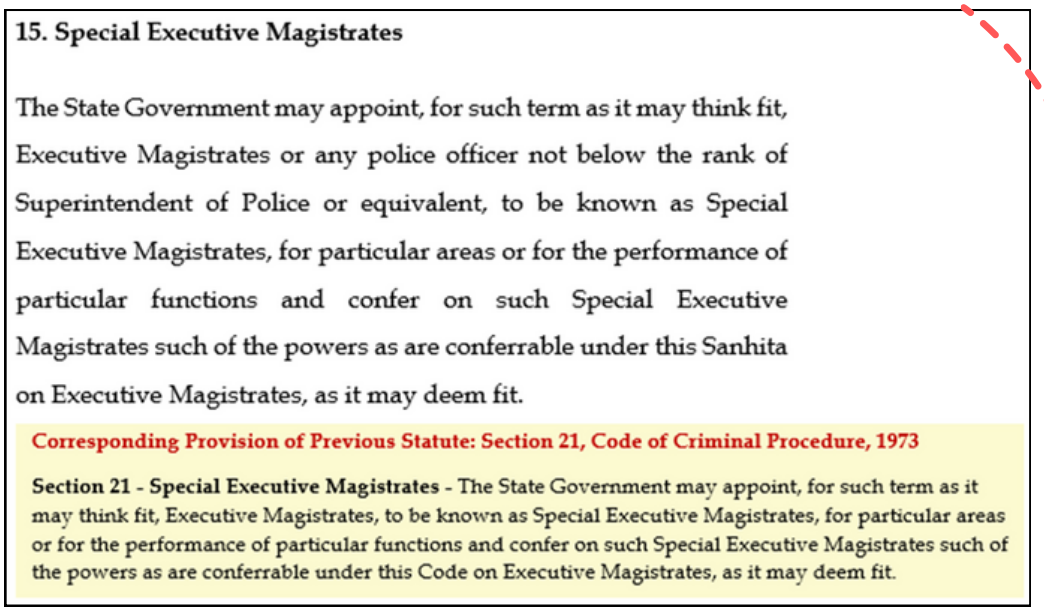
PRELIMINARY

1. Short title, extent and commencement

(1) This Act may be called the Bharatiya Nagarik Suraksha Sanhita, 2023.

02

Below the provisions of the new statute, you will find yellow boxes.



15. Special Executive Magistrates

The State Government may appoint, for such term as it may think fit, Executive Magistrates or any police officer not below the rank of Superintendent of Police or equivalent, to be known as Special Executive Magistrates, for particular areas or for the performance of particular functions and confer on such Special Executive Magistrates such of the powers as are conferrable under this Sanhita on Executive Magistrates, as it may deem fit.

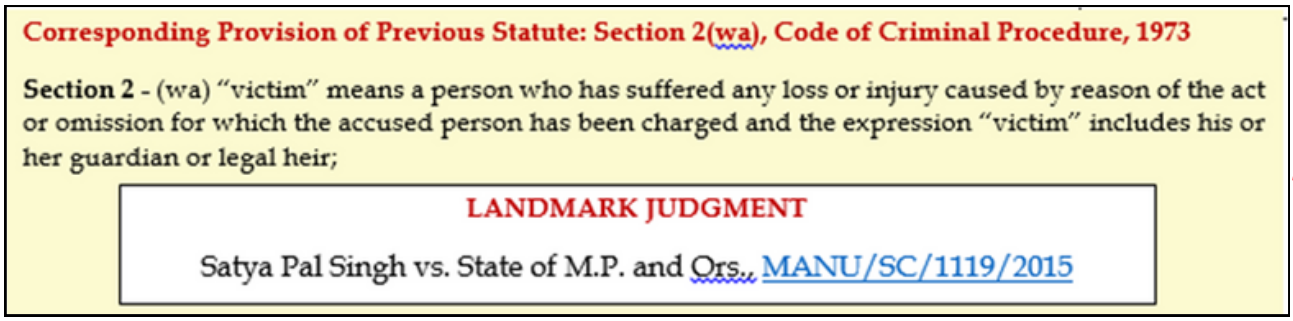
Corresponding Provision of Previous Statute: Section 21, Code of Criminal Procedure, 1973

Section 21 - Special Executive Magistrates - The State Government may appoint, for such term as it may think fit, Executive Magistrates, to be known as Special Executive Magistrates, for particular areas or for the performance of particular functions and confer on such Special Executive Magistrates such of the powers as are conferrable under this Code on Executive Magistrates, as it may deem fit.

These yellow boxes contain the corresponding provision of the Code of Criminal Procedure, 1973. These provisions cater to the same/similar notion or topic as the new statute.

03

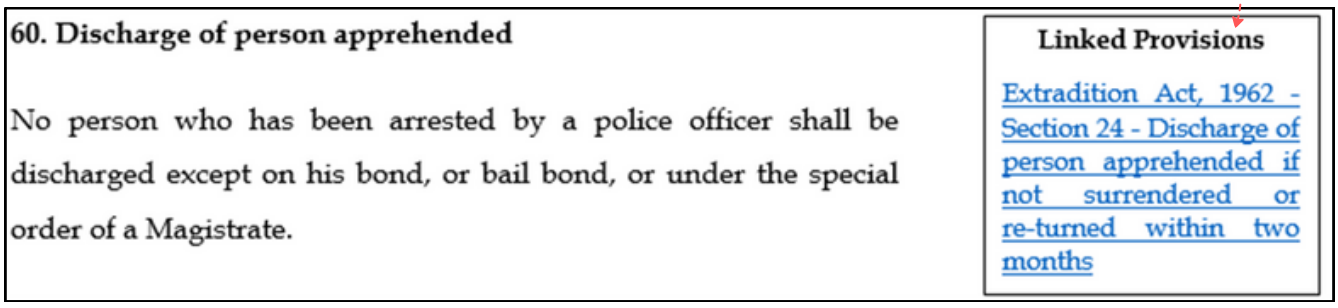
In some of these yellow boxes, landmark decisions of the corresponding provision from the Code of Criminal Procedure, 1973..



Simply click on the link and read the entire judgment.

04

For a lot of the provisions, you will find a box of linked provisions on the side. These are the provisions that can be read as related or connected to the provision of the Bharatiya Nagarik Suraksha Sanhita, 2023. You can read the entire provision by just clicking on the link!



BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

[Act No. 46 of 2023]

[25th December, 2023]

PREAMBLE

An Act to consolidate and amend the law relating to Criminal Procedure.

Be it enacted by Parliament in the Seventy- fourth Year of the Republic of India as follows:- -

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement

(1) This Act may be called the Bharatiya Nagarik Suraksha Sanhita, 2023.

(2) The provisions of this Sanhita, other than those relating to Chapters IX, XI and XII thereof, shall not apply- -

(a) to the State of Nagaland;

(b) to the tribal areas,

but the concerned State Government may, by notification, apply such provisions or any of them to the whole or part of the State of Nagaland or such tribal areas, as the case may be, with such supplemental, incidental or consequential modifications, as may be specified in the notification.

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Explanation.- - In this section, "tribal areas" means the territories which immediately before the 21st day of January, 1972, were included in the tribal areas of Assam, as referred to in paragraph 20 of the Sixth Schedule to the Constitution, other than those within the local limits of the municipality of Shillong.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Corresponding Provision of Previous Statute: Section 1, Code of Criminal Procedure, 1973

Section 1 - Short title, extent and commencement –

(1) This Act may be called the Code of Criminal Procedure, 1973.

(2) It extends to the whole of India 1

Provided that the provisions of this Code, other than those relating to Chapters VIII, X and XI thereof, shall not apply—

(a) to the State of Nagaland,

(b) to the tribal areas,

but the concerned State Government may, by notification, apply such provisions or any of them to the whole or part of the State of Nagaland or such tribal areas, as the case may be, with such supplemental, incidental or consequential modifications, as may be specified in the notification.

Explanation.—In this section, "tribal areas" means the territories which immediately before the 21st day of January, 1972, were included in the tribal areas of Assam, as referred to in paragraph 20 of the Sixth Schedule to the Constitution, other than those within the local limits of the municipality of Shillong.

(3) It shall come into force on the 1st day of April, 1974.

2. Definitions

(1) In this Sanhita, unless the context otherwise requires,- -

(a) "audio- video electronic means" shall include use of any communication device for the purposes of video conferencing, recording of processes of identification, search and seizure or

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evidence, transmission of electronic communication and for such other purposes and by such other means as the State Government may, by rules provide;

(b) "bail" means release of a person accused of or suspected of commission of an offence from the custody of law upon certain conditions imposed by an officer or Court on execution by such person of a bond or a bail bond;

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 492 - Cancellation of bond and bail bond

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 47 - Person arrested to be informed of grounds of arrest and ofright to bail

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 91 - Power to take bond or bail bond for appearance

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 92 - Arrest on breach of bond or bail bond for appearance

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 430 - Suspension of sentence pending appeal; release of appellanton bail

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 478 - In what cases bail to be taken

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 480 - When bail may be taken in case of non-bailable offence

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Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 481 - Bail to require accused to appear before next Appellate Court

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 482 - Direction for grant of bail to person apprehending arrest

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 483 - Special powers of High Court or Court of Session regarding bail

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 488 - Power to order sufficient bail when that first taken is insufficient

(c) "bailable offence" means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and "non- bailable offence" means any other offence;

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 480 - When bail may be taken in case of non-bailable offence

Corresponding Provision of Previous Statute: Section 2(a), Code of Criminal Procedure, 1973

Section 2 - (a) "bailable offence" means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and "non-bailable offence" means any other offence;

(d) "bail bond" means an undertaking for release with surety;

(e) "bond" means a personal bond or an undertaking for release without surety;

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 91 - Power to take bond or bail bond

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Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 494 - Bond required from child

(f) "charge" includes any head of charge when the charge contains more heads than one;

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 510 - Effect of omission to frame, or absence of, or error incharge

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 241 - Separate charges for distinct offences

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 246 - What persons may be charged jointly

Corresponding Provision of Previous Statute: Section 2(b), Code of Criminal Procedure, 1973

Section 2 - (b) "charge" includes any head of charge when the charge contains more heads than one;

LANDMARK JUDGMENT

Birichh Bhuian and Ors. vs. State of Bihar, MANU/SC/0158/1962

(g) "cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 168 - Police to prevent cognizable offences

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 169 - Information of design to commit cognizable offences

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Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 170 - Arrest to prevent commission of cognizable offences

Corresponding Provision of Previous Statute: Section 2(c), Code of Criminal Procedure, 1973

Section 2 - (c) "cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;

(h) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Sanhita, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation.- - A report made by a police officer in a case which discloses, after investigation, the commission of a non- cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;

Corresponding Provision of Previous Statute: Section 2(d), Code of Criminal Procedure, 1973

Section 2 - (d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed anoffence, but does not include a police report.

Explanation.—A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;

LANDMARK JUDGMENT

The State of Bihar vs. Chandra Bhushan Singh and Ors., MANU/SC/0794/2000

(i) "electronic communication" means the communication of any written, verbal, pictorial information or video content transmitted or transferred (whether from one person to another or from one device

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 202 - Offences committed by means of

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to another or from a person to a device or from a device to a person) by means of an electronic device including a telephone, mobile phone, or other wireless telecommunication device, or a computer, or audio- video player or camera or any other electronic device or electronic form as may be specified by notification, by the Central Government;

electronic communications, letters, etc.

(j) "High Court" means,- -

(i) in relation to any State, the High Court for that State;

(ii) in relation to a Union territory to which the jurisdiction of the High Court for a State has been extended by law, that High Court;

(iii) in relation to any other Union territory, the highest Court of criminal appeal for that territory other than the Supreme Court of India;

Corresponding Provision of Previous Statute: Section 2(e), Code of Criminal Procedure, 1973

Section 2 - (e) "High Court" means,—

(i) in relation to any State, the High Court for that State;

(ii) in relation to a Union territory to which the jurisdiction of the High Court for a State has been extended by law, that High Court;

(iii) in relation to any other Union territory, the highest Court of criminal appeal for that territory other than the Supreme Court of India;

(k) "inquiry" means every inquiry, other than a trial, conducted under this Sanhita by a Magistrate or Court;

Linked Provisions

Juvenile Justice - Care and Protection of Children Act, 2015 - Section 36 - inquiry

Corresponding Provision of Previous Statute: Section 2(g), Code of Criminal Procedure, 1973

Section 2 - (g) "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;

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(l) "investigation" includes all the proceedings under this Sanhita for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf.

Explanation.- - Where any of the provisions of a special Act are inconsistent with the provisions of this Sanhita, the provisions of the special Act shall prevail;

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 112 - Letter of request to competent authority for investigation ina country or place outside India

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 113 - Letter of request from a country or place outside India to aCourt or an authority for investigation in India

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 158 - Power of Magistrate to direct local investigation andexamination of an expert

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 174 - Information as to non-cognizable cases and investigation of such cases

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 176 - Procedure for investigation

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 178 - Power to hold investigation or preliminary inquiry

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 187 - Procedure when investigation cannot be completed intwenty-four hour

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Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 188 - Report of investigation by subordinate police officer

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 192 - Diary of proceedings in investigation

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 193 - Report of police officer on completion of investigation

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 233 - Procedure to be followed when there is a complaint case andpolice investigation in respect of same offence

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 369 - Release of person of unsound mind pending investigation or trial

Corresponding Provision of Previous Statute: Section 2(h), Code of Criminal Procedure, 1973

Section 2 - (h) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf;

(m) "judicial proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath;

Corresponding Provision of Previous Statute: Section 2(i), Code of Criminal Procedure, 1973

Section 2 - (i) "judicial proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath;

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(n) "local jurisdiction", in relation to a Court or Magistrate, means the local area within which the Court or Magistrate may exercise all or any of its or his powers under this Sanhita and such local area may comprise the whole of the State, or any part of the State, as the State Government may, by notification, specify;

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 12 - Local Jurisdiction of Judicial Magistrates

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 16 - Local Jurisdiction of Executive Magistrates

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 207 - Power to issue summons or warrant for offence committed beyond local jurisdiction

Corresponding Provision of Previous Statute: Section 2(j), Code of Criminal Procedure, 1973

Section 2 - (j) "local jurisdiction", in relation to a Court or Magistrate, means the local area within which the Court or Magistrate may exercise all or any of its or his powers under this Code and such local area may comprise the whole of the State, or any part of the State, as the State Government may, by notification, specify;

(o) "non- cognizable offence" means an offence for which, and "non-cognizable case" means a case in which, a police officer has no authority to arrest without warrant;

Corresponding Provision of Previous Statute: Section 2(l), Code of Criminal Procedure, 1973

Section 2 - (l) "non-cognizable offence" means an offence for which, and "non-cognizable case" means a case in which, a police officer has no authority to arrest without warrant;

(p) "notification" means a notification published in the Official Gazette;

Corresponding Provision of Previous Statute: Section 2(m), Code of Criminal Procedure, 1973

Section 2 - (m) "notification" means a notification published in the Official Gazette;

(q) "offence" means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a

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complaint may be made under section 20 of the Cattle Trespass Act, 1871 (1 of 1871);

Corresponding Provision of Previous Statute: Section 2(n), Code of Criminal Procedure, 1973

Section 2 - (n) "offence" means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under section 20 of the Cattletrespass Act, 1871 (1 of 1871);

(r) "officer in charge of a police station" includes, when the officer in charge of the police station is absent from the station- house or unable from illness or other cause to perform his duties, the police officer present at the station- house who is next in rank to such officer and is above the rank of constable or, when the State Government so directs, any other police officer so present;

(s) "place" includes a house, building, tent, vehicle and vessel;

Corresponding Provision of Previous Statute: Section 2(p), Code of Criminal Procedure, 1973

Section 2 - (p) "place" includes a house, building, tent, vehicle and vessel;

(t) "police report" means a report forwarded by a police officer to a Magistrate under sub- section (3) of section 193;

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 230 - Supply to accused of copy of police report and otherdocuments

Corresponding Provision of Previous Statute: Section 2(r), Code of Criminal Procedure, 1973

Section 2 - (r) "police report" means a report forwarded by a police officer to a Magistrate under sub-section (2) of section 173;

(u) "police station" means any post or place declared generally or specially by the State Government, to be a police station, and includes any local area specified by the State Government in this behalf;

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 57 - Person arrested to be taken before Magistrate or officer incharge of police station

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Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 186 - When officer in charge of police station may require anotherto issue search-warrant

Corresponding Provision of Previous Statute: Section 2(s), Code of Criminal Procedure, 1973

Section 2 - (s) "police station" means any post or place declared generally or specially by the State Government, to be a police station, and includes any local area specified by the State Government in this behalf;

(v) "Public Prosecutor" means any person appointed under section 18, and includes any person acting under the directions of a Public Prosecutor;

Linked Provisions

TERRORIST AFFECTED AREAS - SPECIAL COURTS ACT, 1984 - Section 9 - Public Prosecutors

National Investigation Agency Act 2008 - Section 15 - Public Prosecutors

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 18 - Public Prosecutors

Corresponding Provision of Previous Statute: Section 2(u), Code of Criminal Procedure, 1973

Section 2 - (u) "Public Prosecutor" means any person appointed under section 24, and includes any person acting under the directions of a Public Prosecutor;

(w) "sub- division" means a sub- division of a district;

Corresponding Provision of Previous Statute: Section 2(v), Code of Criminal Procedure, 1973

Section 2 - (v) "sub-division" means a sub-division of a district;

(x) "summons- case" means a case relating to an offence, and not being a warrant- case;

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 282 - Power of Court to convert summons-cases into warrant-cases

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Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 309 - Record in summons-cases and inquiries

Corresponding Provision of Previous Statute: Section 2(w), Code of Criminal Procedure, 1973

Section 2 - (w) "summons-case" means a case relating to an offence, and not being a warrant-case;

(y) "victim" means a person who has suffered any loss or injury caused by reason of the act or omission of the accused person and includes the guardian or legal heir of such victim;

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 184 - Medical examination of victim of rape

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 396 - Victim compensation scheme

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 397 - Treatment of victims

Corresponding Provision of Previous Statute: Section 2(wa), Code of Criminal Procedure, 1973

Section 2 - (wa) "victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir;

LANDMARK JUDGMENT

Satya Pal Singh vs. State of M.P. and Ors., MANU/SC/1119/2015

(z) "warrant- case" means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years.

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 310 - Record in warrant-cases

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 282 - Power of Court to convert summons-cases into warrant-cases

Corresponding Provision of Previous Statute: Section 2(x), Code of Criminal Procedure, 1973

Section 2 - (*x*) "warrant-case" means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years;

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(2) Words and expressions used herein and not defined but defined in the Information Technology Act, 2000 (21 of 2000) and the Bharatiya Nyaya Sanhita, 2023 shall have the meanings respectively assigned to them in that Act and Sanhita.

Corresponding Provision of Previous Statute: Section 2, Code of Criminal Procedure, 1973

Section 2 – Definitions - In this Code, unless the context otherwise requires,—

(a) "bailable offence" means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and "non-bailable offence" means any other offence;

(b) "charge" includes any head of charge when the charge contains more heads than one;

(c) "cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;

(d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation.—A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;

(e) "High Court" means,—

(i) in relation to any State, the High Court for that State;(ii) in relation to a Union territory to which the jurisdiction of the High Court for a State has been extended by law, that High Court;

(iii) in relation to any other Union territory, the highest Court of criminal appeal for that territory other than the Supreme Court of India;

(f) "India" means the territories to which this Code extends;

(g) "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;

(h) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf;

(i) "judicial proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath;

(j) "local jurisdiction", in relation to a Court or Magistrate, means the local area within which the Court or Magistrate may exercise all or any of its or his powers under this Code and such local area may

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comprise the whole of the State, or any part of the State, as the State Government may, by notification, specify;

(k) "metropolitan area" means the area declared, or deemed to be declared, under section 8, to be a metropolitan area;

(l) "non-cognizable offence" means an offence for which, and "non-cognizable case" means a case in which, a police officer has no authority to arrest without warrant;

(m) "notification" means a notification published in the Official Gazette;

(n) "offence" means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under section 20 of the Cattletrespass Act, 1871 (1 of 1871);

(o) "officer in charge of a police station" includes, when the officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the State Government so directs, any other police officer so present;

(p) "place" includes a house, building, tent, vehicle and vessel;

(q) "pleader", when used with reference to any proceeding in any Court, means a person authorised by or under any law for the time being in force, to practise in such Court, and includes any other person appointed with the permission of the Court to act in such proceeding;

(r) "police report" means a report forwarded by a police officer to a Magistrate under sub-section (2) of section 173;

(s) "police station" means any post or place declared generally or specially by the State Government, to be a police station, and includes any local area specified by the State Government in this behalf;

(t) "prescribed" means prescribed by rules made under this Code;

(u) "Public Prosecutor" means any person appointed under section 24, and includes any person acting under the directions of a Public Prosecutor;

(v) "sub-division" means a sub-division of a district;

(w) "summons-case" means a case relating to an offence, and not being a warrant-case;

(wa) "victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir;

(x) "warrant-case" means a case relating to an offence punishable with death, imprisonment forlife or imprisonment for a term exceeding two years;

(y) words and expressions used herein and not defined but defined in the Indian Penal Code (45 of 1860) have the meanings respectively assigned to them in that Code.

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3. Construction of references

(1) Unless the context otherwise requires, any reference in any law, to a Magistrate without any qualifying words, Magistrate of the first class or a Magistrate of the second class shall, in relation to any area, be construed as a reference to a Judicial Magistrate of the first class or Judicial Magistrate of the second class, as the case may be, exercising jurisdiction in such area.

(2) Where, under any law, other than this Sanhita, the functions exercisable by a Magistrate relate to matters,- -

(a) which involve the appreciation or shifting of evidence or the formulation of any decision which exposes any person to any punishment or penalty or detention in custody pending investigation, inquiry or trial or would have the effect of sending him for trial before any Court, they shall, subject to the provisions of this Sanhita, be exercisable by a Judicial Magistrate; or

(b) which are administrative or executive in nature, such as, the granting of a licence, the suspension or cancellation of a licence, sanctioning a prosecution or withdrawing from a prosecution, they shall, subject to the provisions of clause (a) be exercisable by an Executive Magistrate.

Corresponding Provision of Previous Statute: Section 3, Code of Criminal Procedure, 1973

Section 3 - Construction of references - (1) In this Code,—
(a) any reference, without any qualifying words, to a Magistrate, shall be construed, unless the context otherwise requires,—

(i) in relation to an area outside a metropolitan area, as a reference to a Judicial Magistrate;

(ii) in relation to a metropolitan area, as a reference to a Metropolitan Magistrate;

(b) any reference to a Magistrate of the second class shall, in relation to an area outside a metropolitan area, be construed as a reference to a Judicial Magistrate of the second class, and, in relation to a metropolitan area, as a reference to a Metropolitan Magistrate;

(c) any reference to a Magistrate of the first class shall,—

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(i) in relation to a metropolitan area, be construed as a reference to a Metropolitan Magistrate exercising jurisdiction in that area;

(ii) in relation to any other area, be construed as a reference to a Judicial Magistrate of the first class exercising jurisdiction in that area;

(d) any reference to the Chief Judicial Magistrate shall, in relation to a metropolitan area, be construed as a reference to the Chief Metropolitan Magistrate exercising jurisdiction in that area.

(2) In this Code, unless the context otherwise requires, any reference to the Court of a Judicial Magistrate shall, in relation to a metropolitan area, be construed as a reference to the Court of the Metropolitan Magistrate for that area.

(3) Unless the context otherwise requires, any reference in any enactment passed before the commencement of this Code,—

(a) to a Magistrate of the first class, shall be construed as a reference to a Judicial Magistrate of the first class;

(b) to a Magistrate of the second class or of the third class, shall be construed as a reference to a Judicial Magistrate of the second class;

(c) to a Presidency Magistrate or Chief Presidency Magistrate, shall be construed as a reference, respectively, to a Metropolitan Magistrate or the Chief Metropolitan Magistrate;

(d) to any area which is included in a Metropolitan area, as a reference to such metropolitan area, and any reference to a Magistrate of the first class or of the second class in relation to such area, shall be construed as a reference to the Metropolitan Magistrate exercising jurisdiction in such area.

(4) Where, under any law, other than this Code, the function exercisable by a Magistrate relate to matters,—

(a) which involve the appreciation or sifting of evidence or the formulation of any decision which exposes any person to any punishment or penalty or detention in custody pending investigation, inquiry or trial or would have the effect of sending him for trial before any Court, they shall, subject to the provisions of this Code, be exercisable by a Judicial Magistrate; or

(b) which are administrative or executive in nature, such as, the granting of a licence, the suspension or cancellation of a licence, sanctioning a prosecution or withdrawing from a prosecution, they shall, subject as aforesaid, be exercisable by an Executive Magistrate.

4. Trial of offences under Bharatiya Nyaya Sanhita, 2023 and other laws

(1) All offences under the Bharatiya Nyaya Sanhita, 2023 shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

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(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

Corresponding Provision of Previous Statute: Section 4, Code of Criminal Procedure, 1973

Section 4 - Trial of offences under the Indian Penal Code and other laws – (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner of place of investigating, inquiring into, trying or otherwise dealing with such offences.

LANDMARK JUDGMENT

Attiq-Ur-Rehman vs. Municipal Corporation of Delhi and Ors., MANU/SC/0336/1996

5. Saving

Nothing contained in this Sanhita shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

Corresponding Provision of Previous Statute: Section 5, Code of Criminal Procedure, 1973

Section 5 - Saving - Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

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CHAPTER II

CONSTITUTION OF CRIMINAL COURTS AND OFFICES

6. Classes of Criminal Courts

Besides the High Courts and the Courts constituted under any law, other than this Sanhita, there shall be, in every State, the following classes of Criminal Courts, namely:- -

(i) Courts of Session;

(ii) Judicial Magistrates of the first class;

(iii) Judicial Magistrates of the second class; and

(iv) Executive Magistrates.

Corresponding Provision of Previous Statute: Section 6, Code of Criminal Procedure, 1973

Section 6 - Classes of Criminal Courts - Besides the High Courts and the Courts constituted under any law, other than this Code, there shall be, in every State, the following classes of Criminal Courts, namely:—

(i) Courts of Session;

(ii) Judicial Magistrates of the first class and, in any metropolitan area, Metropolitan Magistrates;

(iii) Judicial Magistrates of the second class; and

(iv) Executive Magistrates.

7. Territorial divisions

(1) Every State shall be a sessions division or shall consist of sessions divisions; and every sessions divisions shall, for the purposes of this Sanhita, be a district or consist of districts.

(2) The State Government may, after consultation with the High Court, alter the limits or the number of such divisions and districts.

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(3) The State Government may, after consultation with the High Court, divide any district into sub- divisions and may alter the limits or the number of such sub- divisions.

(4) The sessions divisions, districts and sub- divisions existing in a State at the commencement of this Sanhita, shall be deemed to have been formed under this section.

Corresponding Provision of Previous Statute: Section 7, Code of Criminal Procedure, 1973

Section 7 - Territorial divisions - (1) Every State shall be a sessions division or shall consist of sessions divisions; and every sessions divisions shall, for the purposes of this Code, be a district or consist of districts:

Provided that every metropolitan area shall, for the said purposes, be a separate sessions division and district.

(2) The State Government may, after consultation with the High Court, alter the limits or the number of such divisions and districts.

(3) The State Government may, after consultation with the High Court, divide any district into subdivisions and may alter the limits or the number of such sub-divisions.

(4) The sessions divisions, districts and sub-divisions existing in a State at the commencement of this Code, shall be deemed to have been formed under this section.

8. Court of Session

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 406 - Court of Session to send copy of finding and sentence to District Magistrate

(1) The State Government shall establish a Court of Session for every sessions division.

(2) Every Court of Session shall be presided over by a Judge, to be appointed by the High Court.

(3) The High Court may also appoint Additional Sessions Judges to exercise jurisdiction in a Court of Session.

(4) The Sessions Judge of one sessions division may be appointed by the High Court to be also an Additional Sessions Judge of another division, and in such case, he may sit for the disposal of cases at such place or places in the other division as the High Court may direct.

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(5) Where the office of the Sessions Judge is vacant, the High Court may make arrangements for the disposal of any urgent application which is, or may be, made or pending before such Court of Session by an Additional Sessions Judge or if there be no Additional Sessions Judge, by a Chief Judicial Magistrate, in the sessions division; and every such Judge or Magistrate shall have jurisdiction to deal with any such application.

(6) The Court of Session shall ordinarily hold its sitting at such place or places as the High Court may, by notification, specify; but, if, in any particular case, the Court of Session is of opinion that it will tend to the general convenience of the parties and witnesses to hold its sittings at any other place in the sessions division, it may, with the consent of the prosecution and the accused, sit at that place for the disposal of the case or the examination of any witness or witnesses therein.

(7) The Sessions Judge may, from time to time, make orders consistent with this Sanhita, as to the distribution of business among such Additional Sessions Judges.

(8) The Sessions Judge may also make provision for the disposal of any urgent application, in the event of his absence or inability to act, by an Additional Sessions Judge or if there be no Additional Sessions Judge, by the Chief Judicial Magistrate, and such Judge or Magistrate shall be deemed to have jurisdiction to deal with any such application.

Explanation.- - For the purposes of this Sanhita, "appointment" does not include the first appointment, posting or promotion of a person

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by the Government to any Service, or post in connection with the affairs of the Union or of a State, where under any law, such appointment, posting or promotion is required to be made by the Government.

Corresponding Provision of Previous Statute: Section 9, Code of Criminal Procedure, 1973

Section 9 - Court of Session - (1) The State Government shall establish a Court of Session for every sessions division.

(2) Every Court of Session shall be presided over by a Judge, to be appointed by the High Court.

(3) The High Court may also appoint Additional Sessions Judges and Assistant Session Judges to exercise jurisdiction in a Court of Session.

(4) The Sessions Judge of one sessions division may be appointed by the High Court to be also an Additional Sessions Judge of another division, and in such case he may sit for the disposal of cases at such place or places in the other division as the High Court may direct.

(5) Where the office of the Sessions Judge is vacant, the High Court may make arrangements for the disposal of any urgent application which is, or may be, made or pending before such Court of Session by an Additional or Assistant Sessions Judge, or, if there be no Additional or Assistant Sessions Judge, by a Chief Judicial Magistrate, in the sessions division; and every such Judge or Magistrate shall have jurisdiction to deal with any such application.

(6) The Court of Session shall ordinarily hold its sitting at such place or places as the High Court may, by notification, specify; but, if, in any particular case, the Court of Session is of opinion that it will tend to the general convenience of the parties and witnesses to hold its sittings at any other place in the sessions division, it may, with the consent of the prosecution and the accused, sit at that place for the disposal of the case or the examination of any witness or witnesses therein.

Explanation.—For the purposes of this Code, "appointment" does not include the first appointment, posting or promotion of a person by the Government to any Service, or post in connection with the affairs of the Union or of a State, where under any law, such appointment, posting or promotion is required to be made by Government.

LANDMARK JUDGMENT

Emperor vs. Lakshman Chavji Narangikar, MANU/MH/0010/1931

9. Courts of Judicial Magistrates

(1) In every district there shall be established as many Courts of Judicial Magistrates of the first class and of the second class, and at such places, as the State Government may, after consultation with the High Court, by notification, specify:

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 529 - Duty of High Court to exercise continuous superintendence over Courts

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Provided that the State Government may, after consultation with the High Court, establish, for any local area, one or more Special Courts of Judicial Magistrates of the first class or of the second class to try any particular case or particular class of cases, and where any such Special Court is established, no other Court of Magistrate in the local area shall have jurisdiction to try any case or class of cases for the trial of which such Special Court of Judicial Magistrate has been established.

(2) The presiding officers of such Courts shall be appointed by the High Court.

(3) The High Court may, whenever it appears to it to be expedient or necessary, confer the powers of a Judicial Magistrate of the first class or of the second class on any member of the Judicial Service of the State, functioning as a Judge in a Civil Court.

Corresponding Provision of Previous Statute: Section 11, Code of Criminal Procedure, 1973

Section 11 - Courts of Judicial Magistrates - (1) In every district (not being a metropolitan area) there shall be established as many Courts of Judicial Magistrates of the first class and of the second class, and at such places, as the State Government may, after consultation with the High Court, by notification, specify:

Provided that the State Government may, after consultation with the High Court, establish, for any local area, one or more Special Courts of Judicial Magistrates of the first class or of the second class to try any particular case or particular class of cases, and where any such Special Court is established, no other Court of Magistrate in the local area shall have jurisdiction to try any case or class of cases for the trial of which such Special Court of Judicial Magistrate has been established.

(2) The presiding officers of such Courts shall be appointed by the High Court.

(3) The High Court may, whenever it appears to it to be expedient or necessary, confer the powers of a Judicial Magistrate of the first class or of the second class on any member of the Judicial Service of the State, functioning as a Judge in a Civil Court.

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10. Chief Judicial Magistrate and Additional Chief Judicial Magistrate, etc.

(1) In every district, the High Court shall appoint a Judicial Magistrate of the first class to be the Chief Judicial Magistrate.

(2) The High Court may appoint any Judicial Magistrate of the first class to be an Additional Chief Judicial Magistrate, and such Magistrate shall have all or any of the powers of a Chief Judicial Magistrate under this Sanhita or under any other law for the time being in force as the High Court may direct.

(3) The High Court may designate any Judicial Magistrate of the first class in any sub- division as the Sub- divisional Judicial Magistrate and relieve him of the responsibilities specified in this section as occasion requires.

(4) Subject to the general control of the Chief Judicial Magistrate, every Sub- divisional Judicial Magistrate shall also have and exercise, such powers of supervision and control over the work of the Judicial Magistrates (other than Additional Chief Judicial Magistrates) in the sub- division as the High Court may, by general or special order, specify in this behalf.

Corresponding Provision of Previous Statute: Section 12, Code of Criminal Procedure, 1973

Section 12 - Chief Judicial Magistrate and Additional Chief Judicial Magistrate, etc - (1) In every district (not being a metropolitan area), the High Court shall appoint a Judicial Magistrate of the first class to be the Chief Judicial Magistrate.

(2) The High Court may appoint any Judicial Magistrate of the first class to be an Additional Chief Judicial Magistrate, and such Magistrate shall have all or any of the powers of a Chief Judicial Magistrate under this Code or under any other law for the time being in force as the High Court may direct.

(3) (a) The High Court may designate any Judicial Magistrate of the first class in any sub-division as the Sub-divisional Judicial Magistrate and relieve him of the responsibilities specified in this section as occasion requires.

(b) Subject to the general control of the Chief Judicial Magistrate, every Sub-divisional Judicial

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Magistrate shall also have and exercise, such powers of supervision and control over the work of the Judicial Magistrates (other than Additional Chief Judicial Magistrates) in the sub-division as the High Court may, by general or special order, specify in this behalf.

11. Special Judicial Magistrates

(1) The High Court may, if requested by the Central or State Government so to do, confer upon any person who holds or has held any post under the Government, all or any of the powers conferred or conferrable by or under this Sanhita on a Judicial Magistrate of the first class or of the second class, in respect to particular cases or to particular classes of cases, in any local area:

Provided that no such power shall be conferred on a person unless he possesses such qualification or experience in relation to legal affairs as the High Court may, by rules, specify.

(2) Such Magistrates shall be called Special Judicial Magistrates and shall be appointed for such term, not exceeding one year at a time, as the High Court may, by general or special order, direct.

Corresponding Provision of Previous Statute: Section 13, Code of Criminal Procedure, 1973

Section 13 - Special Judicial Magistrates - (1) The High Court may, if requested by the Central or State Government so to do, confer upon any person who holds or has held any post under the Government, all or any of the powers conferred or conferrable by or under this Code on a Judicial Magistrate of the first class or of the second class, in respect to particular cases or to particular classes of cases, in any local area, not being a metropolitan area:

Provided that no such power shall be conferred on a person unless he possesses such qualification or experience in relation to legal affairs as the High Court may, by rules, specify.

(2) Such Magistrates shall be called Special Judicial Magistrates and shall be appointed for such term, not exceeding one year at a time, as the High Court may, by general or special order, direct.

(3) The High Court may empower a Special Judicial Magistrate to exercise the powers of a Metropolitan Magistrate in relation to any metropolitan area outside his local jurisdiction.

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12. Local Jurisdiction of Judicial Magistrates

(1) Subject to the control of the High Court, the Chief Judicial Magistrate may, from time to time, define the local limits of the areas within which the Magistrates appointed under section 9 or under section 11 may exercise all or any of the powers with which they may respectively be invested under this Sanhita:

Provided that the Court of Special Judicial Magistrate may hold its sitting at any place within the local area for which it is established.

(2) Except as otherwise provided by such definition, the jurisdiction and powers of every such Magistrate shall extend throughout the district.

(3) Where the local jurisdiction of a Magistrate appointed under section 9 or section 11 extends to an area beyond the district in which he ordinarily holds Court, any reference in this Sanhita to the Court of Session or Chief Judicial Magistrate shall, in relation to such Magistrate, throughout the area within his local jurisdiction, be construed, unless the context otherwise requires, as a reference to the Court of Session or Chief Judicial Magistrate, as the case may be, exercising jurisdiction in relation to the said district.

Corresponding Provision of Previous Statute: Section 14, Code of Criminal Procedure, 1973

Section 14 - Local jurisdiction of Judicial Magistrates - (1) Subject to the control of the High Court, the Chief Judicial Magistrate may, from time to time, define the local limits of the areas within which the Magistrates appointed under section 11 or under section 13 may exercise all or any of the powers with which they may respectively be invested under this Code:

Provided that the Court of Special Judicial Magistrate may hold its sitting at any place within the local area for which it is established.

(2) Except as otherwise provided by such definition, the jurisdiction and powers of every such Magistrate shall extend throughout the district.

(3) Where the local jurisdiction of a Magistrate, appointed under section 11 or section 13 or section 18, extends to an area beyond the district, or the metropolitan area, as the case may be, in which he ordinarily holds Court, any reference in this Code to the Court of Session, Chief Judicial Magistrate or

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the Chief Metropolitan Magistrate shall, in relation to such Magistrate, throughout the area within his local jurisdiction, be construed, unless the context otherwise requires, as a reference to the Court of Session, Chief Judicial Magistrate, or Chief Metropolitan Magistrate, as the case may be, exercising jurisdiction in relation to the said district or metropolitan area.

13. Subordination of Judicial Magistrates

(1) Every Chief Judicial Magistrate shall be subordinate to the Sessions Judge; and every other Judicial Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Judicial Magistrate.

(2) The Chief Judicial Magistrate may, from time to time, make rules or give special orders, consistent with this Sanhita, as to the distribution of business among the Judicial Magistrates subordinate to him.

Corresponding Provision of Previous Statute: Section 15, Code of Criminal Procedure, 1973

Section 15 - Subordination of Judicial Magistrates - (1) Every Chief Judicial Magistrate shall be subordinate to the Sessions Judge; and every other Judicial Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Judicial Magistrate.

(2) The Chief Judicial Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Judicial Magistrates subordinate to him.

14. Executive Magistrates

(1) In every district, the State Government may appoint as many persons as it thinks fit to be Executive Magistrates and shall appoint one of them to be the District Magistrate.

(2) The State Government may appoint any Executive Magistrate to be an Additional District Magistrate, and such Magistrate shall have such of the powers of a District Magistrate under this Sanhita or under any other law for the time being in force as may be directed by the State Government.

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 524 - Power to alter functions allocated to Executive Magistrates in certain cases

Delhi Police Act, 1978 - Section 70 - Power of Central Government to authorise Commissioner of Police and certain other officers to exercise powers of District Magistrates and Executive Magistrates

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(3) Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the executive administration of the district, such officer shall, pending the orders of the State Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Sanhita on the District Magistrate.

(4) The State Government may place an Executive Magistrate in charge of a sub- division and may relieve him of the charge as occasion requires; and the Magistrate so placed in charge of a sub-division shall be called the Sub- divisional Magistrate.

(5) The State Government may, by general or special order and subject to such control and directions as it may deem fit to impose, delegate its powers under sub- section (4) to the District Magistrate.

(6) Nothing in this section shall preclude the State Government from conferring, under any law for the time being in force, on a Commissioner of Police all or any of the powers of an Executive Magistrate.

under Code of Criminal Procedure, 1973

Union Territories - Separation of Judicial and Executive Functions Act, 1969 - Section 5 - Functions exercisable by judicial and executive Magistrates

Bonded Labour System Abolition Act, 1976 - Section 21 - Offences to be tried by Executive Magistrates

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 451- Making over or withdrawal of cases by Executive Magistrates

Corresponding Provision of Previous Statute: Section 20, Code of Criminal Procedure, 1973

Section 20 - Executive Magistrates - (1) In every district and in every metropolitan area, the State Government may appoint as many persons as it thinks fit to be Executive Magistrates and shall appoint one of them to be the District Magistrate.

(2) The State Government may appoint any Executive Magistrate to be an Additional District Magistrate, and such Magistrate shall have such of the powers of a District Magistrate under this Code or under any other law for the time being in force as may be directed by the State Government.

(3) Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the executive administration of the district, such officer shall, pending the orders of the State Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

(4) The State Government may place an Executive Magistrate in charge of a sub-division and may relieve him of the charge as occasion requires; and the Magistrate so placed in charge of a sub-division shall be called the Sub-divisional Magistrate.

(4A) The State Government may, by general or special order and subject to such control and directions as it may deem fit to impose, delegate its powers under sub-section (4) to the District Magistrate.

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(5) Nothing in this section shall preclude the State Government from conferring, under any law for the time being in force, on a Commissioner of Police, all or any of the powers of an Executive Magistrate in relation to a metropolitan area.

15. Special Executive Magistrates

The State Government may appoint, for such term as it may think fit, Executive Magistrates or any police officer not below the rank of Superintendent of Police or equivalent, to be known as Special Executive Magistrates, for particular areas or for the performance of particular functions and confer on such Special Executive Magistrates such of the powers as are conferrable under this Sanhita on Executive Magistrates, as it may deem fit.

Corresponding Provision of Previous Statute: Section 21, Code of Criminal Procedure, 1973

Section 21 - Special Executive Magistrates - The State Government may appoint, for such term as it may think fit, Executive Magistrates, to be known as Special Executive Magistrates, for particular areas or for the performance of particular functions and confer on such Special Executive Magistrates such of the powers as are conferrable under this Code on Executive Magistrates, as it may deem fit.

16. Local Jurisdiction of Executive Magistrates

(1) Subject to the control of the State Government, the District Magistrate may, from time to time, define the local limits of the areas within which the Executive Magistrates may exercise all or any of the powers with which they may be invested under this Sanhita.

(2) Except as otherwise provided by such definition, the jurisdiction and powers of every such Magistrate shall extend throughout the district.

Corresponding Provision of Previous Statute: Section 22, Code of Criminal Procedure, 1973

Section 22 - Local Jurisdiction of Executive Magistrates - (1) Subject to the control of the State Government, the District Magistrate may, from time to time, define the local limits of the areas within which the Executive Magistrates may exercise all or any of the powers with which they may be invested under this Code.

(2) Except as otherwise provided by such definition, the jurisdiction and powers of every such Magistrate shall extend throughout the district.

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17. Subordination of Executive Magistrates

(1) All Executive Magistrates shall be subordinate to the District Magistrate, and every Executive Magistrate (other than the Sub-divisional Magistrate) exercising powers in a sub- division shall also be subordinate to the Sub- divisional Magistrate, subject, to the general control of the District Magistrate.

(2) The District Magistrate may, from time to time, make rules or give special orders, consistent with this Sanhita, as to the distribution or allocation of business among the Executive Magistrates subordinate to him.

Corresponding Provision of Previous Statute: Section 23, Code of Criminal Procedure, 1973

Section 23 - Subordination of Executive Magistrates - (1) All Executive Magistrates, other than the Additional District Magistrate, shall be subordinate to the District Magistrate, and every Executive Magistrate (other than the Sub-divisional Magistrate) exercising powers in a sub-division shall also be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

(2) The District Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Executive Magistrates subordinate to him and as to the allocation of business to an Additional District Magistrate.

18. Public Prosecutors

(1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or the State Government, as the case may be:

Provided that for National Capital Territory of Delhi, the Central Government shall, after consultation with the High Court of Delhi,

Linked Provisions

Terrorist Affected Areas - Special Courts Act, 1984 - Section 9 - Public Prosecutors

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 338 - Appearance by public prosecutors

National Investigation Agency Act, 2008 - Section 15 - Public Prosecutors

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appoint the Public Prosecutor or Additional Public Prosecutors for the purposes of this sub- section.

(2) The Central Government may appoint one or more Public Prosecutors for the purpose of conducting any case in any district or local area.

(3) For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district:

Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district.

(4) The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the district.

(5) No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under sub- section (4).

(6) Notwithstanding anything in sub- section (5), where in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre:

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Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment, that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under sub- section (4).

Explanation.- - For the purposes of this sub- section,- -

(a) "regular Cadre of Prosecuting Officers" means a Cadre of Prosecuting Officers which includes therein the post of Public Prosecutor, by whatever name called, and which provides for promotion of Assistant Public Prosecutors, by whatever name called, to that post;

(b) "Prosecuting Officer" means a person, by whatever name called, appointed to perform the functions of a Public Prosecutor, Special Public Prosecutor, Additional Public Prosecutor or Assistant Public Prosecutor under this Sanhita.

(7) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under sub- section (1) or sub- section (2) or sub- section (3) or sub- section (6), only if he has been in practice as an advocate for not less than seven years.

(8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor:

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Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section.

(9) For the purposes of sub- section (7) and sub- section (8), the period during which a person has been in practice as an advocate, or has rendered (whether before or after the commencement of this Sanhita) service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public Prosecutor or other Prosecuting Officer, by whatever name called, shall be deemed to be the period during which such person has been in practice as an advocate.

Corresponding Provision of Previous Statute: Section 24, Code of Criminal Procedure, 1973

Section 24 - Public Prosecutors - (1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be.

(2) The Central Government may appoint one or more Public Prosecutors for the purpose of conducting any case or class of cases in any district or local area.

(3) For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district:

Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district.

(4) The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the district.

(5) No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under sub-section (4).

(6) Notwithstanding anything contained in sub-section (5), where in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional

Public Prosecutor only from among the persons constituting such Cadre:

Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under sub-section (4).

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Explanation.—For the purposes of this sub-section,—

(a) "regular Cadre of Prosecuting Officers" means a Cadre of Prosecuting Officers which includes therein the post of a Public Prosecutor, by whatever name called, and which provides for promotion of Assistant Public Prosecutors, by whatever name called, to that post;

(b) "Prosecuting Officer" means a person, by whatever name called, appointed to perform the functions of a Public Prosecutor, an Additional Public Prosecutor or an Assistant Public Prosecutor under this Code.

(7) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (6), only if he has been in practice as an advocate for not less than seven years.

(8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor:

Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section.

(9) For the purposes of sub-section (7) and sub-section (8), the period during which a person has been in practice as a pleader, or has rendered (whether before or after the commencement of this Code) service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public Prosecutor or other Prosecuting Officer, by whatever name called, shall be deemed to be the period during which such person

19. Assistant Public Prosecutors

(1) The State Government shall appoint in every district one or more Assistant Public Prosecutors for conducting prosecutions in the Courts of Magistrates.

(2) The Central Government may appoint one or more Assistant Public Prosecutors for the purpose of conducting any case or class of cases in the Courts of Magistrates.

(3) Without prejudice to provisions contained in sub- sections (1) and (2), where no Assistant Public Prosecutor is available for the purposes of any particular case, the District Magistrate may appoint any other person to be the Assistant Public Prosecutor in charge of that case after giving notice of fourteen days to the State Government:

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Provided that no police officer shall be eligible to be appointed as an Assistant Public Prosecutor, if he- -

(a) has taken any part in the investigation into the offence with respect to which the accused is being prosecuted; or

(b) is below the rank of Inspector.

Corresponding Provision of Previous Statute: Section 25, Code of Criminal Procedure, 1973

Section 25 - Assistant Public prosecutors - (1) The State Government shall appoint in every district one or more Assistant Public Prosecutors for conducting prosecutions in the Courts of Magistrates.

(1A) The Central Government may appoint one or more Assistant Public Prosecutors for the purpose of conducting any case or class of cases in the Courts of Magistrates.

(2) Save as otherwise provided in sub-section (3), no police officer shall be eligible to be appointed as an Assistant Public Prosecutor.

(3) Where no Assistant Public Prosecutor is available for the purposes of any particular case, the District Magistrate may appoint any other person to be the Assistant Public Prosecutor in charge of that case:

Provided that a police officer shall not be so appointe -

(a) if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted; or

(b) if he is below the rank of Inspector

20. Directorate of Prosecution

(1) The State Government may establish,- -

(a) a Directorate of Prosecution in the State consisting of a Director of Prosecution and as many Deputy Directors of Prosecution as it thinks fit; and

(b) a District Directorate of Prosecution in every district consisting of as many Deputy Directors and Assistant Directors of Prosecution, as it thinks fit.

(2) A person shall be eligible to be appointed,- -

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(a) as a Director of Prosecution or a Deputy Director of Prosecution, if he has been in practice as an advocate for not less than fifteen years or is or has been a Sessions Judge;

(b) as an Assistant Director of Prosecution, if he has been in practice as an advocate for not less than seven years or has been a Magistrate of the first class.

(3) The Directorate of Prosecution shall be headed by the Director of Prosecution, who shall function under the administrative control of the Home Department in the State.

(4) Every Deputy Director of Prosecution or Assistant Director of Prosecution shall be subordinate to the Director of Prosecution; and every Assistant Director of Prosecution shall be subordinate to the Deputy Director of Prosecution.

(5) Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under sub- section (1) or sub- section (8) of section 18 to conduct cases in the High Court shall be subordinate to the Director of Prosecution.

(6) Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under sub- section (3) or sub- section (8) of section 18 to conduct cases in District Courts and every Assistant Public Prosecutor appointed under sub- section (1) of section 19 shall be subordinate to the Deputy Director of Prosecution or the Assistant Director of Prosecution.

(7) The powers and functions of the Director of Prosecution shall be to monitor cases in which offences are punishable for ten years or

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more, or with life imprisonment, or with death; to expedite the proceedings and to give opinion on filing of appeals.

(8) The powers and functions of the Deputy Director of Prosecution shall be to examine and scrutinise police report and monitor the cases in which offences are punishable for seven years or more, but less than ten years, for ensuring their expeditious disposal.

(9) The functions of the Assistant Director of Prosecution shall be to monitor cases in which offences are punishable for less than seven years.

(10) Notwithstanding anything contained in sub- sections (7), (8) and (9), the Director, Deputy Director or Assistant Director of Prosecution shall have the power to deal with and be responsible for all proceedings under this Sanhita.

(11) The other powers and functions of the Director of Prosecution, Deputy Directors of Prosecution and Assistant Directors of Prosecution and the areas for which each of the Deputy Directors of Prosecution or Assistant Directors of Prosecution have been appointed shall be such as the State Government may, by notification, specify.

(12) The provisions of this section shall not apply to the Advocate General for the State while performing the functions of a Public Prosecutor.

Corresponding Provision of Previous Statute: Section 25A, Code of Criminal Procedure, 1973

Section 25A - Directorate of Prosecution - (1) The State Government may establish a Directorate of Prosecution consisting of a Director of Prosecution and as many Deputy Directors of Prosecution as it thinks fit.

(2) A person shall be eligible to be appointed as a Director of Prosecution or a Deputy Director of Prosecution, only if he has been in practice as an advocate for not less than ten years and such appointment shall be made with the concurrence of the Chief Justice of the High Court.

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(3) The Head of the Directorate of Prosecution shall be the Director of Prosecution, who shall function under the administrative control of the Head of the Home Department in the State.

(4) Every Deputy Director of Prosecution shall be subordinate to the Director of Prosecution.

(5) Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under sub-section (1), or as the case may be, sub-section (8), of section 24 to conduct cases in the High Court shall be subordinate to the Director of Prosecution.

(6) Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under sub-section (3), or as the case may be, sub-section (8), of section 24 to conduct cases in District Courts and every Assistant Public Prosecutor appointed under sub-section (1) of section 25 shall be subordinate to the Deputy Director of Prosecution.

(7) The powers and functions of the Director of Prosecution and the Deputy Directors of Prosecution and the areas for which each of the Deputy Directors of Prosecution have been appointed shall be such as the State Government may, by notification, specify.

(8) The provisions of this section shall not apply to the Advocate General for the State while performing the functions of a Public Prosecutor.

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CHAPTER III

POWER OF COURTS

21. Courts by which offences are triable

Subject to the other provisions of this Sanhita,- -

(a) any offence under the Bharatiya Nyaya Sanhita, 2023 may be tried by- -

(i) the High Court; or

(ii) the Court of Session; or

(iii) any other Court by which such offence is shown in the First Schedule to be triable:

Provided that any offence under section 64, section 65, section 66, section 67, section 68, section 69, section 70 or section 71 of the Bharatiya Nyaya Sanhita, 2023 shall be tried as far as practicable by a Court presided over by a woman;

(b) any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court and when no Court is so mentioned, may be tried by- -

(i) the High Court; or

(ii) any other Court by which such offence is shown in the First Schedule to be triable.

Corresponding Provision of Previous Statute: Section 26, Code of Criminal Procedure, 1973

Section 26 - Courts by which offences are triable - Subject to the other provisions of this Code,—

(a) any offence under the Indian Penal Code (45 of 1860) may be tried by -

(i) the High Court, or

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(ii) the Court of Session, or

(iii) any other Court by which such offence is shown in the First Schedule to be triable:

Provided that any offence under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, 376DB or section 376E of the Indian Penal Code (45 of 1860) shall be tried as far as practicable by a Court presided over by a woman.

(b) any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court and when no Court is so mentioned, may be tried by —

(i) the High Court, or

(ii) any other Court by which such offence is shown in the First Schedule to be triable.

22. Sentences which High Courts and Sessions Judges may pass

(1) A High Court may pass any sentence authorised by law.

(2) A Sessions Judge or Additional Sessions Judge may pass any sentence authorised by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

Corresponding Provision of Previous Statute: Section 28, Code of Criminal Procedure, 1973

Section 28 - Sentences which High Courts and Sessions Judges may pass - (1) A High Court may pass any sentence authorised by law.

(2) A Sessions Judge or Additional Sessions Judge may pass any sentence authorised by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

(3) An Assistant Sessions Judge may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding ten years.

23. Sentences which Magistrates may pass

(1) The Court of a Chief Judicial Magistrate may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years.

(2) The Court of a Magistrate of the first class may pass a sentence of

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imprisonment for a term not exceeding three years, or of fine not exceeding fifty thousand rupees, or of both, or of community service.

(3) The Court of Magistrate of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of fine not exceeding ten thousand rupees, or of both, or of community service.

Explanation.- - "Community service" shall mean the work which the Court may order a convict to perform as a form of punishment that benefits the community, for which he shall not be entitled to any remuneration.

Corresponding Provision of Previous Statute: Section 29, Code of Criminal Procedure, 1973

Section 29 - Sentences which Magistrates may pass - (1) The Court of a Chief Judicial Magistrate may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years.

(2) The Court of a Magistrate of the first class may pass a sentence of imprisonment for a term notexceeding three years, or of fine not exceeding ten thousand rupees, or of both.

(3) The Court of Magistrate of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of fine not exceeding five thousand rupees, or of both.

(4) The Court of a Chief Metropolitan Magistrate shall have the powers of the Court of a Chief Judicial Magistrate and that of a Metropolitan Magistrate, the powers of the Court of a Magistrate of the first class.

LANDMARK JUDGMENT

Pankajbhai Nagjibhai Patel vs. The State of Gujarat and Ors., MANU/SC/0022/2001

24. Sentence of imprisonment in default of fine

(1) The Court of a Magistrate may award such term of imprisonment in default of payment of fine as is authorised by law:

Provided that the term- -

(a) is not in excess of the powers of the Magistrate under section 23;

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(b) shall not, where imprisonment has been awarded as part of the substantive sentence, exceed one- fourth of the term of imprisonment which the Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

(2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 23.

Corresponding Provision of Previous Statute: Section 30, Code of Criminal Procedure, 1973

Section 30 - Sentence of imprisonment in default of fine - (1) The Court of a Magistrate may award such term of imprisonment in default of payment of fine as is authorised by law:

Provided that the term—

(a) is not in excess of the powers of the Magistrate under section 29;

(b) shall not, where imprisonment has been awarded as part of the substantive sentence, exceed one-fourth of the term of imprisonment which the Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

(2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 29.

25. Sentence in cases of conviction of several offences at one trial

(1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 9 of the Bharatiya Nyaya Sanhita, 2023, sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict and the Court shall, considering the gravity of offences, order such punishments to run concurrently or consecutively.

(2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to

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inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Provided that- -

(a) in no case shall such person be sentenced to imprisonment for a longer period than twenty years;

(b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.

(3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence.

Corresponding Provision of Previous Statute: Section 31, Code of Criminal Procedure, 1973

Section 31 - Sentence in cases of conviction of several offences at one trial - (1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Provided that—

(a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years;

(b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.

(3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence.

26. Mode of conferring powers

Linked Provisions

Punjab Courts Act, 1918 - Section 45 - Mode of conferring powers

(1) In conferring powers under this Sanhita, the High Court or the State Government, as the case may be, may, by order, empower

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persons specially by name or in virtue of their offices or classes of officials generally be their official titles.

(2) Every such order shall take effect from the date on which it is communicated to the person so empowered.

Corresponding Provision of Previous Statute: Section 32, Code of Criminal Procedure, 1973

Section 32 - Mode of conferring powers - (1) In conferring powers under this Code, the High Court or the State Government, as the case may be, may, by order, empower persons specially by name or in virtue of their offices or classes of officials generally be their official titles.

(2) Every such order shall take effect from the date on which it is communicated to the person so empowered.

27. Powers of officers appointed

Whenever any person holding an office in the service of Government who has been invested by the High Court or the State Government with any powers under this Sanhita throughout any local area is appointed to an equal or higher office of the same nature, within a like local area under the same State Government, he shall, unless the High Court or the State Government, as the case may be, otherwise directs, or has otherwise directed, exercise the same powers in the local area in which he is so appointed.

Corresponding Provision of Previous Statute: Section 33, Code of Criminal Procedure, 1973

Section 33 - Powers of officers appointed - Whenever any person holding an office in the service of Government who has been invested by the High Court or the State Government with any powers under this Code throughout any local area is appointed to an equal or higher office of the same nature, within a like local area under the same State Government, he shall, unless the High Court or the State Government, as the case may be, otherwise directs, or has otherwise directed, exercise the same powers in the local area in which he is so appointed.

28. Withdrawal of powers

(1) The High Court or the State Government, as the case may be, may withdraw all or any of the powers conferred by it under this Sanhita on any person or by any officer subordinate to it.

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(2) Any powers conferred by the Chief Judicial Magistrate or by the District Magistrate may be withdrawn by the respective Magistrate by whom such powers were conferred.

Corresponding Provision of Previous Statute: Section 34, Code of Criminal Procedure, 1973

Section 34 - Withdrawal of powers - (1) The High Court or the State Government, as the case may be, may withdraw all or any of the powers conferred by it under this Code on any person or by any officersubordinate to it.

(2) Any powers conferred by the Chief Judicial Magistrate or by the District Magistrate may be withdrawn by the respective Magistrate by whom such powers were conferred.

29. Powers of Judges and Magistrates exercisable by their successors- in- office

(1) Subject to the other provisions of this Sanhita, the powers and duties of a Judge or Magistrate may be exercised or performed by his successor- in- office.

(2) When there is any doubt as to who is the successor- in- office, the Sessions Judge shall determine by order in writing the Judge who shall, for the purposes of this Sanhita or of any proceedings or order thereunder, be deemed to be the successor- in- office.

(3) When there is any doubt as to who is the successor- in- office of any Magistrate, the Chief Judicial Magistrate, or the District Magistrate, as the case may be, shall determine by order in writing the Magistrate who shall, for the purpose of this Sanhita or of any proceedings or order thereunder, be deemed to be the successor- in- office of such Magistrate.

Corresponding Provision of Previous Statute: Section 35, Code of Criminal Procedure, 1973

Section 35 - Powers of Judges and Magistrates exercisable by their successors-in-office - (1) Subject to the other provisions of this Code, the powers and duties of a Judge or Magistrate may be exercised or performed by his successor-in-office.

(2) When there is any doubt as to who is the successor-in-office of any Additional or Assistant Sessions Judge, the Sessions Judge shall determine by order in writing the Judge who shall, for the purposes of

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this Code or of any proceedings or order thereunder, be deemed to be the successor-in-office of such Additional or Assistant Sessions Judge.

(3) When there is any doubt as to who is the successor-in-office of any Magistrate, the Chief Judicial Magistrate, or the District Magistrate, as the case may be, shall determine by order in writing the Magistrate who shall, for the purpose of this Code or of any proceedings or order thereunder, be deemed to be the successor-in-office of such Magistrate..

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CHAPTER IV

POWERS OF SUPERIOR OFFICERS OF POLICE AND AID TO THE MAGISTRATES AND THE POLICE

30. Powers of superior officers of police

Police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

Corresponding Provision of Previous Statute: Section 36, Code of Criminal Procedure, 1973

Section 36 - Powers of superior officers of police - Police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

LANDMARK JUDGMENT

R.P. Kapur and Ors. vs. Sardar Pratap Singh Kairon and Ors., MANU/SC/0070/1960

31. Public when to assist Magistrates and police

Every person is bound to assist a Magistrate or police officer reasonably demanding his aid- -

(a) in the taking or preventing the escape of any other person whom such Magistrate or police officer is authorised to arrest; or

(b) in the prevention or suppression of a breach of the peace; or

(c) in the prevention of any injury attempted to be committed to any public property.

Corresponding Provision of Previous Statute: Section 37, Code of Criminal Procedure, 1973

Section 37 - Public when to assist Magistrates and police - Every person is bound to assist a Magistrate or police officer reasonably demanding his aid—

(a) in the taking or preventing the escape of any other person whom such Magistrate or police officer is authorised to arrest; or

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(b) in the prevention or suppression of a breach of the peace; or

(c) in the prevention of any injury attempted to be committed to any railway, canal, telegraph or public property.

32. Aid to person, other than police officer, executing warrant

When a warrant is directed to a person other than a police officer, any other person may aid in the execution of such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

Corresponding Provision of Previous Statute: Section 38, Code of Criminal Procedure, 1973

Section 38 - Aid to person, other than police officer, executing warrant - When a warrant is directed to a person other than a police officer, any other person may aid in the execution of such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

33. Public to give information of certain offences

(1) Every person, aware of the commission of, or of the intention of any other person to commit, any offence punishable under any of the following sections of the Bharatiya Nyaya Sanhita, 2023, namely:- -

(i) sections 103 to 105 (both inclusive);

(ii) sections 111 to 113 (both inclusive);

(iii) sections 140 to 144 (both inclusive);

(iv) sections 147 to 154 (both inclusive) and section 158;

(v) sections 178 to 182 (both inclusive);

(vi) sections 189 and 191;

(vii) sections 274 to 280 (both inclusive);

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(viii) section 307;

(ix) sections 309 to 312 (both inclusive);

(x) sub- section (5) of section 316;

(xi) sections 326 to 328 (both inclusive); and

(xii) sections 331 and 332,

shall, in the absence of any reasonable excuse, the burden of proving which excuse shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police officer of such commission or intention.

(2) For the purposes of this section, the term "offence" includes any act committed at any place out of India which would constitute an offence if committed in India.

Corresponding Provision of Previous Statute: Section 39, Code of Criminal Procedure, 1973

Section 39 - Public to give information of certain offences - (1) Every person, aware of the commission of, or of the intention of any other person to commit, any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely:—

(i) sections 121 to 126, both inclusive, and section 130 (that is to say, offences against the State specified in Chapter VI of the said Code;

(ii) sections 143, 144, 145, 147 and 148 (that is to say, offences against the public tranquillity specified in Chapter VIII of the said Code;

(iii) sections 161 to 165A, both inclusive (that is to say, offences relating to illegal gratification;

(iv) sections 272 to 278, both inclusive (that is to say, offences relating to adulteration of food and drugs, etc.;
(v) sections 302, 303 and 304 (that is to say, offences affecting life;

(va) section 364A (that is to say, offence relating to kidnapping for ransom, etc.;

(vi) section 382 (that is to say, offence of theft after preparation made for causing death, hurt or restraint in order to the committing of the theft;

(vii) sections 392 to 399, both inclusive, and section 402 (that is to say, offences of robbery and dacoity;
(viii) section 409 (that is to say, offence relating to criminal breach of trust by public servant, etc.;
(ix) sections 431 and 439, both inclusive (that is to say, offences of mischief against property;
(x) sections 449 and 450 (that is to say, offence of house trespass;
(xi) sections 456 to 460, both inclusive (that is to say, offences of lurking house trespass) and

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(xii) sections 489A to 489E, both inclusive (that is to say, offences relating to currency notes and bank notes), shall, in the absence of any reasonable excuse, the burden of proving which excuse shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police officer of such commission or intention.

(2) For the purposes of this section, the term "offence" includes any act committed at any place out of India which would constitute an offence if committed in India

34. Duty of officers employed in connection with affairs of a village to make certain report

(1) Every officer employed in connection with the affairs of a village and every person residing in a village shall forthwith communicate to the nearest Magistrate or to the officer in charge of the nearest police station, whichever is nearer, any information which he may possess respecting- -

(a) the permanent or temporary residence of any notorious receiver or vendor of stolen property in or near such village;

(b) the resort to any place within, or the passage through, such village of any person whom he knows, or reasonably suspects, to be a robber, escaped convict or proclaimed offender;

(c) the commission of, or intention to commit, in or near such village any non- bailable offence or any offence punishable under section 189 and section 191 of the Bharatiya Nyaya Sanhita, 2023;

(d) the occurrence in or near such village of any sudden or unnatural death or of any death under suspicious circumstances or the discovery in or near such village of any corpse or part of a corpse, in circumstances which lead to a reasonable suspicion that such a death has occurred or the disappearance from such village of any person

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in circumstances which lead to a reasonable suspicion that a non-bailable offence has been committed in respect of such person;

(e) the commission of, or intention to commit, at any place out of India near such village any act which, if committed in India, would be an offence punishable under any of the following sections of the Bharatiya Nyaya Sanhita, 2023, namely, 103, 105, 111, 112, 113, 178 to 181 (both inclusive), 305, 307, 309 to 312 (both inclusive), clauses (f) and (g) of section 326, 331 or 332;

(f) any matter likely to affect the maintenance of order or the prevention of crime or the safety of person or property respecting which the District Magistrate, by general or special order made with the previous sanction of the State Government, has directed him to communicate information.

(2) In this section,- -

(i) "village" includes village lands;

(ii) the expression "proclaimed offender" includes any person proclaimed as an offender by any Court or authority in any territory in India to which this Sanhita does not extend, in respect of any act which if committed in the territories to which this Sanhita extends, would be an offence punishable under any of the offence punishable with imprisonment for ten years or more or with imprisonment for life or with death under the Bharatiya Nyaya Sanhita, 2023;

(iii) the words "officer employed in connection with the affairs of the village" means a member of the panchayat of the village and includes

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the headman and every officer or other person appointed to perform any function connected with the administration of the village.

Corresponding Provision of Previous Statute: Section 40, Code of Criminal Procedure, 1973

Section 40 - Duty of officers employed in connection with the affairs of a village to make certain

Report - (1) Every officer employed in connection with the affairs of a village and every person residing in a village shall forthwith communicate to the nearest Magistrate or to the officer in charge of the nearest police station, whichever is nearer, any information which he may possess respecting—

(a) the permanent or temporary residence of any notorious receiver or vendor of stolen property in or near such village;

(b) the resort to any place within, or the passage through, such village of any person whom he knows, or reasonably suspects, to be a thug, robber, escaped convict or proclaimed offender;

(c) the commission of, or intention to commit, in or near such village any non-bailable offence or any offence punishable under section 143, section 144, section 145, section 147, or section 148 of the Indian Penal Code (45 of 1860);

(d) the occurrence in or near such village of any sudden or unnatural death or of any death under suspicious circumstances or the discovery in or near such village of any corpse or part of a corpse, in circumstances which lead to a reasonable suspicion that such a death has occurred or the disappearance from such village of any person in circumstances which lead to a reasonable suspicion that a non-bailable offence has been committed in respect of such person;

(e) the commission of, or intention to commit, at any place out of India near such village any act which, if committed in India, would be an offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, 231 to 238 (both inclusive), 302, 304, 382, 392 to 399 (both inclusive), 402, 435, 436, 449, 450, 457 to 460 (both inclusive), 489A, 489B, 489C and 489D;

(f) any matter likely to affect the maintenance of order or the prevention of crime or the safety of person or property respecting which the District Magistrate, by general or special order made with the previous sanction of the State Government, has directed him to communicate information.

(2) In this section,—

(i) "village" includes village-lands;

(ii) the expression "proclaimed offender" includes any person proclaimed as an offender by any Court or authority in any territory in India to which this Code does not extend, in respect of any act which if committed in the territories to which this Code extends, would be an offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, 302, 304, 382, 392 to 399 (both inclusive), 402, 435, 436, 449, 450 and 457 to 460 (both inclusive;

(iii) the words "officer employed in connection with the affairs of the village" means a memberof the panchayat of the village and includes the headman and every officer or other person appointed to perform any function connected with the administration of the village.

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CHAPTER V

ARREST OF PERSONS

35. When police may arrest without warrant

(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person- -

(a) who commits, in the presence of a police officer, a cognizable offence; or

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:- -

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary- -

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

Linked Provisions

Cantonments Act, 2006 - Section 314 - Arrest without warrant

Northern Indian Canal and Drainage Act, 1873 - Section 73 - Power to arrest without warrant

Northern India Ferries Act, 1878 - Section 29 - Power to arrest without warrant

Railway Property - Unlawful Possession Act, 1966 - Section 6 - Power to arrest without warrant

Railway Protection Force Act, 1957 - Section 12 - Power to arrest without warrant

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 55 - Procedure when police officer deputes subordinate to arrest without warrant

Delhi Police Act, 1978 - Section 78 - Arrest without warrant in case of certain offences under Act 59 of 1960

Essential Services Maintenance - Assam Act, 1980 - Section 8 - Power to arrest without warrant

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(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub- section, record the reasons in writing for not making the arrest; or

(c) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence; or

(d) who has been proclaimed as an offender either under this Sanhita or by order of the State Government; or

(e) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(f) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

Essential Services Maintenance Act, 1968 - Section 7 - Power to arrest without warrant

Essential Services Maintenance Act, 1981 - Section 10 - Power to arrest without warrant

Explosives Act, 1884 - Section 13 - Power to arrest without warrant persons committing dangerous offences

Indian Forest Act, 1927 - Section 64 - Power to arrest without warrant

Metro Railway - Operation and Maintenance Act, 2002 - Section 82 - Power of arrest without warrant

Motor Vehicles Act, 1988 - Section 202 - Power to arrest without warrant

Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 42 - Power of entry, search, seizure and arrest without warrant or authorisation

Navy Act, 1957- Section 84 arrest without warrant

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(g) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(h) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(i) who, being a released convict, commits a breach of any rule made under sub- section (5) of section 394; or

(j) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Subject to the provisions of section 39, no person concerned in a non- cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.

(3) The police officer shall, in all cases where the arrest of a person is not required under sub- section (1) issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that

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he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(4) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(5) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(6) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.

(7) No arrest shall be made without prior permission of an officer not below the rank of Deputy Superintendent of Police in case of an offence which is punishable for imprisonment of less than three years and such person is infirm or is above sixty years of age.

Corresponding Provision of Previous Statute: Section 41, Code of Criminal Procedure, 1973

Section 41 - When police may arrest without warrant - (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—

(a) who commits, in the presence of a police officer, a cognizable offence;

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary—

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

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(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.;

(ba) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence;

(c) who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(h) who, being a released convict, commits a breach of any rule made under sub-section (5) of section 356; or

(i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Subject to the provisions of section 42, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.

LANDMARK JUDGMENT

Arnesh Kumar vs. State of Bihar, MANU/SC/0559/2014

36. Procedure of arrest and duties of officer making arrest

Every police officer while making an arrest shall- -

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(a) bear an accurate, visible and clear identification of his name which will facilitate easy identification;

(b) prepare a memorandum of arrest which shall be- -

(i) attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made;

(ii) countersigned by the person arrested; and

(c) inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend or any other person named by him to be informed of his arrest.

Corresponding Provision of Previous Statute: Section 41B, Code of Criminal Procedure, 1973

Section 41B - Procedure of arrest and duties of officer making arrest - Every police officer while making an arrest shall—

(a) bear an accurate, visible and clear identification of his name which will facilitate easy identification;

(b) prepare a memorandum of arrest which shall be—

(i) attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made;

(ii) countersigned by the person arrested; and

(c) inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend named by him to be informed of his arrest.

37. Designated police officer

The State Government shall- -

(a) establish a police control room in every district and at State level;

(b) designate a police officer in every district and in every police station, not below the rank of Assistant Sub- Inspector of Police who

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shall be responsible for maintaining the information about the names and addresses of the persons arrested, nature of the offence with which charged, which shall be prominently displayed in any manner including in digital mode in every police station and at the district headquarters.

38. Right of arrested person to meet an advocate of his choice during interrogation

When any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation, though not throughout interrogation.

Corresponding Provision of Previous Statute: Section 41D, Code of Criminal Procedure, 1973

Section 41D - Right of arrested person to meet an advocate of his choice during interrogation - When any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation, though not throughout interrogation.

39. Arrest on refusal to give name and residence

(1) When any person who, in the presence of a police officer, has committed or has been accused of committing a non- cognizable offence refuses on demand of such officer to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

(2) When the true name and residence of such person have been ascertained, he shall be released on a bond or bail bond, to appear before a Magistrate if so required:

Provided that if such person is not resident in India, the bail bond shall be secured by a surety or sureties resident in India.

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(3) If the true name and residence of such person is not ascertained within twenty- four hours from the time of arrest or if he fails to execute the bond or bail bond, or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.

Corresponding Provision of Previous Statute: Section 42, Code of Criminal Procedure, 1973

Section 42 - Arrest on refusal to give name and residence - (1) When any person who, in the presence of a police officer, has committed or has been accused of committing a non-cognizable offence refuses, on demand of such officer, to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

(2) When the true name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate if so required:

Provided that, if such person is not resident in India, the bond shall be secured by a surety or sureties resident in India.

(3) Should the true name and residence of such person not be ascertained within twenty-four hours from the time of arrest or should he fail to execute the bond, or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.

40. Arrest by private person and procedure on such arrest

(1) Any private person may arrest or cause to be arrested any person who in his presence commits a non- bailable and cognizable offence, or any proclaimed offender, and, without unnecessary delay, but within six hours from such arrest, shall make over or cause to be made over any person so arrested to a police officer, or, in the absence of a police officer, take such person or cause him to be taken in custody to the nearest police station.

(2) If there is reason to believe that such person comes under the provisions of sub- section (1) of section 35, a police officer shall take him in custody.

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(3) If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a police officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 39; but if there is no sufficient reason to believe that he has committed any offence, he shall be at once released.

Corresponding Provision of Previous Statute: Section 43, Code of Criminal Procedure, 1973

Section 43 - Arrest by private person and procedure on such arrest - (1) Any private person may arrest or cause to be arrested any person who in his presence commits a non-bailable and cognizable offence, or any proclaimed offender, and, without unnecessary delay, shall make over or cause to be made over any person so arrested to a police officer, or, in the absence of a police officer, take such person or cause him to be taken in custody to the nearest police station.

(2) If there is reason to believe that such person comes under the provisions of section 41, a police officer shall re-arrest him.

(3) If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a police officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 42; but if there is no sufficient reason to believe that he has committed any offence, he shall be at once released.

41. Arrest by Magistrate

Linked Provisions

Extradition Act, 1962 - Section 9 - Power of Magistrate to issue warrant of arrest in certain cases

(1) When any offence is committed in the presence of a Magistrate, whether Executive or Judicial, within his local jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

(2) Any Magistrate, whether Executive or Judicial, may at any time arrest or direct the arrest, in his presence, within his local jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

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Corresponding Provision of Previous Statute: Section 44, Code of Criminal Procedure, 1973

Section 44 - Arrest by Magistrate - (1) When any offence is committed in the presence of a Magistrate, whether Executive or Judicial, within his local jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

(2) Any Magistrate, whether Executive or Judicial, may at any time arrest or direct the arrest, in his presence, within his local jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

42. Protection of members of Armed Forces from arrest

(1) Notwithstanding anything contained in section 35 and sections 39 to 41 (both inclusive), no member of the Armed Forces of the Union shall be arrested for anything done or purported to be done by him in the discharge of his official duties except after obtaining the consent of the Central Government.

(2) The State Government may, by notification, direct that the provisions of sub- section (1) shall apply to such class or category of the members of the Force charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub- section shall apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

Corresponding Provision of Previous Statute: Section 45, Code of Criminal Procedure, 1973

Section 45 - Protection of members of the Armed Forces from arrest - (1) Notwithstanding anything contained in sections 41 to 44 (both inclusive), no member of the Armed Forces of the Union shall be arrested for anything done or purported to be done by him in the discharge of his official duties except after obtaining the consent of the Central Government.

(2) The State Government may, by notification, direct that the provisions of sub-section (1) shall apply to such class or category of the members of the Force charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section shall apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

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43. Arrest how made

(1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action:

Provided that where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest.

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.

(3) The police officer may, keeping in view the nature and gravity of the offence, use handcuff while making the arrest of a person or while producing such person before the court who is a habitual or repeat offender, or who escaped from custody, or who has committed offence of organised crime, terrorist act, drug related crime, or illegal possession of arms and ammunition, murder, rape, acid attack, counterfeiting of coins and currency- notes, human trafficking, sexual offence against children, or offence against the State.

(4) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

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(5) Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.

Corresponding Provision of Previous Statute: Section 46, Code of Criminal Procedure, 1973

Section 46 - Arrest how made - (1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action:

Provided that where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest.]

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.

(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

(4) Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.

LANDMARK JUDGMENT

Sheela Barse vs. State of Maharashtra, MANU/SC/0382/1983

Arnesh Kumar vs. State of Bihar, MANU/SC/0559/2014

44. Search of place entered by person sought to be arrested

(1) If any person acting under a warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, any person residing in, or being in charge of, such place shall, on demand of such person acting as aforesaid or such police officer, allow him

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free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress to such place cannot be obtained under sub- section (1), it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police officer to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance:

Provided that if any such place is an apartment in the actual occupancy of a female (not being the person to be arrested) who, according to custom, does not appear in public, such person or police officer shall, before entering such apartment, give notice to such female that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

(3) Any police officer or other person authorised to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

Corresponding Provision of Previous Statute: Section 47, Code of Criminal Procedure, 1973

Section 47 - Search of place entered by person sought to be arrested - (1) If any person acting under warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, any person residing in, or being in charge of, such place shall, on demand of such person acting as aforesaid or such police officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

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(2) If ingress to such place cannot be obtained under sub-section (1), it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police officer to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance:

Provided that, if any such place is an apartment in the actual occupancy of a female (not being the persons to be arrested) who, according to custom, does not appear in public, such person or police officer shall, before entering such apartment, give notice to such female that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

(3) Any police officer or other person authorised to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

45. Pursuit of offenders into other jurisdictions

A police officer may, for the purpose of arresting without warrant any person whom he is authorised to arrest, pursue such person into any place in India.

Corresponding Provision of Previous Statute: Section 48, Code of Criminal Procedure, 1973

Section 48 - Pursuit of offenders into other jurisdictions - A police officer may, for the purpose of arresting without warrant any person whom he is authorised to arrest, pursue such person into any place in India.

46. No unnecessary restraint

The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

Corresponding Provision of Previous Statute: Section 49, Code of Criminal Procedure, 1973

Section 49 - No unnecessary restraint - The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

47. Person arrested to be informed of grounds of arrest and of right to bail

(1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

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(2) Where a police officer arrests without warrant any person other than a person accused of a non- bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

Corresponding Provision of Previous Statute: Section 50, Code of Criminal Procedure, 1973

Section 50 - Person arrested to be informed of grounds of arrest and of right to bail - (1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

LANDMARK JUDGMENT

D.K. Basu vs. State of West Bengal, MANU/SC/0157/1997

Joginder Kumar vs. State of U.P. and Ors., MANU/SC/0311/1994

48. Obligation of person making arrest to inform about arrest, etc., to relative or friend

(1) Every police officer or other person making any arrest under this Sanhita shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his relatives, friends or such other persons as may be disclosed or nominated by the arrested person for the purpose of giving such information and also to the designated police officer in the district.

(2) The police officer shall inform the arrested person of his rights under sub- section (1) as soon as he is brought to the police station.

(3) An entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as the State Government may, by rules, provide.

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(4) It shall be the duty of the Magistrate before whom such arrested person is produced, to satisfy himself that the requirements of sub-section (2) and sub- section (3) have been complied with in respect of such arrested person.

Corresponding Provision of Previous Statute: Section 50A, Code of Criminal Procedure, 1973

Section 50A - Obligation of person making arrest to inform about the arrest, etc., to a nominated person - (1) Every police officer or other person making any arrest under this Code shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his friends, relatives or such other persons as may be disclosed or nominated by the arrested person for the purpose of giving such information.

(2) The police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station.

(3) An entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as may be prescribed in this behalf by the State Government.

(4) It shall be the duty of the Magistrate before whom such arrested person is produced, to satisfy himself that the requirements of sub-section (2) and sub-section (3) have been complied with in respect of such arrested person.

49. Search of arrested person

(1) Whenever,- -

(i) a person is arrested by a police officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail; and
(ii) a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail, the officer making the arrest or, when the arrest is made by a private person, the police officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing- apparel, found upon him and where any article is seized from the arrested person,

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a receipt showing the articles taken in possession by the police officer shall be given to such person.

(2) Whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency.

Corresponding Provision of Previous Statute: Section 51, Code of Criminal Procedure, 1973

Section 51 - Search of arrested person - (1) Whenever a person is arrested by a police officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail, andwhenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail, the officer making the arrest or, when the arrest is made by a private person, the police officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing-apparel, found upon him and where any article is seized from the arrested person, a receipt showing the articles taken in possession by the police officer shall be given to such person.

(2) Whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency.

50. Power to seize offensive weapons

The police officer or other person making any arrest under this Sanhita may, immediately after the arrest is made, take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Sanhita to produce the person arrested.

Corresponding Provision of Previous Statute: Section 52, Code of Criminal Procedure, 1973

Section 52 - Power to seize offensive weapons - The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested.

51. Examination of accused by medical practitioner at request of police officer

(1) When a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that

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an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting at the request of any police officer, and for any person acting in good faith in his aid and under his direction, to make such an examination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for that purpose.

(2) Whenever the person of a female is to be examined under this section, the examination shall be made only by, or under the supervision of, a female registered medical practitioner.

(3) The registered medical practitioner shall, without any delay, forward the examination report to the investigating officer.

Explanation.- - In this section and sections 52 and 53,- -

(a) "examination" shall include the examination of blood, blood stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and finger nail clippings by the use of modern and scientific techniques including DNA profiling and such other tests which the registered medical practitioner thinks necessary in a particular case;

(b) "registered medical practitioner" means a medical practitioner who possesses any medical qualification recognised under the National Medical Commission Act, 2019 (30 of 2019) and whose name has been entered in the National Medical Register or a State Medical Register under that Act.

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Corresponding Provision of Previous Statute: Section 53, Code of Criminal Procedure, 1973

Section 53 - Examination of accused by medical practitioner at the request of police officer - (1) When a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting at the request of a police officer not below the rank of sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for that purpose.

(2) Whenever the person of a female is to be examined under this section, the examination shall be made only by, or under the supervision of, a female registered medical practitioner.

Explanation.—In this section and in sections 53A and 54,—

(a) "examination" shall include the examination of blood, blood stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and finger nail clippings by the use of modern and scientific techniques including DNA profiling and such other tests which the registered medical practitioner thinks necessary in a particular case;

(b) "registered medical practitioner" means a medical practitioner who possesses any medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 (102 of 1956) and whose name has been entered in a State Medical Register

52. Examination of person accused of rape by medical practitioner

(1) When a person is arrested on a charge of committing an offence of rape or an attempt to commit rape and there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority and in the absence of such a practitioner within the radius of sixteen kilometres from the place where the offence has been committed, by any other registered medical practitioner, acting at the request of any police officer, and for any person acting in good faith in his aid and under his direction, to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.

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(2) The registered medical practitioner conducting such examination shall, without any delay, examine such person and prepare a report of his examination giving the following particulars, namely:- -

(i) the name and address of the accused and of the person by whom he was brought;

(ii) the age of the accused;

(iii) marks of injury, if any, on the person of the accused;

(iv) the description of material taken from the person of the accused for DNA profiling; and

(v) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The exact time of commencement and completion of the examination shall also be noted in the report.

(5) The registered medical practitioner shall, without any delay, forward the report to the investigating officer, who shall forward it to the Magistrate referred to in section 193 as part of the documents referred to in clause (a) of sub- section (6) of that section.

Corresponding Provision of Previous Statute: Section 53A, Code of Criminal Procedure, 1973

Section 53A - Examination of person accused of rape by medical practitioner - (1) When a person is arrested on a charge of committing an offence of rape or an attempt to commit rape and there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority and in the absence of such a practitioner within the radius of sixteen kilometres from the place where the offence has been committed, by any other registered medical practitioner, acting at the request of a police officer not below the rank of a sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.

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(2) The registered medical practitioner conducting such examination shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely: —

(i) the name and address of the accused and of the person by whom he was brought,

(ii) the age of the accused,

(iii) marks of injury, if any, on the person of the accused,

(iv) the description of material taken from the person of the accused for DNA profiling, and

(v) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The exact time of commencement and completion of the examination shall also be noted in the report.

(5) The registered medical practitioner shall, without delay, forward the report to the investigating officer, who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.

53. Examination of arrested person by medical officer

(1) When any person is arrested, he shall be examined by a medical officer in the service of the Central Government or a State Government, and in case the medical officer is not available, by a registered medical practitioner soon after the arrest is made:

Provided that if the medical officer or the registered medical practitioner is of the opinion that one more examination of such person is necessary, he may do so:

Provided further that where the arrested person is a female, the examination of the body shall be made only by or under the supervision of a female medical officer, and in case the female

medical officer is not available, by a female registered medical practitioner.

(2) The medical officer or a registered medical practitioner so examining the arrested person shall prepare the record of such

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examination, mentioning therein any injuries or marks of violence upon the person arrested, and the approximate time when such injuries or marks may have been inflicted.

(3) Where an examination is made under sub- section (1), a copy of the report of such examination shall be furnished by the medical officer or registered medical practitioner, as the case may be, to the arrested person or the person nominated by such arrested person.

Corresponding Provision of Previous Statute: Section 54, Code of Criminal Procedure, 1973

Section 54 - Examination of arrested person by medical officer- (1) When any person is arrested, he shall be examined by a medical officer in the service of Central or State Government, and in case the medical officer is not available, by a registered medical practitioner soon after the arrest is made:

Provided that where the arrested person is a female, the examination of the body shall be made only by or under the supervision of a female medical officer, and in case the female medical officer is not available, by a female registered medical practitioner.

(2) The medical officer or a registered medical practitioner so examining the arrested person shall prepare the record of such examination, mentioning therein any injuries or marks of violence upon the person arrested, and the approximate time when such injuries or marks may have been inflicted.

(3) Where an examination is made under sub-section (1), a copy of the report of such examination shall be furnished by the medical officer or registered medical practitioner, as the case may be, to the arrested person or the person nominated by such arrested person.

54. Identification of person arrested

Where a person is arrested on a charge of committing an offence and his identification by any other person or persons is considered necessary for the purpose of investigation of such offence, the Court, having jurisdiction may, on the request of the officer in charge of a police station, direct the person so arrested to subject himself to identification by any person or persons in such manner as the Court may deem fit:

Provided that if the person identifying the person arrested is mentally or physically disabled, such process of identification shall take place under the supervision of a Magistrate who shall take

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appropriate steps to ensure that such person identifies the person arrested using methods that person is comfortable with and the identification process shall be recorded by any audio- video electronic means.

Corresponding Provision of Previous Statute: Section 54A, Code of Criminal Procedure, 1973

Section 54A - Identification of person arrested - Where a person is arrested on a charge of committing an offence and his identification by any other person or persons is considered necessary for the purpose of investigation of such offence, the Court, having jurisdiction may, on the request of the officer in charge of a police station, direct the person so arrested to subject himself to identification by any person or persons in such manner as the Court maydeem fit:

Provided that, if the person identifying the person arrested is mentally or physically disabled, such process of identification shall take place under the supervision of a Judicial Magistrate who shall take appropriate steps to ensure that such person identifies the person arrested using methods that person is comfortable with:

Provided further that if the person identifying the person arrested is mentally or physically disabled, the identification process shall be videographed.

55. Procedure when police officer deputes subordinate to arrest without warrant

(1) When any officer in charge of a police station or any police officer making an investigation under Chapter XIII requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence or other cause for which the arrest is to be made and the officer so required shall, before making the arrest, notify to the person to be arrested the substance of the order and, if so required by such person, shall show him the order.

(2) Nothing in sub- section (1) shall affect the power of a police officer to arrest a person under section 35.

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Corresponding Provision of Previous Statute: Section 55, Code of Criminal Procedure, 1973

Section 55 - Procedure when police officer deputes subordinate to arrest without warrant - (1) When any officer in charge of a police station or any police officer making an investigation under Chapter XII requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence or other cause for which the arrest is to be made and the officer so required shall, before making the arrest, notify to the person to be arrested the substance of the order and, if so required by such person, shall show him the order.

(2) Nothing in sub-section (1) shall affect the power of a police officer to arrest a person under section 41.

56. Health and safety of arrested person

It shall be the duty of the person having the custody of an accused to take reasonable care of the health and safety of the accused.

Corresponding Provision of Previous Statute: Section 55A, Code of Criminal Procedure, 1973

Section 55A - Health and safety of arrested person - It shall be the duty of the person having the custody of an accused to take reasonable care of the health and safety of the accused.

57. Person arrested to be taken before Magistrate or officer in charge of police station

A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.

Corresponding Provision of Previous Statute: Section 56, Code of Criminal Procedure, 1973

Section 56 - Person arrested to be taken before Magistrate or officer in charge of police station – A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.

LANDMARK JUDGMENT

Joginder Kumar vs. State of U.P. and Ors., MANU/SC/0311/1994

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58. Person arrested not to be detained more than twenty- four hours

No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 187, exceed twenty- four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court, whether having jurisdiction or not.

Corresponding Provision of Previous Statute: Section 57, Code of Criminal Procedure, 1973

Section 57 - Person arrested not to be detained more than twenty-four hours - No police officer shaldetain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

LANDMARK JUDGMENT

Nilabati Behera vs. State of Orissa and Ors., MANU/SC/0307/1993

59. Police to report apprehensions

Officers in charge of police stations shall report to the District Magistrate, or, if he so directs, to the Sub- divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

Corresponding Provision of Previous Statute: Section 58, Code of Criminal Procedure, 1973

Section 58 - Police to report apprehensions - Officers in charge of police stations shall report to the District Magistrate, or, if he so directs, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

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60. Discharge of person apprehended

No person who has been arrested by a police officer shall be discharged except on his bond, or bail bond, or under the special order of a Magistrate.

Linked Provisions

Extradition Act, 1962 - Section 24 - Discharge of person apprehended if not surrendered or re-turned within two months

Corresponding Provision of Previous Statute: Section 59, Code of Criminal Procedure, 1973

Section 59 - Discharge of person apprehended - No person who has been arrested by a police officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate.

61. Power, on escape, to pursue and retake

(1) If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in India.

(2) The provisions of section 44 shall apply to arrests under sub-section (1) although the person making any such arrest is not acting under a warrant and is not a police officer having authority to arrest.

Corresponding Provision of Previous Statute: Section 60, Code of Criminal Procedure, 1973

Section 60 - Power, on escape, to pursue and retake - (1) If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in India.

(2) The provisions of section 47 shall apply to arrests under sub-section (1) although the person making any such arrest is not acting under a warrant and is not a police officer having authority to arrest.

62. Arrest to be made strictly according to Sanhita

No arrest shall be made except in accordance with the provisions of this Sanhita or any other law for the time being in force providing for arrest.

Corresponding Provision of Previous Statute: Section 60A, Code of Criminal Procedure, 1973

Section 60A - Arrest to be made strictly according to the Code - No arrest shall be made except in accordance with the provisions of this Code or any other law for the time being in force providing for arrest.

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CHAPTER VI

PROCESSES TO COMPEL APPEARANCE

A.- Summons

63. Form of summons

Linked Provisions

Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 - Section 33D - Form of summons and mode of serving it

Every summons issued by a Court under this Sanhita shall be,- -

(i) in writing, in duplicate, signed by the presiding officer of such Court or by such other officer as the High Court may, from time to time, by rule direct, and shall bear the seal of the Court; or

(ii) in an encrypted or any other form of electronic communication and shall bear the image of the seal of the Court or digital signature.

Corresponding Provision of Previous Statute: Section 61, Code of Criminal Procedure, 1973

Section 61 - Form of summons - Every summons issued by a Court under this Code shall be in writing, in duplicate, signed by the presiding officer of such Court or by such other officer as the High Court may, from time to time, by rule direct, and shall bear the seal of the Court.

64. Summons how served

(1) Every summons shall be served by a police officer, or subject to such rules as the State Government may make in this behalf, by an officer of the Court issuing it or other public servant:

Provided that the police station or the registrar in the Court shall maintain a register to enter the address, email address, phone number and such other details as the State Government may, by rules, provide.

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(2) The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons:

Provided that summons bearing the image of Court's seal may also be served by electronic communication in such form and in such manner, as the State Government may, by rules, provide.

(3) Every person on whom a summons is so served personally shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Corresponding Provision of Previous Statute: Section 62, Code of Criminal Procedure, 1973

Section 62 - Summons how served - (1) Every summons shall be served by a police officer, or subject to such rules as the State Government may make in this behalf, by an officer of the Court issuing it or other public servant.

(2) The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.

(3) Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

65. Service of summons on corporate bodies, firms, and societies

(1) Service of a summons on a company or corporation may be effected by serving it on the Director, Manager, Secretary or other officer of the company or corporation, or by letter sent by registered post addressed to the Director, Manager, Secretary or other officer of the company or corporation in India, in which case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

Explanation.- - In this section, "company" means a body corporate and "corporation" means an incorporated company or other body corporate registered under the Companies Act, 2013 (18 of 2013) or

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a society registered under the Societies Registration Act, 1860 (21 of 1860).

(2) Service of a summons on a firm or other association of individuals may be effected by serving it on any partner of such firm or association, or by letter sent by registered post addressed to such partner, in which case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

Corresponding Provision of Previous Statute: Section 63, Code of Criminal Procedure, 1973

Section 63 - Service of summons on corporate bodies and societies - Service of a summons on a corporation may be effected by serving it on the secretary, local manager or other principal officer of the corporation, or by letter sent by registered post, addressed to the chief officer of the corporation in India, in which case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

Explanation.—In this section, "corporation" means an incorporated company or other body corporate and includes a society registered under the Societies Registration Act, 1860 (21 of 1860).

66. Service when persons summoned cannot be found

Where the person summoned cannot, by the exercise of due diligence, be found, the summons may be served by leaving one of the duplicates for him with some adult member of his family residing with him, and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Explanation.- - A servant is not a member of the family within the meaning of this section.

Corresponding Provision of Previous Statute: Section 64, Code of Criminal Procedure, 1973

Section 64 - Service when persons summoned cannot be found - Where the person summoned cannot, by the exercise of due diligence, be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family residing with him, and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Explanation.—A servant is not a member of the family within the meaning of this section

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67. Procedure when service cannot be effected as before provided

If service cannot by the exercise of due diligence be effected as provided in section 64, section 65 or section 66, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the Court, after making such inquiries as it thinks fit, may either declare that the summons has been duly served or order fresh service in such manner as it considers proper.

Corresponding Provision of Previous Statute: Section 65, Code of Criminal Procedure, 1973

Section 65 - Procedure when service cannot be effected as before provided - If service cannot by the exercise of due diligence be effected as provided in section 62, section 63 or section 64, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the Court, after making such inquiries as it thinks fit, may either declare that the summons has been duly served or order fresh service in such manner as it considers proper.

68. Service on Government servant

(1) Where the person summoned is in the active service of the Government, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in the manner provided by section 64, and shall return it to the Court under his signature with the endorsement required by that section.

(2) Such signature shall be evidence of due service.

Corresponding Provision of Previous Statute: Section 66, Code of Criminal Procedure, 1973

Section 66 - Service on Government servant - (1) Where the person summoned is in the active service of the Government, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in the manner provided by section 62, and shall return it to the Court under his signature with the endorsement required by that section.

(2) Such signature shall be evidence of due service.

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69. Service of summons outside local limits

When a Court desires that a summons issued by it shall be served at any place outside its local jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within whose local jurisdiction the person summoned resides, or is, to be there served.

Corresponding Provision of Previous Statute: Section 67, Code of Criminal Procedure, 1973

Section 67 - Service of summons outside local limits - When a Court desires that a summons issued by it shall be served at any place outside its local jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within whose local jurisdiction the person summoned resides, or is, to be there served.

70. Proof of service in such cases and when serving officer not present

(1) When a summons issued by a Court is served outside its local jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in the manner provided by section 64 or section 66) by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

(2) The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court.

(3) All summons served through electronic communication under sections 64 to 71 (both inclusive) shall be considered as duly served and a copy of such summons shall be attested and kept as a proof of service of summons.

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Corresponding Provision of Previous Statute: Section 68, Code of Criminal Procedure, 1973

Section 68 - Proof of service in such cases and when serving officer not present - (1) When a summons issued by a Court is served outside its local jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in the manner provided by section 62 or section 64) by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

(2) The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court.

71. Service of summons on witness

(1) Notwithstanding anything contained in the preceding sections of this Chapter, a Court issuing a summons to a witness may, in addition to and simultaneously with the issue of such summons, direct a copy of the summons to be served by electronic communication or by registered post addressed to the witness at the place where he ordinarily resides or carries on business or personally works for gain.

(2) When an acknowledgement purporting to be signed by the witness or an endorsement purporting to be made by a postal employee that the witness refused to take delivery of the summons has been received or on the proof of delivery of summons under sub-section (3) of section 70 by electronic communication to the satisfaction of the Court, the Court issuing summons may deem that the summons has been duly served.

Corresponding Provision of Previous Statute: Section 69, Code of Criminal Procedure, 1973

Section 69 - Service of summons on witness by post - (1) Notwithstanding anything contained in the preceding sections of this Chapter, a Court issuing a summons to a witness may, in addition to and simultaneously with the issue of such summons, direct a copy of the summons to be served by registered post addressed to the witness at the place where he ordinarily resides or carries on business or personally works for gain.

(2) When an acknowledgement purporting to be signed by the witness or an endorsement purporting to be made by a postal employee that the witness refused to take delivery of the summons has been received, the Court issuing the summons may declare that the summons has been duly served.

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B.- Warrant of arrest

72. Form of warrant of arrest and duration

(1) Every warrant of arrest issued by a Court under this Sanhita shall be in writing, signed by the presiding officer of such Court and shall bear the seal of the Court.

(2) Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

Corresponding Provision of Previous Statute: Section 70, Code of Criminal Procedure, 1973

Section 70 - Form of warrant of arrest and duration - (1) Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer of such Court and shall bear the seal of the Court.

(2) Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

73. Power to direct security to be taken

(1) Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person executes a bail bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

(2) The endorsement shall state- -

(a) the number of sureties;

(b) the amount in which they and the person for whose arrest the warrant is issued, are to be respectively bound;

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(c) the time at which he is to attend before the Court.

(3) Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

Corresponding Provision of Previous Statute: Section 71, Code of Criminal Procedure, 1973

Section 71 - Power to direct security to be taken - (1) Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

(2) The endorsement shall state—

(a) the number of sureties;

(b) the amount in which they and the person for whose arrest the warrant is issued, are to be respectively bound;

(c) the time at which he is to attend before the Court.

(3) Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

74. Warrants to whom directed

(1) A warrant of arrest shall ordinarily be directed to one or more police officers; but the Court issuing such a warrant may, if its immediate execution is necessary and no police officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the same.

(2) When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more of them.

Corresponding Provision of Previous Statute: Section 72, Code of Criminal Procedure, 1973

Section 72 - Warrants to whom directed - (1) A warrant of arrest shall ordinarily be directed to one or more police officers; but the Court issuing such a warrant may, if its immediate execution is necessary and no police officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the same.

(2) When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more of them.

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75. Warrant may be directed to any person

(1) The Chief Judicial Magistrate or a Magistrate of the first class may direct a warrant to any person within his local jurisdiction for the arrest of any escaped convict, proclaimed offender or of any person who is accused of a non- bailable offence and is evading arrest.

(2) Such person shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is in, or enters on, any land or other property under his charge.

(3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 73.

Corresponding Provision of Previous Statute: Section 73, Code of Criminal Procedure, 1973

Section 73 - Warrant may be directed to any person - (1) The Chief Judicial Magistrate or a Magistrate of the first class may direct a warrant to any person within his local jurisdiction for the arrest of any escaped convict, proclaimed offender or of any person who is accused of a non-bailable offence and is evading arrest.

(2) Such person shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is in, or enters on, any land or other property under his charge.

(3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 71.

LANDMARK JUDGMENT

State through C.B.I. vs. Dawood Ibrahim Kaskar and Ors., MANU/SC/0643/1997

76. Warrant directed to police officer

A warrant directed to any police officer may also be executed by any other police officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

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Corresponding Provision of Previous Statute: Section 74, Code of Criminal Procedure, 1973

Section 74 - Warrant directed to police officer - A warrant directed to any police officer may also be executed by any other police officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

77. Notification of substance of warrant

The police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

Corresponding Provision of Previous Statute: Section 75, Code of Criminal Procedure, 1973

Section 75 - Notification of substance of warrant - The police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

78. Person arrested to be brought before Court without delay

The police officer or other person executing a warrant of arrest shall (subject to the provisions of section 73 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person:

Provided that such delay shall not, in any case, exceed twenty- four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

Corresponding Provision of Previous Statute: Section 76, Code of Criminal Procedure, 1973

Section 76 - Person arrested to be brought before Court without delay - The police officer or other person executing a warrant of arrest shall (subject to the provisions of section 71 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person:

Provided that such delay shall not, in any case, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

79. Where warrant may be executed

A warrant of arrest may be executed at any place in India.

Corresponding Provision of Previous Statute: Section 77, Code of Criminal Procedure, 1973

Section 77 - Where warrant may be executed - A warrant of arrest may be executed at any place in India.

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80. Warrant forwarded for execution outside jurisdiction

(1) When a warrant is to be executed outside the local jurisdiction of the Court issuing it, such Court may, instead of directing the warrant to a police officer within its jurisdiction, forward it by post or otherwise to any Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction it is to be executed; and the Executive Magistrate or District Superintendent or Commissioner shall endorse his name thereon, and if practicable, cause it to be executed in the manner hereinbefore provided.

(2) The Court issuing a warrant under sub- section (1) shall forward, along with the warrant, the substance of the information against the person to be arrested together with such documents, if any, as may be sufficient to enable the Court acting under section 83 to decide whether bail should or should not be granted to the person.

Corresponding Provision of Previous Statute: Section 78, Code of Criminal Procedure, 1973

Section 78 - Warrant forwarded for execution outside jurisdiction - (1) When a warrant is to be executed outside the local jurisdiction of the Court issuing it, such Court may, instead of directing the warrant to a police officer within its jurisdiction, forward it by post or otherwise to any Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction it is to be executed; and the Executive Magistrate or District Superintendent or Commissioner shall endorse his name thereon, and if practicable, cause it to be executed in the manner hereinbefore provided.

(2) The Court issuing a warrant under sub-section (1) shall forward, along with the warrant, the substance of the information against the person to be arrested together with such documents, if any, as may be sufficient to enable the Court acting under section 81 to decide whether bail should or should not be granted to the person.

81. Warrant directed to police officer for execution outside jurisdiction

(1) When a warrant directed to a police officer is to be executed beyond the local jurisdiction of the Court issuing the same, he shall

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ordinarily take it for endorsement either to an Executive Magistrate or to a police officer not below the rank of an officer in charge of a police station, within the local limits of whose jurisdiction the warrant is to be executed.

(2) Such Magistrate or police officer shall endorse his name thereon and such endorsement shall be sufficient authority to the police officer to whom the warrant is directed to execute the same, and the local police shall, if so required, assist such officer in executing such warrant.

(3) Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police officer within whose local jurisdiction the warrant is to be executed will prevent such execution, the police officer to whom it is directed may execute the same without such endorsement in any place beyond the local jurisdiction of the Court which issued it.

Corresponding Provision of Previous Statute: Section 79, Code of Criminal Procedure, 1973

Section 79 - Warrant directed to police officer for execution outside jurisdiction - (1) When a warrant directed to a police officer is to be executed beyond the local jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to an Executive Magistrate or to a police officer not below the rank of an officer in charge of a police station, within the local limits of whose jurisdiction the warrant is to be executed.

(2) Such Magistrate or police officer shall endorse his name thereon and such endorsement shall be sufficient authority to the police officer to whom the warrant is directed to execute the same, and the local police shall, if so required, assist such officer in executing such warrant.

(3) Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police officer within whose local jurisdiction the warrant is to be executed will prevent such execution, the police officer to whom it is directed may execute the same without such endorsement in any place beyond the local jurisdiction of the Court which issued it.

82. Procedure on arrest of person against whom warrant issued

(1) When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which

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issued the warrant is within thirty kilometres of the place of arrest or is nearer than the Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 73, be taken before such Magistrate or District Superintendent or Commissioner.

(2) On the arrest of any person referred to in sub- section (1), the police officer shall forthwith give the information regarding such arrest and the place where the arrested person is being held to the designated police officer in the district and to such officer of another district where the arrested person normally resides.

Corresponding Provision of Previous Statute: Section 80, Code of Criminal Procedure, 1973

Section 80 - Procedure on arrest of person against whom warrant issued - When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within thirty kilometres of the place of arrest or is nearer than the Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 71, be taken before such Magistrate or District Superintendent or Commissioner.

83. Procedure by Magistrate before whom such person arrested is brought

(1) The Executive Magistrate or District Superintendent of Police or Commissioner of Police shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court:

Provided that, if the offence is bailable, and such person is ready and willing to give bail bond to the satisfaction of such Magistrate, District Superintendent or Commissioner, or a direction has been endorsed under section 73 on the warrant and such person is ready and willing to give the security required by such direction, the

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Magistrate, District Superintendent or Commissioner shall take such bail bond or security, as the case may be, and forward the bond, to the Court which issued the warrant:

Provided further that if the offence is a non- bailable one, it shall be lawful for the Chief Judicial Magistrate (subject to the provisions of section 480), or the Sessions Judge, of the district in which the arrest is made on consideration of the information and the documents referred to in sub- section (2) of section 80, to release such person on bail.

(2) Nothing in this section shall be deemed to prevent a police officer from taking security under section 73.

Corresponding Provision of Previous Statute: Section 81, Code of Criminal Procedure, 1973

Section 81 - Procedure by Magistrate before whom such person arrested is brought - (1) The Executive Magistrate or District Superintendent of Police or Commissioner of Police shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court:

Provided that, if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate, District Superintendent or Commissioner, or a direction has been endorsed under section 71 on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate, District Superintendent or Commissioner shall take such bail or security, as the case may be, and forward the bond, to the Court which issued the warrant:

Provided further that if the offence is a non-bailable one, it shall be lawful for the Chief Judicial Magistrate (subject to the provisions of section 437), or the Sessions Judge, of the district in which the arrest is made on consideration of the information and the documents referred to in sub-section (2) of section 78, to release such person on bail.

(2) Nothing in this section shall be deemed to prevent a police officer from taking security under section 71.

C.- - Proclamation and attachment

84. Proclamation for person absconding

(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot

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be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:- -

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court- house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub- section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

(4) Where a proclamation published under sub- section (1) is in respect of a person accused of an offence which is made punishable with imprisonment of ten years or more, or imprisonment for life or

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with death under the Bharatiya Nyaya Sanhita, 2023 or under any other law for the time being in force, and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

(5) The provisions of sub- sections (2) and (3) shall apply to a declaration made by the Court under sub- section (4) as they apply to the proclamation published under sub- section (1).

Corresponding Provision of Previous Statute: Section 82, Code of Criminal Procedure, 1973

Section 82 - Proclamation for person absconding - (1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:—

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1).

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85. Attachment of property of person absconding

(1) The Court issuing a proclamation under section 84 may, for reasons to be recorded in writing, at any time after the issue of the proclamation, order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person:

Provided that where at the time of the issue of the proclamation the Court is satisfied, by affidavit or otherwise, that the person in relation to whom the proclamation is to be issued,- -

(a) is about to dispose of the whole or any part of his property; or

(b) is about to remove the whole or any part of his property from the local jurisdiction of the Court,

it may order the attachment of property simultaneously with the issue of the proclamation.

(2) Such order shall authorise the attachment of any property belonging to such person within the district in which it is made; and it shall authorise the attachment of any property belonging to such person without such district when endorsed by the District Magistrate within whose district such property is situate.

(3) If the property ordered to be attached is a debt or other movable property, the attachment under this section shall be made- -

(a) by seizure; or

(b) by the appointment of a receiver; or

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(c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

(d) by all or any two of such methods, as the Court thinks fit.

(4) If the property ordered to be attached is immovable, the attachment under this section shall, in the case of land paying revenue to the State Government, be made through the Collector of the district in which the land is situate, and in all other cases- -

(a) by taking possession; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the payment of rent on delivery of property to the proclaimed person or to any one on his behalf; or

(d) by all or any two of such methods, as the Court thinks fit.

(5) If the property ordered to be attached consists of live- stock or is of a perishable nature, the Court may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the Court.

(6) The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908).

Corresponding Provision of Previous Statute: Section 83, Code of Criminal Procedure, 1973

Section 83 - Attachment of property of person absconding - (1) The Court issuing a proclamation under section 82 may, for reasons to be recorded in writing, at any time after the issue of the proclamation, order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person:

Provided that where at the time of the issue of the proclamation the Court is satisfied, by affidavit or otherwise, that the person in relation to whom the proclamation is to be issued, —

(a) is about to dispose of the whole or any part of his property, or

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(b) is about to remove the whole or any part of his property from the local jurisdiction of the Court, it may order the attachment simultaneously with the issue of the proclamation.

(2) Such order shall authorise the attachment of any property belonging to such person within the district in which it is made; and it shall authorise the attachment of any property belonging to such person without such district when endorsed by the District Magistrate within whose district such property is situate.

(3) If the property ordered to be attached is a debt or other movable property, the attachment under this section shall be mad -

(a) by seizure; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

(d) by all or any two of such methods, as the Court thinks fit.

(4) If the property ordered to be attached is immovable, the attachment under this section shall, in the case of land paying revenue to the State Government, be made through the Collector of the district in which the land is situate, and in all other cases—

(a) by taking possession; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the payment of rent on delivery of property to the proclaimed person or to any one on his behalf; or

(d) by all or any two of such methods, as the Court thinks fit.

(5) If the property ordered to be attached consists of live-stock or is of a perishable nature, the Court may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the Court.

(6) The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908).

86. Identification and attachment of property of proclaimed person

The Court may, on the written request from a police officer not below the rank of the Superintendent of Police or Commissioner of Police, initiate the process of requesting assistance from a Court or an authority in the contracting State for identification, attachment and forfeiture of property belonging to a proclaimed person in accordance with the procedure provided in Chapter VIII.

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87. Claims and objections to attachment

(1) If any claim is preferred to, or objection made to the attachment of, any property attached under section 85, within six months from the date of such attachment, by any person other than the proclaimed person, on the ground that the claimant or objector has an interest in such property, and that such interest is not liable to attachment under section 85, the claim or objection shall be inquired into, and may be allowed or disallowed in whole or in part:

Provided that any claim preferred or objection made within the period allowed by this sub- section may, in the event of the death of the claimant or objector, be continued by his legal representative.

(2) Claims or objections under sub- section (1) may be preferred or made in the Court by which the order of attachment is issued, or, if the claim or objection is in respect of property attached under an order endorsed under sub- section (2) of section 85, in the Court of the Chief Judicial Magistrate of the district in which the attachment is made.

(3) Every such claim or objection shall be inquired into by the Court in which it is preferred or made:

Provided that, if it is preferred or made in the Court of a Chief Judicial Magistrate, he may make it over for disposal to any Magistrate subordinate to him.

(4) Any person whose claim or objection has been disallowed in whole or in part by an order under sub- section (1) may, within a period of one year from the date of such order, institute a suit to

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establish the right which he claims in respect of the property in dispute; but subject to the result of such suit, if any, the order shall be conclusive.

Corresponding Provision of Previous Statute: Section 84, Code of Criminal Procedure, 1973

Section 84 - Claims and objections to attachment - (1) If any claim is preferred to, or objection made to the attachment of, any property attached under section 83, within six months from the date of such attachment, by any person other than the proclaimed person, on the ground that the claimant or objector has an interest in such property, and that such interest is not liable to attachment under section 83, the claim or objection shall be inquired into, and may be allowed or disallowed in whole or in part:

Provided that any claim preferred or objection made within the period allowed by this sub-section may, in the event of the death of the claimant or objector, be continued by his legal representative.

(2) Claims or objections under sub-section (1) may be preferred or made in the Court by which the order of attachment is issued, or, if the claim or objection is in respect of property attached under an order endorsed under sub-section (2) of section 83, in the Court of the Chief Judicial Magistrate of the district in which the attachment is made.

(3) Every such claim or objection shall be inquired into by the Court in which it is preferred or made: Provided that, if it is preferred or made in the Court of a Chief Judicial Magistrate, he may make it over for disposal to any Magistrate subordinate to him.

(4) Any person whose claim or objection has been disallowed in whole or in part by an order under sub-section (1) may, within a period of one year from the date of such order, institute a suit to establish the right which he claims in respect of the property in dispute; but subject to the result of such suit, if any, the order shall be conclusive.

88. Release, sale and restoration of attached property

(1) If the proclaimed person appears within the time specified in the proclamation, the Court shall make an order releasing the property from the attachment.

(2) If the proclaimed person does not appear within the time specified in the proclamation, the property under the attachment shall be at the disposal of the State Government; but it shall not be sold until the expiration of six months from the date of the attachment and until any claim preferred or objection made under section 87 has been disposed of under that section, unless it is subject to speedy and natural decay, or the Court considers that the sale

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would be for the benefit of the owner; in either of which cases the Court may cause it to be sold whenever it thinks fit.

(3) If, within two years from the date of the attachment, any person whose property is or has been at the disposal of the State Government under sub- section (2), appears voluntarily or is apprehended and brought before the Court by whose order the property was attached, or the Court to which such Court is subordinate, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the net proceeds of the sale, or, if part only thereof has been sold, the net proceeds of the sale and the residue of the property, shall, after satisfying therefrom all costs incurred in consequence of the attachment, be delivered to him.

Corresponding Provision of Previous Statute: Section 85, Code of Criminal Procedure, 1973

Section 85 - Release, sale and restoration of attached property - (1) If the proclaimed person appears within the time specified in the proclamation, the Court shall make an order releasing the property from the attachment.

(2) If the proclaimed person does not appear within the time specified in the proclamation, the property under the attachment shall be at the disposal of the State Government; but it shall not be sold until the expiration of six months from the date of the attachment and until any claim preferred or objection made under section 84 has been disposed of under that section, unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner; in either of which cases the Court may cause it to be sold whenever it thinks fit.

(3) If, within two years from the date of the attachment, any person whose property is or has been at the disposal of the State Government, under sub-section (2), appears voluntarily or is apprehended and brought before the Court by whose order the property was attached, or the Court to which such Court is subordinate, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the net proceeds of the sale, or, if part only thereof has been sold, the net proceeds of the sale and the residue of the property, shall, after satisfying therefrom all costs incurred in consequence of the attachment, be delivered to him.

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89. Appeal from order rejecting application for restoration of attached property

Any person referred to in sub- section (3) of section 88, who is aggrieved by any refusal to deliver property or the proceeds of the sale thereof may appeal to the Court to which appeals ordinarily lie from the sentences of the first- mentioned Court.

Corresponding Provision of Previous Statute: Section 86, Code of Criminal Procedure, 1973

Section 86 - Appeal from order rejecting application for restoration of attached property - Any person referred to in sub-section (3) of section 85, who is aggrieved by any refusal to deliver property or the proceeds of the sale thereof may appeal to the Court to which appeals ordinarily lie from the sentences of the first-mentioned Court.

D.- Other rules regarding processes

90. Issue of warrant in lieu of, or in addition to, summons

A Court may, in any case in which it is empowered by this Sanhita to issue a summons for the appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest- -

(a) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

Corresponding Provision of Previous Statute: Section 87, Code of Criminal Procedure, 1973

Section 87 - Issue of warrant in lieu of, or in addition to, summons - A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest—

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(a) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

LANDMARK JUDGMENT

Indradeo Mahato vs. The State of West Bengal, MANU/SC/0114/1973

Somappa Vamanappa Madar and Ors. vs. State of Mysore, MANU/SC/0249/1979

91. Power to take bond or bail bond for appearance

When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond or bail bond for his appearance in such Court, or any other Court to which the case may be transferred for trial.

Corresponding Provision of Previous Statute: Section 88, Code of Criminal Procedure, 1973

Section 88 - Power to take bond for appearance - When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court, or any other Court to which the case may be transferred for trial.

LANDMARK JUDGMENT

Indradeo Mahato vs. The State of West Bengal, MANU/SC/0114/1973

Somappa Vamanappa Madar and Ors. vs. State of Mysore, MANU/SC/0249/1979

92. Arrest on breach of bond or bail bond for appearance

When any person who is bound by any bond or bail bond taken under this Sanhita to appear before a Court, does not appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him.

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Corresponding Provision of Previous Statute: Section 89, Code of Criminal Procedure, 1973

Section 89 - Arrest on breach of bond for appearance - When any person who is bound by any bond taken under this Code to appear before a Court, does not appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him.

93. Provisions of this Chapter generally applicable to summons and warrants of arrest

The provisions contained in this Chapter relating to summons and warrant, and their issue, service and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Sanhita.

Corresponding Provision of Previous Statute: Section 90, Code of Criminal Procedure, 1973

Section 90 - Provisions of this Chapter generally applicable to summonses and warrants of arrest – The provisions contained in this Chapter relating to a summons and warrant, and their issue, service and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

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CHAPTER VII

PROCESSES TO COMPEL THE PRODUCTION OF THINGS

A.- Summons to produce

94. Summons to produce document or other thing

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document, electronic communication, including communication devices, which is likely to contain digital evidence or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Sanhita by or before such Court or officer, such Court may issue a summons or such officer may, by a written order, either in physical form or in electronic form, require the person in whose possession or power such document or thing is believed to be, to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document, or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed- -

(a) to affect sections 129 and 130 of the Bharatiya Sakshya Adhiniyam, 2023 or the Bankers' Books Evidence Act, 1891 (13 of 1891); or

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(b) to apply to a letter, postcard, or other document or any parcel or thing in the custody of the postal authority.

Corresponding Provision of Previous Statute: Section 91, Code of Criminal Procedure, 1973

Section 91 - Summons to produce document or other thing - (1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed —

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

LANDMARK JUDGMENT

V.S. Kuttan Pillai vs. Ramakrishnan and Ors, MANU/SC/0285/1979

95. Procedure as to letters

(1) If any document, parcel or thing in the custody of a postal authority is, in the opinion of the District Magistrate, Chief Judicial Magistrate, Court of Session or High Court wanted for the purpose of any investigation, inquiry, trial or other proceeding under this Sanhita, such Magistrate or Court may require the postal authority to deliver the document, parcel or thing to such person as the Magistrate or Court directs.

(2) If any such document, parcel or thing is, in the opinion of any other Magistrate, whether Executive or Judicial, or of any Commissioner of Police or District Superintendent of Police, wanted

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for any such purpose, he may require the postal authority to cause search to be made for and to detain such document, parcel or thing pending the order of a District Magistrate, Chief Judicial Magistrate or Court under sub- section (1).

Corresponding Provision of Previous Statute: Section 92, Code of Criminal Procedure, 1973

Section 92 - Procedure as to letters and telegrams. - (1) If any document, parcel or thing in the custody of a postal or telegraph authority is, in the opinion of the District Magistrate, Chief Judicial Magistrate, Court of Session or High Court wanted for the purpose of any investigation, inquiry, trial or other proceeding under this Code, such Magistrate or Court may require the postal or telegraph authority, as the case may be, to deliver the document, parcel or thing to such person as the Magistrate or Court directs.

(2) If any such document, parcel or thing is, in the opinion of any other Magistrate, whether Executive or Judicial, or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the postal or telegraph authority, as the case may be, to cause search to be made for and to detain such document, parcel or thing pending the order of a District Magistrate, Chief Judicial Magistrate or Court under sub-section (1).

LANDMARK JUDGMENT

V.S. Kuttan Pillai vs. Ramakrishnan and Ors, MANU/SC/0285/1979

B.- Search- warrants

96. When search- warrant may be issued

(1) Where- -

(a) any Court has reason to believe that a person to whom a summons order under section 94 or a requisition under sub- section (1) of section 95 has been, or might be, addressed, will not or would not produce the document or thing as required by such summons or requisition; or

(b) such document or thing is not known to the Court to be in the possession of any person; or

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(c) the Court considers that the purposes of any inquiry, trial or other proceeding under this Sanhita will be served by a general search or inspection, it may issue a search- warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained.

(2) The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

(3) Nothing contained in this section shall authorise any Magistrate other than a District Magistrate or Chief Judicial Magistrate to grant a warrant to search for a document, parcel or other thing in the custody of the postal authority.

Corresponding Provision of Previous Statute: Section 93, Code of Criminal Procedure, 1973

Section 93 - When search-warrant may be issued - (1) (a) Where any Court has reason to believe that a person to whom a summons order under section 91 or a requisition under sub-section (1) of section 92 hasbeen, or might be, addressed, will not or would not produce the document or thing as required by such summons or requisition, or

(b) where such document or thing is not known to the Court to be in the possession of any person, or

(c) where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection, it may issue a search-warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained.

(2) The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

(3) Nothing contained in this section shall authorise any Magistrate other than a District Magistrate or Chief Judicial Magistrate to grant a warrant to search for a document, parcel or other thing in the custody of the postal or telegraph authority.

LANDMARK JUDGMENT

V.S. Kuttan Pillai vs. Ramakrishnan and Ors, MANU/SC/0285/1979

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97. Search of place suspected to contain stolen property, forged documents, etc.

(1) If a District Magistrate, Sub- divisional Magistrate or Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property, or for the deposit, sale or production of any objectionable article to which this section applies, or that any such objectionable article is deposited in any place, he may by warrant authorise any police officer above the rank of a constable- -

(a) to enter, with such assistance as may be required, such place;

(b) to search the same in the manner specified in the warrant;

(c) to take possession of any property or article therein found which he reasonably suspects to be stolen property or objectionable article to which this section applies;

(d) to convey such property or article before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose of it in some place of safety;

(e) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale or production of any such property or article knowing or having reasonable cause to suspect it to be stolen property or, as the case may be, objectionable article to which this section applies.

(2) The objectionable articles to which this section applies are- -

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(a) counterfeit coin;

(b) pieces of metal made in contravention of the Coinage Act, 2011 (11 of 2011), or brought into India in contravention of any notification for the time being in force issued under section 11 of the Customs Act, 1962 (52 of 1962);

(c) counterfeit currency note; counterfeit stamps;

(d) forged documents;

(e) false seals;

(f) obscene objects referred to in section 294 of the Bharatiya Nyaya Sanhita, 2023;

(g) instruments or materials used for the production of any of the articles mentioned in clauses (a) to (f).

Corresponding Provision of Previous Statute: Section 94, Code of Criminal Procedure, 1973

Section 94 - Search of place suspected to contain stolen property, forged documents, etc - (1) If a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property, or for the deposit, sale or production of any objectionable article to which this section applies, or that any such objectionable article is deposited in any place, he may by warrant authorise any police officer above the rank of a constable—

(a) to enter, with such assistance as may be required, such place,

(b) to search the same in the manner specified in the warrant,

(c) to take possession of any property or article therein found which he reasonably suspects to be stolen property or objectionable article to which this section applies,

(d) to convey such property or article before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose of it in some place of safety,

(e) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale or production of any such property or article knowing or having reasonable cause to suspect it to be stolen property or, as the case may be, objectionable article to which this section applies.

(2) The objectionable articles to which this section applies are—

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(a) counterfeit coin;

(b) pieces of metal made in contravention of the Metal Tokens Act, 1889 (1 of 1889), or brought into India in contravention of any notification for the time being in force under section 11 of the Customs Act, 1962 (52 of 1962);

(c) counterfeit currency note; counterfeit stamps;

(d) forged documents;

(e) false seals;

(f) obscene objects referred to in section 292 of the Indian Penal Code (45 of 1860);

(g) instruments or materials used for the production of any of the articles mentioned in clauses (a) to (f).

LANDMARK JUDGMENT

Shyamlal Mohanlal vs. State of Gujarat, MANU/SC/0092/1964

98. Power to declare certain publications forfeited and to issue search- warrants for same

Linked Provisions

Criminal law Amendment Act, 1961 - Section 4 - Power to declare certain publications forfeited and to issue search warrants for the same

(1) Where- -

(a) any newspaper, or book; or

(b) any document,

wherever printed, appears to the State Government to contain any matter the publication of which is punishable under section 152 or section 196 or section 197 or section 294 or section 295 or section 299 of the Bharatiya Nyaya Sanhita, 2023, the State Government may, by notification, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to Government, and thereupon any police officer may seize the same wherever found in India and any Magistrate may by warrant authorise any police officer not below the rank of sub- inspector to enter upon and search

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for the same in any premises where any copy of such issue, or any such book or other document may be or may be reasonably suspected to be.

(2) In this section and in section 99,- -

(a) "newspaper" and "book" have the same meanings as in the Press and Registration of Books Act, 1867 (25 of 1867);

(b) "document" includes any painting, drawing or photograph, or other visible representation.

(3) No order passed or action taken under this section shall be called in question in any Court otherwise than in accordance with the provisions of section 99.

Corresponding Provision of Previous Statute: Section 95, Code of Criminal Procedure, 1973

Section 95 - Power to declare certain publications forfeited and to issue search-warrants for the

Same - (1) Where—

(a) any newspaper, or book, or

(b) any document,

wherever printed, appears to the State Government to contain any matter the publication of which is punishable under section 124A or section 153A or section 153B or section 292 or section 293 or section 295A of the Indian Penal Code (45 of 1860), the State Government may, by notification, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to Government, and thereupon any police officer may seize the same wherever found in India and any Magistrate may by warrant authorise any police officer not below the rank of sub-inspector to enter upon and search for the same in any premises where any copy of such issue, or any such book or other document may be or may be reasonably suspected to be.

(2) In this section and in section 96,—

(a) “newspaper” and “book” have the same meaning as in the Press and Registration of Books Act, 1867 (25 of 1867);

(b) “document” includes any painting, drawing or photograph, or other visible representation.

(3) No order passed or action taken under this section shall be called in question in any Court otherwise than in accordance with the provisions of section 96.

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99. Application to High Court to set aside declaration of forfeiture

(1) Any person having any interest in any newspaper, book or other document, in respect of which a declaration of forfeiture has been made under section 98, may, within two months from the date of publication in the Official Gazette of such declaration, apply to the High Court to set aside such declaration on the ground that the issue of the newspaper, or the book or other document, in respect of which the declaration was made, did not contain any such matter as is referred to in sub- section (1) of section 98.

(2) Every such application shall, where the High Court consists of three or more Judges, be heard and determined by a Special Bench of the High Court composed of three Judges and where the High Court consists of less than three Judges, such Special Bench shall be composed of all the Judges of that High Court.

(3) On the hearing of any such application with reference to any newspaper, any copy of such newspaper may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper, in respect of which the declaration of forfeiture was made.

(4) The High Court shall, if it is not satisfied that the issue of the newspaper, or the book or other document, in respect of which the application has been made, contained any such matter as is referred to in sub- section (1) of section 98, set aside the declaration of forfeiture.

(5) Where there is a difference of opinion among the Judges forming

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the Special Bench, the decision shall be in accordance with the opinion of the majority of those Judges.

Corresponding Provision of Previous Statute: Section 96, Code of Criminal Procedure, 1973

Section 96 - Application to High Court to set aside declaration of forfeiture - (1) Any person having any interest in any newspaper, book or other document, in respect of which a declaration of forfeiture has been made under section 95, may, within two months from the date of publication in the Official Gazette of such declaration, apply to the High Court to set aside such declaration on the ground that the issue of the newspaper, or the book or other document, in respect of which the declaration was made, did not contain any such matter as is referred to in sub-section (1) of section 95.

(2) Every such application shall, where the High Court consists of three or more Judges, be heard and determined by a Special Bench of the High Court composed of three Judges and where the High Court consists of less than three Judges, such Special Bench shall be composed of all the Judges of that High Court.

(3) On the hearing of any such application with reference to any newspaper, any copy of such newspaper may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper, in respect of which the declaration of forfeiture was made.

(4) The High Court shall, if it is not satisfied that the issue of the newspaper, or the book or other document, in respect of which the application has been made, contained any such matter as is referred to in sub-section (1) of section 95, set aside the declaration of forfeiture.

(5) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority of those Judges.

100. Search for persons wrongfully confined

If any District Magistrate, Sub- divisional Magistrate or Magistrate of the first class has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search- warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.

Corresponding Provision of Previous Statute: Section 97, Code of Criminal Procedure, 1973

Section 97 - Search for persons wrongfully confined - If any District Magistrate, Sub-divisional Magistrate or Magistrate of the first class has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper

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101. Power to compel restoration of abducted females

Upon complaint made on oath of the abduction or unlawful detention of a woman, or a female child for any unlawful purpose, a District Magistrate, Sub- divisional Magistrate or Magistrate of the first class may make an order for the immediate restoration of such woman to her liberty, or of such female child to her parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

Corresponding Provision of Previous Statute: Section 98, Code of Criminal Procedure, 1973

Section 98 - Power to compel restoration of abducted females - Upon complaint made on oath of the abduction or unlawful detention of a woman, or a female child under the age of eighteen years for any unlawful purpose, a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

C.- General provisions relating to searches

102. Direction, etc., of search- warrants

The provisions of sections 32, 72, 74, 76, 79, 80 and 81 shall, so far as may be, apply to all search- warrants issued under section 96, section 97, section 98 or section 100.

Corresponding Provision of Previous Statute: Section 99, Code of Criminal Procedure, 1973

Section 99 - Direction, etc., of search-warrants - The provisions of sections 38, 70, 72, 74, 77, 78 and 79 shall, so far as may be, apply to all search-warrants issued under section 93, section 94, section 95 or section 97.

103. Persons in charge of closed place to allow search

(1) Whenever any place liable to search or inspection under this Chapter is closed, any person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the

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warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in the manner provided by sub- section (2) of section 44.

(3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency.

(4) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do.

(5) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

(6) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search,

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and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person.

(7) When any person is searched under sub- section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person.

(8) Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 222 of the Bharatiya Nyaya Sanhita, 2023.

Corresponding Provision of Previous Statute: Section 100, Code of Criminal Procedure, 1973

Section 100 - Persons in charge of closed place to allow search - (1) Whenever any place liable to search or inspection under this Chapter is closed, any person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in the manner provided by sub-section (2) of section 47.

(3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency.

(4) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do.

(5) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

(6) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person.

(7) When any person is searched under sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person.

(8) Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to

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have committed an offence under section 187 of the Indian Penal Code (45 of 1860).

LANDMARK JUDGMENT

Mukesh and Ors. vs. State for NCT of Delhi and Ors., MANU/SC/0575/2017

Khet Singh vs. Union of India (UOI), MANU/SC/0205/2002

104. Disposal of things found in search beyond jurisdiction

When, in the execution of a search- warrant at any place beyond the local jurisdiction of the Court which issued the same, any of the things for which search is made, are found, such things, together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Court issuing the warrant, unless such place is nearer to the Magistrate having jurisdiction therein than to such Court, in which case the list and things shall be immediately taken before such Magistrate; and, unless there be good cause to the contrary, such Magistrate shall make an order authorising them to be taken to such Court.

Corresponding Provision of Previous Statute: Section 101, Code of Criminal Procedure, 1973

Section 101 - Disposal of things found in search beyond jurisdiction - When, in the execution of a search-warrant at any place beyond the local jurisdiction of the Court which issued the same, any of the things for which search is made, are found, such things, together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Court issuing the warrant, unless such place is nearer to the Magistrate having jurisdiction therein than to such Court, in which case the list and things shall be immediately taken before such Magistrate; and, unless there be good cause to the contrary, such Magistrate shall make an order authorising them to be taken to such Court.

D.- - Miscellaneous

105. Recording of search and seizure through audio- video electronic means

The process of conducting search of a place or taking possession of any property, article or thing under this Chapter or under section 185, including preparation of the list of all things seized in the course

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of such search and seizure and signing of such list by witnesses, shall be recorded through any audio- video electronic means preferably mobile phone and the police officer shall without delay forward such recording to the District Magistrate, Sub- divisional Magistrate or Judicial Magistrate of the first class.

106. Power of police officer to seize certain property

(1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.

(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.

(3) Every police officer acting under sub- section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same:

Provided that where the property seized under sub- section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of

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such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of sections 503 and 504 shall, as nearly as may be practicable, apply to the net proceeds of such sale.

Corresponding Provision of Previous Statute: Section 102, Code of Criminal Procedure, 1973

Section 102 - Power of police officer to seize certain property - (1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.

(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.

(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same:

Provided that where the property seized under sub-section (1) is subject to speedy and natural decayand if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale.

LANDMARK JUDGMENT

Suresh Nanda vs. C.B.I., MANU/SC/7020/2008

107. Attachment, forfeiture or restoration of property

(1) Where a police officer making an investigation has reason to believe that any property is derived or obtained, directly or indirectly, as a result of a criminal activity or from the commission of any offence, he may, with the approval of the Superintendent of Police or Commissioner of Police, make an application to the Court or the Magistrate exercising jurisdiction to take cognizance of the offence or commit for trial or try the case, for the attachment of such property.

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(2) If the Court or the Magistrate has reasons to believe, whether before or after taking evidence, that all or any of such properties are proceeds of crime, the Court or the Magistrate may issue a notice upon such person calling upon him to show cause within a period of fourteen days as to why an order of attachment shall not be made.

(3) Where the notice issued to any person under sub- section (2) specifies any property as being held by any other person on behalf of such person, a copy of the notice shall also be served upon such other person.

(4) The Court or the Magistrate may, after considering the *Explanation*, if any, to the show- cause notice issued under sub-section (2) and the material fact available before such Court or Magistrate and after giving a reasonable opportunity of being heard to such person or persons, may pass an order of attachment, in respect of those properties which are found to be the proceeds of crime:

Provided that if such person does not appear before the Court or the Magistrate or represent his case before the Court or Magistrate within a period of fourteen days specified in the show- cause notice, the Court or the Magistrate may proceed to pass the ex parte order.

(5) Notwithstanding anything contained in sub- section (2), if the Court or the Magistrate is of the opinion that issuance of notice under the said sub- section would defeat the object of attachment or seizure, the Court or Magistrate may by an interim order passed ex parte direct attachment or seizure of such property, and such order shall remain in force till an order under sub- section (6) is passed.

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(6) If the Court or the Magistrate finds the attached or seized properties to be the proceeds of crime, the Court or the Magistrate shall by order direct the District Magistrate to rateably distribute such proceeds of crime to the persons who are affected by such crime.

(7) On receipt of an order passed under sub- section (6), the District Magistrate shall, within a period of sixty days distribute the proceeds of crime either by himself or authorise any officer subordinate to him to effect such distribution.

(8) If there are no claimants to receive such proceeds or no claimant is ascertainable or there is any surplus after satisfying the claimants, such proceeds of crime shall stand forfeited to the Government.

108. Magistrate may direct search in his presence

Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant.

Corresponding Provision of Previous Statute: Section 103, Code of Criminal Procedure, 1973

Section 103 - Magistrate may direct search in his presence - Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant.

109. Power to impound document, etc., produced

Any Court may, if it thinks fit, impound any document or thing produced before it under this Sanhita.

Corresponding Provision of Previous Statute: Section 104, Code of Criminal Procedure, 1973

Section 104 - Power to impound document, etc., produced - Any Court may, if it thinks fit, impound any document or thing produced before it under this Code.

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110. Reciprocal arrangements regarding processes

(1) Where a Court in the territories to which this Sanhita extends (hereafter in this section referred to as the said territories) desires that- -

(a) a summons to an accused person; or

(b) a warrant for the arrest of an accused person; or

(c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it; or

(d) a search- warrant, issued by it shall be served or executed at any place,- -

(i) within the local jurisdiction of a Court in any State or area in India outside the said territories, it may send such summons or warrant in duplicate by post or otherwise, to the presiding officer of that Court to be served or executed; and where any summons referred to in clause (a) or clause (c) has been so served, the provisions of section 70 shall apply in relation to such summons as if the presiding officer of the Court to whom it is sent were a Magistrate in the said territories;

(ii) in any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country or place for service or execution of summons or warrant in relation to criminal matters (hereafter in this section referred to as the contracting State), it may send such summons or warrant in duplicate in such form, directed to such

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Court, Judge or Magistrate, and send to such authority for transmission, as the Central Government may, by notification, specify in this behalf.

(2) Where a Court in the said territories has received for service or execution- -

(a) a summons to an accused person; or

(b) a warrant for the arrest of an accused person; or

(c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it; or

(d) a search- warrant, issued by- -

(I) a Court in any State or area in India outside the said territories;

(II) a Court, Judge or Magistrate in a contracting State, it shall cause the same to be served or executed as if it were a summons or warrant received by it from another Court in the said territories for service or execution within its local jurisdiction; and where- -

(i) a warrant of arrest has been executed, the person arrested shall, so far as possible, be dealt with in accordance with the procedure specified by sections 82 and 83;

(ii) a search- warrant has been executed, the things found in the search shall, so far as possible, be dealt with in accordance with the procedure specified by section 104:

Provided that in a case where a summons or search- warrant received from a contracting State has been executed, the documents

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or things produced or things found in the search shall be forwarded to the Court issuing the summons or search- warrant through such authority as the Central Government may, by notification, specify in

Corresponding Provision of Previous Statute: Section 105, Code of Criminal Procedure, 1973

Section 105 - Reciprocal arrangements regarding processes - (1) Where a Court in the territories to which this Code extends (hereafter in this section referred to as the said territories) desires that—

(a) a summons to an accused person, or

(b) a warrant for the arrest of an accused person, or

(c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it, or

(d) a search-warrant, issued by it shall be served or executed at any place,—

(i) within the local jurisdiction of a Court in any State or area in India outside the said territories, it may send such summons or warrant in duplicate by post or otherwise, to the presiding officer of that Court to be served or executed; and where any summons referred to in clause (a) or clause (c) has been so served, the provisions of section 68 shall apply in relation to such summons as if the presiding officer of the Court to whom it is sent were a Magistrate in the said territories;

(ii) in any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country or place for service or execution of summons or warrant in relation to criminal matters (hereafter in this section referred to as the contracting State), it may send such summons or warrant in duplicate in such form, directed to such Court, Judge or Magistrate, and send to such authority for transmission, as the Central Government may, by notification, specify in this behalf.]

(2) Where a Court in the said territories has received for service or execution—

(a) a summons to an accused person, or

(b) a warrant for the arrest of an accused person, or

(c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it, or

(d) a search-warrant,

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CHAPTER VIII

RECIPROCAL ARRANGEMENTS FOR ASSISTANCE IN CERTAIN MATTERS AND PROCEDURE FOR ATTACHMENT AND FORFEITURE OF PROPERTY

111. Definitions

In this Chapter, unless the context otherwise requires,- -

Corresponding Provision of Previous Statute: Section 105A, Code of Criminal Procedure, 1973

Section 105A - Definitions - In this Chapter, unless the context otherwise requires,—

(a) "contracting State" means any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country through a treaty or otherwise;

Corresponding Provision of Previous Statute: Section 105A(a), Code of Criminal Procedure, 1973

Section 105A(a) - "contracting State" means any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country through a treaty or otherwise;

(b) "identifying" includes establishment of a proof that the property was derived from, or used in, the commission of an offence;

Corresponding Provision of Previous Statute: Section 105A(b), Code of Criminal Procedure, 1973

Section 105A(b) - "identifying" includes establishment of a proof that the property was derived from, or used in, the commission of an offence;

(c) "proceeds of crime" means any property derived or obtained directly or indirectly, by any person as a result of criminal activity (including crime involving currency transfers) or the value of any such property;

Corresponding Provision of Previous Statute: Section 105A(c), Code of Criminal Procedure, 1973

Section 105A(c) - "proceeds of crime" means any property derived or obtained directly or indirectly, by any person as a result of criminal activity (including crime involving currency transfers) or the value of any such property;

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(d) "property" means property and assets of every description whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets derived or used in the commission of an offence and includes property obtained through proceeds of crime;

Corresponding Provision of Previous Statute: Section 105A(d), Code of Criminal Procedure, 1973

Section 105A(d) - "property" means property and assets of every description whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets derived or used in the commission of an offence and includes property obtained through proceeds of crime;

(e) "tracing" means determining the nature, source, disposition, movement, title or ownership of property.

Corresponding Provision of Previous Statute: Section 105A(e), Code of Criminal Procedure, 1973

Section 105A(e) - "tracing" means determining the nature, source, disposition, movement, title or ownership of property.

112. Letter of request to competent authority for investigation in a country or place outside India

(1) If, in the course of an investigation into an offence, an application is made by the investigating officer or any officer superior in rank to the investigating officer that evidence may be available in a country or place outside India, any Criminal Court may issue a letter of request to a Court or an authority in that country or place competent to deal with such request to examine orally any person supposed to be acquainted with the facts and circumstances of the case and to record his statement made in the course of such examination and also to require such person or any other person to produce any document or thing which may be in his possession pertaining to the case and to forward all the evidence so taken or collected or the

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authenticated copies thereof or the thing so collected to the Court issuing such letter.

(2) The letter of request shall be transmitted in such manner as the Central Government may specify in this behalf.

(3) Every statement recorded or document or thing received under sub- section (1) shall be deemed to be the evidence collected during the course of investigation under this Sanhita.

Corresponding Provision of Previous Statute: Section 166A, Code of Criminal Procedure, 1973

Section 166A - Letter of request to competent authority for investigation in a country or place outside India -

(1) Notwithstanding anything contained in this Code, if, in the course of an investigation into an offence, an application is made by the investigating officer or any officer superior in rank to the investigating officer that evidence may be available in a country or place outside India, any Criminal Court may issue a letter of request to a Court or an authority in that country or place competent to deal with such request to examine orally any person supposed to be acquainted with the facts and circumstances of the case and to record his statement made in the course of such examination and also to require such person or any other person to produce any document or thing which may be in his possession pertaining to the case and to forward all the evidence so taken or collected or the authenticated copies thereof or the thing so collected to the Court issuing such letter.

(2) The letter of request shall be transmitted in such manner as the Central Government may specify in this behalf.

(3) Every statement recorded or document or thing received under sub-section (1) shall be deemed to be the evidence collected during the course of investigation under this Chapter.

113. Letter of request from a country or place outside India to a Court or an authority for investigation in India

(1) Upon receipt of a letter of request from a Court or an authority in a country or place outside India competent to issue such letter in that country or place for the examination of any person or production of any document or thing in relation to an offence under investigation in that country or place, the Central Government may, if it thinks fit-

(i) forward the same to the Chief Judicial Magistrate or Judicial

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Magistrate as he may appoint in this behalf, who shall thereupon summon the person before him and record his statement or cause the document or thing to be produced; or

(ii) send the letter to any police officer for investigation, who shall thereupon investigate into the offence in the same manner, as if the offence had been committed within India.

(2) All the evidence taken or collected under sub- section (1), or authenticated copies thereof or the thing so collected, shall be forwarded by the Magistrate or police officer, as the case may be, to the Central Government for transmission to the Court or the authority issuing the letter of request, in such manner as the Central Government may deem fit.

Corresponding Provision of Previous Statute: Section 166B, Code of Criminal Procedure, 1973

Section 166B - Letter of request from a country or place outside India to a Court or an authority for investigation in India - (1) Upon receipt of a letter of request from a Court or an authority in a country or place outside India competent to issue such letter in that country or place for the examination of any person or production of any document or thing in relation to an offence under investigation in that country or place, the Central Government may, if it thinks fit—

(i) forward the same to the Chief Metropolitan Magistrate or Chief Judicial Magistrate or such Metropolitan Magistrate or Judicial Magistrate as he may appoint in this behalf, who shall thereupon summon the person before him and record his statement or cause the document or thing to be produced; or

(ii) send the letter to any police officer for investigation, who shall thereupon investigate into the offence in the same manner, as if the offence had been committed within India.

(2) All the evidence taken or collected under sub-section (1), or authenticated copies thereof or the thing so collected, shall be forwarded by the Magistrate or police officer, as the case may be, to the Central Government for transmission to the Court or the authority issuing the letter of request, in such manner as the Central Government may deem fit.

114. Assistance in securing transfer of persons

(1) Where a Court in India, in relation to a criminal matter, desires that a warrant for arrest of any person to attend or produce a document or other thing issued by it shall be executed in any place

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in a contracting State, it shall send such warrant in duplicate in such form to such Court, Judge or Magistrate through such authority, as the Central Government may, by notification, specify in this behalf and that Court, Judge or Magistrate, as the case may be, shall cause the same to be executed.

(2) If, in the course of an investigation or any inquiry into an offence, an application is made by the investigating officer or any officer superior in rank to the investigating officer that the attendance of a person who is in any place in a contracting State is required in connection with such investigation or inquiry and the Court is satisfied that such attendance is so required, it shall issue a summons or warrant, in duplicate, against the said person to such Court, Judge or Magistrate, in such form as the Central Government may, by notification, specify in this behalf, to cause the same to be served or executed.

(3) Where a Court in India, in relation to a criminal matter, has received a warrant for arrest of any person requiring him to attend or attend and produce a document or other thing in that Court or before any other investigating agency, issued by a Court, Judge or Magistrate in a contracting State, the same shall be executed as if it is the warrant received by it from another Court in India for execution within its local limits.

(4) Where a person transferred to a contracting State pursuant to sub-section (3) is a prisoner in India, the Court in India or the Central Government may impose such conditions as that Court or Government deems fit.

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(5) Where the person transferred to India pursuant to sub- section (1) or sub- section (2) is a prisoner in a contracting State, the Court in India shall ensure that the conditions subject to which the prisoner is transferred to India are complied with and such prisoner shall be kept in such custody subject to such conditions as the Central Government may direct in writing.

Corresponding Provision of Previous Statute: Section 105B, Code of Criminal Procedure, 1973

Section 105B - Assistance in securing transfer of persons - (1) Where a Court in India, in relation to a criminal matter, desires that a warrant for arrest of any person to attend or produce a document or other thing issued by it shall be executed in any place in a contracting State, it shall send such warrant in duplicate in such form to such Court, Judge or Magistrate through such authority, as the Central Government may, by notification, specify in this behalf and that Court, Judge or Magistrate, as the case may be, shall cause the same to be executed.

(2) Notwithstanding anything contained in this Code, if, in the course of an investigation or any inquiry into an offence, an application is made by the investigating officer or any officer superior in rank to the investigating officer that the attendance of a person who is in any place in a contracting State is required in connection with such investigation or inquiry and the Court is satisfied that such attendance is so required, it shall issue a summons or warrant, in duplicate, against the said person to such Court, Judge or Magistrate, in such form as the Central Government may, by notification, specify in this behalf, to cause the same to be served or executed.

(3) Where a Court in India, in relation to a criminal matter, has received a warrant for arrest of any person requiring him to attend or attend and produce a document or other thing in that Court or before any other investigating agency, issued by a Court, Judge or Magistrate in a contracting State, the same shall be executed as if it is the warrant received by it from another Court in India for execution within its local limits.

(4) Where a person transferred to a contracting State pursuant to sub-section (3) is a prisoner in India, the Court in India or the Central Government may impose such conditions as that Court or Government deems fit.

(5) Where the person transferred to India pursuant to sub-section (1) or sub-section (2) is a prisoner in a contracting State, the Court in India shall ensure that the conditions subject to which the prisoner is transferred to India are complied with and such prisoner shall be kept in such custody subject to such conditions as the Central Government may direct in writing.

115. Assistance in relation to orders of attachment or forfeiture of property

(1) Where a Court in India has reasonable grounds to believe that any property obtained by any person is derived or obtained, directly or indirectly, by such person from the commission of an offence, it

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may make an order of attachment or forfeiture of such property, as it may deem fit under the provisions of sections 116 to 122 (both inclusive).

(2) Where the Court has made an order for attachment or forfeiture of any property under sub- section (1), and such property is suspected to be in a contracting State, the Court may issue a letter of request to a Court or an authority in the contracting State for execution of such order.

(3) Where a letter of request is received by the Central Government from a Court or an authority in a contracting State requesting attachment or forfeiture of the property in India, derived or obtained, directly or indirectly, by any person from the commission of an offence committed in that contracting State, the Central Government may forward such letter of request to the Court, as it thinks fit, for execution in accordance with the provisions of sections 116 to 122 (both inclusive) or, as the case may be, any other law for the time being in force.

Corresponding Provision of Previous Statute: Section 105C, Code of Criminal Procedure, 1973

Section 105C - Assistance in relation to orders of attachment or forfeiture of property - (1) Where a Court in India has reasonable grounds to believe that any property obtained by any person is derived or obtained, directly or indirectly, by such person from the commission of an offence, it may make an order of attachment or forfeiture of such property, as it may deem fit under the provisions of sections 105D to 105J (both inclusive).

(2) Where the Court has made an order for attachment or forfeiture of any property under sub-section (1), and such property is suspected to be in a contracting State, the Court may issue a letter of request to a Court or an authority in the contracting State for execution of such order.

(3) Where a letter of request is received by the Central Government from a Court or an authority in a contracting State requesting attachment or forfeiture of the property in India, derived or obtained, directly or indirectly, by any person from the commission of an offence committed in that contracting State, the Central Government may forward such letter of request to the Court, as it thinks fit, for execution in accordance with the provisions of sections 105D to 105J (both inclusive) or, as the case may be, any other law for the time being in force.

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116. Identifying unlawfully acquired property

(1) The Court shall, under sub- section (1), or on receipt of a letter of request under sub- section (3) of section 115, direct any police officer not below the rank of Sub- Inspector of Police to take all steps necessary for tracing and identifying such property.

(2) The steps referred to in sub- section (1) may include any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account in any bank or public financial institutions or any other relevant matters.

(3) Any inquiry, investigation or survey referred to in sub- section (2) shall be carried out by an officer mentioned in sub- section (1) in accordance with such directions issued by the said Court in this behalf.

Corresponding Provision of Previous Statute: Section 105D, Code of Criminal Procedure, 1973

Section 105D - Identifying unlawfully acquired property - (1) The Court shall, under sub-section (1), or on receipt of a letter of request under sub-section (3) of section 105C, direct any police officer not below the rank of Sub-Inspector of Police to take all steps necessary for tracing and identifying such property.

(2) The steps referred to in sub-section (1) may include any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account in any bank or public financial institutions or any other relevant matters.

(3) Any inquiry, investigation or survey referred to in sub-section (2) shall be carried out by an officer mentioned in sub-section (1) in accordance with such directions issued by the said Court in this behalf.

117. Seizure or attachment of property

(1) Where any officer conducting an inquiry or investigation under section 116 has a reason to believe that any property in relation to which such inquiry or investigation is being conducted is likely to be concealed, transferred or dealt with in any manner which will result in disposal of such property, he may make an order for seizing such

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property and where it is not practicable to seize such property, he may make an order of attachment directing that such property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned.

(2) Any order made under sub- section (1) shall have no effect unless the said order is confirmed by an order of the said Court, within a period of thirty days of its being made.

Corresponding Provision of Previous Statute: Section 105E, Code of Criminal Procedure, 1973

Section 105E - Seizure or attachment of property - (1) Where any officer conducting an inquiry or investigation under section 105D has a reason to believe that any property in relation to which such inquiry or investigation is being conducted is likely to be concealed transferred or dealt with in any manner which will result in disposal of such property, he may make an order for seizing such property and where it is not practicable to seize such property, he may make an order of attachment directing that such property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned.

(2) Any order made under sub-section (1) shall have no effect unless the said order is confirmed by an order of the said Court, within a period of thirty days of its being made.

118. Management of properties seized or forfeited under this Chapter

(1) The Court may appoint the District Magistrate of the area where the property is situated, or any other officer that may be nominated by the District Magistrate, to perform the functions of an Administrator of such property.

(2) The Administrator appointed under sub- section (1) shall receive and manage the property in relation to which the order has been made under sub- section (1) of section 117 or under section 120 in such manner and subject to such conditions as may be specified by the Central Government.

Linked Provisions

Wild Life - Protection Act, 1972 - Section 58G - Management of properties seized or forfeited under this Chapter

Narcotic Drugs and Psychotropic Substances Act, 1985 -Section 68G - Management of properties seized or forfeited under this Chapter

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(3) The Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is forfeited to the Central Government.

Corresponding Provision of Previous Statute: Section 105F, Code of Criminal Procedure, 1973

Section 105F - Management of properties seized or forfeited under this Chapter - (1) The Court may appoint the District Magistrate of the area where the property is situated, or any other officer that may be nominated by the District Magistrate, to perform the functions of an Administrator of such property.

(2) The Administrator appointed under sub-section (1) shall receive and manage the property in relation to which the order has been made under sub-section (1) of section 105E or under section 105H in such manner and subject to such conditions as may be specified by the Central Government.

(3) The Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is forfeited to the Central Government.

119. Notice of forfeiture of property

Linked Provisions

Wild Life - Protection Act, 1972 - Section 58H - Notice of forfeiture of property

Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 103 - Notice of forfeiture of property

(1) If as a result of the inquiry, investigation or survey under section 116, the Court has reason to believe that all or any of such properties are proceeds of crime, it may serve a notice upon such person (hereinafter referred to as the person affected) calling upon him within a period of thirty days specified in the notice to indicate the source of income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be proceeds of crime and forfeited to the Central Government.

(2) Where a notice under sub- section (1) to any person specifies any property as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person.

Corresponding Provision of Previous Statute: Section 105G, Code of Criminal Procedure, 1973

Section 105G - Notice of forfeiture of property - (1) If as a result of the inquiry, investigation or survey under section 105D, the Court has reason to believe that all or any of such properties are proceeds of crime, it may serve a notice upon such person (hereinafter referred to as the person affected) calling upon him within a period of thirty days specified in the notice to indicate the source of income, earnings or assets, out

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of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be proceeds of crime and forfeited to the Central Government.

(2) Where a notice under sub-section (1) to any person specifies any property as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person.

120. Forfeiture of property in certain cases

(1) The Court may, after considering the explanation, if any, to the show- cause notice issued under section 119 and the material available before it and after giving to the person affected (and in a case where the person affected holds any property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are proceeds of crime:

Provided that if the person affected (and in a case where the person affected holds any property specified in the notice through any other person such other person also) does not appear before the Court or represent his case before it within a period of thirty days specified in the show- cause notice, the Court may proceed to record a finding under this sub- section ex parte on the basis of evidence available before it.

(2) Where the Court is satisfied that some of the properties referred to in the show- cause notice are proceeds of crime but it is not possible to identify specifically such properties, then, it shall be lawful for the Court to specify the properties which, to the best of its judgment, are proceeds of crime and record a finding accordingly under sub- section (1).

Linked Provisions

Wild Life - Protection Act, 1972 - Section 58-I - Forfeiture of property in certain cases

Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 68-I - Forfeiture of property in certain cases

Smugglers and Foreign Exchange Manipulators - Forfeiture of Property Act, 1976 - Section 7 - Forfeiture of property in certain cases

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(3) Where the Court records a finding under this section to the effect that any property is proceeds of crime, such property shall stand forfeited to the Central Government free from all encumbrances.

(4) Where any shares in a company stand forfeited to the Central Government under this section, then, the company shall, notwithstanding anything contained in the Companies Act, 2013 (18 of 2013) or the Articles of Association of the company, forthwith register the Central Government as the transferee of such shares.

Corresponding Provision of Previous Statute: Section 105H, Code of Criminal Procedure, 1973

Section 105H - Forfeiture of property in certain cases - (1) The Court may, after considering the explanation, if any, to the show-cause notice issued under section 105G and the material available before it and after giving to the person affected (and in a case where the person affected holds any property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are proceeds of crime:

Provided that if the person affected (and in a case where the person affected holds any property specified in the notice through any other person such other person also) does not appear before the Court or represent his case before it within a period of thirty days specified in the show-cause notice, the Court may proceed to record a finding under this sub-section ex parte on the basis of evidence available before it.

(2) Where the Court is satisfied that some of the properties referred to in the show-cause notice are proceeds of crime but it is not possible to identify specifically such properties, then, it shall be lawful for the Court to specify the properties which, to the best of its judgment, are proceeds of crime and record a finding accordingly under sub-section (1).

(3) Where the Court records a finding under this section to the effect that any property is proceeds of crime, such property shall stand forfeited to the Central Government free from all encumbrances.

(4) Where any shares in a company stand forfeited to the Central Government under this section, then, the company shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or the articles of association of the company, forthwith register the Central Government as the transferee of such shares.

121. Fine in lieu of forfeiture

(1) Where the Court makes a declaration that any property stands forfeited to the Central Government under section 120 and it is a case where the source of only a part of such property has not been proved to the satisfaction of the Court, it shall make an order giving an

Linked Provisions

Wild Life - Protection Act, 1972 - Section 58K - Fine in lieu of forfeiture

Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 68K - Fine in lieu of forfeiture

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option to the person affected to pay, in lieu of forfeiture, a fine equal to the market value of such part.

(2) Before making an order imposing a fine under sub- section (1), the person affected shall be given a reasonable opportunity of being heard.

(3) Where the person affected pays the fine due under sub- section (1), within such time as may be allowed in that behalf, the Court may, by order, revoke the declaration of forfeiture under section 120 and thereupon such property shall stand released.

Smugglers and Foreign Exchange Manipulators - Forfeiture of Property Act, 1976 - Section 9 - Fine in lieu of forfeiture

Corresponding Provision of Previous Statute: Section 105I, Code of Criminal Procedure, 1973

Section 105I - Fine in lieu of forfeiture - (1) Where the Court makes a declaration that any property stands forfeited to the Central Government under section 105H and it is a case where the source of only a part of such property has not been proved to the satisfaction of the Court, it shall make an order giving an option to the person affected to pay, in lieu of forfeiture, a fine equal to the market value of such part.

(2) Before making an order imposing a fine under sub-section (1), the person affected shall be given a reasonable opportunity of being heard.

(3) Where the person affected pays the fine due under sub-section (1), within such time as may be allowed in that behalf, the Court may, by order, revoke the declaration of forfeiture under section 105H and thereupon such property shall stand released.

122. Certain transfers to be null and void

Where after the making of an order under sub- section (1) of section 117 or the issue of a notice under section 119, any property referred to in the said order or notice is transferred by any mode whatsoever such transfers shall, for the purposes of the proceedings under this Chapter, be ignored and if such property is subsequently forfeited to the Central Government under section 120, then, the transfer of such property shall be deemed to be null and void.

Linked Provisions

Narcotic Drugs and Psychotropic Substances Act, 1985 -Section 68M - Certain transfers to be null and void

Prohibhition of Benami Property Transactions Act, 1988 - Section 57 - Certain transfers to be null and void

Smugglers and Foreign Exchange Manipulators - Forfeiture of Property Act, 1976 - Section 11 -

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Certain transfers to be null and void

Unlawful Activities - Prevention Act, 1967 - Section 32 - Certain transfers to be null and void

Wild Life - Protection Act, 1972 - 58M - Certain transfers to be null and void

Corresponding Provision of Previous Statute: Section 105J, Code of Criminal Procedure, 1973

Section 105J - Certain transfers to be null and void - Where after the making of an order under subsection (1) of section 105E or the issue of a notice under section 105G, any property referred to in the said order or notice is transferred by any mode whatsoever such transfers shall, for the purposes of the proceedings under this Chapter, be ignored and if such property is subsequently forfeited to the Central Government under section 105H, then, the transfer of such property shall be deemed to be null and void.

123. Procedure in respect of letter of request

Linked Provisions

Prevention of Money-Laundering Act, 2002 - Section 61 - Procedure in respect of letter of request

Every letter of request, summons or warrant, received by the Central Government from, and every letter of request, summons or warrant, to be transmitted to a contracting State under this Chapter shall be transmitted to a contracting State or, as the case may be, sent to the concerned Court in India in such form and in such manner as the Central Government may, by notification, specify in this behalf.

Corresponding Provision of Previous Statute: Section 105K, Code of Criminal Procedure, 1973

Section 105K - Procedure in respect of letter of request - Every letter of request, summons or warrant, received by the Central Government from, and every letter of request, summons or warrant, to be transmitted to a contracting State under this Chapter shall be transmitted to a contracting State or, as the case may be, sent to the concerned Court in India in such form and in such manner as the Central Government may, by notification, specify in this behalf.

124. Application of this Chapter

The Central Government may, by notification in the Official Gazette, direct that the application of this Chapter in relation to a contracting

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State with which reciprocal arrangements have been made, shall be subject to such conditions, exceptions or qualifications as are specified in the said notification.

Corresponding Provision of Previous Statute: Section 105L, Code of Criminal Procedure, 1973

Section 105L - Application of this Chapter - The Central Government may, by notification in the Official Gazette, direct that the application of this Chapter in relation to a contracting State with which reciprocal arrangements have been made, shall be subject to such conditions, exceptions or qualifications as are specified in the said notification.

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CHAPTER IX

SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR

125. Security for keeping peace on conviction

(1) When a Court of Session or Court of a Magistrate of the first class convicts a person of any of the offences specified in sub- section (2) or of abetting any such offence and is of opinion that it is necessary to take security from such person for keeping the peace, the Court may, at the time of passing sentence on such person, order him to execute a bond or bail bond, for keeping the peace for such period, not exceeding three years, as it thinks fit.

(2) The offences referred to in sub- section (1) are- -

(a) any offence punishable under Chapter XI of the Bharatiya Nyaya Sanhita, 2023, other than an offence punishable under sub- section (1) of section 193 or section 196 or section 197 thereof;

(b) any offence which consists of, or includes, assault or using criminal force or committing mischief;

(c) any offence of criminal intimidation;

(d) any other offence which caused, or was intended or known to be likely to cause, a breach of the peace.

(3) If the conviction is set aside on appeal or otherwise, the bond or bail bond so executed shall become void.

(4) An order under this section may also be made by an Appellate Court or by a Court when exercising its powers of revision.

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Corresponding Provision of Previous Statute: Section 106, Code of Criminal Procedure, 1973

Section 106 - Security for keeping the peace on conviction - (1) When a Court of Session or Court of a Magistrate of the first class convicts a person of any of the offences specified in sub-section (2) or of abetting any such offence and is of opinion that it is necessary to take security from such person for keeping the peace, the Court may, at the time of passing sentence on such person, order him to execute a bond, with or without sureties, for keeping the peace for such period, not exceeding three years, as it thinks fit.

(2) The offences referred to in sub-section (1) are—

(a) any offence punishable under Chapter VIII of the Indian Penal Code (45 of 1860), other than an offence punishable under section 153A or section 153B or section 154 thereof;

(b) any offence which consists of, or includes, assault or using criminal force or committing mischief;

(c) any offence of criminal intimidation;

(d) any other offence which caused, or was intended or known to be likely to cause, a breach of the peace.

(3) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(4) An order under this section may also be made by an Appellate Court or by a Court when exercising its powers of revision.

126. Security for keeping peace in other cases

(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond or bail bond for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

(2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of

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the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction.

Corresponding Provision of Previous Statute: Section 109, Code of Criminal Procedure, 1973

Section 109 - Security for good behaviour from suspected persons - When an Executive Magistrate receives information that there is within his local jurisdiction a person taking precautions to conceal his presence and that there is reason to believe that he is doing so with a view to committing a cognizable offence, the Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit.

127. Security for good behaviour from persons disseminating certain matters

(1) When an Executive Magistrate receives information that there is within his local jurisdiction any person who, within or without such jurisdiction,- -

(i) either orally or in writing or in any other manner, intentionally disseminates or attempts to disseminate or abets the dissemination of,- -

(a) any matter the publication of which is punishable under section 152 or section 196 or section 197 or section 299 of the Bharatiya Nyaya Sanhita, 2023; or

(b) any matter concerning a Judge acting or purporting to act in the discharge of his official duties which amounts to criminal intimidation or defamation under the Bharatiya Nyaya Sanhita, 2023;

(ii) makes, produces, publishes or keeps for sale, imports, exports, conveys, sells, lets to hire, distributes, publicly exhibits or in any other manner puts into circulation any obscene matter such as is referred to in section 294 of the Bharatiya Nyaya Sanhita, 2023, and

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the Magistrate is of opinion that there is sufficient ground for proceeding, the Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond or bail bond, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit.

(2) No proceedings shall be taken under this section against the editor, proprietor, printer or publisher of any publication registered under, and edited, printed and published in conformity with, the rules laid down in the Press and Registration of Books Act, 1867 (25 of 1867) with reference to any matter contained in such publication except by the order or under the authority of the State Government or some officer empowered by the State Government in this behalf.

128. Security for good behaviour from suspected persons

When an Executive Magistrate receives information that there is within his local jurisdiction a person taking precautions to conceal his presence and that there is reason to believe that he is doing so with a view to committing a cognizable offence, the Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond or bail bond for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit.

129. Security for good behaviour from habitual offenders

When an Executive Magistrate receives information that there is within his local jurisdiction a person who- -

(a) is by habit a robber, house- breaker, thief, or forger; or

Linked Provisions

Suppression of Immoral Traffic In Women and Girls Act, 1956 - Section 12 - Security for good behaviour from habitual offenders

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(b) is by habit a receiver of stolen property knowing the same to have been stolen; or

(c) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property; or

(d) habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter X of the Bharatiya Nyaya Sanhita, 2023, or under section 178, section 179, section 180 or section 181 of that Sanhita; or

(e) habitually commits, or attempts to commit, or abets the commission of, offences, involving a breach of the peace; or

(f) habitually commits, or attempts to commit, or abets the commission of- -

(i) any offence under one or more of the following Acts, namely:- -

(a) the Drugs and Cosmetics Act, 1940 (23 of 1940);

(b) the Foreigners Act, 1946 (31 of 1946);

(c) the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952);

(d) the Essential Commodities Act, 1955 (10 of 1955);

(e) the Protection of Civil Rights Act, 1955 (22 of 1955);

(f) the Customs Act, 1962 (52 of 1962);

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(g) the Food Safety and Standards Act, 2006 (34 of 2006); or

(ii) any offence punishable under any other law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs or of corruption; or

(g) is so desperate and dangerous as to render his being at large without security hazardous to the community, such Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bail bond, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit.

Corresponding Provision of Previous Statute: Section 110, Code of Criminal Procedure, 1973

Section 110 - Security for good behaviour from habitual offenders - When an Executive Magistrate receives information that there is within his local jurisdiction a person who—

(a) is by habit a robber, house-breaker, thief, or forger, or

(b) is by habit a receiver of stolen property knowing the same to have been stolen, or

(c) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property, or

(d) habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter XII of the Indian Penal Code (45 of 1860), or under section 489A, section 489B, section 489C or section 489D of that Code, or

(e) habitually commits, or attempts to commit, or abets the commission of, offences, involving a breach of the peace, or

(f) habitually commits, or attempts to commit, or abets the commission of—

(i) any offence under one or more of the following Acts, namely:—

(a) the Drugs and Cosmetics Act, 1940 (23 of 1940);

(b) the Foreign Exchange Regulation Act, 1973 (46 of 1973);

(c) the Employees' Provident Fund and Family Pension Fund] Act, 1952 (19 of 1952);

(d) the Prevention of Food Adulteration Act, 1954 (37 of 1954);

(e) the Essential Commodities Act, 1955 (10 of 1955);

(f) the Untouchability (Offences) Act, 1955 (22 of 1955);

(g) the Customs Act, 1962 (52 of 1962);

(h) the Foreigners Act, 1946 (31 of 1946); or

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(ii) any offence punishable under any other law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs or of corruption, or

(g) is so desperate and dangerous to render his being at large without security hazardous to the community, such Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit.

130. Order to be made

When a Magistrate acting under section 126, section 127, section 128 or section 129, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force and the number of sureties, after considering the sufficiency and fitness of sureties.

Corresponding Provision of Previous Statute: Section 111, Code of Criminal Procedure, 1973

Section 111 - Order to be made - When a Magistrate acting under section 107, section 108, section 109 or section 110, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

131. Procedure in respect of person present in Court

If the person in respect of whom such order is made is present in Court, it shall be read over to him, or, if he so desires, the substance thereof shall be explained to him.

Corresponding Provision of Previous Statute: Section 112, Code of Criminal Procedure, 1973

Section 112 - Procedure in respect of person present in Court - If the person in respect of whom such order is made is present in Court, it shall be read over to him, or, if he so desires, the substance thereof shall be explained to him.

132. Summons or warrant in case of person not so present

If such person is not present in Court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in

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custody, a warrant directing the officer in whose custody he is to bring him before the Court:

Provided that whenever it appears to such Magistrate, upon the report of a police officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

Corresponding Provision of Previous Statute: Section 113, Code of Criminal Procedure, 1973

Section 113 - Summons or warrant in case of person not so present - If such person is not present in Court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him before the Court:

Provided that whenever it appears to such Magistrate, upon the report of a police officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

133. Copy of order to accompany summons or warrant

Every summons or warrant issued under section 132 shall be accompanied by a copy of the order made under section 130, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

Corresponding Provision of Previous Statute: Section 114, Code of Criminal Procedure, 1973

Section 114 - Copy of order to accompany summons or warrant - Every summons or warrant issued under section 113 shall be accompanied by a copy of the order made under section 111, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

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134. Power to dispense with personal attendance

The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace or for good behaviour and may permit him to appear by an advocate.

Corresponding Provision of Previous Statute: Section 115, Code of Criminal Procedure, 1973

Section 115 - Power to dispense with personal attendance - The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace or for good behaviour and may permit him to appear by a pleader.

135. Inquiry as to truth of information

(1) When an order under section 130 has been read or explained under section 131 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant, issued under section 132, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

(2) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trial and recording evidence in summons- cases.

(3) After the commencement, and before the completion, of the inquiry under sub- section (1), the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order

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under section 130 has been made to execute a bond or bail bond, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond or bail bond is executed or, in default of execution, until the inquiry is concluded:

Provided that- -

(a) no person against whom proceedings are not being taken under section 127, section 128, or section 129 shall be directed to execute a bond or bail bond for maintaining good behaviour;

(b) the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section 130.

(4) For the purposes of this section the fact that a person is a habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the community may be proved by evidence of general repute or otherwise.

(5) Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the Magistrate shall think just.

(6) The inquiry under this section shall be completed within a period of six months from the date of its commencement, and if such inquiry is not so completed, the proceedings under this Chapter shall, on the expiry of the said period, stand terminated unless, for special reasons to be recorded in writing, the Magistrate otherwise directs:

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Provided that where any person has been kept in detention pending such inquiry, the proceeding against that person, unless terminated earlier, shall stand terminated on the expiry of a period of six months of such detention.

(7) Where any direction is made under sub- section (6) permitting the continuance of proceedings, the Sessions Judge may, on an application made to him by the aggrieved party, vacate such direction if he is satisfied that it was not based on any special reason or was perverse.

Corresponding Provision of Previous Statute: Section 116, Code of Criminal Procedure, 1973

Section 116 - Inquiry as to truth of information - (1) When an order under section 111 has been read or explained under section 112 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant, issued under section 113, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

(2) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trial and recording evidence in summons-cases. (3) After the commencement, and before the completion, of the inquiry under sub-section (1), the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under section 111 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded:

Provided that –

(a) no person against whom proceedings are not being taken under section 108, section 109, or section 110 shall be directed to execute a bond for maintaining good behaviour;

(b) the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section 111.

(4) For the purposes of this section the fact that a person is an habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the community may be proved by evidence of general repute or otherwise.

(5) Where two or more persons have been associated together in the matter under inquiry, they may be dealt within the same or separate inquiries as the Magistrate shall think just.

(6) The inquiry under this section shall be completed within a period of six months from the date of its commencement, and if such inquiry is not so completed, the proceedings under this Chapter shall, on the expiry of the said period, stand terminated unless, for special reasons to be recorded in writing, the Magistrate otherwise directs:

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Provided that where any person has been kept in detention pending such inquiry, the proceeding against that person, unless terminated earlier, shall stand terminated on the expiry of a period of six months of such detention.

(7) Where any direction is made under sub-section (6) permitting the continuance of proceedings the Sessions Judge may, on an application made to him by the aggrieved party, vacate such direction if he is satisfied that it was not based on any special reason or was perverse.

136. Order to give security

If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond or bail bond, the Magistrate shall make an order accordingly:

Provided that- -

(a) no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 130;

(b) the amount of every bond or bail bond shall be fixed with due regard to the circumstances of the case and shall not be excessive;

(c) when the person in respect of whom the inquiry is made is a child, the bond shall be executed only by his sureties.

Corresponding Provision of Previous Statute: Section 117, Code of Criminal Procedure, 1973

Section 117 - Order to give security - If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly:

Provided that—

(a) no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 111;

(b) the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive;

(c) when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

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137. Discharge of person informed against

If, on an inquiry under section 135, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made, should execute a bond, the Magistrate shall make an entry on the record to that effect, and if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

Corresponding Provision of Previous Statute: Section 118, Code of Criminal Procedure, 1973

Section 118 - Discharge of person informed against - If, on an inquiry under section 116, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made, should execute a bond, the Magistrate shall make an entry on the record to that effect, and if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

138. Commencement of period for which security is required

(1) If any person, in respect of whom an order requiring security is made under section 125 or section 136, is at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

(2) In other cases such period shall commence on the date of such order unless the Magistrate, for sufficient reason, fixes a later date.

Corresponding Provision of Previous Statute: Section 119, Code of Criminal Procedure, 1973

Section 119 - Commencement of period for which security is required - (1) If any person, in respect of whom an order requiring security is made under section 106 or section 117, is at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

(2) In other cases such period shall commence on the date of such order unless the Magistrate, for sufficient reason, fixes a later date.

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139. Contents of bond

The bond or bail bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond or bail bond.

Corresponding Provision of Previous Statute: Section 120, Code of Criminal Procedure, 1973

Section 120 - Contents of bond - The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

140. Power to reject sureties

(1) A Magistrate may refuse to accept any surety offered, or may reject any surety previously accepted by him or his predecessor under this Chapter on the ground that such surety is an unfit person for the purposes of the bail bond:

Provided that before so refusing to accept or rejecting any such surety, he shall either himself hold an inquiry on oath into the fitness of the surety, or cause such inquiry to be held and a report to be made thereon by a Magistrate subordinate to him.

(2) Such Magistrate shall, before holding the inquiry, give reasonable notice to the surety and to the person by whom the surety was offered and shall, in making the inquiry, record the substance of the evidence adduced before him.

(3) If the Magistrate is satisfied, after considering the evidence so adduced either before him or before a Magistrate deputed under sub- section (1), and the report of such Magistrate (if any), that the

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surety is an unfit person for the purposes of the bail bond, he shall make an order refusing to accept or rejecting, as the case may be, such surety and recording his reasons for so doing:

Provided that before making an order rejecting any surety who has previously been accepted, the Magistrate shall issue his summons or warrant, as he thinks fit, and cause the person for whom the surety is bound to appear or to be brought before him.

Corresponding Provision of Previous Statute: Section 121, Code of Criminal Procedure, 1973

Section 121 - Power to reject sureties - (1) A Magistrate may refuse to accept any surety offered, or may reject any surety previously accepted by him or his predecessor under this Chapter on the ground that such surety is an unfit person for the purposes of the bond:

Provided that, before so refusing to accept or rejecting any such surety, he shall either himself hold an inquiry on oath into the fitness of the surety, or cause such inquiry to be held and a report to be made thereon by a Magistrate subordinate to him.

(2) Such Magistrate shall, before holding the inquiry, give reasonable notice to the surety and to the person by whom the surety was offered and shall, in making the inquiry, record the substance of the evidence adduced before him.

(3) If the Magistrate is satisfied, after considering the evidence so adduced either before him or before a Magistrate deputed under sub-section (1), and the report of such Magistrate (if any), that the surety is an unfit person for the purposes of the bond, he shall make an order refusing to accept or rejecting, as the case may be, such surety and recording his reasons for so doing:

Provided that, before making an order rejecting any surety who has previously been accepted, the Magistrate shall issue his summons or warrant, as he thinks fit, and cause the person for whom the surety is bound to appear or to be brought before him.

141. Imprisonment in default of security

(1) (a) If any person ordered to give security under section 125 or section 136 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison, be detained in prison until such period expires or until within such period he gives the security to the Court or Magistrate who made the order requiring it;

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(b) if any person after having executed a bond or bail bond for keeping the peace in pursuance of an order of a Magistrate under section 136, is proved, to the satisfaction of such Magistrate or his successor- in- office, to have committed breach of the bond or bail bond, such Magistrate or successor- in- office may, after recording the grounds of such proof, order that the person be arrested and detained in prison until the expiry of the period of the bond or bail bond and such order shall be without prejudice to any other punishment or forfeiture to which the said person may be liable in accordance with law.

(2) When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Sessions Judge and the proceedings shall be laid, as soon as conveniently may be, before such Court.

(3) Such Court, after examining such proceedings and requiring from the Magistrate any further information or evidence which it thinks necessary, and after giving the concerned person a reasonable opportunity of being heard, may pass such order on the case as it thinks fit:

Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

(4) If security has been required in the course of the same proceeding from two or more persons in respect of any one of whom the proceedings are referred to the Sessions Judge under sub- section (2)

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such reference shall also include the case of any other of such persons who has been ordered to give security, and the provisions of sub-sections (2) and (3) shall, in that event, apply to the case of such other person also, except that the period (if any) for which he may be imprisoned, shall not exceed the period for which he was ordered to give security.

(5) A Sessions Judge may in his discretion transfer any proceedings laid before him under sub- section (2) or sub- section (4) to an Additional Sessions Judge and upon such transfer, such Additional Sessions Judge may exercise the powers of a Sessions Judge under this section in respect of such proceedings.

(6) If the security is tendered to the officer in charge of the jail, he shall forthwith refer the matter to the Court or Magistrate who made the order, and shall await the orders of such Court or Magistrate.

(7) Imprisonment for failure to give security for keeping the peace shall be simple.

(8) Imprisonment for failure to give security for good behaviour shall, where the proceedings have been taken under section 127, be simple, and, where the proceedings have been taken under section 128 or section 129, be rigorous or simple as the Court or Magistrate in each case directs.

Corresponding Provision of Previous Statute: Section 122, Code of Criminal Procedure, 1973

Section 122 - Imprisonment in default of security - (1) (a) If any person ordered to give security under section 106 or section 117 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison, be detained in prison until such period expires or until within such period he gives the security to the Court or Magistrate who made the order requiring it.

(b) If any person after having executed a bond, with or without sureties without sureties for keeping the peace in pursuance of an order of a Magistrate under section 117, is proved, to the satisfaction of such

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Magistrate or his successor-in-office, to have committed breach of the bond, such Magistrate or successor-in-office may, after recording the grounds of such proof, order that the person be arrested and detained in prison until the expiry of the period of the bond and such order shall be without prejudice to any other punishment or forfeiture to which the said person may be liable in accordance with law.

(2) When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Sessions Judge and the proceedings shall be laid, as soon as conveniently may be, before such Court.

(3) Such Court, after examining such proceedings and requiring from the Magistrate any further information or evidence which it thinks necessary, and after giving the concerned person a reasonable opportunity of being heard, may pass such order on the case as it thinks fit:

Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

(4) If security has been required in the course of the same proceeding from two or more persons in respect of any one of whom the proceedings are referred to the Sessions Judge under sub-section (2) such reference shall also include the case of any other of such persons who has been order to give security, and the provisions of sub-sections (2) and (3) shall, in that event, apply to the case of such other person also, except that the period (if any) for which he may be imprisoned, shall not exceed the period for which he was ordered to give security.

(5) A Sessions Judge may in his discretion transfer any proceedings laid before him under sub-section (2) or sub-section (4) to an Additional Sessions Judge or Assistant Sessions Judge and upon such transfer, such Additional Sessions Judge or Assistant Sessions Judge may exercise the powers of a Sessions Judge under this section in respect of such proceedings.

(6) If the security is tendered to the officer in charge of the jail, he shall forthwith refer the matter to the Court or Magistrate who made the order, and shall await the orders of such Court or Magistrate.

(7) Imprisonment for failure to give security for keeping the peace shall be simple.

(8) Imprisonment for failure to give security for good behaviour shall, where the proceedings have been taken under section 108, be simple, and, where the proceedings have been taken under section 109 or section 110, be rigorous or simple as the Court or Magistrate in each case directs.

142. Power to release persons imprisoned for failing to give security

(1) Whenever the District Magistrate in the case of an order passed by an Executive Magistrate under section 136, or the Chief Judicial Magistrate in any other case is of opinion that any person imprisoned for failing to give security under this Chapter may be released without hazard to the community or to any other person, he may order such person to be discharged.

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(2) Whenever any person has been imprisoned for failing to give security under this Chapter, the High Court or Court of Session, or, where the order was made by any other Court, District Magistrate, in the case of an order passed by an Executive Magistrate under section 136, or the Chief Judicial Magistrate in any other case, may make an order reducing the amount of the security or the number of sureties or the time for which security has been required.

(3) An order under sub- section (1) may direct the discharge of such person either without conditions or upon any conditions which such person accepts:

Provided that any condition imposed shall cease to be operative when the period for which such person was ordered to give security has expired.

(4) The State Government may prescribe, by rules, the conditions upon which a conditional discharge may be made.

(5) If any condition upon which any person has been discharged is, in the opinion of District Magistrate, in the case of an order passed by an Executive Magistrate under section 136, or the Chief Judicial Magistrate in any other case by whom the order of discharge was made or of his successor, not fulfilled, he may cancel the same.

(6) When a conditional order of discharge has been cancelled under sub- section (5), such person may be arrested by any police officer without warrant, and shall thereupon be produced before the District Magistrate, in the case of an order passed by an Executive Magistrate under section 136, or the Chief Judicial Magistrate in any other case.

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(7) Unless such person gives security in accordance with the terms of the original order for the unexpired portion of the term for which he was in the first instance committed or ordered to be detained (such portion being deemed to be a period equal to the period between the date of the breach of the conditions of discharge and the date on which, except for such conditional discharge, he would have been entitled to release), District Magistrate, in the case of an order passed by an Executive Magistrate under section 136, or the Chief Judicial Magistrate in any other case may remand such person to prison to undergo such unexpired portion.

(8) A person remanded to prison under sub- section (7) shall, subject to the provisions of section 141, be released at any time on giving security in accordance with the terms of the original order for the unexpired portion aforesaid to the Court or Magistrate by whom such order was made, or to its or his successor.

(9) The High Court or Court of Session may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace or for good behaviour executed under this Chapter by any order made by it, and District Magistrate, in the case of an order passed by an Executive Magistrate under section 136, or the Chief Judicial Magistrate in any other case may make such cancellation where such bond was executed under his order or under the order of any other Court in his district.

(10) Any surety for the peaceable conduct or good behaviour of another person ordered to execute a bond under this Chapter may at any time apply to the Court making such order to cancel the bond and on such application being made, the Court shall issue a

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summons or warrant, as it thinks fit, requiring the person for whom such surety is bound to appear or to be brought before it.

Corresponding Provision of Previous Statute: Section 123, Code of Criminal Procedure, 1973

Section 123 - Power to release persons imprisoned for failing to give security - (1) Whenever the District Magistrate in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case is of opinion that any person imprisoned for failing to give security under this Chapter may be released without hazard to the community or to any other person, he may order such person to be discharged.

(2) Whenever any person has been imprisoned for failing to give security under this Chapter, the High Court or Court of Session, or, where the order was made by any other Court, District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case, may make an order reducing the amount of the security or the number of sureties or the time for which security has been required.

(3) An order under sub-section (1) may direct the discharge of such person either without conditions or upon any conditions which such person accepts:

Provided that any condition imposed shall cease to be operative when the period for which such person was ordered to give security has expired.

(4) The State Government may prescribe the conditions upon which a conditional discharge may be made.

(5) If any condition upon which any person has been discharged is, in the opinion of District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case by whom the order of discharge was made or of his successor, not fulfilled, he may cancel the same.

(6) When a conditional order of discharge has been cancelled under sub-section (5), such person may be arrested by any police officer without warrant, and shall thereupon be produced before the District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case.

(7) Unless such person gives security in accordance with the terms of the original order for the unexpired portion of the term for which he was in the first instance committed or ordered to be detained (such portion being deemed to be a period equal to the period between the date of the breach of the conditions of discharge and the date on which, except for such conditional discharge, he would have been entitled to release), District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case may remand such person to prison to undergo such unexpired portion.

(8) A person remanded to prison under sub-section (7) shall, subject to the provisions of section 122, be released at any time on giving security in accordance with the terms of the original order for the unexpired portion aforesaid to the Court or Magistrate by whom such order was made, or to its or his successor.

(9) The High Court or Court of Session may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace or for good behaviour executed under this Chapter by any order made by it, and District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case may make such cancellation where such bond was executed under his order or under the order of any other Court in his district.

(10) Any surety for the peaceable conduct or good behaviour of another person ordered to execute a bond under this Chapter may at any time apply to the Court making such order to cancel the bond and on such application being made, the Court shall issue a summons or warrant, as it thinks fit, requiring the person for whom such surety is bond appear or to be brought before it.

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143. Security for unexpired period of bond

(1) When a person for whose appearance a summons or warrant has been issued under the proviso to sub- section (3) of section 140 or under sub- section (10) of section 142, appears or is brought before the Magistrate or Court, the Magistrate or Court shall cancel the bond or bail bond executed by such person and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security.

(2) Every such order shall, for the purposes of sections 139 to 142 (both inclusive) be deemed to be an order made under section 125 or section 136, as the case may be.

Corresponding Provision of Previous Statute: Section 124, Code of Criminal Procedure, 1973

Section 124 - Security for unexpired period of bond - (1) When a person for whose appearance a summons or warrant has been issued under the proviso to sub-section (3) of section 121 or under sub-section (10) of section 123, appears or is brought before the Magistrate or Court, the Magistrate or Court shall cancel the bond executed by such person and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security.

(2) Every such order shall, for the purposes of sections 120 to 123 (both inclusive) be deemed to be an order made under section 106 or section 117, as the case may be.

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CHAPTER X

ORDER FOR MAINTENANCE OF WIVES, CHILDREN AND PARENTS

144. Order for maintenance of wives, children and parents

(1) If any person having sufficient means neglects or refuses to maintain- -

(a) his wife, unable to maintain herself; or

(b) his legitimate or illegitimate child, whether married or not, unable to maintain itself; or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself; or

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such Magistrate thinks fit and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such female child, if married, is not possessed of sufficient means:

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance

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under this sub- section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

Explanation.- - For the purposes of this Chapter, "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to

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imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.- - If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

Corresponding Provision of Previous Statute: Section 125, Code of Criminal Procedure, 1973

Section 125 - Order for maintenance of wives, children and parents - (1) If any person having sufficient means neglects or refuses to maintain—

(a) his wife, unable to maintain herself, or

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(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such Magistrate thinks fit and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

Explanation.—For the purposes of this Chapter,—

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.—If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery,

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or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section in living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent.

LANDMARK JUDGMENT

Mohd. Ahmed Khan vs. Shah Bano Begum and Ors., MANU/SC/0194/1985

Bai Tahira vs. Ali Hussain Fidaalli Chothia and Ors., MANU/SC/0402/1978

Bhupinder Singh vs. Daljit Kaur, MANU/SC/0066/1978

Chanmuniya vs. Chanmuniya Virendra Kumar Singh Kushwaha and Ors., MANU/SC/0807/2010

145. Procedure

(1) Proceedings under section 144 may be taken against any person in any district- -

(a) where he is; or

(b) where he or his wife resides; or

(c) where he last resided with his wife, or as the case may be, with the mother of the illegitimate child; or

(d) where his father or mother resides.

(2) All evidence in such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proposed to be made, or, when his personal attendance is dispensed with, in the presence of his advocate, and shall be recorded in the manner prescribed for summons- cases:

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Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service, or wilfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case ex parte and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper.

(3) The Court in dealing with applications under section 144 shall have power to make such order as to costs as may be just.

Corresponding Provision of Previous Statute: Section 126, Code of Criminal Procedure, 1973

Section 126 – Procedure - (1) Proceedings under section 125 may be taken against any person in any district—

(a) where he is, or

(b) where he or his wife resides, or

(c) where he last resided with his wife, or as the case may be, with the mother of the illegitimate child.

(2) All evidence in such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proposed to be made, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed for summons-cases:

Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service, or wilfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case ex parte and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper.

(3) The Court in dealing with applications under section 125 shall have power to make such order as to costs as may be just.

146. Alteration in allowance

(1) On proof of a change in the circumstances of any person, receiving, under section 144 a monthly allowance for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be,

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the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be.

(2) Where it appears to the Magistrate that in consequence of any decision of a competent Civil Court, any order made under section 144 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

(3) Where any order has been made under section 144 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that- -

(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage;

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order,- -

(i) in the case where such sum was paid before such order, from the date on which such order was made;

(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to maintenance or interim

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maintenance, as the case may be, after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a monthly allowance for the maintenance and interim maintenance or any of them has been ordered to be paid under section 144, the Civil Court shall take into account the sum which has been paid to, or recovered by, such person as monthly allowance for the maintenance and interim maintenance or any of them, as the case may be, in pursuance of the said order.

Corresponding Provision of Previous Statute: Section 127, Code of Criminal Procedure, 1973

Section 127 – Alteration in allowance - (1) On proof of a change in the circumstances of any person, receiving, under section 125 a monthly allowance for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be.

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

(3) Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that—

(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage;

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order,—

(i) in the case where such sum was paid before such order, from the date on which such order was made;

(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to maintenance or interim maintenance, as the case may be, after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a monthly allowance for the maintenance and interim maintenance or any of them has been ordered to be paid under section 125, the Civil Court shall take into account the sum which has been paid to, or recovered by, such person as monthly allowance for the maintenance and interim maintenance or any of them, as the case may be, in pursuance of the said order.

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LANDMARK JUDGMENT

Bai Tahira vs. Ali Hussain Fidaalli Chothia and Ors., MANU/SC/0402/1978

Bhupinder Singh vs. Daljit Kaur, MANU/SC/0066/1978

147. Enforcement of order of maintenance

A copy of the order of maintenance or interim maintenance and expenses of proceedings, as the case may be, shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance for the maintenance or the allowance for the interim maintenance and expenses of proceeding, as the case may be, is to be paid; and such order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non- payment of the allowance, or as the case may be, expenses, due.

Corresponding Provision of Previous Statute: Section 128, Code of Criminal Procedure, 1973

Section 128 – Enforcement of order of maintenance - A copy of the order of maintenance or interim maintenance and expenses of proceedings, as the case may be,] shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance for the maintenance or the allowance for the interim maintenance and expenses of proceeding, as the case may be,] is to be paid; and such order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance, or as the case may be, expenses, due.

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CHAPTER XI

MAINTENANCE OF PUBLIC ORDER AND TRANQUILLITY

A.- - Unlawful assemblies

148. Dispersal of assembly by use of civil force

(1) Any Executive Magistrate or officer in charge of a police station or, in the absence of such officer in charge, any police officer, not below the rank of a sub- inspector, may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

(2) If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Executive Magistrate or police officer referred to in sub- section (1), may proceed to disperse such assembly by force, and may require the assistance of any person, not being an officer or member of the armed forces and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law.

Corresponding Provision of Previous Statute: Section 129, Code of Criminal Procedure, 1973

Section 129 – Dispersal of assembly by use of civil force - (1) Any Executive Magistrate or officer in charge of a police station or, in the absence of such officer in charge, any police officer, not below the rank of a sub-inspector, may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

(2) If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Executive Magistrate or

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police officer referred to in sub-section (1), may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or member of the armed forces and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law

149. Use of armed forces to disperse assembly

(1) If any assembly referred to in sub- section (1) of section 148 cannot otherwise be dispersed, and it is necessary for the public security that it should be dispersed, the District Magistrate or any other Executive Magistrate authorised by him, who is present, may cause it to be dispersed by the armed forces.

(2) Such Magistrate may require any officer in command of any group of persons belonging to the armed forces to disperse the assembly with the help of the armed forces under his command, and to arrest and confine such persons forming part of it as the Executive Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law.

(3) Every such officer of the armed forces shall obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.

Corresponding Provision of Previous Statute: Section 130, Code of Criminal Procedure, 1973

Section 130 – Use of armed forces to disperse assembly - (1) If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Executive Magistrate of the highest rank who is present may cause it to be dispersed by the armed forces.

(2) Such Magistrate may require any officer in command of any group of persons belonging to the armed forces to disperse the assembly with the help of the armed forces under his command, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law.

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(3) Every such officer of the armed forces shall obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.

150. Power of certain armed force officers to disperse assembly

When the public security is manifestly endangered by any such assembly and no Executive Magistrate can be communicated with, any commissioned or gazetted officer of the armed forces may disperse such assembly with the help of the armed forces under his command, and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to law; but if, while he is acting under this section, it becomes practicable for him to communicate with an Executive Magistrate, he shall do so, and shall thenceforward obey the instructions of the Magistrate, as to whether he shall or shall not continue such action.

Corresponding Provision of Previous Statute: Section 131, Code of Criminal Procedure, 1973

Section 131 – Power of certain armed force officers to disperse assembly - When the public security is manifestly endangered by any such assembly and no Executive Magistrate can be communicated with, any commissioned or gazetted officer of the armed forces may disperse such assembly with the help of the armed forces under his command, and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to law; but if, while he is acting under this section, it becomes practicable for him to communicate with an Executive Magistrate, he shall do so, and shall thenceforward obey the instructions of the Magistrate, as to whether he shall or shall not continue such action.

151. Protection against prosecution for acts done under sections 148, 149 and 150

(1) No prosecution against any person for any act purporting to be done under section 148, section 149 or section 150 shall be instituted in any Criminal Court except- -

(a) with the sanction of the Central Government where such person is an officer or member of the armed forces;

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(b) with the sanction of the State Government in any other case.

(2) (a) No Executive Magistrate or police officer acting under any of the said sections in good faith;

(b) no person doing any act in good faith in compliance with a requisition under section 148 or section 149;

(c) no officer of the armed forces acting under section 150 in good faith;

(d) no member of the armed forces doing any act in obedience to any order which he was bound to obey, shall be deemed to have thereby committed an offence.

(3) In this section and in the preceding sections of this Chapter,- -

(a) the expression "armed forces" means the army, naval and air forces, operating as land forces and includes any other armed forces of the Union so operating;

(b) "officer", in relation to the armed forces, means a person commissioned, gazetted or in pay as an officer of the armed forces and includes a junior commissioned officer, a warrant officer, a petty officer, a non- commissioned officer and a non- gazetted officer;

(c) "member", in relation to the armed forces, means a person in the armed forces other than an officer.

Corresponding Provision of Previous Statute: Section 132, Code of Criminal Procedure, 1973

Section 132 – Protection against prosecution for acts done under preceding sections - (1) No prosecution against any person for any act purporting to be done under section 129, section 130 or section 131 shall be instituted in any Criminal Court except—

(a) with the sanction of the Central Government where such person is an officer or member of the armed forces;

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(b) with the sanction of the State Government in any other case.

(2) (a) No Executive Magistrate or police officer acting under any of the said sections in good faith;

(b) no person doing any act in good faith in compliance with a requisition under section 129 or section 130;

(c) no officer of the armed forces acting under section 131 in good faith;

(d) no member of the armed forces doing any act in obedience to any order which he was bound to obey, shall be deemed to have thereby committed an offence.

(3) In this section and in the preceding sections of this Chapter,—

(a) the expression "armed forces" means the military, naval and air forces, operating as land forces and includes any other armed forces of the Union so operating;

(b) "officer", in relation to the armed forces, means a person commissioned, gazetted or in pay as an officer of the armed forces and includes a junior commissioned officer, a warrant officer, a petty officer, a noncommissioned officer and a non-gazetted officer;

(c) "member", in relation to the armed forces, means a person in the armed forces other than an officer.

B.- - Public nuisances

152. Conditional order for removal of nuisance

(1) Whenever a District Magistrate or a Sub- divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers- -

(a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or

(b) that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or

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(c) that the construction of any building, or, the disposal of any substance, as is likely to occasion conflagration or explosion, should be prevented or stopped; or

(d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary; or

(e) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or

(f) that any dangerous animal should be destroyed, confined or otherwise disposed of,

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order- -

(i) to remove such obstruction or nuisance; or

(ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

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(iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or

(iv) to remove, repair or support such building, tent or structure, or to remove or support such trees; or

(v) to fence such tank, well or excavation; or

(vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order,

or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute.

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

Explanation.- - A "public place" includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes.

Corresponding Provision of Previous Statute: Section 133, Code of Criminal Procedure, 1973

Section 133 – Conditional order for removal of nuisance - (1) Whenever a District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers—

(a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or

(b) that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or

(c) that the construction of any building, or, the disposal of any substance, as is likely to occasion configuration or explosion, should be prevented or stopped; or

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(d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary; or

(e) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or

(f) that any dangerous animal should be destroyed, confined or otherwise disposed of, such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order—

(i) to remove such obstruction or nuisance; or

(ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

(iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or

(iv) to remove, repair or support such building, tent or structure, or to remove or support such trees; or

(v) to fence such tank, well or excavation; or

(vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order, or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute.

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

Explanation.—A "public place" includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes.

LANDMARK JUDGMENT

Farzand Ali vs. Hakim Ali, MANU/UP/0008/1914

153. Service or notification of order

(1) The order shall, if practicable, be served on the person against whom it is made, in the manner herein provided for service of summons.

(2) If such order cannot be so served, it shall be notified by proclamation published in such manner as the State Government

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may, by rules, direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

Corresponding Provision of Previous Statute: Section 134, Code of Criminal Procedure, 1973

Section 134 – Service or notification of order - (1) The order shall, if practicable, be served on the person against whom it is made, in the manner herein provided for service of a summons. (2) If such order cannot be so served, it shall be notified by proclamation, published in such manner as the State Government may, by rules, direct, and a copy thereof shall be struck up at such place or places as may be fittest for conveying the information to such person.

154. Person to whom order is addressed to obey or show cause

The person against whom such order is made shall- -

(a) perform, within the time and in the manner specified in the order, the act directed thereby; or

(b) appear in accordance with such order and show cause against the same; and such appearance or hearing may be permitted through audio- video conferencing.

Corresponding Provision of Previous Statute: Section 135, Code of Criminal Procedure, 1973

Section 135 – Person to whom order is addressed to obey or show cause - The person against whom such order is made shall—

(a) perform, within the time and in the manner specified in the order, the act directed thereby; or

(b) appear in accordance with such order and show cause against the same.

155. Penalty for failure to comply with section 154

If the person against whom an order is made under section 154 does not perform such act or appear and show cause, he shall be liable to the penalty specified in that behalf in section 223 of the Bharatiya Nyaya Sanhita, 2023, and the order shall be made absolute.

Corresponding Provision of Previous Statute: Section 136, Code of Criminal Procedure, 1973

Section 136 – Consequences of his failing to do so - If such person does not perform such act or appear and show cause, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code (45 of 1860), and the order shall be made absolute.

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156. Procedure where existence of public right is denied

(1) Where an order is made under section 152 for the purpose of preventing obstruction, nuisance or danger to the public in the use of any way, river, channel or place, the Magistrate shall, on the appearance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of the way, river, channel or place, and if he does so, the Magistrate shall, before proceeding under section 157, inquire into the matter.

(2) If in such inquiry the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent Court; and, if he finds that there is no such evidence, he shall proceed as laid down in section 157.

(3) A person who has, on being questioned by the Magistrate under sub- section (1), failed to deny the existence of a public right of the nature therein referred to, or who, having made such denial, has failed to adduce reliable evidence in support thereof, shall not in the subsequent proceedings be permitted to make any such denial.

Corresponding Provision of Previous Statute: Section 137, Code of Criminal Procedure, 1973

Section 137 – Procedure where existence of public right is denied - (1) Where an order is made under section 133 for the purpose of preventing obstruction, nuisance or danger to the public in the use of any way, river, channel or place, the Magistrate shall, on the appearance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of the way, river, channel or place, and if he does so, the Magistrate shall, before proceeding under section 138, inquire into the matter.

(2) If in such inquiry the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent Court; and, if he finds that there is no such evidence, he shall proceed as laid down in section 138.

(3) A person who has, on being questioned by the Magistrate under sub-section (1), failed to deny the existence of a public right of the nature therein referred to, or who, having made such denial, has failed to adduce reliable evidence in support thereof, shall not in the subsequent proceedings be permitted to make any such denial.

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157. Procedure where person against whom order is made under section 152 appears to show cause

(1) If the person against whom an order under section 152 is made appears and shows cause against the order, the Magistrate shall take evidence in the matter as in a summons- case.

(2) If the Magistrate is satisfied that the order, either as originally made or subject to such modification as he considers necessary, is reasonable and proper, the order shall be made absolute without modification or, as the case may be, with such modification.

(3) If the Magistrate is not so satisfied, no further proceedings shall be taken in the case:

Provided that the proceedings under this section shall be completed, as soon as possible, within a period of ninety days, which may be extended for the reasons to be recorded in writing, to one hundred and twenty days.

Corresponding Provision of Previous Statute: Section 138, Code of Criminal Procedure, 1973

Section 138 – Procedure where he appears to show cause - (1) If the person against whom an order under section 133 is made appears and shows cause against the order, the Magistrate shall take evidence in the matter as in a summons-case.

(2) If the Magistrate is satisfied that the order, either as originally made or subject to such modification as he considers necessary, is reasonable and proper, the order shall be made absolute without modification or, as the case may be, with such modification.

(3) If the Magistrate is not so satisfied, no further proceedings shall be taken in the case.

158. Power of Magistrate to direct local investigation and examination of an expert

The Magistrate may, for the purposes of an inquiry under section 156 or section 157- -

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(a) direct a local investigation to be made by such person as he thinks fit; or

(b) summon and examine an expert.

Corresponding Provision of Previous Statute: Section 139, Code of Criminal Procedure, 1973

Section 139 – Power of Magistrate to direct local investigation and examination of an expert - The Magistrate may, for the purposes of an inquiry under section 137 or section 138 —

(a) direct a local investigation to be made by such person as he thinks fit; or

(b) summon and examine an expert.

159. Power of Magistrate to furnish written instructions, etc

(1) Where the Magistrate directs a local investigation by any person under section 158, the Magistrate may- -

(a) furnish such person with such written instructions as may seem necessary for his guidance;

(b) declare by whom the whole or any part of the necessary expenses of the local investigation shall be paid.

(2) The report of such person may be read as evidence in the case.

(3) Where the Magistrate summons and examines an expert under section 158, the Magistrate may direct by whom the costs of such summoning and examination shall be paid.

Corresponding Provision of Previous Statute: Section 140, Code of Criminal Procedure, 1973

Section 140 – Power of Magistrate to furnish written instructions, etc - (1) Where the Magistrate directs a local investigation by any person under section 139, the Magistrate may —

(a) furnish such person with such written instructions as may seem necessary for his guidance;

(b) declare by whom the whole or any part of the necessary expenses of the local investigation shall be paid.

(2) The report of such person may be read as evidence in the case.

(3) Where the Magistrate summons and examines an expert under section 139, the Magistrate may direct by whom the costs of such summoning and examination shall be paid.

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160. Procedure on order being made absolute and consequences of disobedience

(1) When an order has been made absolute under section 155 or section 157, the Magistrate shall give notice of the same to the person against whom the order was made, and shall further require him to perform the act directed by the order within the time to be fixed in the notice, and inform him that, in case of disobedience, he shall be liable to the penalty provided by section 223 of the Bharatiya Nyaya Sanhita, 2023.

(2) If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods or other property removed by his order, or by the distress and sale of any other movable property of such person within or without such Magistrate's local jurisdiction, and if such other property is without such jurisdiction, the order shall authorise its attachment and sale when endorsed by the Magistrate within whose local jurisdiction the property to be attached is found.

(3) No suit shall lie in respect of anything done in good faith under this section.

Corresponding Provision of Previous Statute: Section 141, Code of Criminal Procedure, 1973

Section 141 – Procedure on order being made absolute and consequences of disobedience - (1) When an order has been made absolute under section 136 or section 138, the Magistrate shall give notice of the same to the person against whom the order was made, and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Indian Penal Code (45 of 1860).
(2) If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods or other property removed by his order, or by the distress and sale of any other movable property of such person within or without such Magistrate's local jurisdiction, and if such other property is without such jurisdiction, the order shall authorise its attachment and sale when endorsed by the Magistrate within whose local jurisdiction the property to be attached is found.
(3) No suit shall lie in respect of anything done in good faith under this section.

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161. Injunction pending inquiry

(1) If a Magistrate making an order under section 152 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may issue such an injunction to the person against whom the order was made, as is required to obviate or prevent such danger or injury pending the determination of the matter.

(2) In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.

(3) No suit shall lie in respect of anything done in good faith by a Magistrate under this section.

Corresponding Provision of Previous Statute: Section 142, Code of Criminal Procedure, 1973

Section 142 – Injunction pending inquiry - (1) If a Magistrate making an order under section 133 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may issue such an injunction to the person against whom the order was made, as is required to obviate or prevent such danger or injury pending the determination of the matter.

(2) In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.

(3) No suit shall lie in respect of anything done in good faith by a Magistrate under this section.

162. Magistrate may prohibit repetition or continuance of public nuisance

A District Magistrate or Sub- divisional Magistrate, or any other Executive Magistrate or Deputy Commissioner of Police empowered by the State Government or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance, as defined in the Bharatiya Nyaya Sanhita, 2023, or any special or local law.

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Corresponding Provision of Previous Statute: Section 143, Code of Criminal Procedure, 1973

Section 143 – Magistrate may prohibit repetition or continuance of public nuisance - A District Magistrate or Sub-divisional Magistrate, or any other Executive Magistrate empowered by the State Government or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance, as defined in the Indian Penal Code (45 of 1860), or any special or local law.

C.- - Urgent cases of nuisance or apprehended danger

163. Power to issue order in urgent cases of nuisance or apprehended danger

(1) In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 153, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety or a disturbance of the public tranquillity, or a riot, or an affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed ex parte.

(3) An order under this section may be directed to a particular individual, or to persons residing in a particular place or area, or to

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the public generally when frequenting or visiting a particular place or area.

(4) No order under this section shall remain in force for more than two months from the making thereof:

Provided that if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired, as it may specify in the said notification.

(5) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section by himself or any Magistrate subordinate to him or by his predecessor- in- office.

(6) The State Government may, either on its own motion or on the application of any person aggrieved, rescind or alter any order made by it under the proviso to sub- section (4).

(7) Where an application under sub- section (5) or sub- section (6) is received, the Magistrate, or the State Government, as the case may be, shall afford to the applicant an early opportunity of appearing before him or it, either in person or by an advocate and showing cause against the order; and if the Magistrate or the State Government, as the case may be, rejects the application wholly or in part, he or it shall record in writing the reasons for so doing.

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Corresponding Provision of Previous Statute: Section 144, Code of Criminal Procedure, 1973

Section 144 – Power to issue order in urgent cases of nuisance or apprehended danger - (1) In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety or a disturbance of the public tranquillity, or a riot, or an affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed ex parte.

(3) An order under this section may be directed to a particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area.

(4) No order under this section shall remain in force for more than two months from the making thereof: Provided that, if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired, as it may specify in the said notification.

(5) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section, by himself or any Magistrate subordinate to him or by his predecessor-in-office.

(6) The State Government may, either on its own motion or on the application of any person aggrieved, rescind or alter any order made by it under the proviso to sub-section (4).

(7) Where an application under sub-section (5) or sub-section (6) is received, the Magistrate, or the State Government, as the case may be, shall afford to the applicant an early opportunity of appearing before him or it, either in person or by pleader and showing cause against the order; and if the Magistrate or the State Government, as the case may be, rejects the application wholly or in part, he or it shall record in writing the reasons for so doing.

LANDMARK JUDGMENT

Acharya Jagdishwaranand Avadhuta and Ors. vs. Commissioner of Police, Calcutta and Ors., MANU/SC/0050/1983

D.- - Disputes as to immovable property

164. Procedure where dispute concerning land or water is likely to cause breach of peace

(1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause

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a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by an advocate on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in the manner provided by this Sanhita for the service of summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) The Magistrate shall, without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub- section (1), in possession of the subject of dispute:

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date

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of his order under sub- section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub- section (1).

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub- section (1) shall be final.

(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso to sub- section (4) be treated as being, in such possession of the said subject of dispute, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub- section (4), may restore to possession the party forcibly and wrongfully dispossessed;

(b) the order made under this sub- section shall be served and published in the manner laid down in sub- section (3).

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

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(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale- proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of powers of the Magistrate to proceed under section 126.

Corresponding Provision of Previous Statute: Section 145, Code of Criminal Procedure, 1973

Section 145 – Procedure where dispute concerning land or water is likely to cause breach of peace –

(1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in the manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) The Magistrate shall then, without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, persue the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute:

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1).

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(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso to subsection (4) be treated as being, in such possession of the said subject, he shall issue an orderdeclaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3).

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of powers of the Magistrate to proceed under section 107.

LANDMARK JUDGMENT

Rajpati vs. Bachan and Ors., MANU/SC/0200/1980

R.H. Bhutani vs. Man J. Desai and Ors., MANU/SC/0343/1968

Mathuralal vs. Bhanwarlal and Ors., MANU/SC/0173/1979

165. Power to attach subject of dispute and to appoint receiver

(1) If the Magistrate at any time after making the order under sub-section (1) of section 164 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in section 164, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent Court

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has determined the rights of the parties thereto with regard to the person entitled to the possession thereof:

Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if no receiver in relation to such subject of dispute has been appointed by any Civil Court, make such arrangements as he considers proper for looking after the property or if he thinks fit, appoint a receiver thereof, who shall have, subject to the control of the Magistrate, all the powers of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908):

Provided that in the event of a receiver being subsequently appointed in relation to the subject of dispute by any Civil Court, the Magistrate- -

(a) shall order the receiver appointed by him to hand over the possession of the subject of dispute to the receiver appointed by the Civil Court and shall thereafter discharge the receiver appointed by him;

(b) may make such other incidental or consequential orders as may be just.

Corresponding Provision of Previous Statute: Section 146, Code of Criminal Procedure, 1973

Section 146 – Power to attach subject of dispute and to appoint receiver - (1) If the Magistrate at any time after making the order under sub-section (1) of section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof:

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Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if no receiver in relation to such subject of dispute has been appointed by any Civil Court, make such arrangements as he considers proper for looking after the property or if he thinks fit, appoint a receiver thereof, who shall have, subject to the control of the Magistrate, all the powers of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908):

Provided that in the event of a receiver being subsequently appointed in relation to the subject of dispute by any Civil Court, the Magistrate -

(a) shall order the receiver appointed by him to hand over the possession of the subject of dispute to the receiver appointed by the Civil Court and shall thereafter discharge the receiver appointed by him;

(b) may make such other incidental or consequential orders as may be just.

LANDMARK JUDGMENT

Mathuralal vs. Bhanwarlal and Ors., MANU/SC/0173/1979

166. Dispute concerning right of use of land or water

(1) Whenever an Executive Magistrate is satisfied from the report of a police officer or upon other information, that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land or water within his local jurisdiction, whether such right be claimed as an easement or otherwise, he shall make an order in writing, stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend his Court in person or by an advocate on a specified date and time and to put in written statements of their respective claims.

Explanation.- - For the purposes of this sub- section, the expression "land or water" has the meaning given to it in sub- section (2) of section 164.

(2) The Magistrate shall peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them respectively, consider the effect of such evidence, take such further

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evidence, if any, as he thinks necessary and, if possible, decide whether such right exists; and the provisions of section 164 shall, so far as may be, apply in the case of such inquiry.

(3) If it appears to such Magistrate that such rights exist, he may make an order prohibiting any interference with the exercise of such right, including, in a proper case, an order for the removal of any obstruction in the exercise of any such right:

Provided that no such order shall be made where the right is exercisable at all times of the year, unless such right has been exercised within three months next before the receipt under sub-section (1) of the report of a police officer or other information leading to the institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such receipt.

(4) When in any proceedings commenced under sub- section (1) of section 164 the Magistrate finds that the dispute is as regards an alleged right of user of land or water, he may, after recording his reasons, continue with the proceedings as if they had been commenced under sub- section (1), and when in any proceedings commenced under sub- section (1) the Magistrate finds that the dispute should be dealt with under section 164, he may, after recording his reasons, continue with the proceedings as if they had been commenced under sub- section (1) of section 164.

Corresponding Provision of Previous Statute: Section 147, Code of Criminal Procedure, 1973

Section 147 – Dispute concerning right of use of land or water - (1) Whenever an Executive Magistrate issatisfied from the report of a police officer or upon other information, that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land or water within his local jurisdiction, whether such right be claimed as an easement or otherwise, he shall make an order in writing, stating the

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grounds of his being so satisfied and requiring the parties concerned in such dispute to attend his Court in person or by pleader on a specified date and time and to put in written statements of their respective claims.

Explanation.—The expression "land or water" has the meaning given to it in sub-section (2) of section 145.

(2) The Magistrate shall then persue the statements so put in, hear the parties, receive all such evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence, if any, as he thinks necessary and, if possible, decide whether such right exists; and the provisions of section 145 shall, so far as may be, apply in the case of such inquiry.

(3) If it appears to such Magistrate that such rights exist, he may make an order prohibiting any interference with the exercise of such right, including, in a proper case, an order for the removal of any obstruction in the exercise of any such right:

Provided that no such order shall be made where the right is exercisable at all times of the year, unless such right has been exercised within three months next before the receipt under sub-section (1) of the report of a police officer or other information leading to the institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such receipt.

(4) When in any proceedings commenced under sub-section (1) of section 145 the Magistrate finds that the dispute is as regards an alleged right of user of land or water, he may, after recording his reasons, continue with the proceedings as if they had been commenced under sub-section (1), and when in any proceedings commenced under sub-section (1) the magistrate finds that the dispute should be dealt with under section 145, he may, after recording his reasons, continue with the proceedings as if they had been commenced under sub-section (1) of section 145.

167. Local inquiry

(1) Whenever a local inquiry is necessary for the purposes of section 164, section 165 or section 166, a District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

(2) The report of the person so deputed may be read as evidence in the case.

(3) When any costs have been incurred by any party to a proceeding under section 164, section 165 or section 166, the Magistrate passing a decision may direct by whom such costs shall be paid, whether by

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such party or by any other party to the proceeding, and whether in whole or in part or proportion and such costs may include any expenses incurred in respect of witnesses and of advocates' fees, which the Court may consider reasonable.

Corresponding Provision of Previous Statute: Section 148, Code of Criminal Procedure, 1973

Section 148 – . Local inquiry - (1) Whenever a local inquiry is necessary for the purposes of section 145, section 146 or section 147, a District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

(2) The report of the person so deputed may be read as evidence in the case.

(3) When any costs have been incurred by any party to a proceeding under section 145, section 146 or section 147, the Magistrate passing a decision may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion and such costs may include any expenses incurred in respect of witnesses and of pleaders' fees, which the Court may consider reasonable.

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CHAPTER XII

PREVENTIVE ACTION OF THE POLICE

168. Police to prevent cognizable offences

Every police officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence.

Corresponding Provision of Previous Statute: Section 149, Code of Criminal Procedure, 1973

Section 149 – Police to prevent cognizable offences - Every police officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence.

169. Information of design to commit cognizable offences

Every police officer receiving information of a design to commit any cognizable offence shall communicate such information to the police officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

Corresponding Provision of Previous Statute: Section 150, Code of Criminal Procedure, 1973

Section 150 – Information of design to commit cognizable offences - Every police officer receiving information of a design to commit any cognizable offence shall communicate such information to the police officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

170. Arrest to prevent commission of cognizable offences

(1) A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.
(2) No person arrested under sub- section (1) shall be detained in custody for a period exceeding twenty- four hours from the time of

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his arrest unless his further detention is required or authorised under any other provisions of this Sanhita or of any other law for the time being in force.

Corresponding Provision of Previous Statute: Section 151, Code of Criminal Procedure, 1973

Section 151 – Arrest to prevent the commission of cognizable offences - (1) A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

(2) No person arrested under sub-section (1) shall be detained in custody for a period exceeding twenty-four hours from the time of his arrest unless his further detention is required or authorised under any other provisions of this Code or of any other law for the time being in force.

171. Prevention of injury to public property

A police officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, movable or immovable, or the removal or injury of any public landmark, buoy or other mark used for navigation.

Corresponding Provision of Previous Statute: Section 152, Code of Criminal Procedure, 1973

Section 152 – Prevention of injury to public property - A police officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, movable or immovable, or the removal or injury of any public landmark or buoy or other mark used for navigation.

172. Persons bound to conform to lawful directions of police

(1) All persons shall be bound to conform to the lawful directions of a police officer given in fulfilment of any of his duty under this Chapter.

(2) A police officer may detain or remove any person resisting, refusing, ignoring or disregarding to conform to any direction given by him under sub- section (1) and may either take such person before a Magistrate or, in petty cases, release him as soon as possible within a period of twenty- four hours.

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CHAPTER XIII

INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE

173. Information in cognizable cases

(1) Every information relating to the commission of a cognizable offence, irrespective of the area where the offence is committed, may be given orally or by electronic communication to an officer in charge of a police station, and if given- -

(i) orally, it shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it;

(ii) by electronic communication, it shall be taken on record by him on being signed within three days by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may by rules prescribe in this behalf:

Provided that if the information is given by the woman against whom an offence under section 64, section 65, section 66, section 67, section 68, section 69, section 70, section 71, section 74, section 75, section 76, section 77, section 78, section 79 or section 124 of the Bharatiya Nyaya Sanhita, 2023 is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:

Provided further that- -

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(a) in the event that the person against whom an offence under section 64, section 65, section 66, section 67, section 68, section 69, section 70, section 71, section 74, section 75, section 76, section 77, section 78, section 79 or section 124 of the Bharatiya Nyaya Sanhita, 2023 is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

(b) the recording of such information shall be videographed;

(c) the police officer shall get the statement of the person recorded by a Magistrate under clause (a) of sub- section (6) of section 183 as soon as possible.

(2) A copy of the information as recorded under sub- section (1) shall be given forthwith, free of cost, to the informant or the victim.

(3) Without prejudice to the provisions contained in section 175, on receipt of information relating to the commission of any cognizable offence, which is made punishable for three years or more but less than seven years, the officer in charge of the police station may with the prior permission from an officer not below the rank of Deputy Superintendent of Police, considering the nature and gravity of the offence,- -

(i) proceed to conduct preliminary enquiry to ascertain whether there exists a prima facie case for proceeding in the matter within a period of fourteen days; or

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(ii) proceed with investigation when there exists a prima facie case.

(4) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1), may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Sanhita, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence failing which such aggrieved person may make an application to the Magistrate.

Corresponding Provision of Previous Statute: Section 154, Code of Criminal Procedure, 1973

Section 154 – Information in cognizable cases - (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf:

Provided that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB, section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:

Provided further that—

(a) in the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB, section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

(b) the recording of such information shall be video graphed;

(c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon as possible.

(2) A copy of the information as recorded under sub-section (1)shall be given forthwith, free of cost, to the informant.

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(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

LANDMARK JUDGMENT

Joginder Singh vs. The State of Punjab, MANU/PH/0338/1980

Lalita Kumari vs. Govt. of U.P. and Ors., MANU/SC/1166/2013

174. Information as to non- cognizable cases and investigation of such cases

(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may by rules prescribe in this behalf, and,- -

(i) refer the informant to the Magistrate;

(ii) forward the daily diary report of all such cases fortnightly to the Magistrate.

(2) No police officer shall investigate a non- cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

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(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non- cognizable.

Corresponding Provision of Previous Statute: Section 155, Code of Criminal Procedure, 1973

Section 155 – Information as to non-cognizable cases and investigation of such cases - (1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.

175. Police officer's power to investigate cognizable case

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIV:

Provided that considering the nature and gravity of the offence, the Superintendent of Police may require the Deputy Superintendent of Police to investigate the case.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 210 may, after considering the application supported by an affidavit made under

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sub- section (4) of section 173, and after making such inquiry as he thinks necessary and submission made in this regard by the police officer, order such an investigation as above- mentioned.

(4) Any Magistrate empowered under section 210, may, upon receiving a complaint against a public servant arising in course of the discharge of his official duties, order investigation, subject to- -

(a) receiving a report containing facts and circumstances of the incident from the officer superior to him; and

(b) after consideration of the assertions made by the public servant as to the situation that led to the incident so alleged.

Corresponding Provision of Previous Statute: Section 156, Code of Criminal Procedure, 1973

Section 156 – Police officer's power to investigate cognizable case - (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.

LANDMARK JUDGMENT

Sakiri Vasu vs. State of U.P. and Ors., MANU/SC/8179/2007

176. Procedure for investigation

(1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 175 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or

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special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender:

Provided that- -

(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case:

Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality and such statement may also be recorded through any audio- video electronic means including mobile phone.

(2) In each of the cases mentioned in clauses (a) and (b) of the first proviso to sub- section (1), the officer in charge of the police station shall state in his report the reasons for not fully complying with the requirements of that sub- section by him, and, forward the daily diary report fortnightly to the Magistrate and in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify

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to the informant, if any, in such manner as may be prescribed by rules made by the State Government.

(3) On receipt of every information relating to the commission of an offence which is made punishable for seven years or more, the officer in charge of a police station shall, from such date, as may be notified within a period of five years by the State Government in this regard, cause the forensic expert to visit the crime scene to collect forensic evidence in the offence and also cause videography of the process on mobile phone or any other electronic device:

Provided that where forensic facility is not available in respect of any such offence, the State Government shall, until the facility in respect of that matter is developed or made in the State, notify the utilisation of such facility of any other State.

Corresponding Provision of Previous Statute: Section 157, Code of Criminal Procedure, 1973

Section 157 – Procedure for investigation - (1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender:

Provided that—

(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality.]

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that subsection, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated.

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177. Report how submitted

(1) Every report sent to a Magistrate under section 176 shall, if the State Government so directs, be submitted through such superior officer of police as the State Government, by general or special order, appoints in that behalf.

(2) Such superior officer may give such instructions to the officer in charge of the police station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.

Corresponding Provision of Previous Statute: Section 158, Code of Criminal Procedure, 1973

Section 158 – Report how submitted - (1) Every report sent to a Magistrate under section 157 shall, if the State Government so directs, be submitted through such superior officer of police as the State Government, by general or special order, appoints in that behalf.

(2) Such superior officer may give such instructions to the officer in charge of the police station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.

178. Power to hold investigation or preliminary inquiry

The Magistrate, on receiving a report under section 176, may direct an investigation, or, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into, or otherwise to dispose of, the case in the manner provided in this Sanhita.

Corresponding Provision of Previous Statute: Section 159, Code of Criminal Procedure, 1973

Section 159 – Power to hold investigation or preliminary inquiry - Such Magistrate, on receiving such report, may direct an investigation, or, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into, or otherwise to dispose of, the case in the manner provided in this Code.

179. Police officer's power to require attendance of witnesses

(1) Any police officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of

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any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required:

Provided that no male person under the age of fifteen years or above the age of sixty years or a woman or a mentally or physically disabled person or a person with acute illness shall be required to attend at any place other than the place in which such person resides:

Provided further that if such person is willing to attend at the police station, such person may be permitted so to do.

(2) The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under sub- section (1) at any place other than his residence.

Corresponding Provision of Previous Statute: Section 160, Code of Criminal Procedure, 1973

Section 160 - Police officer's power to require attendance of witnesses - (1) Any police officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required:

Provided that no male person under the age of fifteen years or above the age of sixty-five years or a woman or a mentally or physically disabled person] shall be required to attend at any place other than the place in which such male person or woman resides.

(2) The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under sub-section (1) at any place other than his residence.

180. Examination of witnesses by police

(1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the

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requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records:

Provided that statement made under this sub- section may also be recorded by audio- video electronic means:

Provided further that the statement of a woman against whom an offence under section 64, section 65, section 66, section 67, section 68, section 69, section 70, section 71, section 74, section 75, section 76, section 77, section 78, section 79 or section 124 of the Bharatiya Nyaya Sanhita, 2023 is alleged to have been committed or attempted, shall be recorded, by a woman police officer or any woman officer.

Corresponding Provision of Previous Statute: Section 161, Code of Criminal Procedure, 1973

Section 161 - Examination of witnesses by police - (1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.

Provided that statement made under this sub-section may also be recorded by audio-video electronic means:

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Provided further that the statement of a woman against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB, section 376E or section 509 of the Indian Penal Code (45 of 1860)

LANDMARK JUDGMENT

Mukund Lal and Ors. vs. Union of India (UOI) and Ors., MANU/SC/0322/1988

181. Statements to police and use thereof

(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 148 of the Bharatiya Sakshya Adhiniyam, 2023; and when any part of such statement is so used, any part thereof may also be used in the re- examination of such witness, but for the purpose only of explaining any matter referred to in his cross- examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (a) of section 26 of the Bharatiya Sakshya Adhiniyam, 2023; or to affect the provisions of the proviso to sub- section (2) of section 23 of that Adhiniyam.

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Explanation.- - An omission to state a fact or circumstance in the statement referred to in sub- section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.

Corresponding Provision of Previous Statute: Section 162, Code of Criminal Procedure, 1973

Section 162 - Statements to police not to be signed: Use of statements in evidence - (1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his crossexamination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872); or to affect the provisions of section 27 of that Act.

Explanation.—An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.

LANDMARK JUDGMENT

Khatri and Ors. vs. State of Bihar and Ors., MANU/SC/0163/1981

Somappa Vamanappa Madar and Ors. vs. State of Mysore, MANU/SC/0249/1979

182. No inducement to be offered

(1) No police officer or other person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in section 22 of the Bharatiya Sakshya Adhiniyam, 2023.

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(2) But no police officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this Chapter any statement which he may be disposed to make of his own free will:

Provided that nothing in this sub- section shall affect the provisions of sub- section (4) of section 183.

Corresponding Provision of Previous Statute: Section 163, Code of Criminal Procedure, 1973

Section 163 - No inducement to be offered - (1) No police officer or other person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in section 24 of the Indian Evidence Act, 1872 (1 of 1872).

(2) But no police officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this Chapter any statement which he may be disposed to make of his own free will:

Provided that nothing in this sub-section shall affect the provisions of sub-section (4) of section 164.

183. Recording of confessions and statements

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 509 - Non-compliance with provisions of Section 183 or Section 316

(1) Any Magistrate of the District in which the information about commission of any offence has been registered, may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards but before the commencement of the inquiry or trial:

Provided that any confession or statement made under this sub-section may also be recorded by audio- video electronic means in the presence of the advocate of the person accused of an offence:

Provided further that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force.

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(2) The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily.

(3) If at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorise the detention of such person in police custody.

(4) Any such confession shall be recorded in the manner provided in section 316 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect:- -

"I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed)
A.B. Magistrate.".

(5) Any statement (other than a confession) made under sub- section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best

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fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded.

(6) (a) In cases punishable under section 64, section 65, section 66, section 67, section 68, section 69, section 70, section 71, section 74, section 75, section 76, section 77, section 78, section 79 or section 124 of the Bharatiya Nyaya Sanhita, 2023, the Magistrate shall record the statement of the person against whom such offence has been committed in the manner specified in sub- section (5), as soon as the commission of the offence is brought to the notice of the police:

Provided that such statement shall, as far as practicable, be recorded by a woman Magistrate and in her absence by a male Magistrate in the presence of a woman:

Provided further that in cases relating to the offences punishable with imprisonment for ten years or more or with imprisonment for life or with death, the Magistrate shall record the statement of the witness brought before him by the police officer:

Provided also that if the person making the statement is temporarily or permanently, mentally or physically disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement:

Provided also that if the person making the statement is temporarily or permanently, mentally or physically disabled, the statement made by the person, with the assistance of an interpreter or a special educator, shall be recorded through audio- video electronic means preferably by mobile phone;

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(b) a statement recorded under clause (a) of a person, who is temporarily or permanently, mentally or physically disabled, shall be considered a statement in lieu of examination- in- chief, as specified in section 142 of the Bharatiya Sakshya Adhiniyam, 2023 such that the maker of the statement can be cross- examined on such statement, without the need for recording the same at the time of trial.

Corresponding Provision of Previous Statute: Section 164, Code of Criminal Procedure, 1973

Section 164 - Recording of confessions and statements - (1) Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial:

Provided that any confession or statement made under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of an offence:

Provided further that no confession shall be recorded by a police officer on whom any power of a Magistratehas been conferred under any law for the time being in force.

(2) The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily.

(3) If at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorise the detention of such person in police custody.

(4) Any such confession shall be recorded in the manner provided in section 281 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect: —

"I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed) A. B.

Magistrate."

(5) Any statement (other than a confession) made under sub-section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded.

(5A) (a) In cases punishable under section 354, section 354A, section 354B, section 354C, section 354D, sub-section (1) or sub-section (2) of section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB, section 376E or section 509 of the Indian Penal Code (45 of 1860), the

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Judicial Magistrate shall record the statement of the person against whom such offence has been committed in the manner prescribed in sub-section (5), as soon as the commission of the offence is brought to the notice of the police:

Provided that if the person making the statement is temporarily or permanently mentally or physically disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement:

Provided further that if the person making the statement is temporarily or permanently mentally or physically disabled, the statement made by the person, with the assistance of an interpreter or a special educator, shall be video graphed.

(b) A statement recorded under clause (a) of a person, who is temporarily or permanently mentally or physically disabled, shall be considered a statement in lieu of examination-in-chief, as specified in section 137 of the Indian Evidence Act, 1872 (1 of 1872) such that the maker of the statement can be cross-examined on such statement, without the need for recording the same at the time of trial.

(6) The Magistrate recording a confession or statement under this section shall forward it to the Magistrate by whom the case is to be inquired into or tried

LANDMARK JUDGMENT

State of Uttar Pradesh vs. Singhara Singh and Ors., MANU/SC/0082/1963

184. Medical examination of victim of rape

(1) Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty- four hours from the time of receiving the information relating to the commission of such offence.

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(2) The registered medical practitioner, to whom such woman is sent, shall, without delay, examine her person and prepare a report of his examination giving the following particulars, namely:- -

(i) the name and address of the woman and of the person by whom she was brought;

(ii) the age of the woman;

(iii) the description of material taken from the person of the woman for DNA profiling;

(iv) marks of injury, if any, on the person of the woman;

(v) general mental condition of the woman; and

(vi) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The report shall specifically record that the consent of the woman or of the person competent to give such consent on her behalf to such examination had been obtained.

(5) The exact time of commencement and completion of the examination shall also be noted in the report.

(6) The registered medical practitioner shall, within a period of seven days forward the report to the investigating officer who shall forward it to the Magistrate referred to in section 193 as part of the documents referred to in clause (a) of sub- section (6) of that section.

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(7) Nothing in this section shall be construed as rendering lawful any examination without the consent of the woman or of any person competent to give such consent on her behalf.

Explanation.- - For the purposes of this section, "examination" and "registered medical practitioner" shall have the same meanings as respectively assigned to them in section 51.

Corresponding Provision of Previous Statute: Section 164A, Code of Criminal Procedure, 1973

Section 164A - Medical examination of the victim of rape - (1) Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.

(2) The registered medical practitioner, to whom such woman is sent, shall, without delay, examine her person and prepare a report of his examination giving the following particulars, namely: —

(i) the name and address of the woman and of the person by whom she was brought;

(ii) the age of the woman;

(iii) the description of material taken from the person of the woman for DNA profiling;

(iv) marks of injury, if any, on the person of the woman;

(v) general mental condition of the woman; and

(vi) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The report shall specifically record that the consent of the woman or of the person competent to give such consent on her behalf to such examination had been obtained.

(5) The exact time of commencement and completion of the examination shall also be noted in the report.

(6) The registered medical practitioner shall, without delay forward the report to the investigating officer who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.

(7) Nothing in this section shall be construed as rendering lawful any examination without the consent of the woman or of any person competent to give such consent on her behalf.

Explanation.—For the purposes of this section, "examination" and "registered medical practitioner" shall have the same meanings as in section 53.

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185. Search by police officer

(1) Whenever an officer in charge of a police station or a police officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief in the case- diary and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station.

(2) A police officer proceeding under sub- section (1), shall, if practicable, conduct the search in person:

Provided that the search conducted under this section shall be recorded through audio- video electronic means preferably by mobile phone.

(3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may, after recording in writing his reasons for so doing, require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the place to be searched, and so far as possible, the thing for which search is to be made; and such subordinate officer may thereupon search for such thing in such place.

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(4) The provisions of this Sanhita as to search- warrants and the general provisions as to searches contained in section 103 shall, so far as may be, apply to a search made under this section.

(5) Copies of any record made under sub- section (1) or sub- section (3) shall forthwith, but not later than forty- eight hours, be sent to the nearest Magistrate empowered to take cognizance of the offence, and the owner or occupier of the place searched shall, on application, be furnished, free of cost, with a copy of the same by the Magistrate.

Corresponding Provision of Previous Statute: Section 165, Code of Criminal Procedure, 1973

Section 165 - Search by police officer - (1) Whenever an officer in charge of a police station or a police officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station.

(2) A police officer proceeding under sub-section (1), shall, if practicable, conduct the search in person.

(3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may, after recording in writing his reasons for so doing, require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the place to be searched, and so far as possible, the thing for which search is to be made; and such subordinate officer may thereupon search for such thing in such place.

(4) The provisions of this Code as to search-warrants and the general provisions as to searches contained in section 100 shall, so far as may be, apply to a search made under this section.

(5) Copies of any record made under sub-section (1) or sub-section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence, and the owner or occupier of the place searched shall, on application, be furnished, free of cost, with a copy of the same by the Magistrate.

186. When officer in charge of police station may require another to issue search- warrant

(1) An officer in charge of a police station or a police officer not being below the rank of sub- inspector making an investigation may require an officer in charge of another police station, whether in the same or a different district, to cause a search to be made in any place,

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in any case in which the former officer might cause such search to be made, within the limits of his own station.

(2) Such officer, on being so required, shall proceed according to the provisions of section 185, and shall forward the thing found, if any, to the officer at whose request the search was made.

(3) Whenever there is reason to believe that the delay occasioned by requiring an officer in charge of another police station to cause a search to be made under sub- section (1) might result in evidence of the commission of an offence being concealed or destroyed, it shall be lawful for an officer in charge of a police station or a police officer making any investigation under this Chapter to search, or cause to be searched, any place in the limits of another police station in accordance with the provisions of section 185, as if such place were within the limits of his own police station.

(4) Any officer conducting a search under sub- section (3) shall forthwith send notice of the search to the officer in charge of the police station within the limits of which such place is situate, and shall also send with such notice a copy of the list (if any) prepared under section 103, and shall also send to the nearest Magistrate empowered to take cognizance of the offence, copies of the records referred to in sub- sections (1) and (3) of section 185.

(5) The owner or occupier of the place searched shall, on application, be furnished free of cost with a copy of any record sent to the Magistrate under sub- section (4).

Corresponding Provision of Previous Statute: Section 166, Code of Criminal Procedure, 1973

Section 166 - When officer in charge of police station may require another to issue search-warrant - (1) An officer in charge of a police station or a police officer not being below the rank of sub-inspector making an investigation may require an officer in charge of another police station, whether in the same or a different district, to cause a search to be made in any place, in any case in which the former officer might cause such

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search to be made, within the limits of his own station.

(2) Such officer, on being so required, shall proceed according to the provisions of section 165, and shall forward the thing found, if any, to the officer at whose request the search was made.

(3) Whenever there is reason to believe that the delay occasioned by requiring an officer in charge of another police station to cause a search to be made under sub-section (1) might result in evidence of the commission of an offence being concealed or destroyed, it shall be lawful for an officer in charge of a police station or a police officer making any investigation under this Chapter to search, or cause to be searched, any place in the limits of another police station in accordance with the provisions of section 165, as if such place were within the limits of his own police station.

(4) Any officer conducting a search under sub-section (3) shall forthwith send notice of the search to the officer in charge of the police station within the limits of which such place is situate, and shall also send with such notice a copy of the list (if any) prepared under section 100, and shall also send to the nearest Magistrate empowered to take cognizance of the offence, copies of the records referred to in sub-sections (1) and (3) of section 165.

(5) The owner or occupier of the place searched shall, on application, be furnished free of cost with a copy of any record sent to the Magistrate under sub-section (4).

187. Procedure when investigation cannot be completed in twenty-four hours

(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty- four hours fixed by section 58, and there are grounds for believing that the accusation or information is well- founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub- inspector, shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter specified relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, irrespective of whether he has or has no jurisdiction to try the case, after taking into consideration whether such person has not been released on bail or his bail has been cancelled, authorise, from time to time, the detention of the accused in such custody as

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such Magistrate thinks fit, for a term not exceeding fifteen days in the whole, or in parts, at any time during the initial forty days or sixty days out of detention period of sixty days or ninety days, as the case may be, as provided in sub- section (3), and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

(3) The Magistrate may authorise the detention of the accused person, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this sub- section for a total period exceeding- -

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of ten years or more;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub- section shall be deemed to be so released under the provisions of Chapter XXXV for the purposes of that Chapter.

(4) No Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the

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accused either in person or through the audio- video electronic means.

(5) No Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I.- - For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in sub-section (3), the accused shall be detained in custody so long as he does not furnish bail.

Explanation II.- - If any question arises whether an accused person was produced before the Magistrate as required under sub- section (4), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the audio- video electronic means, as the case may be:

Provided that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution:

Provided further that no person shall be detained otherwise than in police station under police custody or in prison under judicial custody or a place declared as prison by the Central Government or the State Government.

(6) Notwithstanding anything contained in sub- section (1) to sub-section (5), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-

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inspector, may, where a Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Magistrate have been conferred, a copy of the entry in the diary hereinafter specified relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub- section, shall be taken into account in computing the period specified in sub- section (3):

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.

(7) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

(8) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.

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(9) If in any case triable by a Magistrate as a summons- case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.

(10) Where any order stopping further investigation into an offence has been made under sub- section (9), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub- section (9) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify.

Corresponding Provision of Previous Statute: Section 167, Code of Criminal Procedure, 1973

Section 167 - Procedure when investigation cannot be completed in twenty-four hours - (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is wellfounded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that—

(a) the Magistrate may authorise the detention of the accused person, otherwise than in custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding—

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to

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and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I.—For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.

Explanation II.—If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.

Provided further that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution.

(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred, a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub-section (2):

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.

(3) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

(4) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.

(5) If in any case triable by a Magistrate as a summons-case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.

(6) Where any order stopping further investigation into an offence has been made under sub-section (5), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub-section (5) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify.

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LANDMARK JUDGMENT

Central Bureau of Investigation, Special Investigation Cell-I, New Delhi vs. Anupam J. Kulkarni, MANU/SC/0335/1992

188. Report of investigation by subordinate police officer

When any subordinate police officer has made any investigation under this Chapter, he shall report the result of such investigation to the officer in charge of the police station.

Corresponding Provision of Previous Statute: Section 168, Code of Criminal Procedure, 1973

Section 168 - Report of investigation by subordinate police officer - When any subordinate police officer has made any investigation under this Chapter, he shall report the result of such investigation to the officer in charge of the police station.

189. Release of accused when evidence deficient

If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond or bail bond, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report, and to try the accused or commit him for trial.

Corresponding Provision of Previous Statute: Section 169, Code of Criminal Procedure, 1973

Section 169 - Release of accused when evidence deficient - If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report, and to try the accused or commit him for trial.

190. Cases to be sent to Magistrate, when evidence is sufficient

(1) If, upon an investigation under this Chapter, it appears to the

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officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial, or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed:

Provided that if the accused is not in custody, the police officer shall take security from such person for his appearance before the Magistrate and the Magistrate to whom such report is forwarded shall not refuse to accept the same on the ground that the accused is not taken in custody.

(2) When the officer in charge of a police station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the facts and circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate as thereby directed and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

(3) If the Court of the Chief Judicial Magistrate is mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided

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reasonable notice of such reference is given to such complainant or persons.

(4) The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

Corresponding Provision of Previous Statute: Section 170, Code of Criminal Procedure, 1973

Section 170 - Cases to be sent to Magistrate, when evidence is sufficient - (1) If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial, or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

(2) When the officer in charge of a police station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the facts and circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate as thereby directed and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

(3) If the Court of the Chief Judicial Magistrate is mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference is given to such complainant or persons.

(4) The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

191. Complainant and witnesses not to be required to accompany police officer and not to be subject to restraint

No complainant or witness on his way to any Court shall be required to accompany a police officer, or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond:

Provided that if any complainant or witness refuses to attend or to execute a bond as directed in section 190, the officer in charge of the police station may forward him in custody to the Magistrate, who

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may detain him in custody until he executes such bond, or until the hearing of the case is completed.

Corresponding Provision of Previous Statute: Section 171, Code of Criminal Procedure, 1973

Section 171 - Complainant and witnesses not to be required to accompany police officer and not to be subjected toRestraint - No complainant or witness on his way to any Court shall be required to accompany a police officer, or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond:

Provided that, if any complainant or witness refuses to attend or to execute a bond as directed in section 170, the officer in charge of the police station may forward him in custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed.

192. Diary of proceedings in investigation

(1) Every police officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

(2) The statements of witnesses recorded during the course of investigation under section 180 shall be inserted in the case diary.

(3) The diary referred to in sub- section (1) shall be a volume and duly paginated.

(4) Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

(5) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police officer who made them to refresh his memory, or if the Court uses

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them for the purpose of contradicting such police officer, the provisions of section 148 or section 164, as the case may be, of the Bharatiya Sakshya Adhiniyam, 2023, shall apply.

Corresponding Provision of Previous Statute: Section 172, Code of Criminal Procedure, 1973

Section 172 - Diary of proceedings in investigation - (1) Every police officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

(1A) The statements of witnesses recorded during the course of investigation under section 161 shall be inserted in the case diary.

(1B) The diary referred to in sub-section (1) shall be a volume and duly paginated.]

(2) Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

(3) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of section 161 or section 145, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872), shall apply.

LANDMARK JUDGMENT

Khatri and Ors. vs. State of Bihar and Ors., MANU/SC/0163/1981

Mukund Lal and Ors. vs. Union of India (UOI) and Ors., MANU/SC/0322/1988

193. Report of police officer on completion of investigation

(1) Every investigation under this Chapter shall be completed without unnecessary delay.

(2) The investigation in relation to an offence under sections 64, 65, 66, 67, 68, 70, 71 of the Bharatiya Nyaya Sanhita, 2023 or under sections 4, 6, 8 or section 10 of the Protection of Children from Sexual Offences Act, 2012 (32 of 2012) shall be completed within two months from the date on which the information was recorded by the officer in charge of the police station.

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(3) (i) As soon as the investigation is completed, the officer in charge of the police station shall forward, including through electronic communication to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form as the State Government may, by rules provide, stating- -

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether the accused has been released on his bond or bail bond;

(g) whether the accused has been forwarded in custody under section 190;

(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 64, 65, 66, 67, 68, 70 or section 71 of the Bharatiya Nyaya Sanhita, 2023;

(i) the sequence of custody in case of electronic device;

(ii) the police officer shall, within a period of ninety days, inform the progress of the investigation by any means including through electronic communication to the informant or the victim;

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(iii) the officer shall also communicate, in such manner as the State Government may, by rules, provide, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(4) Where a superior officer of police has been appointed under section 177, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

(5) Whenever it appears from a report forwarded under this section that the accused has been released on his bond or bail bond, the Magistrate shall make such order for the discharge of such bond or bail bond or otherwise as he thinks fit.

(6) When such report is in respect of a case to which section 190 applies, the police officer shall forward to the Magistrate along with the report- -

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 180 of all the persons whom the prosecution proposes to examine as its witnesses.

(7) If the police officer is of opinion that any part of any such statement is not relevant to the subject matter of the proceedings or that its disclosure to the accused is not essential in the interests of

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justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(8) Subject to the provisions contained in sub- section (7), the police officer investigating the case shall also submit such number of copies of the police report along with other documents duly indexed to the Magistrate for supply to the accused as required under section 230:

Provided that supply of report and other documents by electronic communication shall be considered as duly served.

(9) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub- section (3) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form as the State Government may, by rules, provide; and the provisions of sub- sections (3) to (8) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub- section (3):

Provided that further investigation during the trial may be conducted with the permission of the Court trying the case and the same shall be completed within a period of ninety days which may be extended with the permission of the Court.

Corresponding Provision of Previous Statute: Section 173, Code of Criminal Procedure, 1973

Section 173 - Report of police officer on completion of investigation - (1) Every investigation under this Chapter shall be completed without unnecessary delay.

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(1A) The investigation in relation to an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E from the date on which the information was recorded by the officer in charge of the police station.

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating—

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170.

(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB] or section 376E of the Indian Penal Code (45 of 1860)].

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report—

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the

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officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

LANDMARK JUDGMENT

Bhagwant Singh vs. Commissioner of Police and Ors., MANU/SC/0063/1985

Habu vs. State of Rajasthan, MANU/RH/0023/1987

194. Police to enquire and report on suicide, etc.

(1) When the officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and, unless otherwise directed by any rule made by the State Government, or by any general or special order of the District or Sub- divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

(2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be

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forwarded to the District Magistrate or the Sub- divisional Magistrate within twenty- four hours.

(3) When- -

(i) the case involves suicide by a woman within seven years of her marriage; or

(ii) the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman; or

(iii) the case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf; or

(iv) there is any doubt regarding the cause of death; or

(v) the police officer for any other reason considers it expedient so to do, he shall, subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical person appointed in this behalf by the State Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub- divisional Magistrate and

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any other Executive Magistrate specially empowered in this behalf by the State Government or the District Magistrate.

Corresponding Provision of Previous Statute: Section 174, Code of Criminal Procedure, 1973

Section 174 - Police to enquire and report on suicide, etc - (1) When the officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any); such marks appear to have been inflicted.

(2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

(3) When—

(i) the case involves suicide by a woman within seven years of her marriage; or

(ii) the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman; or

(iii) the case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf; or

(iv) there is any doubt regarding the cause of death; or

(v) the police officer for any other reason considers it expedient so to do, he shall, subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the State Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-divisional Magistrate and any other Executive Magistrate specially empowered in this behalf by the State Government or the District Magistrate.

195. Power to summon persons

(1) A police officer proceeding under section 194 may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case and every person so summoned shall be bound to attend and to answer truly all questions other than

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questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture:

Provided that no male person under the age of fifteen years or above the age of sixty years or a woman or a mentally or physically disabled person or a person with acute illness shall be required to attend at any place other than the place where such person resides:

Provided further that if such person is willing to attend and answer at the police station, such person may be permitted so to do.

(2) If the facts do not disclose a cognizable offence to which section 190 applies, such persons shall not be required by the police officer to attend a Magistrate's Court.

Corresponding Provision of Previous Statute: Section 175, Code of Criminal Procedure, 1973

Section 175 - Power to summon persons - (1) A police officer proceeding under section 174 may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case and every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(2) If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the police officer to attend a Magistrate's Court.

196. Inquiry by Magistrate into cause of death

(1) When the case is of the nature referred to in clause (i) or clause (ii) of sub- section (3) of section 194, the nearest Magistrate empowered to hold inquests shall, and in any other case mentioned in sub- section (1) of section 194, any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police officer; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence.

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(2) Where,- -

(a) any person dies or disappears; or

(b) rape is alleged to have been committed on any woman, while such person or woman is in the custody of the police or in any other custody authorised by the Magistrate or the Court, under this Sanhita in addition to the inquiry or investigation held by the police, an inquiry shall be held by the Magistrate within whose local jurisdiction the offence has been committed.

(3) The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any manner hereinafter specified according to the circumstances of the case.

(4) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

(5) Where an inquiry is to be held under this section, the Magistrate shall, wherever practicable, inform the relatives of the deceased whose names and addresses are known, and shall allow them to remain present at the inquiry.

(6) The Magistrate or the Executive Magistrate or the police officer holding an inquiry or investigation under sub- section (2) shall, within twenty- four hours of the death of a person, forward the body with a view to its being examined to the nearest Civil Surgeon or other qualified medical person appointed in this behalf by the State

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Government, unless it is not possible to do so for reasons to be recorded in writing.

Explanation.- - In this section, the expression "relative" means parents, children, brothers, sisters and spouse.

Corresponding Provision of Previous Statute: Section 176, Code of Criminal Procedure, 1973

Section 176 - Inquiry by Magistrate into cause of death - (1) when the case is of the nature referred to in clause (i) or clause (ii) of sub-section (3) of section 174, the nearest Magistrate empowered to hold inquests shall, and in any other case mentioned in sub-section (1) of section 174, any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police officer; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence.
(1A) Where,—

(a) any person dies or disappears, or

(b) rape is alleged to have been committed on any woman,

while such person or woman is in the custody of the police or in any other custody authorised by the Magistrate or the Court, under this Code in addition to the inquiry or investigation held by the police, an inquiry shall be held by the Judicial Magistrate or the Metropolitan Magistrate, as the case may be, within whose local jurisdiction the offence has been committed.

(2) The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any manner hereinafter prescribed according to the circumstances of the case.

(3) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

(4) Where an inquiry is to be held under this section, the Magistrate shall, wherever practicable, inform the relatives of the deceased whose names and addresses are known, and shall allow them to remain present at the inquiry.

(5) The Judicial Magistrate or the Metropolitan Magistrate or Executive Magistrate or police officer holding an inquiry or investigation, as the case may be, under sub-section (1A) shall, within twenty-four hours of the death of a person, forward the body with a view to its being examined to the nearest Civil Surgeon or other qualified medical person appointed in this behalf by the State Government, unless it is not possible to do so for reasons to be recorded in writing.

Explanation.—In this section, the expression "relative" means parents, children, brothers, sisters and spouse.

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CHAPTER XIV

JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS

197. Ordinary place of inquiry and trial

Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

Corresponding Provision of Previous Statute: Section 177, Code of Criminal Procedure, 1973

Section 177 - Ordinary place of inquiry and trial - Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

198. Place of inquiry or trial

(a) When it is uncertain in which of several local areas an offence was committed; or

(b) where an offence is committed partly in one local area and partly in another; or

(c) where an offence is a continuing one, and continues to be committed in more local areas than one; or

(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

Corresponding Provision of Previous Statute: Section 178, Code of Criminal Procedure, 1973

Section 178 - Place of inquiry or trial - (a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed partly in one local area and partly in another, or

(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

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199. Offence triable where act is done or consequence ensues

When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.

Corresponding Provision of Previous Statute: Section 179, Code of Criminal Procedure, 1973

Section 179 - Offence triable where act is done or consequence ensues - When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.

200. Place of trial where act is an offence by reason of relation to other offence

When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, the first- mentioned offence may be inquired into or tried by a Court within whose local jurisdiction either act was done.

Corresponding Provision of Previous Statute: Section 180, Code of Criminal Procedure, 1973

Section 180 - Place of trial where act is an offence by reason of relation to other offence - When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, the first-mentioned offence may be inquired into or tried by a Court within whose local jurisdiction either act was done.

201. Place of trial in case of certain offences

(1) Any offence of dacoity, or of dacoity with murder, of belonging to a gang of dacoits, or of escaping from custody, may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the accused person is found.

(2) Any offence of kidnapping or abduction of a person may be inquired into or tried by a Court within whose local jurisdiction the

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person was kidnapped or abducted or was conveyed or concealed or detained.

(3) Any offence of theft, extortion or robbery may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the stolen property which is the subject of the offence was possessed by any person committing it or by any person who received or retained such property knowing or having reason to believe it to be stolen property.

(4) Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person.

(5) Any offence which includes the possession of stolen property may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the stolen property was possessed by any person who received or retained it knowing or having reason to believe it to be stolen property.

Corresponding Provision of Previous Statute: Section 181, Code of Criminal Procedure, 1973

Section 181 - Place of trial in case of certain offences - (1) Any offence of being a thug, or murder committed by a thug, of dacoity, of dacoity with murder, of belonging to a gang of dacoits, or of escaping from custody, may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the accused person is found.

(2) Any offence of kidnapping or abduction of a person may be inquired into or tried by a Court within whose local jurisdiction the person was kidnapped or abducted or was conveyed or concealed or detained.

(3) Any offence of theft, extortion or robbery may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the stolen property which is the subject of the offence was possessed by any person committing it or by any person who received or retained such property knowing or having reason to believe it to be stolen property.

(4) Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the

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subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person.

(5) Any offence which includes the possession of stolen property may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the stolen property was possessed by any person who received or retained it knowing or having reason to believe it to be stolen property.

202. Offences committed by means of electronic communications, letters, etc.

(1) Any offence which includes cheating, may, if the deception is practised by means of electronic communications or letters or telecommunication messages, be inquired into or tried by any Court within whose local jurisdiction such electronic communications or letters or messages were sent or were received; and any offence of cheating and dishonestly inducing delivery of property may be inquired into or tried by a Court within whose local jurisdiction the property was delivered by the person deceived or was received by the accused person.

(2) Any offence punishable under section 82 of the Bharatiya Nyaya Sanhita, 2023 may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the offender last resided with his or her spouse by the first marriage, or the wife by the first marriage has taken up permanent residence after the commission of the offence.

Corresponding Provision of Previous Statute: Section 182, Code of Criminal Procedure, 1973

Section 182 - Offences committed by letters, etc - (1) Any offence which includes cheating may, if the deception is practised by means of letters or telecommunication messages, be inquired into or tried by any Court within whose local jurisdiction such letters or messages were sent or were received; and any offence of cheating and dishonestly inducing delivery of property may be inquired into or tried by a Court within whose local jurisdiction the property was delivered by the person deceived or was received by the accused person.

(2) Any offence punishable under section 494 or section 495 of the Indian Penal Code (45 of 1860) may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the offender last resided with his or her spouse by the first marriage, or the wife by the first marriage has taken up permanent residence after the commission of the offence.

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203. Offence committed on journey or voyage

When an offence is committed whilst the person by or against whom, or the thing in respect of which, the offence is committed is in the course of performing a journey or voyage, the offence may be inquired into or tried by a Court through or into whose local jurisdiction that person or thing passed in the course of that journey or voyage.

Corresponding Provision of Previous Statute: Section 183, Code of Criminal Procedure, 1973

Section 183 - Offence committed on journey or voyage - When an offence is committed whilst the person by or against whom, or the thing in respect of which, the offence is committed is in the course of performing a journey or voyage, the offence may be inquired into or tried by a Court through or into whose local jurisdiction that person or thing passed in the course of that journey or voyage.

204. Place of trial for offences triable together

Where- -

(a) the offences committed by any person are such that he may be charged with, and tried at one trial for, each such offence by virtue of the provisions of section 242, section 243 or section 244; or

(b) the offence or offences committed by several persons are such that they may be charged with and tried together by virtue of the provisions of section 246, the offences may be inquired into or tried by any Court competent to inquire into or try any of the offences.

Corresponding Provision of Previous Statute: Section 184, Code of Criminal Procedure, 1973

Section 184 - Place of trial for offences triable together – Where -

(a) the offences committed by any person are such that he may be charged with, and tried at one trial for, each such offence by virtue of the provisions of section 219, section 220 or section 221, or

(b) the offence or offences committed by several persons are such that they may be charged with and tried together by virtue of the provisions of section 223,

the offences may be inquired into or tried by any Court competent to inquire into or try any of the offences.

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205. Power to order cases to be tried in different sessions divisions

Notwithstanding anything contained in the preceding provisions of this Chapter, the State Government may direct that any case or class of cases committed for trial in any district may be tried in any sessions division:

Provided that such direction is not repugnant to any direction previously issued by the High Court or the Supreme Court under the Constitution, or under this Sanhita or any other law for the time being in force.

Corresponding Provision of Previous Statute: Section 185, Code of Criminal Procedure, 1973

Section 185 - Power to order cases to be tried in different sessions divisions - Notwithstanding anything contained in the preceding provisions of this Chapter, the State Government may direct that any cases or class of cases committed for trial in any district may be tried in any sessions division:

Provided that such direction is not repugnant to any direction previously issued by the High Court or the Supreme Court under the Constitution, or under this Code or any other law for the time being in force.

206. High Court to decide, in case of doubt, district where inquiry or trial shall take place

Where two or more Courts have taken cognizance of the same offence and a question arises as to which of them ought to inquire into or try that offence, the question shall be decided- -

(a) if the Courts are subordinate to the same High Court, by that High Court;

(b) if the Courts are not subordinate to the same High Court, by the High Court within the local limits of whose appellate criminal jurisdiction the proceedings were first commenced, and thereupon all other proceedings in respect of that offence shall be discontinued.

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Corresponding Provision of Previous Statute: Section 186, Code of Criminal Procedure, 1973

Section 186 - High Court to decide, in case of doubt, district where inquiry or trial shall take place - Where two or more Courts have taken cognizance of the same offence and a question arises as to which of them ought to inquire into or try that offence, the question shall be decided—

(a) if the Courts are subordinate to the same High Court, by that High Court;

(b) if the Courts are not subordinate to the same High Court, by the High Court within the local limits of whose appellate criminal jurisdiction the proceedings were first commenced, and thereupon all other proceedings in respect of that offence shall be discontinued

207. Power to issue summons or warrant for offence committed beyond local jurisdiction

(1) When a Magistrate of the first class sees reason to believe that any person within his local jurisdiction has committed outside such jurisdiction (whether within or outside India) an offence which cannot, under the provisions of sections 197 to 205 (both inclusive), or any other law for the time being in force, be inquired into or tried within such jurisdiction but is under any law for the time being in force triable in India, such Magistrate may inquire into the offence as if it had been committed within such local jurisdiction and compel such person in the manner hereinbefore provided to appear before him, and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is not punishable with death or imprisonment for life and such person is ready and willing to give bail to the satisfaction of the Magistrate acting under this section, take a bond or bail bond for his appearance before the Magistrate having such jurisdiction.

(2) When there are more Magistrates than one having such jurisdiction and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person

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should be sent or bound to appear, the case shall be reported for the orders of the High Court.

Corresponding Provision of Previous Statute: Section 187, Code of Criminal Procedure, 1973

Section 187 - Power to issue summons or warrant for offence committed beyond local jurisdiction - (1) When a Magistrate of the first class sees reason to believe that any person within his local jurisdiction has committed outside such jurisdiction (whether within or outside India) an offence which cannot, under the provisions of sections 177 to 185 (both inclusive), or any other law for the time being in force, be inquired into or tried within such jurisdiction but is under some law for the time being in force triable in India, such Magistrate may inquire into the offence as if it had been committed within such local jurisdiction and compel such person in the manner hereinbefore provided to appear before him, and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is not punishable with death or imprisonment for life and such person is ready and willing to give bail to the satisfaction of the Magistrate acting under this section, take a bond with or without sureties for his appearance before the Magistrate having such jurisdiction.

(2) When there are more Magistrates than one having such jurisdiction and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent or bound to appear, the case shall be reported for the orders of the High Court.

208. Offence committed outside India

When an offence is committed outside India- -

(a) by a citizen of India, whether on the high seas or elsewhere; or
(b) by a person, not being such citizen, on any ship or aircraft registered in India, he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found or where the offence is registered in India:

Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government.

Corresponding Provision of Previous Statute: Section 188, Code of Criminal Procedure, 1973

Section 188 - Offence committed outside India - When an offence is committed outside India—

(a) by a citizen of India, whether on the high seas or elsewhere; or

(b) by a person, not being such citizen, on any ship or aircraft registered in India, he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found:

Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government.

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209. Receipt of evidence relating to offences committed outside India

When any offence alleged to have been committed in a territory outside India is being inquired into or tried under the provisions of section 208, the Central Government may, if it thinks fit, direct that copies of depositions made or exhibits produced, either in physical form or in electronic form, before a judicial officer, in or for that territory or before a diplomatic or consular representative of India in or for that territory shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

Corresponding Provision of Previous Statute: Section 189, Code of Criminal Procedure, 1973

Section 189 - Receipt of evidence relating to offences committed outside India - When any offence alleged to have been committed in a territory outside India is being inquired into or tried under the provisions of section 188, the Central Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before a Judicial officer in or for that territory or before a diplomatic or consular representative of India in or for that territory shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

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CHAPTER XV

Conditions Requisite for Initiation of Proceedings

210. Cognizance of offences by Magistrate

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub- section (2), may take cognizance of any offence- -

(a) upon receiving a complaint of facts, including any complaint filed by a person authorised under any special law, which constitutes such offence;

(b) upon a police report (submitted in any mode including electronic mode) of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub- section (1) of such offences as are within his competence to inquire into or try.

Corresponding Provision of Previous Statute: Section 190, Code of Criminal Procedure, 1973

Section 190 - Cognizance of offences by Magistrates - (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence—

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

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211. Transfer on application of accused

When a Magistrate takes cognizance of an offence under clause (c) of sub- section (1) of section 210, the accused shall, before any evidence is taken, be informed that he is entitled to have the case inquired into or tried by another Magistrate, and if the accused or any of the accused, if there be more than one, objects to further proceedings before the Magistrate taking cognizance, the case shall be transferred to such other Magistrate as may be specified by the Chief Judicial Magistrate in this behalf.

Corresponding Provision of Previous Statute: Section 191, Code of Criminal Procedure, 1973

Section 191 - Transfer on application of the accused - When a Magistrate takes cognizance of an offence under clause (c) of sub-section (1) of section 190, the accused shall, before any evidence is taken, be informed that he is entitled to have the case inquired into or tried by another Magistrate, and if the accused or any of the accused, if there be more than one, objects to further proceedings before the Magistrate taking cognizance, the case shall be transferred to such other Magistrate as may be specified by the Chief Judicial Magistrate in this behalf.

212. Making over of cases to Magistrates

(1) Any Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to any competent Magistrate subordinate to him.

(2) Any Magistrate of the first class empowered in this behalf by the Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to such other competent Magistrate as the Chief Judicial Magistrate may, by general or special order, specify, and thereupon such Magistrate may hold the inquiry or trial.

Corresponding Provision of Previous Statute: Section 192, Code of Criminal Procedure, 1973

Section 192 - Making over of cases to Magistrates - (1) Any Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to any competent Magistrate subordinate to him.

(2) Any Magistrate of the first class empowered in this behalf by the Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to such other competent Magistrate as the Chief Judicial Magistrate may, by general or special order, specify, and thereupon such Magistrate may hold the inquiry or trial.

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213. Cognizance of offences by Court of Session

Except as otherwise expressly provided by this Sanhita or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Sanhita.

Corresponding Provision of Previous Statute: Section 193, Code of Criminal Procedure, 1973

Section 193 - Cognizance of offences by Courts of Session - Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.

214. Additional Sessions Judges to try cases made over to them

An Additional Sessions Judge shall try such cases as the Sessions Judge of the division may, by general or special order, make over to him for trial or as the High Court may, by special order, direct him to try.

Corresponding Provision of Previous Statute: Section 194, Code of Criminal Procedure, 1973

Section 194 - Additional and Assistant Sessions Judges to try cases made over to them - As Additional Sessions Judge or Assistant Sessions Judge shall try such cases as the Sessions Judge of the division may, by general or special order, make over to him for trial or as the High Court may, by special order, direct him to try.

215. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence

(1) No Court shall take cognizance- -

(a) (i) of any offence punishable under sections 206 to 223 (both inclusive but excluding section 209) of the Bharatiya Nyaya Sanhita, 2023; or

(ii) of any abetment of, or attempt to commit, such offence; or

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(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate or of some other public servant who is authorised by the concerned public servant so to do;

(b) (i) of any offence punishable under any of the following sections of the Bharatiya Nyaya Sanhita, 2023, namely, sections 229 to 233 (both inclusive), 236, 237, 242 to 248 (both inclusive) and 267, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court; or

(ii) of any offence described in sub- section (1) of section 336, or punishable under sub- section (2) of section 340 or section 342 of the said Sanhita, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court; or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub- clause (i) or sub- clause (ii), except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant or by some other public servant who has been authorised to do so by him under clause (a) of sub- section (1), any authority to which he is administratively subordinate or who has authorised such public servant, may, order the withdrawal of the complaint and send a copy

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of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub- section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub- section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the Principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that- -

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

Corresponding Provision of Previous Statute: Section 195, Code of Criminal Procedure, 1973

Section 195 - Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence - (1) No Court shall take cognizance—

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, (45 of 1860), or

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(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.
(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the Principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that—

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

216. Procedure for witnesses in case of threatening, etc.

A witness or any other person may file a complaint in relation to an offence under section 232 of the Bharatiya Nyaya Sanhita, 2023.

Corresponding Provision of Previous Statute: Section 195A, Code of Criminal Procedure, 1973

Section 195A - Procedure for witnesses in case of threatening, etc. - A witness or any other person may file a complaint in relation to an offence under section 195A of the Indian Penal Code (45 of 1860).

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217. Prosecution for offences against State and for criminal conspiracy to commit such offence

(1) No Court shall take cognizance of- -

(a) any offence punishable under Chapter VII or under section 196, section 299 or sub- section (1) of section 353 of the Bharatiya Nyaya Sanhita, 2023; or

(b) a criminal conspiracy to commit such offence; or

(c) any such abetment, as is described in section 47 of the Bharatiya Nyaya Sanhita, 2023, except with the previous sanction of the Central Government or of the State Government.

(2) No Court shall take cognizance of- -

(a) any offence punishable under section 197 or sub- section (2) or sub- section (3) of section 353 of the Bharatiya Nyaya Sanhita, 2023; or

(b) a criminal conspiracy to commit such offence, except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.

(3) No Court shall take cognizance of the offence of any criminal conspiracy punishable under sub- section (2) of section 61 of the Bharatiya Nyaya Sanhita, 2023, other than a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceedings:

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Provided that where the criminal conspiracy is one to which the provisions of section 215 apply, no such consent shall be necessary.-

(4) The Central Government or the State Government may, before according sanction under sub- section (1) or sub- section (2) and the District Magistrate may, before according sanction under sub-section (2) and the State Government or the District Magistrate may, before giving consent under sub- section (3), order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in sub- section (3) of section 174.

Corresponding Provision of Previous Statute: Section 196, Code of Criminal Procedure, 1973

Section 196 - Prosecution for offences against the State and for criminal conspiracy to commit such offence - (1) No Court shall take cognizance of—

(a) any offence punishable under Chapter VI or under section 153A, section 295A or sub-section (1) of section 505 of the Indian Penal Code (45 of 1860), or

(b) a criminal conspiracy to commit such offence, or

(c) any such abetment, as is described in section 108A of the Indian Penal Code (45 of 1860), except with the previous sanction of the Central Government or of the State Government.

(1A) No Court shall take cognizance of—

(a) any offence punishable under section 153B or sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code (45 of 1860), or

(b) a criminal conspiracy to commit such offence, except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.

(2) No Court shall take cognizance of the offence of any criminal conspiracy punishable under section 120B of the Indian Penal Code (45 of 1860), other than a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceedings:

Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary.

(3) The Central Government or the State Government may, before according sanction under sub-section (1) or sub-section (1A) and the District Magistrate may, before according sanction under sub-section (1A) and the State Government or the District Magistrate may, before giving consent under sub-section (2), order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in sub-section (3) of section 155.

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218. Prosecution of Judges and public servants

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)- -

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted:

Provided further that such Government shall take a decision within a period of one hundred and twenty days from the date of the receipt of the request for sanction and in case it fails to do so, the sanction shall be deemed to have been accorded by such Government:

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Provided also that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 64, section 65, section 66, section 68, section 69, section 70, section 71, section 74, section 75, section 76, section 77, section 78, section 79, section 143, section 199 or section 200 of the Bharatiya Nyaya Sanhita, 2023.

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub- section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub- section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

(4) Notwithstanding anything contained in sub- section (3), no Court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(5) The Central Government or the State Government, may determine the person by whom, the manner in which, and the

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offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.

Corresponding Provision of Previous Statute: Section 197, Code of Criminal Procedure, 1973

Section 197 - Prosecution of Judges and public servants - (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)—

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.

Explanation.—For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB or section 509 of the Indian Penal Code (45 of 1860).

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

(3A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991 (43 of 1991), receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.

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(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.

LANDMARK JUDGMENT

B.S. Sambhu vs. T.S. Krishnaswamy, MANU/SC/0054/1982;

Darshan Kumar vs. Sushil Kumar Malhotra and Ors., MANU/HP/0027/1979

219. Prosecution for offences against marriage

(1) No Court shall take cognizance of an offence punishable under sections 81 to 84 (both inclusive) of the Bharatiya Nyaya Sanhita, 2023 except upon a complaint made by some person aggrieved by the offence:

Provided that- -

(a) where such person is a child, or is of unsound mind or is having intellectual disability requiring higher support needs, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf;

(b) where such person is the husband and he is serving in any of the Armed Forces of the Union under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, some other person authorised by the husband in accordance with the provisions of sub- section (4) may make a complaint on his behalf;

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(c) where the person aggrieved by an offence punishable under section 82 of the Bharatiya Nyaya Sanhita, 2023 is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister, or, with the leave of the Court, by any other person related to her by blood, marriage or adoption.

(2) For the purposes of sub- section (1), no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under section 84 of the Bharatiya Nyaya Sanhita, 2023.

(3) When in any case falling under clause (a) of the proviso to sub-section (1), the complaint is sought to be made on behalf of a child or of a person of unsound mind by a person who has not been appointed or declared by a competent authority to be the guardian of the child, or of the person of unsound mind, and the Court is satisfied that there is a guardian so appointed or declared, the Court shall, before granting the application for leave, cause notice to be given to such guardian and give him a reasonable opportunity of being heard.

(4) The authorisation referred to in clause (b) of the proviso to sub-section (1), shall be in writing, shall be signed or otherwise attested by the husband, shall contain a statement to the effect that he has been informed of the allegations upon which the complaint is to be founded, shall be countersigned by his Commanding Officer, and shall be accompanied by a certificate signed by that Officer to the effect that leave of absence for the purpose of making a complaint in person cannot for the time being be granted to the husband.

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(5) Any document purporting to be such an authorisation and complying with the provisions of sub- section (4), and any document purporting to be a certificate required by that sub- section shall, unless the contrary is proved, be presumed to be genuine and shall be received in evidence.

(6) No Court shall take cognizance of an offence under section 64 of the Bharatiya Nyaya Sanhita, 2023, where such offence consists of sexual intercourse by a man with his own wife, the wife being under eighteen years of age, if more than one year has elapsed from the date of the commission of the offence.

(7) The provisions of this section apply to the abetment of, or attempt to commit, an offence as they apply to the offence.

Corresponding Provision of Previous Statute: Section 198, Code of Criminal Procedure, 1973

Section 198 - Prosecution for offences against marriage - (1) No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:

Provided that—

(a) where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf;

(b) where such person is the husband and he is serving in any of the Armed Forces of the Union under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, some other person authorised by the husband in accordance with the provisions of sub-section (4) may make a complaint on his behalf;

(c) where the person aggrieved by an offence punishable under section 494 or section 495] of the Indian Penal Code (45 of 1860) is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister, or, with the leave of the Court, by any other person related to her by blood, marriage or adoption.

(2) For the purposes of sub-section (1), no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under section 497 or section 498 of the said Code:

Provided that in the absence of the husband, some person who had care of the woman on his behalf at the time when such offence was committed may, with the leave of the Court, make a complaint on his behalf.

(3) When in any case falling under clause (a) of the proviso to sub-section (1), the complaint is sought to be made on behalf of a person under the age of eighteen years or of a lunatic by a person who has not been

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appointed or declared by a competent authority to be the guardian of the person of the minor or lunatic, and the Court is satisfied that there is a guardian so appointed or declared, the Court shall, before granting the application for leave, cause notice to be given to such guardian and give him a reasonable opportunity of being heard.

(4) The authorisation referred to in clause (b) of the proviso to sub-section (1), shall be in writing, shall be signed or otherwise attested by the husband, shall contain a statement to the effect that he has been informed of the allegations upon which the complaint is to be founded, shall be countersigned by his Commanding Officer, and shall be accompanied by a certificate signed by that Officer to the effect that leave of absence for the purpose of making a complaint in person cannot for the time being be granted to the husband.

(5) Any document purporting to be such an authorisation and complying with the provisions of sub-section (4), and any document purporting to be a certificate required by that sub-section shall, unless the contrary is proved, be presumed to be genuine and shall be received in evidence.

(6) No Court shall take cognizance of an offence under section 376 of the Indian Penal Code (45 of 1860), where such offence consists of sexual intercourse by a man with his own wife, the wife being under eighteen years of age, if more than one year has elapsed from the date of the commission of the offence.

(7) The provisions of this section apply to the abetment of, or attempt to commit, an offence as they apply to the offence.

220. Prosecution of offences under section 85 of Bharatiya Nyaya Sanhita, 2023

No Court shall take cognizance of an offence punishable under section 85 of the Bharatiya Nyaya Sanhita, 2023 except upon a police report of facts which constitute such offence or upon a complaint made by the person aggrieved by the offence or by her father, mother, brother, sister or by her father's or mother's brother or sister or, with the leave of the Court, by any other person related to her by blood, marriage or adoption.

Corresponding Provision of Previous Statute: Section 198A, Code of Criminal Procedure, 1973

Section 198A - Prosecution of offences under section 498A of the Indian Penal Code - No Court shall take cognizance of an offence punishable under section 498A of the Indian Penal Code (45 of 1860) except upon a police report of facts which constitute such offence or upon a complaint made by the person aggrieved by the offence or by her father, mother, brother, sister or by her father's or mother's brother or sister or, with the leave of the Court, by any other person related to her by blood, marriage or adoption

221. Cognizance of offence

No Court shall take cognizance of an offence punishable under section 67 of the Bharatiya Nyaya Sanhita, 2023 where the persons

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are in a marital relationship, except upon prima facie satisfaction of the facts which constitute the offence upon a complaint having been filed or made by the wife against the husband.

Corresponding Provision of Previous Statute: Section 198B, Code of Criminal Procedure, 1973

Section 198B - Cognizance of offence - No Court shall take cognizance of an offence punishable under section 376B of the Indian Penal Code (45 of 1860) where the persons are in a marital relationship, except upon prima facie satisfaction of the facts which constitute the offence upon a complaint having been filed or made by the wife against the husband.

222. Prosecution for defamation

(1) No Court shall take cognizance of an offence punishable under section 356 of the Bharatiya Nyaya Sanhita, 2023 except upon a complaint made by some person aggrieved by the offence:

Provided that where such person is a child, or is of unsound mind or is having intellectual disability or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.

(2) Notwithstanding anything contained in this Sanhita, when any offence falling under section 356 of the Bharatiya Nyaya Sanhita, 2023 is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Governor of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions, a Court of Session may take

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cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

(3) Every complaint referred to in sub- section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(4) No complaint under sub- section (2) shall be made by the Public Prosecutor except with the previous sanction- -

(a) of the State Government,- -

(i) in the case of a person who is or has been the Governor of that State or a Minister of that Government;

(ii) in the case of any other public servant employed in connection with the affairs of the State;

(b) of the Central Government, in any other case.

(5) No Court of Session shall take cognizance of an offence under sub- section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint.

Corresponding Provision of Previous Statute: Section 199, Code of Criminal Procedure, 1973

Section 199 - Prosecution for defamation - (1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:

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Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.

(2) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Governor of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

(3) Every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(4) No complaint under sub-section (2) shall be made by the Public Prosecutor except with the previous sanction—

(a) of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government;

(b) of the State Government, in the case of any other public servant employed in connection with the affairs of the State;

(c) of the Central Government, in any other case.

(5) No Court of Session shall take cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint.

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CHAPTER XVI

COMPLAINTS TO MAGISTRATES

223. Examination of complainant

(1) A Magistrate having jurisdiction while taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard:

Provided further that when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses- -

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 212:

Provided also that if the Magistrate makes over the case to another Magistrate under section 212 after examining the complainant and the witnesses, the latter Magistrate need not re- examine them.

(2) A Magistrate shall not take cognizance on a complaint against a public servant for any offence alleged to have been committed in course of the discharge of his official functions or duties unless- -

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(a) such public servant is given an opportunity to make assertions as to the situation that led to the incident so alleged; and

(b) a report containing facts and circumstances of the incident from the officer superior to such public servant is received.

Corresponding Provision of Previous Statute: Section 200, Code of Criminal Procedure, 1973

Section 200 - Examination of complainant - A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses—

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

224. Procedure by Magistrate not competent to take cognizance of case

If the complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall,- -

(a) if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect;

(b) if the complaint is not in writing, direct the complainant to the proper Court.

Corresponding Provision of Previous Statute: Section 201, Code of Criminal Procedure, 1973

Section 201 - Procedure by Magistrate not competent to take cognizance of the case - If the complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall,—

(a) if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect;

(b) if the complaint is not in writing, direct the complainant to the proper Court.

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225. Postponement of issue of process

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 212, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made.- -

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 223.

(2) In an inquiry under sub- section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub- section (1) is made by a person not being a police officer, he shall have for that investigation all the

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powers conferred by this Sanhita on an officer in charge of a police station except the power to arrest without warrant.

Corresponding Provision of Previous Statute: Section 202, Code of Criminal Procedure, 1973

Section 202 - Postponement of issue of process - (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,—

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.

226. Dismissal of complaint

If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 225, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.

Corresponding Provision of Previous Statute: Section 203, Code of Criminal Procedure, 1973

Section 203 - Dismissal of complaint - If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.

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CHAPTER XVII

COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES

227. Issue of process

(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be-

-

(a) a summons- case, he shall issue summons to the accused for his attendance; or

(b) a warrant- case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction:

Provided that summons or warrants may also be issued through electronic means.

(2) No summons or warrant shall be issued against the accused under sub- section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub- section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process- fees or other fees are payable, no process shall be issued until the fees are

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paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of section 90.

Corresponding Provision of Previous Statute: Section 204, Code of Criminal Procedure, 1973

Section 204 - Issue of process - (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be—

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of section 87.

228. Magistrate may dispense with personal attendance of accused

(1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his advocate.

(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner hereinbefore provided.

Corresponding Provision of Previous Statute: Section 205, Code of Criminal Procedure, 1973

Section 205 - Magistrate may dispense with personal attendance of accused - (1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader.

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(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner hereinbefore provided.

229. Special summons in cases of petty offence

(1) If, in the opinion of a Magistrate taking cognizance of a petty offence, the case may be summarily disposed of under section 283 or section 284, the Magistrate shall, except where he is, for reasons to be recorded in writing of a contrary opinion, issue summons to the accused requiring him either to appear in person or by an advocate before the Magistrate on a specified date, or if he desires to plead guilty to the charge without appearing before the Magistrate, to transmit before the specified date, by post or by messenger to the Magistrate, the said plea in writing and the amount of fine specified in the summons or if he desires to appear by an advocate and to plead guilty to the charge through such advocate, to authorise, in writing, the advocate to plead guilty to the charge on his behalf and to pay the fine through such advocate:

Provided that the amount of the fine specified in such summons shall not exceed five thousand rupees.

(2) For the purposes of this section, "petty offence" means any offence punishable only with fine not exceeding five thousand rupees, but does not include any offence so punishable under the Motor Vehicles Act, 1988 (59 of 1988), or under any other law which provides for convicting the accused person in his absence on a plea of guilty.

(3) The State Government may, by notification, specially empower any Magistrate to exercise the powers conferred by sub- section (1)

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in relation to any offence which is compoundable under section 359 or any offence punishable with imprisonment for a term not exceeding three months, or with fine, or with both where the Magistrate is of opinion that, having regard to the facts and circumstances of the case, the imposition of fine only would meet the ends of justice.

Corresponding Provision of Previous Statute: Section 206, Code of Criminal Procedure, 1973

Section 206 - Special summons in cases of petty offence - (1) If, in the opinion of a Magistrate taking cognizance of a petty offence, the case may be summarily disposed of under section 260 or section 261, the Magistrate shall, except where he is, for reasons to be recorded in writing of a contrary opinion, issue summons to the accused requiring him either to appear in person or by pleader before the Magistrate on a specified date, or if he desires to plead guilty to the charge without appearing before the Magistrate, to transmit before the specified date, by post or by messenger to the Magistrate, the said plea in writing and the amount of fine specified in the summons or if he desires to appear by pleader and to plead guilty to the charge through such pleader, to authorise, in writing, the pleader to plead guilty to the charge on his behalf and to pay the fine through such pleader:

Provided that the amount of the fine specified in such summons shall not exceed one thousand rupees.

(2) For the purposes of this section, "petty offence" means any offence punishable only with fine not exceeding one thousand rupees, but does not include any offence so punishable under the Motor Vehicles Act, 1939 (4 of 1939), or under any other law which provides for convicting the accused person in his absence on a plea of guilty.

(3) The State Government may, by notification, specially empower any Magistrate to exercise the powers conferred by sub-section (1) in relation to any offence which is compoundable under section 320 or any offence punishable with imprisonment for a term not exceeding three months, or with fine, or with both where the Magistrate is of opinion that, having regard to the facts and circumstances of the case, the imposition of fine only would meet the ends of justice.

230. Supply to accused of copy of police report and other documents

In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay, and in no case beyond fourteen days from the date of production or appearance of the accused, furnish to the accused and the victim (if represented by an advocate) free of cost, a copy of each of the following:- -

(i) the police report;

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(ii) the first information report recorded under section 173;

(iii) the statements recorded under sub- section (3) of section 180 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section (7) of section 193;

(iv) the confessions and statements, if any, recorded under section 183;

(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub- section (6) of section 193:

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused:

Provided further that if the Magistrate is satisfied that any such document is voluminous, he shall, instead of furnishing the accused and the victim (if represented by an advocate) with a copy thereof, may furnish the copies through electronic means or direct that he will only be allowed to inspect it either personally or through an advocate in Court:

Provided also that supply of documents in electronic form shall be considered as duly furnished.

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Corresponding Provision of Previous Statute: Section 207, Code of Criminal Procedure, 1973

Section 207 - Supply to the accused of copy of police report and other documents - In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following: —

(i) the police report;

(ii) the first information report recorded under section 154;

(iii) the statements recorded under sub-section (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section (6) of section 173;

(iv) the confessions and statements, if any, recorded under section 164;

(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of section 173:

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused:

Provided further that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.

231. Supply of copies of statements and documents to accused in other cases triable by Court of Session

Where, in a case instituted otherwise than on a police report, it appears to the Magistrate issuing process under section 227 that the offence is triable exclusively by the Court of Session, the Magistrate shall forthwith furnish to the accused, free of cost, a copy of each of the following:- -

(i) the statements recorded under section 223 or section 225, of all persons examined by the Magistrate;

(ii) the statements and confessions, if any, recorded under section 180 or section 183;
(iii) any documents produced before the Magistrate on which the prosecution proposes to rely:

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Provided that if the Magistrate is satisfied that any such document is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through an advocate in Court:

Provided further that supply of documents in electronic form shall be considered as duly furnished.

Corresponding Provision of Previous Statute: Section 208, Code of Criminal Procedure, 1973

Section 208 - Supply of copies of statements and documents to accused in other cases triable by Court of Session - Where, in a case instituted otherwise than on a police report, it appears to the Magistrate issuing process under section 204 that the offence is triable exclusively by the Court of Session, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:—

(i) the statements recorded under section 200 or section 202, of all persons examined by the Magistrate;

(ii) the statements and confessions, if any, recorded under section 161 or section 164;

(iii) any documents produced before the Magistrate on which the prosecution proposes to rely:

Provided that if the Magistrate is satisfied that any such document is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.

232. Commitment of case to Court of Session when offence is triable exclusively by it

When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall- -

(a) commit, after complying with the provisions of section 230 or section 231 the case to the Court of Session, and subject to the provisions of this Sanhita relating to bail, remand the accused to custody until such commitment has been made;

(b) subject to the provisions of this Sanhita relating to bail, remand the accused to custody during, and until the conclusion of, the trial;

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(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;

(d) notify the Public Prosecutor of the commitment of the case to the Court of Session:

Provided that the proceedings under this section shall be completed within a period of ninety days from the date of taking cognizance, and such period may be extended by the Magistrate for a period not exceeding one hundred and eighty days for the reasons to be recorded in writing:

Provided further that any application filed before the Magistrate by the accused or the victim or any person authorised by such person in a case triable by Court of Session, shall be forwarded to the Court of Session with the committal of the case.

Corresponding Provision of Previous Statute: Section 209, Code of Criminal Procedure, 1973

Section 209 - Commitment of case to Court of Session when offence is triable exclusively by it - When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall -

(a) commit, after complying with the provisions of section 207 or section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;

(b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;

(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;

(d) notify the Public Prosecutor of the commitment of the case to the Court of Session.

233. Procedure to be followed when there is a complaint case and police investigation in respect of same offence

(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to

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the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject- matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under section 193 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Sanhita.

Corresponding Provision of Previous Statute: Section 210, Code of Criminal Procedure, 1973

Section 210 - Procedure to be followed when there is a complaint case and police investigation in respect of the same offence - (1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.

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CHAPTER XVIII

THE CHARGE

A.- Form of charges

234. Contents of charge

(1) Every charge under this Sanhita shall state the offence with which the accused is charged.

(2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

(3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

(6) The charge shall be written in the language of the Court.

(7) If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit, to award for the subsequent offence, the fact, date and place of the

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previous conviction shall be stated in the charge; and if such statement has been omitted, the Court may add it at any time before sentence is passed.

Illustrations

(a) A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in sections 100 and 101 of the Bharatiya Nyaya Sanhita, 2023; that it did not fall within any of the general exceptions of the said Sanhita; and that it did not fall within any of the five exceptions to section 101 thereof, or that, if it did fall within Exception 1, one or other of the three provisos to that exception applied to it.

(b) A is charged under sub- section (2) of section 118 of the Bharatiya Nyaya Sanhita, 2023, with voluntarily causing grievous hurt to B by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by sub- section (2) of section 122 of the said Sanhita, and that the general exceptions did not apply to it.

(c) A is accused of murder, cheating, theft, extortion, or criminal intimidation, or using a false property- mark. The charge may state that A committed murder, or cheating, or theft, or extortion, or criminal intimidation, or that he used a false property- mark, without reference to the definitions, of those crimes contained in the Bharatiya Nyaya Sanhita, 2023; but the sections under which the offence is punishable must, in each instance be referred to in the charge.

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(d) A is charged under section 219 of the Bharatiya Nyaya Sanhita, 2023, with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

Corresponding Provision of Previous Statute: Section 211, Code of Criminal Procedure, 1973

Section 211 - Contents of charge - (1) Every charge under this Code shall state the offence with which the accused is charged.

(2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

(3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

(6) The charge shall be written in the language of the Court.

(7) If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge; and if such statement has been omitted, the Court may add it at any time before sentence is passed.

Illustrations

(a) A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code (45 of 1860); that it did not fall within any of the general exceptions of the said Code; and that it did not fall within any of the five exceptions to section 300, or that, if it did fall within Exception 1, one or other of the three provisos to that exception applied to it.

(b) A is charged under section 326 of the Indian Penal Code (45 of 1860), with voluntarily causing grievous hurt to B by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the said Code, and that the general exceptions did not apply to it.

(c) A is accused of murder, cheating, theft, extortion, adultery or criminal intimidation, or using a false property-mark. The charge may state that A committed murder, or cheating, or theft, or extortion, or adultery, or criminal intimidation, or that he used a false property-mark, without reference to the definitions, of those crimes contained in the Indian Penal Code (45 of 1860); but the sections under which the offence is punishable must, in each instance be referred to in the charge.

(d) A is charged under section 184 of the Indian Penal Code (45 of 1860) with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

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235. Particulars as to time, place and person

(1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money or other movable property, it shall be sufficient to specify the gross sum or, as the case may be, describe the movable property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 242:

Provided that the time included between the first and last of such dates shall not exceed one year.

Corresponding Provision of Previous Statute: Section 212, Code of Criminal Procedure, 1973

Section 212 - Particulars as to time, place and person - (1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money or other movable property, it shall be sufficient to specify the gross sum or, as the case may be, describe the movable property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 219:

Provided that the time included between the first and last of such dates shall not exceed one year.

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236. When manner of committing offence must be stated

When the nature of the case is such that the particulars mentioned in sections 234 and 235 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Illustrations

(a) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(b) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B.

(c) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false.

(d) A is accused of obstructing B, a public servant, in the discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions.

(e) A is accused of the murder of B at a given time and place. The charge need not state the manner in which A murdered B.

(f) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobedience charged and the law infringed.

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Corresponding Provision of Previous Statute: Section 213, Code of Criminal Procedure, 1973

Section 213 - When manner of committing offence must be stated - When the nature of the case is such that the particulars mentioned in sections 211 and 212 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Illustrations

(a) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(b) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B.

(c) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false.

(d) A is accused of obstructing B, a public servant, in the discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions.

(e) A is accused of the murder of B at a given time and place. The charge need not state the manner in which A murdered B.

(f) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobedience charged and the law infringed

237. Words in charge taken in sense of law under which offence is punishable

In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

Corresponding Provision of Previous Statute: Section 214, Code of Criminal Procedure, 1973

Section 214 - Words in charge taken in sense of law under which offence is punishable - In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

238. Effect of errors

No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material,

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unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

Illustrations.

(a) A is charged under section 180 of the Bharatiya Nyaya Sanhita, 2023, with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit," the word "fraudulently" being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material.

(b) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge or is set out incorrectly. A defends himself, calls witnesses and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(c) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in the case, a material error.

(d) A is charged with the murder of Khoda Baksh on the 21st January, 2023. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January, 2023. A was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of

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Haidar Baksh. The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial.

(e) A was charged with murdering Haidar Baksh on the 20th January, 2023, and Khoda Baksh (who tried to arrest him for that murder) on the 21st January, 2023. When charged for the murder of Haidar Baksh, he was tried for the murder of Khoda Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that A was misled, and that the error was material.

Corresponding Provision of Previous Statute: Section 215, Code of Criminal Procedure, 1973

Section 215 - Effect of errors - No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

Illustrations

(a) A is charged under section 242 of the Indian Penal Code (45 of 1860), with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit," the word "fraudulently" being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material.

(b) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge or is set out incorrectly. A defends himself, calls witnesses and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(c) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in the case, a material error.

(d) A is charged with the murder of Khoda Baksh on the 21st January, 1882. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January, 1882. A was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial.

(e) A was charged with murdering Haidar Baksh on the 20th January, 1882, and Khoda Baksh (who tried to arrest him for that murder) on the 21st January, 1882. When charged for the murder of Haidar Baksh, he was tried for the murder of Khoda Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that A was misled, and that the error was material.

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239. Court may alter charge

(1) Any Court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.

Corresponding Provision of Previous Statute: Section 216, Code of Criminal Procedure, 1973

Section 216 - Court may alter charge - (1) Any Court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

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(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.

240. Recall of witnesses when charge altered

Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed- -

(a) to recall or re- summon, and examine with reference to such alteration or addition, any witness who may have been examined, unless the Court, for reasons to be recorded in writing, considers that the prosecutor or the accused, as the case may be, desires to recall or re- examine such witness for the purpose of vexation or delay or for defeating the ends of justice;

(b) also to call any further witness whom the Court may think to be material.

Corresponding Provision of Previous Statute: Section 217, Code of Criminal Procedure, 1973

Section 217 - Recall of witnesses when charge altered - Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed —

(a) to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, unless the Court, for reasons to be recorded in writing, considers that the prosecutor or the accused, as the case may be, desires to recall or re-examine such witness for the purpose of vexation or delay or for defeating the ends of justice;

(b) also to call any further witness whom the Court may think to be material.

B.- - Joinder of charges

241. Separate charges for distinct offences

(1) For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately:

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Provided that where the accused person, by an application in writing, so desires and the Magistrate is of opinion that such person is not likely to be prejudiced thereby, the Magistrate may try together all or any number of the charges framed against such person.

(2) Nothing in sub- section (1) shall affect the operation of the provisions of sections 242, 243, 244 and 246.

Illustration.

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and causing grievous hurt.

Corresponding Provision of Previous Statute: Section 218, Code of Criminal Procedure, 1973

Section 218 - Separate charges for distinct offences - (1) For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately:

Provided that where the accused person, by an application in writing, so desires and the Magistrate is of opinion that such person is not likely to be prejudiced thereby, the Magistrate may try together all or any number of the charges framed against such person.

(2) Nothing in sub-section (1) shall affect the operation of the provisions of sections 219, 220, 221 and 223.

Illustration

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and causing grievous hurt.

242. Offences of same kind within year may be charged together

(1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding five.

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(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Bharatiya Nyaya Sanhita, 2023 or of any special or local law:

Provided that for the purposes of this section, an offence punishable under sub- section (2) of section 303 of the Bharatiya Nyaya Sanhita, 2023 shall be deemed to be an offence of the same kind as an offence punishable under section 305 of the said Sanhita, and that an offence punishable under any section of the said Sanhita, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.

Corresponding Provision of Previous Statute: Section 219, Code of Criminal Procedure, 1973

Section 219 - Three offences of same kind within year may be charged together - (1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code (45 of 1860) or of any special or local law:

Provided that, for the purposes of this section, an offence punishable under section 379 of the Indian Penal Code (45 of 1860) shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, and that an offence punishable under any section of the said Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.

243. Trial for more than one offence

(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub- section (2) of section 235 or in sub- section (1) of

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section 242, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.

(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

(4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.

(5) Nothing contained in this section shall affect section 9 of the Bharatiya Nyaya Sanhita, 2023.

Illustrations to sub- section (1)

(a) A rescues B, a person in lawful custody, and in so doing causes grievous hurt to C, a constable in whose custody B was. A may be charged with, and convicted of, offences under sub- section (2) of section 121 and section 263 of the Bharatiya Nyaya Sanhita, 2023.

(b) A commits house- breaking by day with intent to commit rape, and commits, in the house so entered, rape with B's wife. A may be separately charged with, and convicted of, offences under section 64

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and sub- section (3) of section 331 of the Bharatiya Nyaya Sanhita, 2023.

(c) A has in his possession several seals, knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under section 337 of the Bharatiya Nyaya Sanhita, 2023. A may be separately charged with, and convicted of, the possession of each seal under sub- section (2) of section 341 of the Bharatiya Nyaya Sanhita, 2023.

(d) With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding, and also falsely accuses B of having committed an offence, knowing that there is no just or lawful ground for such charge. A may be separately charged with, and convicted of, two offences under section 248 of the Bharatiya Nyaya Sanhita, 2023.

(e) A, with intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of, offences under sections 230 and 248 of the Bharatiya Nyaya Sanhita, 2023.

(f) A, with six others, commits the offences of rioting, grievous hurt and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. A may be separately charged with, and convicted of, offences under sub- section (2) of section 117, sub-

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section (2) of section 191 and section 195 of the Bharatiya Nyaya Sanhita, 2023.

(g) A threatens B, C and D at the same time with injury to their persons with intent to cause alarm to them. A may be separately charged with, and convicted of, each of the three offences under sub-sections (2) and (3) of section 351 of the Bharatiya Nyaya Sanhita, 2023.

The separate charges referred to in illustrations (a) to (g), respectively, may be tried at the same time.

Illustrations to sub- section (3)

(h) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under sub- section (2) of section 115 and section 131 of the Bharatiya Nyaya Sanhita, 2023.

(i) Several stolen sacks of corn are made over to A and B, who knew they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain- pit. A and B may be separately charged with, and convicted of, offences under sub- sections (2) and (5) of section 317 of the Bharatiya Nyaya Sanhita, 2023.

(j) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with, and convicted of, offences under sections 93 and 105 of the Bharatiya Nyaya Sanhita, 2023.

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(k) A dishonestly uses a forged document as genuine evidence, in order to convict B, a public servant, of an offence under section 201 of the Bharatiya Nyaya Sanhita, 2023. A may be separately charged with, and convicted of, offences under section 233 and sub- section (2) of section 340 (read with section 337) of that Sanhita.

Illustration to sub- section (4)

(l) A commits robbery on B, and in doing so voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under sub- section (2) of section 115 and sub- sections (2) and (4) of section 309 of the Bharatiya Nyaya Sanhita, 2023.

Corresponding Provision of Previous Statute: Section 220, Code of Criminal Procedure, 1973

Section 220 - Trial for more than one offence - (1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub-section (2) of section 212 or in sub-section (1) of section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.

(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

(4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.

(5) Nothing contained in this section shall affect section 71 of the Indian Penal Code (45 of 1860).

Illustrations to sub-section (1)

(a) A rescues B, a person in lawful custody, and in so doing causes grievous hurt to C, a constable in whose custody B was. A may be charged with, and convicted of, offences under sections 225 and 333 of the Indian Penal Code (45 of 1860).

(b) A commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with B's wife. A may be separately charged with, and convicted of, offences under sections 454 and 497 of the Indian Penal Code (45 of 1860).

(c) A entices B, the wife of C, away from C, with intent to commit adultery with B, and then commits adultery with her. A may be separately charged with, and convicted of, offences under sections 498 and 497 of the

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Indian Penal Code (45 of 1860).

(d) A has in his possession several seals, knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under section 466 of the Indian Penal Code (45 of 1860). A may be separately charged with, and convicted of, the possession of each seal under section 473 of the Indian Penal Code.

(e) With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding, and also falsely accuses B of having committed an offence, knowing that there is no just or lawful ground for such charge. A may be separately charged with, and convicted of, two offences under section 211 of the Indian Penal Code (45 of 1860).

(f) A, with intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of, offences under sections 211 and 194 of the Indian Penal Code (45 of 1860).

(g) A, with six others, commits the offences of rioting, grievous hurt and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. A may be separately charged with, and convicted of, offences under sections 147, 325 and 152 of the Indian Penal Code (45 of 1860).

(h) A threatens B, C and D at the same time with injury to their persons with intent to cause alarm to them. A may be separately charged with, and convicted of, each of the three offences under section 506 of the Indian Penal Code (45 of 1860).

The separate charges referred to in illustrations (a) to (h), respectively, may be tried at the same time.

Illustrations to sub-section (3)

(i) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under sections 352 and 323 of the Indian Penal Code (45 of 1860).

(j) Several stolen sacks of corn are made over to A and B, who knew they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain-pit. A and B may be separately charged with, and convicted of, offences under sections 411 and 414 of the Indian Penal Code (45 of 1860).

(k) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with, and convicted of, offences under sections 317 and 304 of the Indian Penal Code (45 of 1860).

(l) A dishonestly uses a forged document as genuine evidence, in order to convict B, a public servant, of an offence under section 167 of the Indian Penal Code (45 of 1860). A may be separately charged with, and convicted of, offences under sections 471 (read with section 466) and 196 of that Code.

Illustration to sub-section (4)

(m) A commits robbery on B, and in doing so voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under sections 323, 392 and 394 of the Indian Penal Code (45 of 1860).

244. Where it is doubtful what offence has been committed

(1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will

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constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed someone of the said offences.

(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub- section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

Illustrations.

(a) A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating.

(b) In the case mentioned, A is only charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be), though he was not charged with such offence.

(c) A states on oath before the Magistrate that he saw B hit C with a club. Before the Sessions Court A states on oath that B never hit C. A may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false.

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Corresponding Provision of Previous Statute: Section 221, Code of Criminal Procedure, 1973

Section 221 - Where it is doubtful what offence has been committed - (1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

Illustrations

(a) A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating.

(b) In the case mentioned, A is only charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be), though he was not charged with such offence.

(c) A states on oath before the Magistrate that he saw B hit C with a club. Before the Sessions Court A states on oath that B never hit C. A may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false.

245. When offence proved included in offence charged

(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

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(4) Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied.

Illustrations.

(a) A is charged, under sub- section (3) of section 316 of the Bharatiya Nyaya Sanhita, 2023, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears, that he did commit criminal breach of trust under sub- section (2) of section 316 of that Sanhita in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under the said sub- section (2) of section 316.

(b) A is charged, under sub- section (2) of section 117 of the Bharatiya Nyaya Sanhita, 2023, with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under sub- section (2) of section 122 of that Sanhita.

Corresponding Provision of Previous Statute: Section 222, Code of Criminal Procedure, 1973

Section 222 - When offence proved included in offence charged - (1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

(4) Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied.

Illustrations

(a) A is charged, under section 407 of the Indian Penal Code (45 of 1860), with criminal breach of trust in respect of property entrusted to him as a carrier. It appears, that he did commit criminal breach of trust under section 406 of that Code in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under the said section 406.

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(b) A is charged, under section 325 of the Indian Penal Code (45 of 1860), with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of that Code.

246. What persons may be charged jointly

The following persons may be charged and tried together, namely:-

(a) persons accused of the same offence committed in the course of the same transaction;

(b) persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence;

(c) persons accused of more than one offence of the same kind, within the meaning of section 242 committed by them jointly within the period of twelve months;

(d) persons accused of different offences committed in the course of the same transaction;

(e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first- named persons, or of abetment of or attempting to commit any such last- named offence;

(f) persons accused of offences under sub- sections (2) and (5) of section 317 of the Bharatiya Nyaya Sanhita, 2023 or either of those sections in respect of stolen property the possession of which has been transferred by one offence;

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(g) persons accused of any offence under Chapter X of the Bharatiya Nyaya Sanhita, 2023 relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges:

Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the Magistrate or Court of Session may, if such persons by an application in writing, so desire, and if he or it is satisfied that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together.

Corresponding Provision of Previous Statute: Section 223, Code of Criminal Procedure, 1973

Section 223 - What persons may be charged jointly - The following persons may be charged and tried together, namely:—

(a) persons accused of the same offence committed in the course of the same transaction;

(b) persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence;

(c) persons accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months;

(d) persons accused of different offences committed in the course of the same transaction;

(e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such lastnamed offence;

(f) persons accused of offences under sections 411 and 414 of the Indian Penal Code (45 of 1860) or either of those sections in respect of stolen property the possession of which has been transferred by one offence;

(g) persons accused of any offence under Chapter XII of the Indian Penal Code (45 of 1860) relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges:

Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the Magistrate or Court of Session may, if such persons by an application in writing, so desire, and if he or it is satisfied] that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together.

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247. Withdrawal of remaining charges on conviction on one of several charges

When a charge containing more heads than one is framed against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw the remaining charge or charges, or the Court of its own accord may stay the inquiry into, or trial of, such charge or charges and such withdrawal shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into, or trial of, the charge or charges so withdrawn.

Corresponding Provision of Previous Statute: Section 224, Code of Criminal Procedure, 1973

Section 224 - Withdrawal of remaining charges on conviction on one of several charges - When a charge containing more heads than one is framed against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw the remaining charge or charges, or the Court of its own accord may stay the inquiry into, or trial of, such charge or charges and such withdrawal shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into, or trial of, the charge or charges so withdrawn.

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CHAPTER XIX

Trial before a Court of Session

248. Trial to be conducted by Public Prosecutor

In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.

Corresponding Provision of Previous Statute: Section 225, Code of Criminal Procedure, 1973

Section 225 - Trial to be conducted by Public Prosecutor - In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.

249. Opening case for prosecution

When the accused appears or is brought before the Court, in pursuance of a commitment of the case under section 232, or under any other law for the time being in force, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused.

Corresponding Provision of Previous Statute: Section 226, Code of Criminal Procedure, 1973

Section 226 - Opening case for prosecution - When the accused appears or is brought before the Court in pursuance of a commitment of the case under section 209, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused.

250. Discharge

(1) The accused may prefer an application for discharge within a period of sixty days from the date of commitment of the case under section 232.

(2) If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that

Linked Provisions

Territorial Army Act, 1948 - Section 8 – Discharge

Provincal Insolvency Act, 1920 - Section 41 – Discharge

Provincal Insolvency Act, 1920 - Section 42 – Discharge

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there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

Provincal Insolvency Act, 1920 - Section 43 – Discharge

Provincal Insolvency Act, 1920 - Section 44 – Discharge

National Cadet Corps Act, 1948 - Section 8 – Discharge

Lok Sahayak Sena Act, 1956 - Section 7 – Discharge

Indian Territorial Force Act, 1920 - Section 8 – Discharge

Indian Securities Act, 1920 - Section 17 – Discharge

Indian Securities Act, 1920 - Section 18A – Discharge

Indian Army Act, 1911 - Section 16 – Discharge

Indian Air Force Act, 1932 - Section 15 – Discharge

Auxiliary Force Act, 1920 - Section 17 - Discharge

Corresponding Provision of Previous Statute: Section 227, Code of Criminal Procedure, 1973

Section 227 – Discharge - If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

LANDMARK JUDGMENT

Sajjan Kumar vs. Central Bureau of Investigation, MANU/SC/0741/2010

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251. Framing of charge

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which- -

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant- cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused within a period of sixty days from the date of first hearing on charge.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused present either physically or through audio- video electronic means and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

Corresponding Provision of Previous Statute: Section 228, Code of Criminal Procedure, 1973

Section 228 – Framing of charge - (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

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(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

252. Conviction on plea of guilty

If the accused pleads guilty, the Judge shall record the plea and may, in his discretion, convict him thereon.

Corresponding Provision of Previous Statute: Section 229, Code of Criminal Procedure, 1973

Section 229 – Conviction on plea of guilty - If the accused pleads guilty, the Judge shall record the plea and may, in his discretion, convict him thereon.

253. Date for prosecution evidence

If the accused refuses to plead, or does not plead, or claims to be tried or is not convicted under section 252, the Judge shall fix a date for the examination of witnesses, and may, on the application of the prosecution, issue any process for compelling the attendance of any witness or the production of any document or other thing.

Corresponding Provision of Previous Statute: Section 230, Code of Criminal Procedure, 1973

Section 230 – Date for prosecution evidence - If the accused refuses to plead, or does not plead, or claims to be tried or is not convicted under section 229, the Judge shall fix a date for the examination of witnesses, and may, on the application of the prosecution, issue any process for compelling the attendance of any witness or the production of any document or other thing.

254. Evidence for prosecution

(1) On the date so fixed, the Judge shall proceed to take all such evidence as may be produced in support of the prosecution:

Provided that evidence of a witness under this sub- section may be recorded by audio- video electronic means.

(2) The deposition of evidence of any public servant may be taken through audio- video electronic means.

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(3) The Judge may, in his discretion, permit the cross- examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.

Corresponding Provision of Previous Statute: Section 231, Code of Criminal Procedure, 1973

Section 231 – Evidence for prosecution - (1) On the date so fixed, the Judge shall proceed to take all such evidence as may be produced in support of the prosecution.

(2) The Judge may, in his discretion, permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.

255. Acquittal

If, after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal.

Corresponding Provision of Previous Statute: Section 232, Code of Criminal Procedure, 1973

Section 232 – Acquittal - If, after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal.

256. Entering upon defence

(1) Where the accused is not acquitted under section 255, he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof.

(2) If the accused puts in any written statement, the Judge shall file it with the record.

(3) If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for

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reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.

Corresponding Provision of Previous Statute: Section 233, Code of Criminal Procedure, 1973

Section 233 – Entering upon defence - (1) Where the accused is not acquitted under section 232, he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof.

(2) If the accused puts in any written statement, the Judge shall file it with the record.

(3) If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.

257. Arguments

When the examination of the witnesses (if any) for the defence is complete, the prosecutor shall sum up his case and the accused or his advocate shall be entitled to reply:

Provided that where any point of law is raised by the accused or his advocate, the prosecution may, with the permission of the Judge, make his submissions with regard to such point of law.

Corresponding Provision of Previous Statute: Section 234, Code of Criminal Procedure, 1973

Section 234 – Arguments - When the examination of the witnesses (if any) for the defence is complete, the prosecutor shall sum up his case and the accused or his pleader shall be entitled to reply:

Provided that where any point of law is raised by the accused or his pleader, the prosecution may, with the permission of the Judge, make his submissions with regard to such point of law.

258. Judgment of acquittal or conviction

(1) After hearing arguments and points of law (if any), the Judge shall give a judgment in the case, as soon as possible, within a period of thirty days from the date of completion of arguments, which may be extended to a period of forty- five days for reasons to be recorded in writing.

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(2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 401, hear the accused on the questions of sentence, and then pass sentence on him according to law.

Corresponding Provision of Previous Statute: Section 235, Code of Criminal Procedure, 1973

Section 235 – Judgment of acquittal or conviction - (1) After hearing arguments and points of law (if any), the Judge shall give a judgment in the case.

(2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 360, hear the accused on the questions of sentence, and then pass sentence on him according to law.

LANDMARK JUDGMENT

Santa Singh vs. The State of Punjab, MANU/SC/0167/1976

259. Previous conviction

In a case where a previous conviction is charged under the provisions of sub- section (7) of section 234, and the accused does not admit that he has been previously convicted as alleged in the charge, the Judge may, after he has convicted the said accused under section 252 or section 258, take evidence in respect of the alleged previous conviction, and shall record a finding thereon:

Provided that no such charge shall be read out by the Judge nor shall the accused be asked to plead thereto nor shall the previous conviction be referred to by the prosecution or in any evidence adduced by it, unless and until the accused has been convicted under section 252 or section 258.

Corresponding Provision of Previous Statute: Section 236, Code of Criminal Procedure, 1973

Section 236 – Previous conviction - In a case where a previous conviction is charged under the provisions of sub-section (7) of section 211, and the accused does not admit that he has been previously convicted as alleged in the charge, the Judge may, after he has convicted the said accused under section 229 or section 235, take evidence in respect of the alleged previous conviction, and shall record a finding thereon:

Provided that no such charge shall be read out by the Judge nor shall the accused be asked to plead thereto nor shall the previous conviction be referred to by the prosecution or in any evidence adduced by it, unless and until the accused has been convicted under section 229 or section 235.

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260. Procedure in cases instituted under sub- section (2) of section 222

(1) A Court of Session taking cognizance of an offence under sub-section (2) of section 222 shall try the case in accordance with the procedure for the trial of warrant- cases instituted otherwise than on a police report before a Court of Magistrate:

Provided that the person against whom the offence is alleged to have been committed shall, unless the Court of Session, for reasons to be recorded, otherwise directs, be examined as a witness for the prosecution.

(2) Every trial under this section shall be held in camera if either party thereto so desires or if the Court thinks fit so to do.

(3) If, in any such case, the Court discharges or acquits all or any of the accused and is of opinion that there was no reasonable cause for making the accusation against them or any of them, it may, by its order of discharge or acquittal, direct the person against whom the offence was alleged to have been committed (other than the President, theVice- President or the Governor of a State or the Administrator of a Union territory) to show cause why he should not pay compensation to such accused or to each or any of such accused, when there are more than one.

(4) The Court shall record and consider any cause which may be shown by the person so directed, and if it is satisfied that there was no reasonable cause for making the accusation, it may, for reasons to be recorded, make an order that compensation to such amount not

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exceeding five thousand rupees, as it may determine, be paid by such person to the accused or to each or any of them.

(5) Compensation awarded under sub- section (4) shall be recovered as if it were a fine imposed by a Magistrate.

(6) No person who has been directed to pay compensation under sub- section (4) shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made under this section:

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(7) The person who has been ordered under sub- section (4) to pay compensation may appeal from the order, in so far as it relates to the payment of compensation, to the High Court.

(8) When an order for payment of compensation to an accused person is made, the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided.

Corresponding Provision of Previous Statute: Section 237, Code of Criminal Procedure, 1973

Section 237 – Procedure in cases instituted under section 199(2) - (1) A Court of Session taking cognizance of an offence under sub-section (2) of section 199 shall try the case in accordance with the procedure for the trial of warrant-cases instituted otherwise than on a police report before a Court of Magistrate:

Provided that the person against whom the offence is alleged to have been committed shall, unless the Court of Session, for reasons to be recorded, otherwise directs, be examined as a witness for the prosecution.

(2) Every trial under this section shall be held in camera if either party thereto so desires or if the Court thinks fit so to do.

(3) If, in any such case, the Court discharges or acquits all or any of the accused and is of opinion that there was no reasonable cause for making the accusation against them or any of them, it may, by its order of

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discharge or acquittal, direct the person against whom the offence was alleged to have been committed (other than the President, Vice-President or the Governor of a State or the Administrator of a Union territory) to show cause why he should not pay compensation to such accused or to each or any of such accused, when there are more than one.

(4) The Court shall record and consider any cause which may be shown by the person so directed, and if it is satisfied that there was no reasonable cause for making the accusation, it may, for reasons to be recorded, make an order that compensation to such amount not exceeding one thousand rupees, as it may determine, be paid by such person to the accused or to each or any of them.

(5) Compensation awarded under sub-section (4) shall be recovered as if it were a fine imposed by a Magistrate.

(6) No person who has been directed to pay compensation under sub-section (4) shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made under this section:

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(7) The person who has been ordered under sub-section (4) to pay compensation may appeal from the order, in so far as it relates to the payment of compensation, to the High Court.

(8) When an order for payment of compensation to an accused person is made, the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided.

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CHAPTER XX

TRIAL OF WARRANT- CASES BY MAGISTRATES

A.- - Cases instituted on a police report

261. Compliance with section 230

When, in any warrant- case instituted on a police report, the accused appears or is brought before a Magistrate at the commencement of the trial, the Magistrate shall satisfy himself that he has complied with the provisions of section 230.

Corresponding Provision of Previous Statute: Section 238, Code of Criminal Procedure, 1973

Section 238 – Compliance with section 207 - When, in any warrant-case instituted on a police report, the accused appears or is brought before a Magistrate at the commencement of the trial, the Magistrate shall satisfy himself that he has complied with the provisions of section 207.

262. When accused shall be discharged

(1) The accused may prefer an application for discharge within a period of sixty days from the date of supply of copies of documents under section 230.

(2) If, upon considering the police report and the documents sent with it under section 193 and making such examination, if any, of the accused, either physically or through audio- video electronic means, as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

Corresponding Provision of Previous Statute: Section 239, Code of Criminal Procedure, 1973

Section 239 – When accused shall be discharged - If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

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263. Framing of charge

(1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused within a period of sixty days from the date of first hearing on charge.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.

Corresponding Provision of Previous Statute: Section 240, Code of Criminal Procedure, 1973

Section 240 – Framing of charge - (1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.

264. Conviction on plea of guilty

If the accused pleads guilty, the Magistrate shall record the plea and may, in his discretion, convict him thereon.

Corresponding Provision of Previous Statute: Section 241, Code of Criminal Procedure, 1973

Section 241 – Conviction on plea of guilty - If the accused pleads guilty, the Magistrate shall record the plea and may, in his discretion, convict him thereon

265. Evidence for prosecution

(1) If the accused refuses to plead or does not plead, or claims to be tried or the Magistrate does not convict the accused under section 264, the Magistrate shall fix a date for the examination of witnesses:

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Provided that the Magistrate shall supply in advance to the accused, the statement of witnesses recorded during investigation by the police.

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

(3) On the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution:

Provided that the Magistrate may permit the cross- examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross- examination:

Provided further that the examination of a witness under this sub-section may be done by audio- video electronic means at the designated place to be notified by the State Government.

Corresponding Provision of Previous Statute: Section 242, Code of Criminal Procedure, 1973

Section 242 – Evidence for prosecution - (1) If the accused refuses to plead or does not plead, or claims to be tried or the Magistrate does not convict the accused under section 241, the Magistrate shall fix a date for the examination of witnesses:

Provided that the Magistrate shall supply in advance to the accused, the statement of witnesses recorded during investigation by the police.

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

(3) On the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution:

Provided that the Magistrate may permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.

266. Evidence for defence

(1) The accused shall then be called upon to enter upon his defence and

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produce his evidence; and if the accused puts in any written statement, the Magistrate shall file it with the record.

(2) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross- examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing:

Provided that when the accused has cross- examined or had the opportunity of cross- examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice:

Provided further that the examination of a witness under this sub-section may be done by audio- video electronic means at the designated place to be notified by the State Government.

(3) The Magistrate may, before summoning any witness on an application under sub- section (2), require that the reasonable expenses incurred by the witness in attending for the purposes of the trial be deposited in Court.

Corresponding Provision of Previous Statute: Section 243, Code of Criminal Procedure, 1973

Section 243 – Evidence for defence - (1) The accused shall then be called upon to enter upon his defence and produce his evidence; and if the accused puts in any written statement, the Magistrate shall file it with the record.

(2) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that

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such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing:

Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice.

(3) The Magistrate may, before summoning any witness on an application under sub-section (2), require that the reasonable expenses incurred by the witness in attending for the purposes of the trial be deposited in Court.

B.- - Cases instituted otherwise than on police report

267. Evidence for prosecution

(1) When, in any warrant- case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

Corresponding Provision of Previous Statute: Section 244, Code of Criminal Procedure, 1973

Section 244 – Evidence for prosecution - (1) When, in any warrant-case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing

268. When accused shall be discharged

(1) If, upon taking all the evidence referred to in section 267, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

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(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

Corresponding Provision of Previous Statute: Section 245, Code of Criminal Procedure, 1973

Section 245 – When accused shall be discharged - (1) If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

269. Procedure where accused is not discharged

(1) If, when such evidence has been taken, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty or has any defence to make.

(3) If the accused pleads guilty, the Magistrate shall record the plea, and may, in his discretion, convict him thereon.

(4) If the accused refuses to plead, or does not plead or claims to be tried or if the accused is not convicted under sub- section (3), he shall be required to state, at the commencement of the next hearing of the case, or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith, whether he wishes to cross- examine any, and,

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if so, which, of the witnesses for the prosecution whose evidence has been taken.

(5) If he says he does so wish, the witnesses named by him shall be recalled and, after cross- examination and re- examination (if any), they shall be discharged.

(6) The evidence of any remaining witnesses for the prosecution shall next be taken, and after cross- examination and re- examination (if any), they shall also be discharged.

(7) Where, despite giving opportunity to the prosecution and after taking all reasonable measures under this Sanhita, if the attendance of the prosecution witnesses under sub- sections (5) and (6) cannot be secured for cross- examination, it shall be deemed that such witness has not been examined for not being available, and the Magistrate may close the prosecution evidence for reasons to be recorded in writing and proceed with the case on the basis of the materials on record.

Corresponding Provision of Previous Statute: Section 246, Code of Criminal Procedure, 1973

Section 246 – Procedure where accused is not discharged - (1) If, when such evidence has been taken, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty or has any defence to make.

(3) If the accused pleads guilty, the Magistrate shall record the plea, and may, in his discretion, convict him thereon.

(4) If the accused refuses to plead, or does not plead or claims to be tried or if the accused is not convicted under sub-section (3), he shall be required to state, at the commencement of the next hearing of the case, or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith, whether he wishes to cross-examine any, and, if so, which, of the witnesses for the prosecution whose evidence has been taken.

(5) If he says he does so wish, the witnesses named by him shall be recalled and, after cross-examination and re-examination (if any), they shall be discharged.

(6) The evidence of any remaining witnesses for the prosecution shall next be taken, and after cross-examination and re-examination (if any), they shall also be discharged.

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270. Evidence for defence

The accused shall then be called upon to enter upon his defence and produce his evidence; and the provisions of section 266 shall apply to the case.

Corresponding Provision of Previous Statute: Section 247, Code of Criminal Procedure, 1973

Section 247 – Evidence for defence - The accused shall then be called upon to enter upon his defence and produce his evidence; and the provisions of section 243 shall apply to the case.

LANDMARK JUDGMENT

Rasik Tatma vs. Bhagwat Tanti, MANU/BH/0090/1958

C.- - Conclusion of trial

271. Acquittal or conviction

(1) If, in any case under this Chapter in which a charge has been framed, the Magistrate finds the accused not guilty, he shall record an order of acquittal.

(2) Where, in any case under this Chapter, the Magistrate finds the accused guilty, but does not proceed in accordance with the provisions of section 364 or section 401, he shall, after hearing the accused on the question of sentence, pass sentence upon him according to law.

(3) Where, in any case under this Chapter, a previous conviction is charged under the provisions of sub- section (7) of section 234 and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the said accused, take evidence in respect of the alleged previous conviction, and shall record a finding thereon:

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Provided that no such charge shall be read out by the Magistrate nor shall the accused be asked to plead thereto nor shall the previous conviction be referred to by the prosecution or in any evidence

Corresponding Provision of Previous Statute: Section 248, Code of Criminal Procedure, 1973

Section 248 – Acquittal or conviction - (1) If, in any case under this Chapter in which a charge has been framed, the Magistrate finds the accused not guilty, he shall record an order of acquittal.

(2) Where, in any case under this Chapter, the Magistrate finds the accused guilty, but does not proceed in accordance with the provisions of section 325 or section 360, he shall, after hearing the accused on the question of sentence, pass sentence upon him according to law.

(3) Where, in any case under this Chapter, a previous conviction is charged under the provisions of sub-section (7) of section 211 and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the said accused, take evidence in respect of the alleged previous conviction, and shall record a finding thereon:

Provided that no such charge shall be read out by the Magistrate nor shall the accused be asked to plead thereto nor shall the previous conviction be referred to by the prosecution or in any evidence adduced by it, unless and until the accused has been convicted under sub-section (2).

272. Absence of complainant

When the proceedings have been instituted upon complaint, and on any day fixed for the hearing of the case, the complainant is absent, and the offence may be lawfully compounded or is not a cognizable offence, the Magistrate may after giving thirty days' time to the complainant to be present, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.

Corresponding Provision of Previous Statute: Section 249, Code of Criminal Procedure, 1973

Section 249 – Absence of complainant - When the proceedings have been instituted upon complaint, and on any day fixed for the hearing of the case, the complainant is absent, and the offence may be lawfully compounded or is not a cognizable offence, the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.

273. Compensation for accusation without reasonable cause

(1) If, in any case instituted upon complaint or upon information given to a police officer or to a Magistrate, one or more persons is or

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are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that there was no reasonable ground for making the accusation against them or any of them, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one; or, if such person is not present, direct the issue of a summons to him to appear and show cause as aforesaid.

(2) The Magistrate shall record and consider any cause which such complainant or informant may show, and if he is satisfied that there was no reasonable ground for making the accusation, may, for reasons to be recorded, make an order that compensation to such amount, not exceeding the amount of fine he is empowered to impose, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.

(3) The Magistrate may, by the order directing payment of the compensation under sub- section (2), further order that, in default of payment, the person ordered to pay such compensation shall undergo simple imprisonment for a period not exceeding thirty days.

(4) When any person is imprisoned under sub- section (3), the provisions of sub- section (6) of section 8 of the Bharatiya Nyaya Sanhita, 2023 shall, so far as may be, apply.

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(5) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him:

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(6) A complainant or informant who has been ordered under sub-section (2) by a Magistrate of the second class to pay compensation exceeding two thousand rupees, may appeal from the order, as if such complainant or informant had been convicted on a trial held by such Magistrate.

(7) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub- section (6), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided; and where such order is made in a case which is not so subject to appeal the compensation shall not be paid before the expiration of one month from the date of the order.

(8) The provisions of this section apply to summons- cases as well as to warrant- cases.

Corresponding Provision of Previous Statute: Section 250, Code of Criminal Procedure, 1973

Section 250 – Compensation for accusation without reasonable cause - (1) If, in any case instituted upon complaint or upon information given to a police officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that there was no reasonable ground for making the accusation against them or any of them, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon

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him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one; or, if such person is not present, direct the issue of a summons to him to appear and show cause as aforesaid.

(2) The Magistrate shall record and consider any cause which such complainant or informant may show, and if he is satisfied that there was no reasonable ground for making the accusation, may, for reasons to be recorded, make an order that compensation to such amount, not exceeding the amount of fine he is empowered to impose, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.

(3) The Magistrate may, by the order directing payment of the compensation under sub-section (2), further order that, in default of payment, the person ordered to pay such compensation shall undergo simple imprisonment for a period not exceeding thirty days.

(4) When any person is imprisoned under sub-section (3), the provisions of sections 68 and 69 of the Indian Penal Code (45 of 1860) shall, so far as may be, apply.

(5) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him:

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(6) A complainant or informant who has been ordered under sub-section (2) by a Magistrate of the second class to pay compensation exceeding one hundred rupees, may appeal from the order, as if such complainant or informanthad been convicted on a trial held by such Magistrate.

(7) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (6), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided; and where such order is made in a case which is not so subject to appeal the compensation shall not be paid before the expiration of one month from the date of the order.

(8) The provisions of this section apply to summons-cases as well as to warrant-cases.

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CHAPTER XXI

TRIAL OF SUMMONS- CASES BY MAGISTRATES

274. Substance of accusation to be stated

When in a summons- case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge:

Provided that if the Magistrate considers the accusation as groundless, he shall, after recording reasons in writing, release the accused and such release shall have the effect of discharge.

Corresponding Provision of Previous Statute: Section 251, Code of Criminal Procedure, 1973

Section 251 – Substance of accusation to be stated - When in a summons-case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge.

275. Conviction on plea of guilty

If the accused pleads guilty, the Magistrate shall record the plea as nearly as possible in the words used by the accused and may, in his discretion, convict him thereon.

Corresponding Provision of Previous Statute: Section 252, Code of Criminal Procedure, 1973

Section 252 – Conviction on plea of guilty - If the accused pleads guilty, the Magistrate shall record the plea as nearly as possible in the words used by the accused and may, in his discretion, convict him thereon.

276. Conviction on plea of guilty in absence of accused in petty cases

(1) Where a summons has been issued under section 229 and the accused desires to plead guilty to the charge without appearing before the Magistrate, he shall transmit to the Magistrate, by post or

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by messenger, a letter containing his plea and also the amount of fine specified in the summons.

(2) The Magistrate may, in his discretion, convict the accused in his absence, on his plea of guilty and sentence him to pay the fine specified in the summons, and the amount transmitted by the accused shall be adjusted towards that fine, or where an advocate authorised by the accused in this behalf pleads guilty on behalf of the accused, the Magistrate shall record the plea as nearly as possible in the words used by the advocate and may, in his discretion, convict the accused on such plea and sentence him as aforesaid.

Corresponding Provision of Previous Statute: Section 253, Code of Criminal Procedure, 1973

Section 253 – Conviction on plea of guilty in absence of accused in petty cases - (1) Where a summons has been issued under section 206 and the accused desires to plead guilty to the charge without appearing before the Magistrate, he shall transmit to the Magistrate, by post or by messenger, a letter containing his plea and also the amount of fine specified in the summons.

(2) The Magistrate may, in his discretion, convict the accused in his absence, on his plea of guilty and sentence him to pay the fine specified in the summons, and the amount transmitted by the accused shall be adjusted towards that fine, or where a pleader authorised by the accused in this behalf pleads guilty on behalf of the accused, the Magistrate shall record the plea as nearly as possible in the words used by the pleader and may, in his discretion, convict the accused on such plea and sentence him as aforesaid.

277. Procedure when not convicted

(1) If the Magistrate does not convict the accused under section 275 or section 276, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence.

(2) The Magistrate may, if he thinks fit, on the application of the prosecution or the accused, issue a summons to any witness directing him to attend or to produce any document or other thing.

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(3) The Magistrate may, before summoning any witness on such application, require that the reasonable expenses of the witness incurred in attending for the purposes of the trial be deposited in Court.

Corresponding Provision of Previous Statute: Section 254, Code of Criminal Procedure, 1973

Section 254 – Procedure when not convicted - (1) If the Magistrate does not convict the accused under section 252 or section 253, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence.

(2) The Magistrate may, if he thinks fit, on the application of the prosecution or the accused, issue a summons to any witness directing him to attend or to produce any document or other thing.

(3) The Magistrate may, before summoning any witness on such application, require that the reasonable expenses of the witness incurred in attending for the purposes of the trial be deposited in Court.

278. Acquittal or conviction

(1) If the Magistrate, upon taking the evidence referred to in section 277 and such further evidence, if any, as he may, of his own motion, cause to be produced, finds the accused not guilty, he shall record an order of acquittal.

(2) Where the Magistrate does not proceed in accordance with the provisions of section 364 or section 401, he shall, if he finds the accused guilty, pass sentence upon him according to law.

(3) A Magistrate may, under section 275 or section 278, convict the accused of any offence triable under this Chapter, which from the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons, if the Magistrate is satisfied that the accused would not be prejudiced thereby.

Corresponding Provision of Previous Statute: Section 255, Code of Criminal Procedure, 1973

Section 255 – Acquittal or conviction - (1) If the Magistrate, upon taking the evidence referred to in section 254 and such further evidence, if any, as he may, of his own motion, cause to be produced, finds the accused not guilty, he shall record an order of acquittal.

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(2) Where the Magistrate does not proceed in accordance with the provisions of section 325 or section 360, he shall, if he finds the accused guilty, pass sentence upon him according to law.

(3) A Magistrate may, under section 252 or section 255, convict the accused of any offence triable under this Chapter, which from the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons, if the Magistrate is satisfied that the accused would not be prejudiced thereby.

279. Non- appearance or death of complainant

(1) If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, after giving thirty days' time to the complainant to be present, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day:

Provided that where the complainant is represented by an advocate or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may, dispense with his attendance and proceed with the case.

(2) The provisions of sub- section (1) shall, so far as may be, apply also to cases where the non- appearance of the complainant is due to his death.

Corresponding Provision of Previous Statute: Section 256, Code of Criminal Procedure, 1973

Section 256 – Non-appearance or death of complainant - (1) If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day:

Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may, dispense with his attendance and proceed with the case.

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(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death.

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280. Withdrawal of complaint

If a complainant, at any time before a final order is passed in any case under this Chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint against the accused, or if there be more than one accused, against all or any of them, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused against whom the complaint is so withdrawn.

Corresponding Provision of Previous Statute: Section 257, Code of Criminal Procedure, 1973

Section 257 – Withdrawal of complaint - If a complainant, at any time before a final order is passed in any case under this Chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint against the accused, or if there be more than one accused, against all or any of them, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused against whom the complaint is so withdrawn.

281. Power to stop proceedings in certain cases

In any summons- case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge.

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Corresponding Provision of Previous Statute: Section 258, Code of Criminal Procedure, 1973

Section 258 – Power to stop proceedings in certain cases - In any summons-case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge.

282. Power of Court to convert summons- cases into warrant- cases

When in the course of the trial of a summons- case relating to an offence punishable with imprisonment for a term exceeding six months, it appears to the Magistrate that in the interests of justice, the offence should be tried in accordance with the procedure for the trial of warrant- cases, such Magistrate may proceed to re- hear the case in the manner provided by this Sanhita for the trial of warrant-cases and may recall any witness who may have been examined.

Corresponding Provision of Previous Statute: Section 259, Code of Criminal Procedure, 1973

Section 259 – Power of Court to convert summons-cases into warrant-cases - When in the course of the trial of a summons-case relating to an offence punishable with imprisonment for a term exceeding six months, it appears to the Magistrate that in the interests of justice, the offence should be tried in accordance with the procedure for the trial of warrant-cases, such Magistrate may proceed to re-hear the case in the manner provided by this Code for the trial of warrant-cases and may re-call any witness who may have been examined.

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CHAPTER XXII

SUMMARY TRIALS

283. Power to try summarily

Linked Provisions

Essential Commodities Act, 1955 - Section 12A - Power to try summarily

Northern India Ferries Act, 1878 - Section 30 - Power to try summarily

Prevention of Corruption Act, 1988 - Section 6 - Power to try summarily

(1) Notwithstanding anything contained in this Sanhita- -

(a) any Chief Judicial Magistrate;

(b) Magistrate of the first class, shall try in a summary way all or any of the following offences:- -

(i) theft, under sub- section (2) of section 303, section 305 or section 306 of the Bharatiya Nyaya Sanhita, 2023 where the value of the property stolen does not exceed twenty thousand rupees;

(ii) receiving or retaining stolen property, under sub- section (2) of section 317 of the Bharatiya Nyaya Sanhita, 2023, where the value of the property does not exceed twenty thousand rupees;

(iii) assisting in the concealment or disposal of stolen property under sub- section (5) of section 317 of the Bharatiya Nyaya Sanhita, 2023, where the value of such property does not exceed twenty thousand rupees;

(iv) offences under sub- sections (2) and (3) of section 331 of the Bharatiya Nyaya Sanhita, 2023;

(v) insult with intent to provoke a breach of the peace, under section 352, and criminal intimidation, under sub- sections (2) and (3) of section 351 of the Bharatiya Nyaya Sanhita, 2023;

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(vi) abetment of any of the foregoing offences;

(vii) an attempt to commit any of the foregoing offences, when such attempt is an offence;

(viii) any offence constituted by an act in respect of which a complaint may be made under section 20 of the Cattle- trespass Act, 1871 (1 of 1871).

(2) The Magistrate may, after giving the accused a reasonable opportunity of being heard, for reasons to be recorded in writing, try in a summary way all or any of the offences not punishable with death or imprisonment for life or imprisonment for a term exceeding three years:

Provided that no appeal shall lie against the decision of a Magistrate to try a case in a summary way under this sub- section.

(3) When, in the course of a summary trial it appears to the Magistrate that the nature of the case is such that it is undesirable to try it summarily, the Magistrate shall recall any witnesses who may have been examined and proceed to re- hear the case in the manner provided by this Sanhita.

Corresponding Provision of Previous Statute: Section 260, Code of Criminal Procedure, 1973

Section 260 – Power to try summarily - (1) Notwithstanding anything contained in this Code —

(a) any Chief Judicial Magistrate;

(b) any Metropolitan Magistrate;

(c) any Magistrate of the first class specially empowered in this behalf by the High Court, may, if he thinks fit, try in a summary way all or any of the following offences: —

(i) offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years;

(ii) theft, under section 379, section 380 or section 381 of the Indian Penal Code (45 of 1860), where the value of the property stolen does not exceed two thousand rupees;

(iii) receiving or retaining stolen property, under section 411 of the Indian Penal Code (45 of 1860), where

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the value of the property does not exceed two thousand rupees;

(iv) assisting in the concealment or disposal of stolen property, under section 414 of the Indian Penal Code (45 of 1860), where the value of such property does not exceed two thousand rupees;

(v) offences under sections 454 and 456 of the Indian Penal Code (45 of 1860);

(vi) insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation punishable with imprisionment for a term which may extend to two years, or with fine, or with both, under section 506 of the Indian Penal Code (45 of 1860);

(vii) abetment of any of the foregoing offences;

(viii) an attempt to commit any of the foregoing offences, when such attempt is an offence;

(ix) any offence constituted by an act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871 (1 of 1871).

(2) When, in the course of a summary trial it appears to the Magistrate that the nature of the case is such that it is undesirable to try it summarily, the Magistrate shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by this Code.

284. Summary trial by Magistrate of second class

The High Court may confer on any Magistrate invested with the powers of a Magistrate of the second class power to try summarily any offence which is punishable only with fine or with imprisonment for a term not exceeding six months with or without fine, and any abetment of or attempt to commit any such offence.

Corresponding Provision of Previous Statute: Section 261, Code of Criminal Procedure, 1973

Section 261 – Summary trial by Magistrate of the second class - The High Court may confer on any Magistrate invested with the powers of a Magistrate of the second class power to try summarily any offence which is punishable only with fine or with imprisonment for a term not exceeding six months with or without fine, and any abetment of or attempt to commit any such offence.

285. Procedure for summary trials

(1) In trials under this Chapter, the procedure specified in this Sanhita for the trial of summons- case shall be followed except as hereinafter mentioned.

(2) No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this Chapter.

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Corresponding Provision of Previous Statute: Section 262, Code of Criminal Procedure, 1973

Section 262 – Procedure for summary trials - (1) In trials under this Chapter, the procedure specified in this Code for the trial of summons-case shall be followed except as hereinafter mentioned.

(2) No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this Chapter.

286. Record in summary trials

In every case tried summarily, the Magistrate shall enter, in such form as the State Government may direct, the following particulars, namely:- -

(a) the serial number of the case;

(b) the date of the commission of the offence;

(c) the date of the report or complaint;

(d) the name of the complainant (if any);

(e) the name, parentage and residence of the accused;

(f) the offence complained of and the offence (if any) proved, and in cases coming under clause (i), clause (ii) or clause (iii) of sub- section (1) of section 283, the value of the property in respect of which the offence has been committed;

(g) the plea of the accused and his examination (if any);

(h) the finding;

(i) the sentence or other final order;

(j) the date on which proceedings terminated.

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Corresponding Provision of Previous Statute: Section 263, Code of Criminal Procedure, 1973

Section 263 – Record in summary trials - In every case tried summarily, the Magistrate shall enter, in such form as the State Government may direct, the following particulars, namely:—

(a) the serial number of the case;

(b) the date of the commission of the offence;

(c) the date of the report or complaint;

(d) the name of the complainant (if any);

(e) the name, parentage and residence of the accused;

(f) the offence complained of and the offence (if any) proved, and in cases coming under clause (ii), clause (iii) or clause (iv) of sub-section (1) of section 260, the value of the property in respect of which the offence has been committed;

(g) the plea of the accused and his examination (if any);

(h) the finding;

(i) the sentence or other final order;

(j) the date on which proceedings terminated.

287. Judgment in cases tried summarily

In every case tried summarily in which the accused does not plead guilty, the Magistrate shall record the substance of the evidence and a judgment containing a brief statement of the reasons for the finding.

Corresponding Provision of Previous Statute: Section 264, Code of Criminal Procedure, 1973

Section 264 – Judgment in cases tried summarily - In every case tried summarily in which the accused does not plead guilty, the Magistrate shall record the substance of the evidence and a judgment containing a brief statement of the reasons for the finding.

288. Language of record and judgment

(1) Every such record and judgment shall be written in the language of the Court.

(2) The High Court may authorise any Magistrate empowered to try offences summarily to prepare the aforesaid record or judgment or

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both by means of an officer appointed in this behalf by the Chief Judicial Magistrate, and the record or judgment so prepared shall be signed by such Magistrate.

Corresponding Provision of Previous Statute: Section 265, Code of Criminal Procedure, 1973

Section 265 – Language of record and judgment - (1) Every such record and judgment shall be written in the language of the Court.

(2) The High Court may authorise any Magistrate empowered to try offences summarily to prepare the aforesaid record or judgment or both by means of an officer appointed in this behalf by the Chief Judicial Magistrate, and the record or judgment so prepared shall be signed by such Magistrate.

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CHAPTER XXIII

PLEA BARGAINING

289. Application of Chapter

(1) This Chapter shall apply in respect of an accused against whom-

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(a) the report has been forwarded by the officer in charge of the police station under section 193 alleging therein that an offence appears to have been committed by him other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years has been provided under the law for the time being in force; or

(b) a Magistrate has taken cognizance of an offence on complaint, other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years, has been provided under the law for the time being in force, and after examining complainant and witnesses under section 223, issued the process under section 227, but does not apply where such offence affects the socio- economic condition of the country or has been committed against a woman, or a child.

(2) For the purposes of sub- section (1), the Central Government shall, by notification, determine the offences under the law for the time being in force which shall be the offences affecting the socio-economic condition of the country.

Corresponding Provision of Previous Statute: Section 265A, Code of Criminal Procedure, 1973

Section 265A – Application of the Chapter - (1) This Chapter shall apply in respect of an accused against whom—

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(a) the report has been forwarded by the officer in charge of the police station under section 173 alleging therein that an offence appears to have been committed by him other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years has been provided under the law for the time being in force; or

(b) a Magistrate has taken cognizance of an offence on complaint, other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years, has been provided under the law for the time being in force, and after examining complainant and witnesses under section 200, issued the process under section 204,

but does not apply where such offence affects the socio-economic condition of the country or has been committed against a woman, or a child below the age of fourteen years.

(2) For the purposes of sub-section (1), the Central Government shall, by notification, determine the offences under the law for the time being in force which shall be the offences affecting the socio-economic condition of the country.

290. Application for plea bargaining

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 296 - Power of the Court in plea bargaining

(1) A person accused of an offence may file an application for plea bargaining within a period of thirty days from the date of framing of charge in the Court in which such offence is pending for trial.

(2) The application under sub- section (1) shall contain a brief description of the case relating to which the application is filed including the offence to which the case relates and shall be accompanied by an affidavit sworn by the accused stating therein that he has voluntarily preferred, after understanding the nature and extent of punishment provided under the law for the offence, the plea bargaining in his case and that he has not previously been convicted by a Court in which he had been charged with the same offence.

(3) After receiving the application under sub- section (1), the Court shall issue notice to the Public Prosecutor or the complainant of the case and to the accused to appear on the date fixed for the case.

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(4) When the Public Prosecutor or the complainant of the case and the accused appear on the date fixed under sub- section (3), the Court shall examine the accused in camera, where the other party in the case shall not be present, to satisfy itself that the accused has filed the application voluntarily and where- -

(a) the Court is satisfied that the application has been filed by the accused voluntarily, it shall provide time, not exceeding sixty days, to the Public Prosecutor or the complainant of the case and the accused to work out a mutually satisfactory disposition of the case which may include giving to the victim by the accused the compensation and other expenses during the case and thereafter fix the date for further hearing of the case;

(b) the Court finds that the application has been filed involuntarily by the accused or he has previously been convicted by a Court in a case in which he had been charged with the same offence, it shall proceed further in accordance with the provisions of this Sanhita from the stage such application has been filed under sub- section (1).

Corresponding Provision of Previous Statute: Section 265B, Code of Criminal Procedure, 1973

Section 265B – Application for plea bargaining - (1) A person accused of an offence may file an application for plea bargaining in the Court in which such offence is pending for trial.

(2) The application under sub-section (1) shall contain a brief description of the case relating to which the application is filed including the offence to which the case relates and shall be accompanied by an affidavit sworn by the accused stating therein that he has voluntarily preferred, after understanding the nature and extent of punishment

provided under the law for the offence, the plea bargaining in his case and that he has not previously been convicted by a Court in a case in which he had been charged with the same offence.

(3) After receiving the application under sub-section (1), the Court shall issue notice to the Public Prosecutor or the complainant of the case, as the case may be, and to the accused to appear on the date fixed for the case.

(4) When the Public Prosecutor or the complainant of the case, as the case may be, and the accused appear on the date fixed under sub-section (3), the Court shall examine the accused in camera, where the other party in the case shall not be present, to satisfy itself that the accused has filed the application voluntarily and where—

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(a) the Court is satisfied that the application has been filed by the accused voluntarily, it shall provide time to the Public Prosecutor or the complainant of the case, as the case may be, and the accused to work out a mutually satisfactory disposition of the case which may include giving to the victim by the accused the compensation and other expenses during the case and thereafter fix the date for further hearing of the case;

(b) the Court finds that the application has been filed involuntarily by the accused or he has previously been convicted by a Court in a case in which he had been charged with the same offence, it shall proceed further in accordance with the provisions of this Code from the stage such application has been filed under sub-section (1).

291. Guidelines for mutually satisfactory disposition

In working out a mutually satisfactory disposition under clause (a) of sub- section (4) of section 290, the Court shall follow the following procedure, namely:- -

(a) in a case instituted on a police report, the Court shall issue notice to the Public Prosecutor, the police officer who has investigated the case, the accused and the victim of the case to participate in the meeting to work out a satisfactory disposition of the case:

Provided that throughout such process of working out a satisfactory disposition of the case, it shall be the duty of the Court to ensure that the entire process is completed voluntarily by the parties participating in the meeting:

Provided further that the accused, if he so desires, may participate in such meeting with his advocate, if any, engaged in the case;

(b) in a case instituted otherwise than on police report, the Court shall issue notice to the accused and the victim of the case to participate in a meeting to work out a satisfactory disposition of the case:

Provided that it shall be the duty of the Court to ensure, throughout such process of working out a satisfactory disposition of the case,

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that it is completed voluntarily by the parties participating in the meeting:

Provided further that if the victim of the case or the accused so desires, he may participate in such meeting with his advocate engaged in the case.

Corresponding Provision of Previous Statute: Section 265C, Code of Criminal Procedure, 1973

Section 265C – Guidelines for mutually satisfactory disposition - In working out a mutually satisfactory disposition under clause (a) of sub-section (4) of section 265B, the Court shall follow the following procedure, namely:—

(a) in a case instituted on a police report, the Court shall issue notice to the Public Prosecutor, the police officer who has investigated the case, the accused and the victim of the case to participate in the meeting to work out a satisfactory disposition of the case:

Provided that throughout such process of working out a satisfactory disposition of the case, it shall be the duty of the Court to ensure that the entire process is completed voluntarily by the parties participating in the meeting:

Provided further that the accused, if he so desires, participate in such meeting with his pleader, if any, engaged in the case;

(b) in a case instituted otherwise than on police report, the Court shall issue notice to the accused and the victim of the case to participate in a meeting to work out a satisfactory disposition of the case:

Provided that it shall be the duty of the Court to ensure, throughout such process of working out a satisfactory disposition of the case, that it is completed voluntarily by the parties participating in the meeting:

Provided further that if the victim of the case or the accused, as the case may be, so desires, he may participate in such meeting with his pleader engaged in the case.

292. Report of mutually satisfactory disposition to be submitted before Court

Where in a meeting under section 291, a satisfactory disposition of the case has been worked out, the Court shall prepare a report of such disposition which shall be signed by the presiding officer of the Court and all other persons who participated in the meeting and if no such disposition has been worked out, the Court shall record such observation and proceed further in accordance with the provisions

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of this Sanhita from the stage the application under sub- section (1) of section 290 has been filed in such case.

Corresponding Provision of Previous Statute: Section 265D, Code of Criminal Procedure, 1973

Section 265D – Report of the mutually satisfactory disposition to be submitted before the Court - Where in a meeting under section 265C, a satisfactory disposition of the case has been worked out, the Court shall prepare a report of such disposition which shall be signed by the presiding officer of the Court and all other persons who participated in the meeting and if no such disposition has been worked out, the Court shall record such observation and proceed further in accordance with the provisions of this Code from the stage the application under sub-section (1) of section 265B has been filed in such case.

293. Disposal of case

Where a satisfactory disposition of the case has been worked out under section 292, the Court shall dispose of the case in the following manner, namely:- -

(a) the Court shall award the compensation to the victim in accordance with the disposition under section 292 and hear the parties on the quantum of the punishment, releasing of the accused on probation of good conduct or after admonition under section 401 or for dealing with the accused under the provisions of the Probation of Offenders Act, 1958 (20 of 1958) or any other law for the time being in force and follow the procedure specified in the succeeding clauses for imposing the punishment on the accused;

(b) after hearing the parties under clause (a), if the Court is of the view that section 401 or the provisions of the Probation of Offenders Act, 1958 (20 of 1958) or any other law for the time being in force are attracted in the case of the accused, it may release the accused on probation or provide the benefit of any such law;

(c) after hearing the parties under clause (b), if the Court finds that minimum punishment has been provided under the law for the

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offence committed by the accused, it may sentence the accused to half of such minimum punishment, and where the accused is a first-time offender and has not been convicted of any offence in the past, it may sentence the accused to one- fourth of such minimum punishment;

(d) in case after hearing the parties under clause (b), the Court finds that the offence committed by the accused is not covered under clause (b) or clause (c), then, it may sentence the accused to one-fourth of the punishment provided or extendable for such offence and where the accused is a first- time offender and has not been convicted of any offence in the past, it may sentence the accused to one- sixth of the punishment provided or extendable, for such offence.

Corresponding Provision of Previous Statute: Section 265E, Code of Criminal Procedure, 1973

Section 265E – Disposal of the case - Where a satisfactory disposition of the case has been worked out under section 265D, the Court shall dispose of the case in the following manner, namely: —

(a) the Court shall award the compensation to the victim in accordance with the disposition under section 265D and hear the parties on the quantum of the punishment, releasing of the accused on probation of good conduct or after admonition under section 360 or for dealing with the accused under the provisions of the

Probation of Offenders Act, 1958 (20 of 1958) or any other law for the time being in force and follow the procedure specified in the succeeding clauses for imposing the punishment on the accused;

(b) after hearing the parties under clause (a), if the Court is of the view that section 360 or the provisions of the Probation of Offenders Act, 1958 (20 of 1958) or any other law for the time being in force are attracted in the case of the accused, it may release the accused on probation or provide the benefit of any such law, as the case may be;

(c) after hearing the parties under clause (b), if the Court finds that minimum punishment has been provided under the law for the offence committed by the accused, it may sentence the accused to half of such minimum punishment;

(d) in case after hearing the parties under clause (b), the Court finds that the offence committed by the accused is not covered under clause (b) or clause (c), then, it may sentence the accused to one-fourth of the punishment provided or extendable, as the case may be, for such offence.

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294. Judgment of Court

The Court shall deliver its judgment in terms of section 293 in the open Court and the same shall be signed by the presiding officer of the Court.

Corresponding Provision of Previous Statute: Section 265F, Code of Criminal Procedure, 1973

Section 265F – Judgment of the Court - The Court shall deliver its judgment in terms of section 265E in the open Court and the same shall be signed by the presiding officer of the Court.

295. Finality of judgment

The judgment delivered by the Court under this section shall be final and no appeal (except the special leave petition under article 136 and writ petition under articles 226 and 227 of the Constitution) shall lie in any Court against such judgment.

Corresponding Provision of Previous Statute: Section 265G, Code of Criminal Procedure, 1973

Section 265G – Finality of the judgment - The judgment delivered by the Court under section 265G shall be final and no appeal (except the special leave petition under article 136 and writ petition under articles 226 and 227 of the Constitution) shall lie in any Court against such judgment.

296. Power of Court in plea bargaining

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 290 - Application for plea bargaining

A Court shall have, for the purposes of discharging its functions under this Chapter, all the powers vested in respect of bail, trial of offences and other matters relating to the disposal of a case in such Court under this Sanhita.

Corresponding Provision of Previous Statute: Section 265H, Code of Criminal Procedure, 1973

Section 265H – Power of the Court in plea bargaining - A Court shall have, for the purposes of discharging its functions under this Chapter, all the powers vested in respect of bail, trial of offences and other matters relating to the disposal of a case in such Court under this Code.

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297. Period of detention undergone by accused to be set off against sentence of imprisonment

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 468 - Period of detention undergone by the accused to be set off against the sentence of imprisonment

The provisions of section 468 shall apply, for setting off the period of detention undergone by the accused against the sentence of imprisonment imposed under this Chapter, in the same manner as they apply in respect of the imprisonment under other provisions of this Sanhita.

Corresponding Provision of Previous Statute: Section 265I, Code of Criminal Procedure, 1973

Section 265I – Period of detention undergone by the accused to be set off against the sentence of imprisonment - The provisions of section 428 shall apply, for setting off the period of detention undergone by the accused against the sentence of imprisonment imposed under this Chapter, in the same manner as they apply in respect of the imprisonment under other provisions of this Code.

298. Savings

The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other provisions of this Sanhita and nothing in such other provisions shall be construed to constrain the meaning of any provision of this Chapter.

Explanation.- - For the purposes of this Chapter, the expression "Public Prosecutor" has the meaning assigned to it under clause (v) of section 2 and includes an Assistant Public Prosecutor appointed under section 19.

Corresponding Provision of Previous Statute: Section 265J, Code of Criminal Procedure, 1973

Section 265J – Savings - The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other provisions of this Code and nothing in such other provisions shall be construed to constrain the meaning of any provision of this Chapter.

Explanation.—For the purposes of this Chapter, the expression "Public Prosecutor" has the meaning assigned to it under clause (u) of section 2 and includes an Assistant Public Prosecutor appointed under section 25.

299. Statements of accused not to be used

Notwithstanding anything contained in any law for the time being in force, the statements or facts stated by an accused in an application

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for plea bargaining filed under section 290 shall not be used for any other purpose except for the purpose of this Chapter.

Corresponding Provision of Previous Statute: Section 265K, Code of Criminal Procedure, 1973

Section 265K – Statements of accused not to be used - Notwithstanding anything contained in any law for the time being in force, the statements or facts stated by an accused in an application for plea bargaining filed under section 265B shall not be used for any other purpose except for the purpose of this Chapter.

300. Non- application of Chapter

Nothing in this Chapter shall apply to any juvenile or child as defined in section 2 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016).

Corresponding Provision of Previous Statute: Section 265L, Code of Criminal Procedure, 1973

Section 265L – Non-application of the Chapter - Nothing in this Chapter shall apply to any juvenile or child as defined in clause (k) of section 2 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000).

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CHAPTER XXIV

ATTENDANCE OF PERSONS CONFINED OR DETAINED IN PRISONS

301. Definitions

In this Chapter,- -

Corresponding Provision of Previous Statute: Section 266, Code of Criminal Procedure, 1973

Section 266 – Definitions - In this Chapter,—

(a) "detained" includes detained under any law providing for preventive detention;

Corresponding Provision of Previous Statute: Section 266(a), Code of Criminal Procedure, 1973

Section 266(a) – "detained" includes detained under any law providing for preventive detention;

(b) "prison" includes,- -

(i) any place which has been declared by the State Government, by general or special order, to be a subsidiary jail;

(ii) any reformatory, Borstal institution or other institution of a like nature.

Corresponding Provision of Previous Statute: Section 266(b), Code of Criminal Procedure, 1973

Section 266(b) – "prison" includes,—

(i) any place which has been declared by the State Government, by general or special order, to be a subsidiary jail;

(ii) any reformatory, Borstal institution or institution of a like nature.

302. Power to require attendance of prisoners

(1) Whenever, in the course of an inquiry, trial or proceeding under this Sanhita, it appears to a Criminal Court,- -

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(a) that a person confined or detained in a prison should be brought before the Court for answering to a charge of an offence, or for the purpose of any proceedings against him; or

(b) that it is necessary for the ends of justice to examine such person as a witness, the Court may make an order requiring the officer in charge of the prison to produce such person before the Court answering to the charge or for the purpose of such proceeding or for giving evidence.

(2) Where an order under sub- section (1) is made by a Magistrate of the second class, it shall not be forwarded to, or acted upon by, the officer in charge of the prison unless it is countersigned by the Chief Judicial Magistrate, to whom such Magistrate is subordinate.

(3) Every order submitted for countersigning under sub- section (2) shall be accompanied by a statement of the facts which, in the opinion of the Magistrate, render the order necessary, and the Chief Judicial Magistrate to whom it is submitted may, after considering such statement, decline to countersign the order.

Corresponding Provision of Previous Statute: Section 267, Code of Criminal Procedure, 1973

Section 267 – Power to require attendance of prisoners - (1) Whenever, in the course of an inquiry, trial or proceeding under this Code, it appears to a Criminal Court,—

(a) that a person confined or detained in a prison should be brought before the Court for answering to a charge of an offence, or for the purpose of any proceedings against him, or

(b) that it is necessary for the ends of justice to examine such person as a witness, the Court may make an order requiring the officer in charge of the prison to produce such person before the Court answering to the charge or for the purpose of such proceeding or, as the case may be, for giving evidence.

(2) Where an order under sub-section (1) is made by a Magistrate of the second class, it shall not be forwarded to, or acted upon by, the officer in charge of the prison unless it is countersigned by the Chief Judicial Magistrate, to whom such Magistrate is subordinate.

(3) Every order submitted for countersigning under sub-section (2) shall be accompanied by a statement of the facts which, in the opinion of the Magistrate, render the order necessary, and the Chief Judicial Magistrate to whom it is submitted may, after considering such statement, decline to countersign the order.

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303. Power of State Government or Central Government to exclude certain persons from operation of section 302

(1) The State Government or the Central Government, as the case may be, may, at any time, having regard to the matters specified in sub- section (2), by general or special order, direct that any person or class of persons shall not be removed from the prison in which he or they may be confined or detained, and thereupon, so long as the order remains in force, no order made under section 302, whether before or after the order of the State Government or the Central Government, shall have effect in respect of such person or class of persons.

(2) Before making an order under sub- section (1), the State Government or the Central Government in the cases instituted by its central agency, as the case may be, shall have regard to the following matters, namely:- -

(a) the nature of the offence for which, or the grounds on which, the person or class of persons has been ordered to be confined or detained in prison;

(b) the likelihood of the disturbance of public order if the person or class of persons is allowed to be removed from the prison;

(c) the public interest, generally.

Corresponding Provision of Previous Statute: Section 268, Code of Criminal Procedure, 1973

Section 268 – Power of State Government to exclude certain persons from operation of section 267 - (1) The State Government may, at any time, having regard to the matters specified in sub-section (2), by general or special order, direct that any person or class of persons shall not be removed from the prison in which he or they may be confined or detained, and thereupon, so long as the order remains in force, no order made under section 267, whether before or after the order of the State Government, shall have effect in respect of such person or class of persons.

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(2) Before making an order under sub-section (1), the State Government shall have regard to the following matters, namely:—

(a) the nature of the offence for which, or the grounds on which, the person or class of persons has been ordered to be confined or detained in prison;

(b) the likelihood of the disturbance of public order if the person or class of persons is allowed to be removed from the prison;

(c) the public interest, generally.

304. Officer in charge of prison to abstain from carrying out order in certain contingencies

Where the person in respect of whom an order is made under section 302- -

(a) is by reason of sickness or infirmity unfit to be removed from the prison; or

(b) is under committal for trial or under remand pending trial or pending a preliminary investigation; or

(c) is in custody for a period which would expire before the expiration of the time required for complying with the order and for taking him back to the prison in which he is confined or detained; or

(d) is a person to whom an order made by the State Government or the Central Government under section 303 applies, the officer in charge of the prison shall abstain from carrying out the Court's order and shall send to the Court a statement of reasons for so abstaining:

Provided that where the attendance of such person is required for giving evidence at a place not more than twenty- five kilometres distance from the prison, the officer in charge of the prison shall not so abstain for the reason mentioned in clause (b).

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Corresponding Provision of Previous Statute: Section 269, Code of Criminal Procedure, 1973

Section 269 – Officer in charge of prison to abstain from carrying out order in certain contingencies - Where the person in respect of whom an order is made under section 267 —

(a) is by reason of sickness or infirmity unfit to be removed from the prison; or

(b) is under committal for trial or under remand pending trial or pending a preliminary investigation; or

(c) is in custody for a period which would expire before the expiration of the time required for complying with the order and for taking him back to the prison in which he is confined or detained; or

(d) is a person to whom an order made by the State Government under section 268 applies, the officer in charge of the prison shall abstain from carrying out the Court's order and shall send to the Court a statement of reasons for so abstaining:

Provided that where the attendance of such person is required for giving evidence at a place not more than twenty-five kilometres distance from the prison, the officer in charge of the prison shall not so abstain for the reason mentioned in clause (b).

305. Prisoner to be brought to Court in custody

Linked Provisions

Code of Civil Procedure, 1908 - Section 6 - Prisoner to be brought to Court in custody

Subject to the provisions of section 304, the officer in charge of the prison shall, upon delivery of an order made under sub- section (1) of section 302 and duly countersigned, where necessary, under sub-section (2) thereof, cause the person named in the order to be taken to the Court in which his attendance is required, so as to be present there at the time mentioned in the order, and shall cause him to be kept in custody in or near the Court until he has been examined or until the Court authorises him to be taken back to the prison in which he was confined or detained.

Corresponding Provision of Previous Statute: Section 270, Code of Criminal Procedure, 1973

Section 270 – Prisoner to be brought to Court in custody - Subject to the provisions of section 269, the officer in charge of the prison shall, upon delivery of an order made under sub-section (1) of section 267 and duly countersigned, where necessary, under sub-section (2) thereof, cause the person named in the order to be taken to the Court in which his attendance is required, so as to be present there at the time mentioned in the order, and shall cause him to be kept in custody in or near the Court until he has been examined or until the Court authorises him to be taken back to the prison in which he was confined or detained.

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306. Power to issue commission for examination of witness in prison

The provisions of this Chapter shall be without prejudice to the power of the Court to issue, under section 319, a commission for the examination, as a witness, of any person confined or detained in a prison; and the provisions of Part B of Chapter XXV shall apply in relation to the examination on commission of any such person in the prison as they apply in relation to the examination on commission of any other person.

Linked Provisions

Code of Civil Procedure, 1908 - Order XVI-A Rule 7 - Power to issue commission for examination of witness in prison

Corresponding Provision of Previous Statute: Section 271, Code of Criminal Procedure, 1973

Section 271 – Power to issue commission for examination of witness in prison - The provisions of this Chapter shall be without prejudice to the power of the Court to issue, under section 284, a commission for the examination, as a witness, of any person confined or detained in a prison; and the provisions of Part B of Chapter XXIII shall apply in relation to the examination on commission of any such person in the prison as they apply in relation to the examination on commission of any other person.

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CHAPTER XXV

EVIDENCE IN INQUIRIES AND TRIALS

A.- - Mode of taking and recording evidence

307. Language of Courts

The State Government may determine what shall be, for purposes of this Sanhita, the language of each Court within the State other than the High Court.

Corresponding Provision of Previous Statute: Section 272, Code of Criminal Procedure, 1973

Section 272 – Language of Courts - The State Government may determine what shall be, for purposes of this Code, the language of each Court within the State other than the High Court.

308. Evidence to be taken in presence of accused

Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his advocate including through audio- video electronic means at the designated place to be notified by the State Government:

Provided that where the evidence of a woman below the age of eighteen years who is alleged to have been subjected to rape or any other sexual offence, is to be recorded, the Court may take appropriate measures to ensure that such woman is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused.

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Explanation.- - In this section, "accused" includes a person in relation to whom any proceeding under Chapter IX has been commenced under this Sanhita.

Corresponding Provision of Previous Statute: Section 273, Code of Criminal Procedure, 1973

Section 273 – Evidence to be taken in presence of accused - Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader:

Provided that where the evidence of a woman below the age of eighteen years who is alleged to have been subjected to rape or any other sexual offence, is to be recorded, the court may take appropriate measures to ensure that such woman is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused.

Explanation.—In this section, "accused" includes a person in relation to whom any proceeding under Chapter VIII has been commenced under this Code.

309. Record in summons- cases and inquiries

(1) In all summons- cases tried before a Magistrate, in all inquiries under sections 164 to 167 (both inclusive), and in all proceedings under section 491 otherwise than in the course of a trial, the Magistrate shall, as the examination of each witness proceeds, make a memorandum of the substance of the evidence in the language of the Court:

Provided that if the Magistrate is unable to make such memorandum himself, he shall, after recording the reason of his inability, cause such memorandum to be made in writing or from his dictation in open Court.

(2) Such memorandum shall be signed by the Magistrate and shall form part of the record.

Corresponding Provision of Previous Statute: Section 274, Code of Criminal Procedure, 1973

Section 274 – Record in summons-cases and inquiries - (1) In all summons-cases tried before a Magistrate, in all inquiries under sections 145 to 148 (both inclusive), and in all proceedings under section 446 otherwise than in the course of a trial, the Magistrate shall, as the examination of each witness proceeds, make a memorandum of the substance of the evidence in the language of the Court:

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Provided that if the Magistrate is unable to make such memorandum himself, he shall, after recording the reason of his inability, cause such memorandum to be made in writing or from his dictation in open Court.

(2) Such memorandum shall be signed by the Magistrate and shall form part of the record.

310. Record in warrant- cases

(1) In all warrant- cases tried before a Magistrate, the evidence of each witness shall, as his examination proceeds, be taken down in writing either by the Magistrate himself or by his dictation in open Court or, where he is unable to do so owing to a physical or other incapacity, under his direction and superintendence, by an officer of the Court appointed by him in this behalf:

Provided that evidence of a witness under this sub- section may also be recorded by audio- video electronic means in the presence of the advocate of the person accused of the offence.

(2) Where the Magistrate causes the evidence to be taken down, he shall record a certificate that the evidence could not be taken down by himself for the reasons referred to in sub- section (1).

(3) Such evidence shall ordinarily be taken down in the form of a narrative; but the Magistrate may, in his discretion take down, or cause to be taken down, any part of such evidence in the form of question and answer.

(4) The evidence so taken down shall be signed by the Magistrate and shall form part of the record.

Corresponding Provision of Previous Statute: Section 275, Code of Criminal Procedure, 1973

Section 275 – Record in warrant-cases - (1) In all warrant-cases tried before a Magistrate, the evidence of each witness shall, as his examination proceeds, be taken down in writing either by the Magistrate himself or by his dictation in open Court or, where he is unable to do so owing to a physical or other incapacity, under his direction and superintendence, by an officer of the Court appointed by him in this behalf:

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Provided that evidence of a witness under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of the offence.

(2) Where the Magistrate causes the evidence to be taken down, he shall record a certificate that the evidence could not be taken down by himself for the reasons referred to in sub-section (1).

(3) Such evidence shall ordinarily be taken down in the form of a narrative; but the Magistrate may, in his discretion take down, or cause to be taken down, any part of such evidence in the form of question and answer.

(4) The evidence so taken down shall be signed by the Magistrate and shall form part of the record.

311. Record in trial before Court of Session

(1) In all trials before a Court of Session, the evidence of each witness shall, as his examination proceeds, be taken down in writing either by the presiding Judge himself or by his dictation in open Court, or under his direction and superintendence, by an officer of the Court appointed by him in this behalf.

(2) Such evidence shall ordinarily be taken down in the form of a narrative, but the presiding Judge may, in his discretion, take down, or cause to be taken down, any part of such evidence in the form of question and answer.

(3) The evidence so taken down shall be signed by the presiding Judge and shall form part of the record.

Corresponding Provision of Previous Statute: Section 276, Code of Criminal Procedure, 1973

Section 276 – Record in trial before Court of Session - (1) In all trials before a Court of Session, the evidence of each witness shall, as his examination proceeds, be taken down in writing either by the presiding Judge himself or by his dictation in open Court, or under his direction and superintendence, by an officer of the Court appointed by him in this behalf.

(2) Such evidence shall ordinarily be taken down in the form of a narrative, but the presiding Judge may, in his discretion, take down, or cause to be taken down, any part of such evidence in the form of question and answer.

(3) The evidence so taken down shall be signed by the presiding Judge and shall form part of the record.

312. Language of record of evidence

In every case where evidence is taken down under section 310 or section 311,- -

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(a) if the witness gives evidence in the language of the Court, it shall be taken down in that language;

(b) if he gives evidence in any other language, it may, if practicable, be taken down in that language, and if it is not practicable to do so, a true translation of the evidence in the language of the Court shall be prepared as the examination of the witness proceeds, signed by the Magistrate or presiding Judge, and shall form part of the record;

(c) where under clause (b) evidence is taken down in a language other than the language of the Court, a true translation thereof in the language of the Court shall be prepared as soon as practicable, signed by the Magistrate or presiding Judge, and shall form part of the record:

Provided that when under clause (b) evidence is taken down in English and a translation thereof in the language of the Court is not required by any of the parties, the Court may dispense with such translation.

Corresponding Provision of Previous Statute: Section 277, Code of Criminal Procedure, 1973

Section 277 – Language of record of evidence - In every case where evidence is taken down under section 275 or 276,—

(a) if the witness gives evidence in the language of the Court, it shall be taken down in that language;

(b) if he gives evidence in any other language, it may, if practicable, be taken down in that language, and if it is not practicable to do so, a true translation of the evidence in the language of the Court shall be prepared as the examination of the witness proceeds, signed by the Magistrate or presiding Judge, and shall form part of the record;

(c) where under clause (b) evidence is taken down in a language other than the language of the Court, a true translation thereof in the language of the Court shall be prepared as soon as practicable, signed by the Magistrate or presiding Judge, and shall form part of the record:

Provided that when under clause (b) evidence is taken down in English and a translation thereof in the language of the Court is not required by any of the parties, the Court may dispense with such translation.

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313. Procedure in regard to such evidence when completed

(1) As the evidence of each witness taken under section 310 or section 311 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his advocate, if he appears by an advocate, and shall, if necessary, be corrected.

(2) If the witness denies the correctness of any part of the evidence when the same is read over to him, the Magistrate or presiding Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness and shall add such remarks as he thinks necessary.

(3) If the record of the evidence is in a language different from that in which it has been given and the witness does not understand that language, the record shall be interpreted to him in the language in which it was given, or in a language which he understands.

Corresponding Provision of Previous Statute: Section 278, Code of Criminal Procedure, 1973

Section 278 – Procedure in regard to such evidence when completed - (1) As the evidence of each witness taken under section 275 or section 276 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected.

(2) If the witness denies the correctness of any part of the evidence when the same is read over to him, the Magistrate or presiding Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness and shall add such remarks as he thinks necessary.

(3) If the record of the evidence is in a language different from that in which it has been given and the witness does not understand that language, the record shall be interpreted to him in the language in which it was given, or in a language which he understands.

314. Interpretation of evidence to accused or his advocate

(1) Whenever any evidence is given in a language not understood by the accused, and he is present in Court in person, it shall be interpreted to him in open Court in a language understood by him.

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(2) If he appears by an advocate and the evidence is given in a language other than the language of the Court, and not understood by the advocate, it shall be interpreted to such advocate in that language.

(3) When documents are put for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

Corresponding Provision of Previous Statute: Section 279, Code of Criminal Procedure, 1973

Section 279 – Interpretation of evidence to accused or his pleader - (1) Whenever any evidence is given in a language not understood by the accused, and he is present in Court in person, it shall be interpreted to him in open Court in a language understood by him.

(2) If he appears by pleader and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted to such pleader in that language.

(3) When documents are put for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

315. Remarks respecting demeanour of witness

When a presiding Judge or Magistrate has recorded the evidence of a witness, he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

Corresponding Provision of Previous Statute: Section 280, Code of Criminal Procedure, 1973

Section 280 – Remarks respecting demeanour of witness - When a presiding Judge or Magistrate has recorded the evidence of a witness, he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

316. Record of examination of accused

(1) Whenever the accused is examined by any Magistrate, or by a Court of Session, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full by the presiding Judge or Magistrate himself or

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 509 - Non-compliance with provisions of Section 183 or Section 316

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where he is unable to do so owing to a physical or other incapacity, under his direction and superintendence by an officer of the Court appointed by him in this behalf.

(2) The record shall, if practicable, be in the language in which the accused is examined or, if that is not practicable, in the language of the Court.

(3) The record shall be shown or read to the accused, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

(4) It shall thereafter be signed by the accused and by the Magistrate or presiding Judge, who shall certify under his own hand that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused:

Provided that where the accused is in custody and is examined through electronic communication, his signature shall be taken within seventy- two hours of such examination.

(5) Nothing in this section shall be deemed to apply to the examination of an accused person in the course of a summary trial.

Corresponding Provision of Previous Statute: Section 281, Code of Criminal Procedure, 1973

Section 281 – Record of examination of accused - (1) Whenever the accused is examined by a Metropolitan Magistrate, the Magistrate shall make a memorandum of the substance of the examination of the accused in the language of the Court and such memorandum shall be signed by the Magistrate and shall form part of the record.

(2) Whenever the accused is examined by any Magistrate other than a Metropolitan Magistrate, or by a Court of Session, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full by the presiding Judge or Magistrate himself or where he is unable to do so owing to a physical or other incapacity, under his direction and superintendence by an officer of the Court appointed by him in this behalf.

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(3) The record shall, if practicable, be in the language in which the accused is examined or, if that is not practicable, in the language of the Court.

(4) The record shall be shown or read to the accused, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

(5) It shall thereafter be signed by the accused and by the Magistrate or presiding Judge, who shall certify under his own hand that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused.

(6) Nothing in this section shall be deemed to apply to the examination of an accused person in the course of a summary trial.

317. Interpreter to be bound to interpret truthfully

When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

Corresponding Provision of Previous Statute: Section 282, Code of Criminal Procedure, 1973

Section 282 – Interpreter to be bound to interpret truthfully - When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

318. Record in High Court

Every High Court may, by general rule, prescribe the manner in which the evidence of witnesses and the examination of the accused shall be taken down in cases coming before it, and such evidence and examination shall be taken down in accordance with such rule.

Corresponding Provision of Previous Statute: Section 283, Code of Criminal Procedure, 1973

Section 283 – Record in High Court - Every High Court may, by general rule, prescribe the manner in which the evidence of witnesses and the examination of the accused shall be taken down in cases coming before it, and such evidence and examination shall be taken down in accordance with such rule.

B.- - Commissions for the examination of witnesses

319. When attendance of witness may be dispensed with and commission issued

(1) Whenever, in the course of any inquiry, trial or other proceeding under this Sanhita, it appears to a Court or Magistrate that the examination of a

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witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, the Court or Magistrate may dispense with such attendance and may issue a commission for the examination of the witness in accordance with the provisions of this Chapter:

Provided that where the examination of the President or the Vice-President of India or the Governor of a State or the Administrator of a Union territory as a witness is necessary for the ends of justice, a commission shall be issued for the examination of such a witness.

(2) The Court may, when issuing a commission for the examination of a witness for the prosecution, direct that such amount as the Court considers reasonable to meet the expenses of the accused, including the advocate's fees, be paid by the prosecution.

Corresponding Provision of Previous Statute: Section 284, Code of Criminal Procedure, 1973

Section 284 – When attendance of witness may be dispensed with and commission issued - (1) Whenever, in the course of any inquiry, trial or other proceeding under this Code, it appears to a Court or Magistrate that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, the Court or Magistrate may dispense with such attendance and may issue a commission for the examination of the witness in accordance with the provisions of this Chapter:

Provided that where the examination of the President or the Vice-President of India or the Governor of a State or the Administrator of a Union territory as a witness is necessary for the ends of Justice, a commission shall be issued for the examination of such a witness.

(2) The Court may, when issuing a commission for the examination of a witness for the prosecution, direct that such amount as the Court considers reasonable to meet the expenses of the accused, including the pleader's fees, be paid by the prosecution.

320. Commission to whom to be issued

(1) If the witness is within the territories to which this Sanhita extends, the commission shall be directed to the Chief Judicial Magistrate within whose local jurisdiction the witness is to be found.

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(2) If the witness is in India, but in a State or an area to which this Sanhita does not extend, the commission shall be directed to such Court or officer as the Central Government may, by notification, specify in this behalf.

(3) If the witness is in a country or place outside India and arrangements have been made by the Central Government with the Government of such country or place for taking the evidence of witnesses in relation to criminal matters, the commission shall be issued in such form, directed to such Court or officer, and sent to such authority for transmission as the Central Government may, by notification, prescribe in this behalf.

Corresponding Provision of Previous Statute: Section 285, Code of Criminal Procedure, 1973

Section 285 – Commission to whom to be issued - (1) If the witness is within the territories to which this Code extends, the commission shall be directed to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate, as the case may be, within whose local jurisdiction the witness is to be found.

(2) If the witness is in India, but in a State or an area to which this Code does not extend, the commission shall be directed to such Court or officer as the Central Government may, by notification, specify in this behalf.

(3) If the witness is in a country or place outside India and arrangements have been made by the Central Government with the Government of such country or place for taking the evidence of witnesses in relation to criminal matters, the commission shall be issued in such form, directed to such Court or officer, and sent to such authority for transmission as the Central Government may, by notification, prescribed in this behalf

321. Execution of commissions

Upon receipt of the commission, the Chief Judicial Magistrate or such Magistrate as he may appoint in this behalf, shall summon the witness before him or proceed to the place where the witness is, and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant- cases under this Sanhita.

Corresponding Provision of Previous Statute: Section 286, Code of Criminal Procedure, 1973

Section 286 – Execution of commissions - Upon receipt of the commission, the Chief Metropolitan Magistrate, or Chief Judicial Magistrate or such Metropolitan or Judicial Magistrate as he may appoint in this behalf, shall

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summon the witness before him or proceed to the place where the witness is, and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials or warrant-cases under this Code.

322. Parties may examine witnesses

(1) The parties to any proceeding under this Sanhita in which a commission is issued may respectively forward any interrogatories in writing which the Court or Magistrate directing the commission may think relevant to the issue, and it shall be lawful for the Magistrate, Court or officer to whom the commission, is directed, or to whom the duty of executing it is delegated, to examine the witness upon such interrogatories.

(2) Any such party may appear before such Magistrate, Court or Officer by an advocate, or if not in custody, in person, and may examine, cross- examine and re- examine the said witness.

Corresponding Provision of Previous Statute: Section 287, Code of Criminal Procedure, 1973

Section 287 – Parties may examine witnesses - (1) The parties to any proceeding under this Code in which a commission is issued may respectively forward any interrogatories in writing which the Court or Magistrate directing the commission may think relevant to the issue, and it shall be lawful for the Magistrate, Court or officer to whom the commission, is directed, or to whom the duty of executing it is delegated, to examine the witness upon such interrogatories.

(2) Any such party may appear before such magistrate, Court or Officer by pleader, or if not in custody, in person, and may examine, cross-examine and re-examine (as the case may be) the said witness.

323. Return of commission

(1) After any commission issued under section 319 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court or Magistrate issuing the commission; and the commission, the return thereto and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

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(2) Any deposition so taken, if it satisfies the conditions specified by section 27 of the Bharatiya Sakshya Adhiniyam, 2023, may also be received in evidence at any subsequent stage of the case before another Court.

Corresponding Provision of Previous Statute: Section 288, Code of Criminal Procedure, 1973

Section 288 – Return of commission - (1) After any commission issued under section 284 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court or Magistrate issuing the commission; and the commission, the return thereto and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

(2) Any deposition so taken, if it satisfies the conditions prescribed by section 33 of the Indian Evidence Act, 1872 (1 of 1872), may also be received in evidence at any subsequent stage of the case before another Court.

324. Adjournment of proceeding

In every case in which a commission is issued under section 319, the inquiry, trial or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

Corresponding Provision of Previous Statute: Section 289, Code of Criminal Procedure, 1973

Section 289 – Adjournment of proceeding - In every case in which a commission is issued under section 284, the inquiry, trial or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

325. Execution of foreign commissions

(1) The provisions of section 321 and so much of section 322 and section 323 as relate to the execution of a commission and its return shall apply in respect of commissions issued by any of the Courts, Judges or Magistrates hereinafter mentioned as they apply to commissions issued under section 319.

(2) The Courts, Judges and Magistrates referred to in sub- section (1) are- -

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(a) any such Court, Judge or Magistrate exercising jurisdiction within an area in India to which this Sanhita does not extend, as the Central Government may, by notification, specify in this behalf;

(b) any Court, Judge or Magistrate exercising jurisdiction in any such country or place outside India, as the Central Government may, by notification, specify in this behalf, and having authority, under the law in force in that country or place, to issue commissions for the examination of witnesses in relation to criminal matters.

Corresponding Provision of Previous Statute: Section 290, Code of Criminal Procedure, 1973

Section 290 – Execution of foreign commissions - (1) The provisions of section 286 and so much of section 287 and section 288 as relate to the execution of a commission and its return shall apply in respect of commissions issued by any of the Courts, Judges or Magistrates hereinafter mentioned as they apply to commissions issued under section 284.

(2) The Courts, Judges and Magistrates referred to in sub-section (1) are—

(a) any such Court, Judge or Magistrate exercising jurisdiction within an area in India to which this Code does not extend, as the Central Government may, by notification, specify in this behalf;

(b) any Court, Judge or Magistrate exercising jurisdiction in any such country or place outside India, as the Central Government may, by notification, specify in this behalf, and having authority, under the law in force in that country or place, to issue commissions for the examination of witnesses in relation to criminal matters.

326. Deposition of medical witness

(1) The deposition of a civil surgeon or other medical witness, taken and attested by a Magistrate in the presence of the accused, or taken on commission under this Chapter, may be given in evidence in any inquiry, trial or other proceeding under this Sanhita, although the deponent is not called as a witness.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any such deponent as to the subject- matter of his deposition.

Corresponding Provision of Previous Statute: Section 291, Code of Criminal Procedure, 1973

Section 291 – Deposition of medical witness - (1) The deposition of civil surgeon or other medical witness, taken and attested by a Magistrate in the presence of the accused, or taken on commission under this Chapter,

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may be given in evidence in any inquiry, trial or other proceeding under this Code, although the deponent is not called as a witness.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any such deponent as to the subject-matter of his deposition.

327. Identification report of Magistrate

(1) Any document purporting to be a report of identification under the hand of an Executive Magistrate in respect of a person or property may be used as evidence in any inquiry, trial or other proceeding under this Sanhita, although such Magistrate is not called as a witness:

Provided that where such report contains a statement of any suspect or witness to which the provisions of section 19, section 26, section 27, section 158 or section 160 of the Bharatiya Sakshya Adhiniyam, 2023, apply, such statement shall not be used under this sub- section except in accordance with the provisions of those sections.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or of the accused, summon and examine such Magistrate as to the subject- matter of the said report.

Corresponding Provision of Previous Statute: Section 291A, Code of Criminal Procedure, 1973

Section 291A – Identification report of Magistrate - (1) Any document purporting to be a report of identification under the hand of an Executive Magistrate in respect of a person or property may be used as evidence in any inquiry, trial or other proceeding under this Code, although such Magistrate is not called as a witness:

Provided that where such report contains a statement of any suspect or witness to which the provisions of section 21, section 32, section 33, section 155 or section 157, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872), apply, such statement shall not be used under this sub-section except in accordance with the provisions of those sections.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or of the accused, summon and examine such Magistrate as to the subject-matter of the said report.

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328. Evidence of officers of Mint

(1) Any document purporting to be a report under the hand of a gazetted officer of any Mint or of any Note Printing Press or of any Security Printing Press (including the officer of the Controller of Stamps and Stationery) or of any Forensic Department or Division of Forensic Science Laboratory or any Government Examiner of Questioned Documents or any State Examiner of Questioned Documents as the Central Government may, by notification, specify in this behalf, upon any matter or thing duly submitted to him for examination and report in the course of any proceeding under this Sanhita, may be used as evidence in any inquiry, trial or other proceeding under this Sanhita, although such officer is not called as a witness.

(2) The Court may, if it thinks fit, summon and examine any such officer as to the subject- matter of his report:

Provided that no such officer shall be summoned to produce any records on which the report is based.

(3) Without prejudice to the provisions of sections 129 and 130 of the Bharatiya Sakshya Adhiniyam, 2023, no such officer shall, except with the permission of the General Manager or any officer in charge of any Mint or of any Note Printing Press or of any Security Printing Press or of any Forensic Department or any officer in charge of the Forensic Science Laboratory or of the Government Examiner of Questioned Documents Organisation or of the State Examiner of Questioned Documents Organisation be permitted- -

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(a) to give any evidence derived from any unpublished official records on which the report is based; or

(b) to disclose the nature or particulars of any test applied by him in the course of the examination of the matter or thing.

Corresponding Provision of Previous Statute: Section 292, Code of Criminal Procedure, 1973

Section 292 – Evidence of officers of the Mint - (1) Any document purporting to be a report under the hand of any such officer of any Mint or of any Note Printing Press or of any Security Printing Press (including the officer of the Controller of Stamps and Stationery) or of any Forensic Department or Division of Forensic Science Laboratory or any Government Examiner of Questioned Documents or any State Examiner of Questioned Documents, as the case may be, as the Central Government may, by notification, specify in this behalf, upon any matter or thing duly submitted to him for examination and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code, although such officer is not called as a witness.

(2) The Court may, if it thinks fit, summon and examine any such officer as to the subject-matter of his report: Provided that no such officer shall be summoned to produce any records on which the report is based.

(3) Without prejudice to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), no such officer shall, except with the permission of the General Manager or any officer in charge of any Mint or of any Note Printing Press or of any Security Printing Press or of any Forensic Department or any officer in charge of the Forensic Science Laboratory or of the Government Examiner of Questioned Documents Organisation or of the State Examiner of Questioned Documents Organisation, as the case may be, be permitted—

(a) to give any evidence derived from any unpublished official records on which the report is based; or

(b) to disclose the nature or particulars of any test applied by him in the course of the examination of the matter or thing.

329. Reports of certain Government scientific experts

(1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Sanhita, may be used as evidence in any inquiry, trial or other proceeding under this Sanhita.

(2) The Court may, if it thinks fit, summon and examine any such expert as to the subject- matter of his report.

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(3) Where any such expert is summoned by a Court, and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.

(4) This section applies to the following Government scientific experts, namely:- -

(a) any Chemical Examiner or Assistant Chemical Examiner to Government;

(b) the Chief Controller of Explosives;

(c) the Director of the Finger Print Bureau;

(d) the Director, Haffkeine Institute, Bombay;

(e) the Director, Deputy Director or Assistant Director of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;

(f) the Serologist to the Government;

(g) any other scientific expert specified or certified, by notification, by the State Government or the Central Government for this purpose.

Corresponding Provision of Previous Statute: Section 293, Code of Criminal Procedure, 1973

Section 293 – Reports of certain Government scientific experts - (1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

(2) The Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report.

(3) Where any such expert is summoned by a Court, and he is unable to attend personally, he may, unless the

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Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.

(4) This section applies to the following Government scientific experts, namely:—

(a) any Chemical Examiner or Assistant Chemical Examiner to Government;

(b) the Chief Controller of Explosives;

(c) the Director of the Finger Print Bureau;

(d) the Director, Haffkeine Institute, Bombay;

(e) the Director, Deputy Director or Assistant Director of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;

(f) the Serologist to the Government;

(g) any other Government scientific expert specified, by notification, by the Central Government for this purpose.

330. No formal proof of certain documents

(1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused or the advocate for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document soon after supply of such documents and in no case later than thirty days after such supply:

Provided that the Court may, in its discretion, relax the time limit with reasons to be recorded in writing:

Provided further that no expert shall be called to appear before the Court unless the report of such expert is disputed by any of the parties to the trial.

(2) The list of documents shall be in such form as the State Government may, by rules, provide.

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(3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Sanhita without proof of the signature of the person by whom it purports to be signed:

Provided that the Court may, in its discretion, require such signature to be proved.

Corresponding Provision of Previous Statute: Section 294, Code of Criminal Procedure, 1973

Section 294 – No formal proof of certain documents - (1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

(2) The list of documents shall be in such form as be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed:

Provided that the Court may, in its discretion, require such signature to be proved.

331. Affidavit in proof of conduct of public servants

When any application is made to any Court in the course of any inquiry, trial or other proceeding under this Sanhita, and allegations are made therein respecting any public servant, the applicant may give evidence of the facts alleged in the application by affidavit, and the Court may, if it thinks fit, order that evidence relating to such facts be so given.

Corresponding Provision of Previous Statute: Section 295, Code of Criminal Procedure, 1973

Section 295 – Affidavit in proof of conduct of public servants - When any application is made to any Court in the course of any inquiry, trial or other proceeding under this Code, and allegations are made therein respecting any public servant, the applicant may give evidence of the facts alleged in the application by affidavit, and the Court may, if it thinks fit, order that evidence relating to such facts be so given.

332. Evidence of formal character on affidavit

(1) The evidence of any person whose evidence is of a formal character may be given by affidavit and may, subject to all just

Linked Provisions

Gram Nyayalayas Act, 2008 - Section 32 - Evidence of formal

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exceptions, be read in evidence in any inquiry, trial or other proceeding under this Sanhita.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any such person as to the facts contained in his affidavit.

character on affidavit

Family Courts Act, 1984 - Section 16 - Evidence of formal character on affidavit

Corresponding Provision of Previous Statute: Section 296, Code of Criminal Procedure, 1973

Section 296 – Evidence of formal character on affidavit - (1) The evidence of any person whose evidence is of a formal character may be given by affidavit and may, subject to all just exceptions, be read in evidence in any inquiry, trial or other proceeding under this Code.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any such person as to the facts contained in his affidavit.

333. Authorities before whom affidavits may be sworn

(1) Affidavits to be used before any Court under this Sanhita may be sworn or affirmed before-

(a) any Judge or Judicial or Executive Magistrate; or

(b) any Commissioner of Oaths appointed by a High Court or Court of Session; or

(c) any notary appointed under the Notaries Act, 1952 (53 of 1952).

(2) Affidavits shall be confined to, and shall state separately, such facts as the deponent is able to prove from his own knowledge and such facts as he has reasonable ground to believe to be true, and in the latter case, the deponent shall clearly state the grounds of such belief.

(3) The Court may order any scandalous and irrelevant matter in the affidavit to be struck out or amended.

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Corresponding Provision of Previous Statute: Section 297, Code of Criminal Procedure, 1973

Section 297 – Authorities before whom affidavits may be sworn - (1) Affidavits to be used before any Court under this Code may be sworn or affirmed before—

(a) any Judge or Judicial or Executive Magistrate, or

(b) any Commissioner of Oaths appointed by a High Court or Court of Session, or

(c) any notary appointed under the Notaries Act, 1952 (53 of 1952).

(2) Affidavits shall be confined to, and shall state separately, such facts as the deponent is able to prove from his own knowledge and such facts as he has reasonable ground to believe to be true, and in the latter case, the deponent shall clearly state the grounds of such belief.

(3) The Court may order any scandalous and irrelevant matter in the affidavit to be struck out or amended.

334. Previous conviction or acquittal how proved

In any inquiry, trial or other proceeding under this Sanhita, a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force,- -

(a) by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was held, to be a copy of the sentence or order; or

(b) in case of a conviction, either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was undergone, or by production of the warrant of commitment under which the punishment was suffered, together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted or acquitted.

Corresponding Provision of Previous Statute: Section 298, Code of Criminal Procedure, 1973

Section 298 – Previous conviction or acquittal how proved - In any inquiry, trial or other proceeding under this Code, a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force,—

(a) by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was held, to be a copy of the sentence or order, or

(b) in case of a conviction, either by a certificate signed by the officer in charge of the Jail in which the punishment or any part thereof was undergone, or by production of the warrant of commitment under which the punishment was suffered, together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted or acquitted.

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335. Record of evidence in absence of accused

(1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try, or commit for trial, such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions and any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

(2) If it appears that an offence punishable with death or imprisonment for life has been committed by some person or persons unknown, the High Court or the Sessions Judge may direct that any Magistrate of the first class shall hold an inquiry and examine any witnesses who can give evidence concerning the offence and any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits of India.

Corresponding Provision of Previous Statute: Section 299, Code of Criminal Procedure, 1973

Section 299 – Record of evidence in absence of accused - (1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try, or commit for trial, such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions and any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

(2) If it appears that an offence punishable with death or imprisonment for life has been committed by some

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person or persons unknown, the High Court or the Sessions Judge may direct that any Magistrate of the first class shall hold an inquiry and examine any witnesses who can give evidence concerning the offence and any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits of India.

336. Evidence of public servants, experts, police officers in certain cases

Where any document or report prepared by a public servant, scientific expert or medical officer is purported to be used as evidence in any inquiry, trial or other proceeding under this Sanhita, and- -

(i) such public servant, expert or officer is either transferred, retired, or died; or

(ii) such public servant, expert or officer cannot be found or is incapable of giving deposition; or

(iii) securing presence of such public servant, expert or officer is likely to cause delay in holding the inquiry, trial or other proceeding, the Court shall secure presence of successor officer of such public servant, expert, or officer who is holding that post at the time of such deposition to give deposition on such document or report:

Provided that no public servant, scientific expert or medical officer shall be called to appear before the Court unless the report of such public servant, scientific expert or medical officer is disputed by any of the parties of the trial or other proceedings:

Provided further that the deposition of such successor public servant, expert or officer may be allowed through audio- video electronic means.

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CHAPTER XXVI

GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS

337. Person once convicted or acquitted not to be tried for same offence

(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub- section (1) of section 244, or for which he might have been convicted under sub- section (2) thereof.

(2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub- section (1) of section 243.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last- mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence

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constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged under section 281 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first- mentioned Court is subordinate.

(6) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897 (10 of 1897) or of section 208 of this Sanhita.

Explanation.- - The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section.

Illustrations.

(a) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant, or, upon the same facts, with theft simply, or with criminal breach of trust.

(b) A is tried for causing grievous hurt and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.

(c) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B.

(d) A is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to B. A may not afterwards be

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tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within sub- section (3) of this section.

(e) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of B. A may subsequently be charged with, and tried for, robbery on the same facts.

(f) A, B and C are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B and C may afterwards be charged with, and tried for, dacoity on the same facts.

Corresponding Provision of Previous Statute: Section 300, Code of Criminal Procedure, 1973

Section 300 – Person once convicted or acquitted not to be tried for same offence - (1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof.

(2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub-section (1) of section 220.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first-mentioned Court is subordinate.

(6) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897 (10 of 1897) or of section 188 of this Code.

Explanation.—The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section.

Illustrations

(a) A is tried upon a charge of theft as a servant and aquitted. He cannot afterwards, while the acquittal

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remains in force, be charged with theft as a servant, or, upon the same facts, with theft simply, or with criminal breach of trust.

(b) A is tried for causing grievous hurt and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.

(c) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B.

(d) A is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within sub-section (3) of this section.

(e) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of B. A may subsequently be charged with, and tried for, robbery on the same facts.

(f) A, B and C are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B and C may afterwards be charged with, and tried for, dacoity on the same facts.

338. Appearance by Public Prosecutors

(1) The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal.

(2) If in any such case any private person instructs his advocate to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the advocate so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case.

Corresponding Provision of Previous Statute: Section 301, Code of Criminal Procedure, 1973

Section 301 – Appearance by Public Prosecutors - (1) The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal.

(2) If in any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case.

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339. Permission to conduct prosecution

(1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of inspector; but no person, other than the Advocate-General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission:

Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.

(2) Any person conducting the prosecution may do so personally or by an advocate.

Corresponding Provision of Previous Statute: Section 302, Code of Criminal Procedure, 1973

Section 302 – Permission to conduct prosecution - (1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of inspector; but no person, other than the Advocate-General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission:

Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.

(2) Any person conducting the prosecution may do so personally or by a pleader.

340. Right of person against whom proceedings are instituted to be defended

Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Sanhita, may of right be defended by an advocate of his choice.

Corresponding Provision of Previous Statute: Section 303, Code of Criminal Procedure, 1973

Section 303 – Right of person against whom proceedings are instituted to be defended - Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code, may of right be defended by a pleader of his choice.

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341. Legal aid to accused at State expense in certain cases

(1) Where, in a trial or appeal before a Court, the accused is not represented by an advocate, and where it appears to the Court that the accused has not sufficient means to engage an advocate, the Court shall assign an advocate for his defence at the expense of the State.

(2) The High Court may, with the previous approval of the State Government, make rules providing for- -

(a) the mode of selecting advocates for defence under sub- section (1);

(b) the facilities to be allowed to such advocates by the Courts;

(c) the fees payable to such advocates by the Government, and generally, for carrying out the purposes of sub- section (1).

(3) The State Government may, by notification, direct that, as from such date as may be specified in the notification, the provisions of sub- sections (1) and (2) shall apply in relation to any class of trials before other Courts in the State as they apply in relation to trials before Courts of Session.

Corresponding Provision of Previous Statute: Section 304, Code of Criminal Procedure, 1973

Section 304 – Legal aid to accused at State expense in certain cases - (1) Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State.

(2) The High Court may, with the previous approval of the State Government, make rules providing for—

(a) the mode of selecting pleaders for defence under sub-section (1);

(b) the facilities to be allowed to such pleaders by the Courts;

(c) the fees payable to such pleaders by the Government, and generally, for carrying out the purposes of sub-section (1).

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(3) The State Government may, by notification, direct that, as from such date as may be specified in the notification, the provisions of sub-sections (1) and (2) shall apply in relation to any class of trials before other Courts in the State as they apply in relation to trials before Courts of Session.

LANDMARK JUDGMENT

Khatri and Ors. vs. State of Bihar and Ors., MANU/SC/0518/1981

Suk Das vs. Union Territory of Arunachal Pradesh, MANU/SC/0140/1986

342. Procedure when corporation or registered society is an accused

(1) In this section, "corporation" means an incorporated company or other body corporate, and includes a society registered under the Societies Registration Act, 1860 (21 of 1860).

(2) Where a corporation is the accused person or one of the accused persons in an inquiry or trial, it may appoint a representative for the purpose of the inquiry or trial and such appointment need not be under the seal of the corporation.

(3) Where a representative of a corporation appears, any requirement of this Sanhita that anything shall be done in the presence of the accused or shall be read or stated or explained to the accused, shall be construed as a requirement that that thing shall be done in the presence of the representative or read or stated or explained to the representative, and any requirement that the accused shall be examined shall be construed as a requirement that the representative shall be examined.

(4) Where a representative of a corporation does not appear, any such requirement as is referred to in sub- section (3) shall not apply.

(5) Where a statement in writing purporting to be signed by the managing director of the corporation or by any person duly

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authorised by him (by whatever name called) having, or being one of the persons having the management of the affairs of the corporation to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this section, is filed, the Court shall, unless the contrary is proved, presume that such person has been so appointed.

(6) If a question arises as to whether any person, appearing as the representative of a corporation in an inquiry or trial before a Court is or is not such representative, the question shall be determined by the Court.

Corresponding Provision of Previous Statute: Section 305, Code of Criminal Procedure, 1973

Section 305 – Procedure when corporation or registered society is an accused - (1) In this section, "corporation" means an incorporated company or other body corporate, and includes a society registered under the Societies Registration Act, 1860 (21 of 1860).

(2) Where a corporation is the accused person or one of the accused persons in an inquiry or trial, it may appoint a representative for the purpose of the inquiry or trial and such appointment need not be under the seal of the corporation.

(3) Where a representative of a corporation appears, any requirement of this Code that anything shall be done in the presence of the accused or shall be read or stated or explained to the accused, shall be construed as a requirement that thing shall be done in the presence of the representative or read or stated or explained to the representative, and any requirement that the accused shall be examined shall be construed as a requirement that the representative shall be examined.

(4) Where a representative of a corporation does not appear, any such requirement as is referred to in sub-section (3) shall not apply.

(5) Where a statement in writing purporting to be signed by the managing director of the corporation or by any person (by whatever name called) having, or being one of the persons having the management of the affairs of the corporation to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this section, is filed, the Court shall, unless the contrary is proved, presume that such person has been so appointed.

(6) If a question arises as to whether any person, appearing as the representative of a corporation in an inquiry or trial before a Court is or is not such representative, the question shall be determined by the Court.

Linked Provisions

Indo-Tibetan Border Police Force Act, 1992 - Section 119 - Tender of pardon to accomplice

343. Tender of pardon to accomplice

(1) With a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence

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Sashastra Seema Bal Act, 2007 - Section 119 - Tender of pardon to accomplice

to which this section applies, the Chief Judicial Magistrate at any stage of the investigation or inquiry into, or the trial of, the offence, and the Magistrate of the first class inquiring into or trying the offence, at any stage of the inquiry or trial, may tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.

(2) This section applies to- -

(a) any offence triable exclusively by the Court of Session or by the Court of a Special Judge appointed under any other law for the time being in force;

(b) any offence punishable with imprisonment which may extend to seven years or with a more severe sentence.

(3) Every Magistrate who tenders a pardon under sub- section (1) shall record- -

(a) his reasons for so doing;

(b) whether the tender was or was not accepted by the person to whom it was made, and shall, on application made by the accused, furnish him with a copy of such record free of cost.

(4) Every person accepting a tender of pardon made under sub-section (1)- -

(a) shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any;

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(b) shall, unless he is already on bail, be detained in custody until the termination of the trial.

(5) Where a person has accepted a tender of pardon made under sub-section (1) and has been examined under sub- section (4), the Magistrate taking cognizance of the offence shall, without making any further inquiry in the case- -

(a) commit it for trial- -

(i) to the Court of Session if the offence is triable exclusively by that Court or if the Magistrate taking cognizance is the Chief Judicial Magistrate;

(ii) to a Court of Special Judge appointed under any other law for the time being in force, if the offence is triable exclusively by that Court;

(b) in any other case, make over the case to the Chief Judicial Magistrate who shall try the case himself.

Corresponding Provision of Previous Statute: Section 306, Code of Criminal Procedure, 1973

Section 306 – Tender of pardon to accomplice - (1) With a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence to which this section applies, the Chief JudicialMagistrate or a Metropolitan Magistrate at any stage of the investigation or inquiry into, or the trial of, the offence, and the Magistrate of the first class inquiring into or trying the offence, at any stage of the inquiry or trial, may tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.

(2) This section applies to—

(a) any offence triable exclusively by the Court of Session or by the Court of a Special Judge appointed under the Criminal Law Amendment Act, 1952 (46 of 1952);

(b) any offence punishable with imprisonment which may extend to seven years or with a more severe sentence.

(3) Every Magistrate who tenders a pardon under sub-section (1) shall record—

(a) his reasons for so doing;

(b) whether the tender was or was not accepted by the person to whom it was made, and shall, on application

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made by the accused, furnish him with a copy of such record free of cost.

(4) Every person accepting a tender of pardon made under sub-section (1)—

(a) shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any;

(b) shall, unless he is already on bail, be detained in custody until the termination of the trial.

(5) Where a person has accepted a tender of pardon made under sub-section (1) and has been examined under sub-section (4), the Magistrate taking cognizance of the offence shall, without making any further inquiry in the case—

(a) commit it for trial—

(i) to the Court of Session if the offence is triable exclusively by that Court or if the Magistrate taking cognizance is the Chief Judicial Magistrate;

(ii) to a Court of Special Judge appointed under the Criminal Law Amendment Act, 1952 (46 of 1952), if the offence is triable exclusively by that Court;

(b) in any other case, make over the case to the Chief Judicial Magistrate who shall try the case himself.

344. Power to direct tender of pardon

At any time after commitment of a case but before judgment is passed, the Court to which the commitment is made may, with a view to obtaining at the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender a pardon on the same condition to such person.

Corresponding Provision of Previous Statute: Section 307, Code of Criminal Procedure, 1973

Section 307 – Power to direct tender of pardon - At any time after commitment of a case but before judgment is passed, the Court to which the commitment is made may, with a view to obtaining at the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender a pardon on the same condition to such person.

LANDMARK JUDGMENT

K.M. Nanavati vs. State of Maharashtra, MANU/SC/0147/1961

345. Trial of person not complying with conditions of pardon

(1) Where, in regard to a person who has accepted a tender of pardon made under section 343 or section 344, the Public Prosecutor certifies that in his opinion such person has, either by wilfully concealing

Linked Provisions

Indo-Tibetan Border Police Force Act, 1992 - Section 120 - Trial of person not complying with conditions of pardon

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anything essential or by giving false evidence, not complied with the condition on which the tender was made, such person may be tried for the offence in respect of which the pardon was so tendered or for any other offence of which he appears to have been guilty in connection with the same matter, and also for the offence of giving false evidence:

Sashastra Seema Bal Act, 2007 - Section 120 - Trial of person not complying with conditions of pardon

Provided that such person shall not be tried jointly with any of the other accused:

Provided further that such person shall not be tried for the offence of giving false evidence except with the sanction of the High Court, and nothing contained in section 215 or section 379 shall apply to that offence.

(2) Any statement made by such person accepting the tender of pardon and recorded by a Magistrate under section 183 or by a Court under sub- section (4) of section 343 may be given in evidence against him at such trial.

(3) At such trial, the accused shall be entitled to plead that he has complied with the condition upon which such tender was made; in which case it shall be for the prosecution to prove that the condition has not been complied with.

(4) At such trial, the Court shall- -

(a) if it is a Court of Session, before the charge is read out and explained to the accused;

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(b) if it is the Court of a Magistrate, before the evidence of the witnesses for the prosecution is taken, ask the accused whether he pleads that he has complied with the conditions on which the tender of pardon was made.

(5) If the accused does so plead, the Court shall record the plea and proceed with the trial and it shall, before passing judgment in the case, find whether or not the accused has complied with the conditions of the pardon, and, if it finds that he has so complied, it shall, notwithstanding anything contained in this Sanhita, pass judgment of acquittal.

Corresponding Provision of Previous Statute: Section 308, Code of Criminal Procedure, 1973

Section 308 – Trial of person not complying with conditions of pardon - (1) Where, in regard to a person who has accepted a tender of pardon made under section 306 or section 307, the Public Prosecutor certifies that in his opinion such person has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, such person may be tried for the offence in respect of which the pardon was so tendered or for any other offence of which he appears to have been guilty in connection with the same matter, and also for the offence of giving false evidence:

Provided that such person shall not be tried jointly with any of the other accused:

Provided further that such person shall not be tried for the offence of giving false evidence except with the sanction of the High Court, and nothing contained in section 195 or section 340 shall apply to that offence.

(2) Any statement made by such person accepting the tender of pardon and recorded by a Magistrate under section 164 or by a Court under sub-section (4) of section 306 may be given in evidence against him at such trial.

(3) At such trial, the accused shall be entitled to plead that he has complied with the condition upon which such tender was made; in which case it shall be for the prosecution to prove that the condition has not been complied with.

(4) At such trial, the Court shall—

(a) if it is a Court of Session, before the charge is read out and explained to the accused;

(b) if it is the Court of a Magistrate, before the evidence of the witnesses for the prosecution is taken, ask the accused whether he pleads that he has complied with the conditions on which the tender of pardon was made.

(5) If the accused does so plead, the Court shall record the plea and proceed with the trial and it shall, before passing judgment in the case, find whether or not the accused has complied with the conditions of the pardon, and, if it finds that he has so complied, it shall, notwithstanding anything contained in this Code, pass judgment of acquittal.

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346. Power to postpone or adjourn proceedings

(1) In every inquiry or trial the proceedings shall be continued from day- to- day basis until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded:

Provided that when the inquiry or trial relates to an offence under section 64, section 65, section 66, section 67, section 68, section 70 or section 71 of the Bharatiya Nyaya Sanhita, 2023 the inquiry or trial shall be completed within a period of two months from the date of filing of the chargesheet.

(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Court shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing:

Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him:

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Provided also that- -

(a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

(b) where the circumstances are beyond the control of a party, not more than two adjournments may be granted by the Court after hearing the objections of the other party and for the reasons to be recorded in writing;

(c) the fact that the advocate of a party is engaged in another Court, shall not be a ground for adjournment;

(d) where a witness is present in Court but a party or his advocate is not present or the party or his advocate though present in Court, is not ready to examine or cross- examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination- in- chief or cross-examination of the witness, as the case may be.

Explanation 1.- - If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation 2.- - The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused.

Corresponding Provision of Previous Statute: Section 309, Code of Criminal Procedure, 1973

Section 309 – Power to postpone or adjourn proceedings - (1) In every inquiry or trial the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded:

Provided that when the inquiry or trial relates to an offence under section 376, section 376A, section 376AB,

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section 376B, section 376C, section 376D, section 376DA or section DB of the Indian Penal Code (45 of 1860), the inquiry ortrial shall be completed within a period of two months from the date of filing of the charge sheet.

(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary oradvisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasonsto be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable,and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing:

Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.

Provided also that—

(a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

(b) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment;

(c) where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be.

Explanation 1.—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation 2.—The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused.

347. Local inspection

(1) Any Judge or Magistrate may, at any stage of any inquiry, trial or other proceeding, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other place which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection.

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(2) Such memorandum shall form part of the record of the case and if the prosecutor, complainant or accused or any other party to the case, so desires, a copy of the memorandum shall be furnished to him free of cost.

Corresponding Provision of Previous Statute: Section 310, Code of Criminal Procedure, 1973

Section 310 – Local inspection - (1) Any Judge or Magistrate may, at any stage of any inquiry, trial or other proceeding, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other place in which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection.

(2) Such memorandum shall form part of the record of the case and if the prosecutor, complainant or accused or any other party to the case, so desires, a copy of the memorandum shall be furnished to him free of cost.

348. Power to summon material witness, or examine person present

Any Court may, at any stage of any inquiry, trial or other proceeding under this Sanhita, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or re- call and re- examine any person already examined; and the Court shall summon and examine or re- call and re- examine any such person if his evidence appears to it to be essential to the just decision of the case.

Corresponding Provision of Previous Statute: Section 311, Code of Criminal Procedure, 1973

Section 311 – Power to summon material witness, or examine person present - Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

349. Power of Magistrate to order person to give specimen signatures or handwriting, etc.

If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Sanhita, it is expedient to direct any person, including an accused person, to give specimen

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signatures or finger impressions or handwriting or voice sample, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or finger impressions or handwriting or voice sample:

Provided that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding:

Provided further that the Magistrate may, for the reasons to be recorded in writing, order any person to give such specimen or sample without him being arrested.

Corresponding Provision of Previous Statute: Section 311A, Code of Criminal Procedure, 1973

Section 311A – Power of Magistrate to order person to give specimen signatures or handwriting - If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Code, it is expedient to direct any person, including an accused person, to give specimen signatures or handwriting, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or handwriting:

Provided that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding.

350. Expenses of complainants and witnesses

Subject to any rules made by the State Government, any Criminal Court may, if it thinks fit, order payment, on the part of the Government, of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceeding before such Court under this Sanhita.

Corresponding Provision of Previous Statute: Section 312, Code of Criminal Procedure, 1973

Section 312 – Expenses of complainants and witnesses - Subject to any rules made by the State Government, any Criminal Court may, if it thinks fit, order payment, on the part of the Government, of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceeding before such Court under this Code.

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351. Power to examine accused

(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court- -

(a) may at any stage, without previously warning the accused put such questions to him as the Court considers necessary;

(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case:

Provided that in a summons case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) No oath shall be administered to the accused when he is examined under sub- section (1).

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and

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the Court may permit filing of written statement by the accused as sufficient compliance of this section.

Corresponding Provision of Previous Statute: Section 313, Code of Criminal Procedure, 1973

Section 313 – Power to examine the accused - (1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court —

(a) may at any stage, without previously warning the accused put such questions to him as the Court considers necessary;

(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case:

Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) No oath shall be administered to the accused when he is examined under sub-section (1).

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section.

LANDMARK JUDGMENT

Balwant Singh and Ors. vs. State of Punjab, MANU/SC/0344/1995

352. Oral arguments and memorandum of arguments

(1) Any party to a proceeding may, as soon as may be, after the close of his evidence, address concise oral arguments, and may, before he concludes the oral arguments, if any, submit a memorandum to the Court setting forth concisely and under distinct headings, the arguments in support of his case and every such memorandum shall form part of the record.

(2) A copy of every such memorandum shall be simultaneously furnished to the opposite party.

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(3) No adjournment of the proceedings shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.

(4) The Court may, if it is of opinion that the oral arguments are not concise or relevant, regulate such arguments.

Corresponding Provision of Previous Statute: Section 314, Code of Criminal Procedure, 1973

Section 314 – Oral arguments and memorandum of arguments - (1) Any party to a proceeding may, as soon as may be, after the close of his evidence, address concise oral arguments, and may, before he concludes the oral arguments, if any, submit a memorandum to the Court setting forth concisely and under distinct headings, the arguments in support of his case and every such memorandum shall form part of the record.

(2) A copy of every such memorandum shall be simultaneously furnished to the opposite party.

(3) No adjournment of the proceedings shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.

(4) The Court may, if it is of opinion that the oral arguments are not concise or relevant, regulate such arguments.

353. Accused person to be competent witness

(1) Any person accused of an offence before a Criminal Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:

Provided that- -

(a) he shall not be called as a witness except on his own request in writing;

(b) his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any person charged together with him at the same trial.

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(2) Any person against whom proceedings are instituted in any Criminal Court under section 101, or section 126, or section 127, or section 128, or section 129, or under Chapter X or under Part B, Part C or Part D of Chapter XI, may offer himself as a witness in such proceedings:

Provided that in proceedings under section 127, section 128, or section 129, the failure of such person to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against him or any other person proceeded against together with him at the same inquiry.

Corresponding Provision of Previous Statute: Section 315, Code of Criminal Procedure, 1973

Section 315 – Accused person to be competent witness - (1) Any person accused of an offence before a Criminal Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:

Provided that—

(a) he shall not be called as a witness except on his own request in writing;

(b) his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any person charged together with him that the same trial.

(2) Any person against whom proceedings are instituted in any Criminal Court under section 98, or section 107 or section 108, or section 109, or section 110, or under Chapter IX or under Part B, Part C or Part D of Chapter X, may offer himself as a witness in such proceedings:

Provided that in proceedings under section 108, section 109, or section 110, the failure of such person to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against him or any other person proceeded against together with him at the same inquiry.

354. No influence to be used to induce disclosure

Except as provided in sections 343 and 344, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

Corresponding Provision of Previous Statute: Section 316, Code of Criminal Procedure, 1973

Section 316 – No influence to be used to induce disclosure - Except as provided in sections 306 and 307, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

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355. Provision for inquiries and trial being held in absence of accused in certain cases

(1) At any stage of an inquiry or trial under this Sanhita, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, or that the accused persistently disturbs the proceedings in Court, the Judge or Magistrate may, if the accused is represented by an advocate, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

(2) If the accused in any such case is not represented by an advocate, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately.

Explanation.- - For the purpose of this section, personal attendance of the accused includes attendance through audio- video electronic means.

Corresponding Provision of Previous Statute: Section 317, Code of Criminal Procedure, 1973

Section 317 – Provision for inquiries and trial being held in the absence of accused in certain cases - (1) At any stage of an inquiry or trial under this Code, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, or that the accused persistently disturbs the proceedings in Court, the Judge or Magistrate may, if the accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

(2) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately.

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356. Inquiry, trial or judgment in absentia of proclaimed offender

(1) Notwithstanding anything contained in this Sanhita or in any other law for the time being in force, when a person declared as a proclaimed offender, whether or not charged jointly, has absconded to evade trial and there is no immediate prospect of arresting him, it shall be deemed to operate as a waiver of the right of such person to be present and tried in person, and the Court shall, after recording reasons in writing, in the interest of justice, proceed with the trial in the like manner and with like effect as if he was present, under this Sanhita and pronounce the judgment:

Provided that the Court shall not commence the trial unless a period of ninety days has lapsed from the date of framing of the charge.

(2) The Court shall ensure that the following procedure has been complied with before proceeding under sub- section (1), namely:- -

(i) issuance of two consecutive warrants of arrest within the interval of at least thirty days;

(ii) publish in a national or local daily newspaper circulating in the place of his last known address of residence, requiring the proclaimed offender to appear before the Court for trial and informing him that in case he fails to appear within thirty days from the date of such publication, the trial shall commence in his absence;

(iii) inform his relative or friend, if any, about the commencement of the trial; and
(iv) affix information about the commencement of the trial on some conspicuous part of the house or homestead in which such person ordinarily

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resides and display in the police station of the district of his last known address of residence.

(3) Where the proclaimed offender is not represented by any advocate, he shall be provided with an advocate for his defence at the expense of the State.

(4) Where the Court, competent to try the case or commit for trial, has examined any witnesses for prosecution and recorded their depositions, such depositions shall be given in evidence against such proclaimed offender on the inquiry into, or in trial for, the offence with which he is charged:

Provided that if the proclaimed offender is arrested and produced or appears before the Court during such trial, the Court may, in the interest of justice, allow him to examine any evidence which may have been taken in his absence.

(5) Where a trial is related to a person under this section, the deposition and examination of the witness, may, as far as practicable, be recorded by audio- video electronic means preferably mobile phone and such recording shall be kept in such manner as the Court may direct.

(6) In prosecution for offences under this Sanhita, voluntary absence of accused after the trial has commenced under sub- section (1) shall not prevent continuing the trial including the pronouncement of the judgment even if he is arrested and produced or appears at the conclusion of such trial.

(7) No appeal shall lie against the judgment under this section unless the proclaimed offender presents himself before the Court of appeal:

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Provided that no appeal against conviction shall lie after the expiry of three years from the date of the judgment.

(8) The State may, by notification, extend the provisions of this section to any absconder mentioned in sub- section (1) of section 84.

357. Procedure where accused does not understand proceedings

If the accused, though not a person of unsound mind, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and, in the case of a Court other than a High Court, if such proceedings result in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.

Corresponding Provision of Previous Statute: Section 318, Code of Criminal Procedure, 1973

Section 318 – Procedure where accused does not understand proceedings - If the accused, though not of unsound mind, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and, in the case of a Court other than a High Court, if such proceedings result in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.

358. Power to proceed against other persons appearing to be guilty of offence

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

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(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub- section (1), then- -

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re- heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

Corresponding Provision of Previous Statute: Section 319, Code of Criminal Procedure, 1973

Section 319 – Power to proceed against other persons appearing to be guilty of offence - (1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1), then—

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

359. Compounding of offences

(1) The offences punishable under the sections of the Bharatiya Nyaya Sanhita, 2023 specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table:- -

Linked Provisions

Child And Adolescent Labour - Prohibhition and Regulation Act, 1986 - Section 14D - Compounding of offences

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TABLE

Offence	Section of the Bharatiya Nyaya Sanhita, 2023 applicable	Person by whom offence may be compounded
1	2	3
Enticing or taking away or detaining with criminal intent a married woman.	84	The husband of the woman and the woman.
Voluntarily causing hurt.	115(2)	The person to whom the hurt is caused.
Voluntarily causing hurt on provocation.	122(1)	The person to whom the hurt is caused.
Voluntarily causing grievous hurt on grave and sudden provocation.	122(2)	The person to whom the hurt is caused.
Wrongfully restraining or confining any person.	126(2), 127(2)	The person restrained or confined.
Wrongfully confining a person for three days or more.	127(3)	The person confined.
Wrongfully confining a person for ten days or more.	127(4)	The person confined.
Wrongfully confining a person in secret.	127(6)	The person confined.
Assault or use of criminal force.	131, 133, 136	The person assaulted or to whom criminal force is used.
Uttering words, etc., with deliberate intent to wound the religious feelings of any person.	302	The person whose religious feelings are intended to be wounded.

Consumer Protection Act, 2019 - Section 96 - Compounding of offences

Electricity Act, 2003 - Section 152 - Compounding of offences

Information Technology Act, 2000 - Section 77A - Compounding of offences

Legal Metrology Act, 2009 - Section 48 - Compounding of offences

Limited Liability Partnership Act, 2008 - Section 39 - Compounding of offences

Mines and Minerals - Development and Regulation Act, 1957 - Section 23A - Compounding of offences

Offshore Areas Mineral - Development And Regulation Act, 2002 - Section 30 - Compounding of offences

Rubber Act, 1947 - Section 26A - Compounding of offences

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Theft.	303(2)	The owner of the property stolen.
Dishonest misappropriation of property.	314	The owner of the property misappropriated.
Criminal breach of trust by a carrier, wharfinger, etc.	316(3)	The owner of the property in respect of which the breach of trust has been committed.
Dishonestly receiving stolen property knowing it to be stolen.	317(2)	The owner of the property stolen.
Assisting in the concealment or disposal of stolen property, knowing it to be stolen.	317(5)	The owner of the property stolen.
Cheating.	318(2)	The person cheated.
Cheating by personation.	319(2)	The person cheated.
Fraudulent removal or concealment of property, etc., to prevent distribution among creditors.	320	The creditors who are affected thereby.
Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	321	The creditors who are affected thereby.
Fraudulent execution of deed of transfer containing false statement of consideration.	322	The person affected thereby.

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Fraudulent removal or concealment of property.	323	The person affected thereby.
Mischief, when the only loss or damage caused is loss or damage to a private person.	324(2), 324(4)	The person to whom the loss or damage is caused.
Mischief by killing or maiming animal.	325	The owner of the animal.
Mischief by injury to works of irrigation by wrongfully diverting water when the only loss or damage caused is loss or damage to private person.	326(a)	The person to whom the loss or damage is caused.
Criminal trespass.	329(3)	The person in possession of the property trespassed upon.
House- trespass.	329(4)	The person in possession of the property trespassed upon.
House- trespass to commit an offence (other than theft) punishable with imprisonment.	332(c)	The person in possession of the house trespassed upon.
Using a false trade or property mark.	345(3)	The person to whom loss or injury is caused by such use.
Counterfeiting a property mark used by another.	347(1)	The person to whom loss or injury is caused by such use.
Selling goods marked with a counterfeit property mark.	349	The person to whom loss or injury is caused by such use.

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Criminal intimidation.	351(2), 351(3)	The person intimidated.
Insult intended to provoke a breach of peace.	352	The person insulted.
Inducing person to believe himself an object of divine displeasure.	354	The person induced.
Defamation, except such cases as are specified against section 356(2) of the Bharatiya Nyaya Sanhita, 2023, column 1 of the Table under sub- section (2).	356(2)	The person defamed.
Printing or engraving matter, knowing it to be defamatory.	356(3)	The person defamed.
Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	356(4)	The person defamed.
Criminal breach of contract of service.	357	The person with whom the offender has contracted.

(2) The offences punishable under the sections of the Bharatiya Nyaya Sanhita, 2023 specified in the first two columns of the Table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that Table:- -

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TABLE

Offence	Section of the Bharatiya Nyaya Sanhita applicable	Person by whom offence may be compounded
1	2	3
Word, gesture or act intended to insult the modesty of a woman.	79	The woman whom it was intended to insult or whose privacy was intruded upon.
Marrying again during the life- time of a husband or wife.	82(1)	The husband or wife of the person so marrying.
Causing miscarriage.	88	The woman to whom miscarriage is caused.
Voluntarily causing grievous hurt.	117(2)	The person to whom hurt is caused.
Causing hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	125(a)	The person to whom hurt is caused.
Causing grievous hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	1250)	The person to whom hurt is caused.
Assault or criminal force in attempting wrongfully to confine a person.	135	The person assaulted or to whom the force was used.
Theft, by clerk or servant of property in possession of master.	306	The owner of the property stolen.
Criminal breach of trust.	316(2)	The owner of the property in respect of which breach of trust has been committed.

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Criminal breach of trust by a clerk or servant.	316(4)	The owner of the property in respect of which the breach of trust has been committed.
Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	318(3)	The person cheated.
Cheating and dishonestly inducing delivery of property or the making, alteration or destruction of a valuable security.	318(4)	The person cheated.
Defamation against the President or the Vice-President or the Governor of the State or the Administrator of the Union territory or a Minister in respect of his public functions when instituted upon a complaint made by the public prosecutor.	356(2)	The person defamed.

(3) When an offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) or where the accused is liable under sub- section (5) of section 3 or section 190 of the Bharatiya Nyaya Sanhita, 2023, may be compounded in like manner.

(4) (a) When the person who would otherwise be competent to compound an offence under this section is a child or of unsound

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mind, any person competent to contract on his behalf may, with the permission of the Court, compound such offence;

(b) When the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure, 1908 (5 of 1908) of such person may, with the consent of the Court, compound such offence.

(5) When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.

(6) A High Court or Court of Session acting in the exercise of its powers of revision under section 442 may allow any person to compound any offence which such person is competent to compound under this section.

(7) No offence shall be compounded if the accused is, by reason of a previous conviction, liable either to enhanced punishment or to a punishment of a different kind for such offence.

(8) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

(9) No offence shall be compounded except as provided by this section.

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Corresponding Provision of Previous Statute: Section 320, Code of Criminal Procedure, 1973

Section 320 – Compounding of offences - (1) The offences punishable under the sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table:—

TABLE

Offence	Section of the Indian Penal Code applicable	Person by whom offence may be compounded
1	2	3
Uttering words etc. with deliberate intent to wound the religious feelings of any person.	298	The person whose religious feelings are intended to be wounded.
Voluntarily casuing hurt.	323	The person to whom the hurt is caused.
Voluntarily causing hurt on provocation.	334	Ditto.
Volunatrily causing grievous hurt on grave and sudden provocation.	335	The person to whom the hurt is caused.
Wrongfully restraining or confining any person.	341, 342	The person restrained or confined.
Wrongfully confining a person for three days or more	343	The person confined.
Wrongfully confining a person for ten days or more.	344	Ditto.
Wrongfully confining a person in secret.	346	The person confined.
Assault or use of criminal force.	352, 355, 358	The person assaulted or to whom criminal force is used.
Theft.	379	The owner of the property stolen.
Dishonest misappropriation of property.	403	The owner of the property misappropriated.
Criminal breach of trust by a carrier, wharfinger, etc.	407	The owner of the property in respect of which the breach of trust has been committed.
Dishonestly receiving stolen property knowing it to be stolen.	411	The owner of the property stolen.
Assisting in the concealment or disposal of stolen property, knowing it to be stolen.	414	Ditto.
Cheating.	417	The person cheated.
Cheating by personation.	419	Ditto.
Fraudulent removal or concealment of property, etc., to prevent distribution among creditors.	421	The creditors who are affected thereby.
Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	422	Ditto.
Fraudulent execution of deed of transfer containing false statement of consideration.	423	The person affected thereby.
Fraudulent removal or concealment of property.	424	Ditto.

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1	2	3
Mischief, when the only loss or damage caused is loss or damage to a private person.	426, 427	The person to whom the loss or damage is caused.
Mischief by killing or maiming animal.	428	The owner of the animal
Mischief by killing or maiming cattle, etc.	429	The owner of the cattle or animal.
Mischief by injury to works of irrigation by wrongfully diverting water when the only loss or damage caused is loss or damage to private person.	430	The person to whom the loss or damage is caused.
Criminal trespass.	447	The person in possession of the property trespassed upon.
House-trespass.	448	Ditto.
House-trespass to commit an offence (other than theft) punishable with imprisonment.	451	The person in possession of the house trespassed upon.
Using a false trade or property mark.	482	The person to whom loss or injury is caused by such use.
Counterfeiting a trade or property mark used by another.	483	Ditto.
Knowingly selling, or exposing or possessing for sale or for manufacturing purpose, goods marked with a counterfeit property mark.	486	Ditto.
Criminal breach of contract of service.	491	The person with whom the offender has contracted.
Adultery.	497	The husband of the woman.
Enticing or taking away or detaining with criminal intent a married woman.	498	The husband of the woman and the woman.
Defamation, except such cases as are specified against section 500 of the Indian Penal Code (45 of 1860) in column 1 of the Table under sub-section (2).	500	The person defamed.
Printing or engraving matter, knowing it to be defamatory.	501	Ditto.
Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	502	Ditto.
Insult intended to provoke a breach of the peace.	504	The person insulted.
Criminal intimidation.	506	The person intimidated.
Inducing person to believe himself an object of divine displeasure.	508	The person induced

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(2) The offences punishable under the sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the Table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that Table: —

TABLE

Offence	Section of the Indian Penal Code applicable	Person by whom offence may be compounded
1	2	3
Causing miscarriage.	312	The woman to whom miscarriage is caused.
Voluntarily causing grievous hurt.	325	The person to whom hurt is caused.
Causing hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	337	Ditto.
Causing grievous hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	338	Ditto.
Assault or criminal force in attempt-ting wrongfully to confine a person.	357	The person assaulted or to whomthe force was used.
Theft, by clerk or servant of property in possession of master.	381	The owner of the property stolen.
Criminal breach of trust	406	The owner of property in respect of which breach of trust has been committed.
Criminal breach of trust by a clerk or servant.	408	The owner of the property in respect of which the breach of trust has been committed.
Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	418	The person cheated.
Cheating and dishonestly inducing delivery of property or the making, alteration or destruction of a valuable security.	420	The person cheated.
Marrying again during the life-time of a husband or wife.	494	The husband or wife of the person so marrying.
Defamation against the President or the Vice-President or the Governor of a State or the Administrator of a Union territory or a Minister in respect of his public functions when instituted upon a complaint made by the Public Prosecutor.	500	The person defamed.
Uttering words or sounds or making gestures or exhibiting any object intending to insult the modesty of a woman or intruding upon the privacy of a woman.	509	The woman whom it was intended to insult or whose privacy was intrudedupon.

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(3) When an offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) or where the accused is liable under section 34 or 149 of the Indian Penal Code (45 of 1860) may be compounded in like manner.

(4) (a) When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf may, with the permission of the Court, compound such offence.

(b) When the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure, 1908 (5 of 1908) of such person may, with the consent of the Court, compound such offence.

(5) When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.

(6) A High Court or Court of Session acting in the exercise of its powers of revision under section 401 may allow any person to compound any offence which such person is competent to compound under this section.

(7) No offence shall be compounded if the accused is, by reason of a previous conviction, liable either to enhanced punishment or to a punishment of a different kind for such offence.

(8) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

(9) No offence shall be compounded except as provided by this section.

LANDMARK JUDGMENT

State of M.P. vs. Madanlal, MANU/SC/0689/2015

360. Withdrawal from prosecution

The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court, at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and, upon such withdrawal,- -

(a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;

(b) if it is made after a charge has been framed, or when under this Sanhita no charge is required, he shall be acquitted in respect of such offence or offences:
Provided that where such offence- -

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(i) was against any law relating to a matter to which the executive power of the Union extends; or

(ii) was investigated under any Central Act; or

(iii) involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government; or

(iv) was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty, and the Prosecutor in charge of the case has not been appointed by the Central Government, he shall not, unless he has been permitted by the Central Government to do so, move the Court for its consent to withdraw from the prosecution and the Court shall, before according consent, direct the Prosecutor to produce before it the permission granted by the Central Government to withdraw from the prosecution:

Provided further that no Court shall allow such withdrawal without giving an opportunity of being heard to the victim in the case.

Corresponding Provision of Previous Statute: Section 321, Code of Criminal Procedure, 1973

Section 321 - Withdrawal from prosecution - The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court, at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and, upon such withdrawal,—

(a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;

(b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences:

Provided that where such offence—

(i) was against any law relating to a matter to which the executive power of the Union extends, or

(ii) was investigated by the Delhi Special Police Establishment under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or

(iii) involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or

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(iv) was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty,

and the Prosecutor in charge of the case has not been appointed by the Central Government, he shall not, unless he has been permitted by the Central Government to do so, move the Court for its consent to withdraw from the prosecution and the Court shall, before according consent, direct the Prosecutor to produce before it the permission granted by the Central Government to withdraw from the prosecution.

LANDMARK JUDGMENT

Bansi Lal vs. Chandan Lal And Ors., MANU/SC/0089/1975

361. Procedure in cases which Magistrate cannot dispose of

(1) If, in the course of any inquiry into an offence or a trial before a Magistrate in any district, the evidence appears to him to warrant a presumption- -

(a) that he has no jurisdiction to try the case or commit it for trial; or

(b) that the case is one which should be tried or committed for trial by some other Magistrate in the district; or

(c) that the case should be tried by the Chief Judicial Magistrate, he shall stay the proceedings and submit the case, with a brief report explaining its nature, to the Chief Judicial Magistrate or to such other Magistrate, having jurisdiction, as the Chief Judicial Magistrate directs.

(2) The Magistrate to whom the case is submitted may, if so empowered, either try the case himself, or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial.

Corresponding Provision of Previous Statute: Section 322, Code of Criminal Procedure, 1973

Section 322 - Procedure in cases which Magistrate cannot dispose of - (1) If, in the course of any inquiry into an offence or a trial before a Magistrate in any district, the evidence appears to him to warrant a presumption—

(a) that he has no jurisdiction to try the case or commit it for trial, or

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(b) that the case is one which should be tried or committed for trial by some other Magistrate in the district, or

(c) that the case should be tried by the Chief Judicial Magistrate, he shall stay the proceedings and submit the case, with a brief report explaining its nature, to the Chief Judicial Magistrate or to such other Magistrate, having jurisdiction, as the Chief Judicial Magistrate directs.

(2) The Magistrate to whom the case is submitted may, if so empowered, either try the case himself, or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial.

362. Procedure when after commencement of inquiry or trial, Magistrate finds case should be committed

If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing the judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under the provisions hereinbefore contained and thereupon the provisions of Chapter XIX shall apply to the commitment so made.

Corresponding Provision of Previous Statute: Section 323, Code of Criminal Procedure, 1973

Section 323 - Procedure when, after commencement of inquiry or trial, Magistrate finds case should be Committed - If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing the judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under the provisions hereinbefore contained and thereupon the provisions of Chapter XVIII shall apply to the commitment so made

363. Trial of persons previously convicted of offences against coinage, stamp- law or property

(1) Where a person, having been convicted of an offence punishable under Chapter X or Chapter XVII of the Bharatiya Nyaya Sanhita, 2023, with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those Chapters with imprisonment for a term of three years or upwards, and the Magistrate before whom the case is pending is satisfied that

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there is ground for presuming that such person has committed the offence, he shall be sent for trial to the Chief Judicial Magistrate or committed to the Court of Session, unless the Magistrate is competent to try the case and is of opinion that he can himself pass an adequate sentence if the accused is convicted.

(2) When any person is sent for trial to the Chief Judicial Magistrate or committed to the Court of Session under sub- section (1), any other person accused jointly with him in the same inquiry or trial shall be similarly sent or committed, unless the Magistrate discharges such other person under section 262 or section 268, as the case may be.

Corresponding Provision of Previous Statute: Section 324, Code of Criminal Procedure, 1973

Section 324 - Trial of persons previously convicted of offences against coinage, stamp-law or property - (1) Where a person, having been convicted of an offence punishable under Chapter XII or Chapter XVII of the Indian Penal Code (45 of 1860), with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those Chapters with imprisonment for a term of three years or upwards, and the Magistrate before whom the case is pending is satisfied that there is ground for presuming that such person has committed the offence, he shall be sent for trial to the Chief Judicial Magistrate or committed to the Court of Session, unless the Magistrate is competent to try the case and is of opinion that he can himself pass an adequate sentence if the accused is convicted.

(2) When any person is sent for trial to the Chief Judicial Magistrate or committed to the Court of Session under sub-section (1), any other person accused jointly with him in the same inquiry or trial shall be similarly sent or committed, unless the Magistrate discharges such other person under section 239 or section 245, as the case may be.

364. Procedure when Magistrate cannot pass sentence sufficiently severe

(1) Whenever a Magistrate is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or, being a Magistrate of the second class, is of opinion that the accused ought to be required to execute a bond or bail bond under section

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125, he may record the opinion and submit his proceedings, and forward the accused, to the Chief Judicial Magistrate to whom he is subordinate.

(2) When more accused persons than one are being tried together, and the Magistrate considers it necessary to proceed under sub-section (1), in regard to any of such accused, he shall forward all the accused, who are in his opinion guilty, to the Chief Judicial Magistrate.

(3) The Chief Judicial Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case and may call for and take any further evidence and shall pass such judgment, sentence or order in the case as he thinks fit, and is according to law.

Corresponding Provision of Previous Statute: Section 325, Code of Criminal Procedure, 1973

Section 325 - Procedure when Magistrate cannot pass sentence sufficiently severe - (1) Whenever a Magistrate is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or, being a Magistrate of the second class, is of opinion that the accused ought to be required to execute a bond under section 106, he may record the opinion and submit his proceedings, and forward the accused, to the Chief Judicial Magistrate to whom he is subordinate.

(2) When more accused than one are being tried together, and the Magistrate considers it necessary to proceed under sub-section (1), in regard to any of such accused, he shall forward all the accused, who are in his opinion guilty, to the Chief Judicial Magistrate.

(3) The Chief Judicial Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case and may call for and take any further evidence and shall pass such judgment, sentence or order in the case as he thinks fit, and is according to law.

LANDMARK JUDGMENT

Ratilal Bhanji Mithani vs. State of Maharashtra and Ors., MANU/SC/0398/1978

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365. Conviction or commitment on evidence partly recorded by one Magistrate and partly by another

(1) Whenever any Judge or Magistrate, after having heard and recorded the whole or any part of the evidence in any inquiry or a trial, ceases to exercise jurisdiction therein and is succeeded by another Judge or Magistrate who has and who exercises such jurisdiction, the Judge or Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself:

Provided that if the succeeding Judge or Magistrate is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, he may re- summon any such witness, and after such further examination, cross- examination and re-examination, if any, as he may permit, the witness shall be discharged.

(2) When a case is transferred under the provisions of this Sanhita from one Judge to another Judge or from one Magistrate to another Magistrate, the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter, within the meaning of sub- section (1).

(3) Nothing in this section applies to summary trials or to cases in which proceedings have been stayed under section 361 or in which proceedings have been submitted to a superior Magistrate under section 364.

Corresponding Provision of Previous Statute: Section 326, Code of Criminal Procedure, 1973

Section 326 - Conviction or commitment on evidence partly recorded by one Magistrate and partly by Another - (1) Whenever any Judge or Magistrate, after having heard and recorded the whole or any part of the evidence in any enquiry or a trial, ceases to exercise jurisdiction therein and is succeeded by another Judge or Magistrate who has and who exercises such jurisdiction, the Judge or Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself:

Provided that if the succeeding Judge or Magistrate is of opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of Justice, he may re-summon any such witness, and after such further examination, cross-examination and re-examination, if any, as he may permit, the witness shall be discharged.

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(2) When a case is transferred under the provisions of this Code from one judge to another Judge or from one Magistrate to another Magistrate, the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter, within the meaning of sub-section (1).

(3) Nothing in this section applies to summary trials or to cases in which proceedings have been stayed under section 322 or in which proceedings have been submitted to a superior Magistrate under section 325.

366. Court to be open

(1) The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open Court, to which the public generally may have access, so far as the same can conveniently contain them:

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

(2) Notwithstanding anything contained in sub- section (1), the inquiry into and trial of rape or an offence under section 64, section 65, section 66, section 67, section 68, section 70 or section 71 of the Bharatiya Nyaya Sanhita, 2023 or under sections 4, 6, 8 or section 10 of the Protection of Children from Sexual Offences Act, 2012 (32 of 2012) shall be conducted in camera:

Provided that the presiding Judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or building used by the Court:

Provided further that in camera trial shall be conducted as far as practicable by a woman Judge or Magistrate.

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(3) Where any proceedings are held under sub- section (2), it shall not be lawful for any person to print or publish any matter in relation to any such proceedings except with the previous permission of the Court:

Provided that the ban on printing or publication of trial proceedings in relation to an offence of rape may be lifted, subject to maintaining confidentiality of name and address of the parties.

Corresponding Provision of Previous Statute: Section 327, Code of Criminal Procedure, 1973

Section 327 - Court to be open - (1) The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open Court, to which the public generally may have access, so far as the same can conveniently contain them:

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

(2) Notwithstanding anything contained in sub- section (1), the inquiry into and trial of rape or an offence under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB section 376E of the Indian Penal Code (45 of 1860)] shall be conducted in camera :

Provided that the presiding Judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or building used by the Court:

Provided further that in camera trial shall be conducted as far as practicable by a woman Judge or Magistrate.

(3) Where any proceedings are held under sub-section (2), it shall not be lawful for any person to print or publish any matter in relation to any such proceedings except with the previous permission of the Court:

Provided that the ban on printing or publication of trial proceedings in relation to an offence of rape may be lifted, subject to maintaining confidentiality of name and address of the parties.

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CHAPTER XXVII

PROVISIONS AS TO ACCUSED PERSONS OF UNSOUND MIND

367. Procedure in case of accused being person of unsound mind

(1) When a Magistrate holding an inquiry has reason to believe that the person against whom the inquiry is being held is a person of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness of mind, and shall cause such person to be examined by the civil surgeon of the district or such other medical officer as the State Government may direct, and thereupon shall examine such surgeon or other medical officer as a witness, and shall reduce the examination to writing.

(2) If the civil surgeon finds the accused to be a person of unsound mind, he shall refer such person to a psychiatrist or clinical psychologist of Government hospital or Government medical college for care, treatment and prognosis of the condition and the psychiatrist or clinical psychologist, as the case may be, shall inform the Magistrate whether the accused is suffering from unsoundness of mind or intellectual disability:

Provided that if the accused is aggrieved by the information given by the psychiatric or clinical psychologist, as the case may be, to the Magistrate, he may prefer an appeal before the Medical Board which shall consist of- -

(a) head of psychiatry unit in the nearest Government hospital; and

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(b) a faculty member in psychiatry in the nearest Government medical college.

(3) Pending such examination and inquiry, the Magistrate may deal with such person in accordance with the provisions of section 369.

(4) If the Magistrate is informed that the person referred to in sub-section (2) is a person of unsound mind, the Magistrate shall further determine whether the unsoundness of mind renders the accused incapable of entering defence and if the accused is found so incapable, the Magistrate shall record a finding to that effect, and shall examine the record of evidence produced by the prosecution and after hearing the advocate of the accused but without questioning the accused, if he finds that no prima facie case is made out against the accused, he shall, instead of postponing the enquiry, discharge the accused and deal with him in the manner provided under section 369:

Provided that if the Magistrate finds that a prima facie case is made out against the accused in respect of whom a finding of unsoundness of mind is arrived at, he shall postpone the proceeding for such period, as in the opinion of the psychiatrist or clinical psychologist, is required for the treatment of the accused, and order the accused to be dealt with as provided under section 369.

(5) If the Magistrate is informed that the person referred to in sub-section (2) is a person with intellectual disability, the Magistrate shall further determine whether the intellectual disability renders the accused incapable of entering defence, and if the accused is found so

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incapable, the Magistrate shall order closure of the inquiry and deal with the accused in the manner provided under section 369.

Corresponding Provision of Previous Statute: Section 328, Code of Criminal Procedure, 1973

Section 328 - Procedure in case of accused being lunatic - (1) When a Magistrate holding an inquiry has reason to believe that the person against whom the inquiry is being held is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness of mind, and shall cause such person to be examined by the civil surgeon of the district or such other medical officer as the State Government may direct, and thereupon shall examine such surgeon or other officer as a witness, and shall reduce the examination to writing.

(1A) If the civil surgeon finds the accused to be of unsound mind, he shall refer such person to a psychiatrist or clinical psychologist for care, treatment and prognosis of the condition and the psychiatrist or clinical psychologist, as the case may be, shall inform the Magistrate whether the accused is suffering from unsoundness of mind or mental retardation:

Provided that if the accused is aggrieved by the information given by the psychiatric or clinical psychologist, as the case may be, to the Magistrate, he may prefer an appeal before the Medical Board which shall consist of—

(a) head of psychiatry unit in the nearest government hospital; and

(b) a faculty member in psychiatry in the nearest medical college.

(2) Pending such examination and inquiry, the Magistrate may deal with such person in accordance with the provisions of section 330.

(3) If such Magistrate is informed that the person referred to in sub-section (1A) is a person of unsound mind, the Magistrate shall further determine whether the unsoundness of mind renders the accused incapable of entering defence and if the accused is found so incapable, the Magistrate shall record a finding to that effect, and shall examine the record of evidence produced by the prosecution and after hearing the advocate of the accused but without questioning the accused, if he finds that no prima facie case is made out against the accused, he shall, instead of postponing the enquiry, discharge the accused and deal with him in the manner provided under section 330:

Provided that if the Magistrate finds that a prima facie case is made out against the accused in respect of whom a finding of unsoundness of mind is arrived at, he shall postpone the proceeding for such period, as in the opinion of the psychiatrist or clinical psychologist, is required for the treatment of the accused, and order the accused to be dealt with as provided under section 330.

(4) If such Magistrate is informed that the person referred to in sub-section (1A) is a person with mental retardation, the Magistrate shall further determine whether the mental retardation renders the accused incapable of entering defence, and if the accused is found so incapable, the Magistrate shall order closure of the inquiry and deal with the accused in the manner provided under section 330.

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368. Procedure in case of person of unsound mind tried before Court

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 369 - Release of person with unsound mind pending investigation or trial

(1) If at the trial of any person before a Magistrate or Court of Session, it appears to the Magistrate or Court that such person is of unsound mind and consequently incapable of making his defence, the Magistrate or Court shall, in the first instance, try the fact of such unsoundness of mind and incapacity, and if the Magistrate or Court, after considering such medical and other evidence as may be produced before him or it, is satisfied of the fact, he or it shall record a finding to that effect and shall postpone further proceedings in the case.

(2) If during trial, the Magistrate or Court of Session finds the accused to be of unsound mind, he or it shall refer such person to a psychiatrist or clinical psychologist for care and treatment, and the psychiatrist or clinical psychologist, as the case may be, shall report to the Magistrate or Court whether the accused is suffering from unsoundness of mind:

Provided that if the accused is aggrieved by the information given by the psychiatrist or clinical psychologist, as the case may be, to the Magistrate, he may prefer an appeal before the Medical Board which shall consist of- -

(a) head of psychiatry unit in the nearest Government hospital; and

(b) a faculty member in psychiatry in the nearest Government medical college.

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(3) If the Magistrate or Court is informed that the person referred to in sub- section (2) is a person of unsound mind, the Magistrate or Court shall further determine whether the unsoundness of mind renders the accused incapable of entering defence and if the accused is found so incapable, the Magistrate or Court shall record a finding to that effect and shall examine the record of evidence produced by the prosecution and after hearing the advocate of the accused but without questioning the accused, if the Magistrate or Court finds that no prima facie case is made out against the accused, he or it shall, instead of postponing the trial, discharge the accused and deal with him in the manner provided under section 369:

Provided that if the Magistrate or Court finds that a prima facie case is made out against the accused in respect of whom a finding of unsoundness of mind is arrived at, he shall postpone the trial for such period, as in the opinion of the psychiatrist or clinical psychologist, is required for the treatment of the accused.

(4) If the Magistrate or Court finds that a prima facie case is made out against the accused and he is incapable of entering defence by reason of intellectual disability, he or it shall not hold the trial and order the accused to be dealt with in accordance with section 369.

Corresponding Provision of Previous Statute: Section 329, Code of Criminal Procedure, 1973

Section 329 - Procedure in case of person of unsound mind tried before Court - (1) If at the trial of any person before a Magistrate or Court of Session, it appears to the Magistrate or Court that such person is of unsound mind and consequently incapable of making his defence, the Magistrate or Court shall, in the first instance, try the fact of such unsoundness and incapacity, and if the Magistrate or Court, after considering such medical and other evidence as may be produced before him or it, is satisfied of the fact, he or it shall record a finding to that effect and shall postpone further proceedings in the case.

(1A) If during trial, the Magistrate or Court of Sessions finds the accused to be of unsound mind, he or it shall refer such person to a psychiatrist or clinical psychologist for care and treatment, and the psychiatrist or clinical psychologist, as the case may be shall report to the Magistrate or Court whether the accused is suffering from unsoundness of mind:

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Provided that if the accused is aggrieved by the information given by the psychiatric or clinical psychologist, as the case may be, to the Magistrate, he may prefer an appeal before the Medical Board which shall consist of—

(a) head of psychiatry unit in the nearest government hospital; and

(b) a faculty member in psychiatry in the nearest medical college.

(2) If such Magistrate or Court is informed that the person referred to in sub-section (1A) is a person of unsound mind, the Magistrate or Court shall further determine whether unsoundness of mind renders the accused incapable of entering defence and if the accused is found so incapable, the Magistrate or Court shall record a finding to that effect and shall examine the record of evidence produced by the prosecution and after hearing the advocate of the accused but without questioning the accused, if the Magistrate or Court finds that no prima facie case is made out against the accused, he or it shall, instead of postponing the trial, discharge the accused and deal with him in the manner provided under section 330:

Provided that if the Magistrate or Court finds that a prima facie case is made out against the accused in respect of whom a finding of unsoundness of mind is arrived at, he shall postpone the trial for such period, as in the opinion of the psychiatrist or clinical psychologist, is required for the treatment of the accused.

(3) If the Magistrate or Court finds that a prima facie case is made out against the accused and he is incapable of entering defence by reason of mental retardation, he or it shall not hold the trial and order the accused to be dealt with in accordance with section 330.

369. Release of person of unsound mind pending investigation or trial

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 368 - Procedure in case of person with unsound mind tried before Court

(1) Whenever a person if found under section 367 or section 368 to be incapable of entering defence by reason of unsoundness of mind or intellectual disability, the Magistrate or Court, as the case may be, shall, whether the case is one in which bail may be taken or not, order release of such person on bail:

Provided that the accused is suffering from unsoundness of mind or intellectual disability which does not mandate in- patient treatment and a friend or relative undertakes to obtain regular out- patient psychiatric treatment from the nearest medical facility and to prevent from doing injury to himself or to any other person.

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(2) If the case is one in which, in the opinion of the Magistrate or Court, as the case may be, bail cannot be granted or if an appropriate undertaking is not given, he or it shall order the accused to be kept in such a place where regular psychiatric treatment can be provided, and shall report the action taken to the State Government:

Provided that no order for the detention of the accused in a public mental health establishment shall be made otherwise than in accordance with such rules as the State Government may have made under the Mental Healthcare Act, 2017 (10 of 2017).

(3) Whenever a person is found under section 367 or section 368 to be incapable of entering defence by reason of unsoundness of mind or intellectual disability, the Magistrate or Court, as the case may be, shall keeping in view the nature of the act committed and the extent of unsoundness of mind or intellectual disability, further determine if the release of the accused can be ordered:

Provided that- -

(a) if on the basis of medical opinion or opinion of a specialist, the Magistrate or Court, as the case may be, decide to order discharge of the accused, as provided under section 367 or section 368, such release may be ordered, if sufficient security is given that the accused shall be prevented from doing injury to himself or to any other person;

(b) if the Magistrate or Court, as the case may be, is of the opinion that discharge of the accused cannot be ordered, the transfer of the accused to a residential facility for persons with unsoundness of

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mind or intellectual disability may be ordered wherein the accused may be provided care and appropriate education and training.

Corresponding Provision of Previous Statute: Section 330, Code of Criminal Procedure, 1973

Section 330 - Release of person of unsound mind pending investigation or trial - (1) Whenever a person if found under section 328 or section 329 to be incapable of entering defence by reason of unsoundness of mind or mental retardation, the Magistrate or Court, as the case may be shall, whether the case is one in which bail may be taken or not, order release of such person on bail:

Provided that the accused is suffering from unsoundness of mind or mental retardation which does not mandate in-patient treatment and a friend or relative undertakes to obtain regular out-patient psychiatric treatment from the nearest medical facility and to prevent from doing injury to himself or to any other person.

(2) If the case is one in which, in the opinion of the Magistrate or Court, as the case may be, bail cannot be granted or if an appropriate undertaking is not given, he or it shall order the accused to be kept in such a place where regular psychiatric treatment can be provided, and shall report the action taken to the State Government:

Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the State Government may have made under the Mental Health Act, 1987 (14 of 1987).

(3) Whenever a person is found under section 328 or section 329 to be incapable of entering defence by reason of unsoundness of mind or mental retardation, the Magistrate or Court, as the case may be, shall keeping in view the nature of the act committed and the extent of unsoundness of mind or mental retardation, further determine if the release of the accused can be ordered:

Provided that—

(a) if on the basis of medical opinion or opinion of a specialist, the Magistrate or Court, as the case may be, decide to order discharge of the accused, as provided under section 328 or section 329, such release may be ordered, if sufficient security is given that the accused shall be prevented from doing injury to himself or to any other person;

(b) if the Magistrate or Court, as the case may be, is of opinion that discharge of the accused cannot be ordered, the transfer of the accused to a residential facility for persons of unsound mind or mental retardation may be ordered wherein the accused may be provided care and appropriate education and training.

370. Resumption of inquiry or trial

(1) Whenever an inquiry or a trial is postponed under section 367 or section 368, the Magistrate or Court, as the case may be, may at any time after the person concerned has ceased to be of unsound mind,

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resume the inquiry or trial and require the accused to appear or be brought before such Magistrate or Court.

(2) When the accused has been released under section 369, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

Corresponding Provision of Previous Statute: Section 331, Code of Criminal Procedure, 1973

Section 331 - Resumption of inquiry or trial - (1) Whenever an inquiry or a trial is postponed under section 328 or section 329, the Magistrate or Court, as the case may be, may at any time after the person concerned has ceased to be of unsound mind, resume the inquiry or trial and require the accused to appear or be brought before such Magistrate or Court.

(2) When the accused has been released under section 330, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

371. Procedure on accused appearing before Magistrate or Court

(1) If, when the accused appears or is again brought before the Magistrate or Court, as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

(2) If the Magistrate or Court considers the accused to be still incapable of making his defence, the Magistrate or Court shall act according to the provisions of section 367 or section 368, as the case may be, and if the accused is found to be of unsound mind and consequently incapable of making his defence, shall deal with such accused in accordance with the provisions of section 369.

Corresponding Provision of Previous Statute: Section 332, Code of Criminal Procedure, 1973

Section 332 - Procedure on accused appearing before Magistrate or Court - (1) If, when the accused appears or is again brought before the Magistrate or Court, as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

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(2) If the Magistrate or Court considers the accused to be still incapable of making his defence, the Magistrate or Court shall act according to the provisions of section 328 or section 329, as the case may be, and if the accused is found to be of unsound mind and consequently incapable making his defence, shall deal with such accused in accordance with the provisions of section 330.

372. When accused appears to have been of sound mind

When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate is satisfied from the evidence given before him that there is reason to believe that the accused committed an act, which, if he had been of sound mind, would have been an offence, and that he was, at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law, the Magistrate shall proceed with the case, and, if the accused ought to be tried by the Court of Session, commit him for trial before the Court of Session.

Corresponding Provision of Previous Statute: Section 333, Code of Criminal Procedure, 1973

Section 333 - When accused appears to have been of sound mind - When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate is satisfied from the evidence given before him that there is reason to believe that the accused committed an act, which, if he had been of sound mind, would have been an offence, and that he was, at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law, the Magistrate shall proceed with the case, and, if the accused ought to be tried by the Court of Session, commit him for trial before the Court of Session.

373. Judgment of acquittal on ground of unsoundness of mind

Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not.

Corresponding Provision of Previous Statute: Section 334, Code of Criminal Procedure, 1973

Section 334 - Judgment of acquittal on ground of unsoundness of mind - Whenever any person is

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acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not.

374. Person acquitted on ground of unsoundness of mind to be detained in safe custody

(1) Whenever the finding states that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held, shall, if such act would, but for the incapacity found, have constituted an offence,- -

(a) order such person to be detained in safe custody in such place and manner as the Magistrate or Court thinks fit; or

(b) order such person to be delivered to any relative or friend of such person.

(2) No order for the detention of the accused in a public mental health establishment shall be made under clause (a) of sub- section (1) otherwise than in accordance with such rules as the State Government may have made under the Mental Healthcare Act, 2017 (10 of 2017).

(3) No order for the delivery of the accused to a relative or friend shall be made under clause (b) of sub- section (1) except upon the application of such relative or friend and on his giving security to the satisfaction of the Magistrate or Court that the person delivered shall- -

(a) be properly taken care of and prevented from doing injury to himself or to any other person;

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(b) be produced for the inspection of such officer, and at such times and places, as the State Government may direct.

(4) The Magistrate or Court shall report to the State Government the action taken under sub- section (1).

Corresponding Provision of Previous Statute: Section 335, Code of Criminal Procedure, 1973

Section 335 - Person acquitted on such ground to be detained in safe custody - (1) Whenever the finding states that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held, shall, if such act would, but for the incapacity found, have constituted an offence,—

(a) order such person to be detained in safe custody in such place and manner as the Magistrate or Court thinks fit; or

(b) order such person to be delivered to any relative or friend of such person.

(2) No order for the detention of the accused in a lunatic asylum shall be made under clause (a) of sub-section (1) otherwise than in accordance with such rules as the State Government may have made under the Indian Lunacy Act, 1912 (4 of 1912).

(3) No order for the delivery of the accused to a relative or friend shall be made under clause (b) of sub-section

(1) except upon the application of such relative or friend and on his giving security to the satisfaction of the Magistrate or Court that the person delivered shall—

(a) be properly taken care of and prevented from doing injury to himself or to any other person;

(b) be produced for the inspection of such officer, and at such times and places, as the State Government may direct.

(4) The Magistrate or Court shall report to the State Government the action taken under sub-section (1).

LANDMARK JUDGMENT

Balu Ganpat Koshire vs. State of Maharashtra, MANU/MH/0015/1983

375. Power of State Government to empower officer in charge to discharge

The State Government may empower the officer in charge of the jail in which a person is confined under the provisions of section 369 or

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section 374 to discharge all or any of the functions of the Inspector-General of Prisons under section 376 or section 377.

Corresponding Provision of Previous Statute: Section 336, Code of Criminal Procedure, 1973

Section 336 - Power of State Government to empower officer-in-charge to discharge - The State Government may empower the officer in charge of the jail in which a person is confined under the provisions of section 330 or section 335 to discharge all or any of the functions of the Inspector-General of Prisons under section 337 or section 338.

376. Procedure where prisoner of unsound mind is reported capable of making his defence

If a person is detained under the provisions of sub- section (2) of section 369, and in the case of a person detained in a jail, the Inspector- General of Prisons, or, in the case of a person detained in a public mental health establishment, the Mental Health Review Board constituted under the Mental Healthcare Act, 2017 (10 of 2017), shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of section 371; and the certificate of such Inspector- General or visitors as aforesaid shall be receivable as evidence.

Corresponding Provision of Previous Statute: Section 337, Code of Criminal Procedure, 1973

Section 337 - Procedure where lunatic prisoner is reported capable of making his defence - If such person is detained under the provisions of sub-section (2) of section 330, and in the case of a person detained in a jail, the Inspector-General of Prisons, or, in the case of a person detained a lunatic asylum, the visitors of such asylum, or any two of them shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of section 332; and the certificate of such Inspector-General or visitors as aforesaid shall be receivable as evidence.

377. Procedure where person of unsound mind detained is declared fit to be released

(1) If a person is detained under the provisions of sub- section (2) of section

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369, or section 374, and such Inspector- General or visitors shall certify that, in his or their judgment, he may be released without danger of his doing injury to himself or to any other person, the State Government may thereupon order him to be released, or to be detained in custody, or to be transferred to a public mental health establishment if he has not been already sent to such establishment; and, in case it orders him to be transferred to a public mental health establishment, may appoint a Commission, consisting of a Judicial and two medical officers.

(2) Such Commission shall make a formal inquiry into the state of mind of such person, take such evidence as is necessary, and shall report to the State Government, which may order his release or detention as it thinks fit.

Corresponding Provision of Previous Statute: Section 338, Code of Criminal Procedure, 1973

Section 338 - Procedure where lunatic detained is declared fit to be released - (1) If such person is detained under the provisions of sub-section (2) of section 330, or section 335, and such Inspector-General or visitors shall certify that, in his or their judgment, he may be released without danger of his doing injury to himself or to any other person, the State Government may thereupon order him to be released, or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been already sent to such an asylum; and, in case it orders him to be transferred to an asylum, may appoint a Commission, consisting of a Judicial and two medical officers.

378. Delivery of person of unsound mind to care of relative or friend

(1) Whenever any relative or friend of any person detained under the provisions of section 369 or section 374 desires that he shall be delivered to his care and custody, the State Government may, upon the application of such relative or friend and on his giving security to the satisfaction of such State Government, that the person delivered shall- -

(a) be properly taken care of and prevented from doing injury to himself or to any other person;

(b) be produced for the inspection of such officer, and at such times and places, as the State Government may direct;

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(c) in the case of a person detained under sub- section (2) of section 369, be produced when required before such Magistrate or Court, order such person to be delivered to such relative or friend.

(2) If the person so delivered is accused of any offence, the trial of which has been postponed by reason of his being of unsound mind and incapable of making his defence, and the inspecting officer referred to in clause (b) of sub- section (1), certifies at any time to the Magistrate or Court that such person is capable of making his defence, such Magistrate or Court shall call upon the relative or friend to whom such accused was delivered to produce him before the Magistrate or Court; and, upon such production the Magistrate or Court shall proceed in accordance with the provisions of section 371, and the certificate of the inspecting officer shall be receivable as evidence.

Corresponding Provision of Previous Statute: Section 339, Code of Criminal Procedure, 1973

Section 339 - Delivery of lunatic to care of relative or friend - (1) Whenever any relative or friend of any person detained under the provisions of section 330 or section 335 desires that he shall be delivered to his care and custody, the State Government may, upon the application of such relative or friend and on his giving security to the satisfaction of such State Government, that the person delivered shall—

(a) be properly taken care of and prevented from doing injury to himself or to any other person;
(b) be produced for the inspection of such officer, and at such times and places, as the State Government maydirect;
(c) in the case of a person detained under sub-section (2) of section 330, be produced when required before such Magistrate or Court, order such person to be delivered to such relative or friend.

(2) If the person so delivered is accused of any offence, the trial of which has been postponed by reason of his being of unsound mind and incapable of making his defence, and the inspecting officer referred to in clause (b) of sub-section (1), certifies at any time to the Magistrate or Court that such person is capable of making his defence, such Magistrate or Court shall call upon the relative or friend to whom such accused was delivered to produce him before the Magistrate or Court; and, upon such production the Magistrate or Court shall proceed in accordance with the provisions of section 332, and the certificate of the inspecting office shall be receivable as evidence.

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CHAPTER XXVIII

PROVISIONS AS TO OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE

379. Procedure in cases mentioned in section 215

(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub- section (1) of section 215, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,- -

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non- bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub- section (1) in respect of an offence may, in any case where that Court has neither made a

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complaint under sub- section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub- section (4) of section 215.

(3) A complaint made under this section shall be signed,- -

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.

(4) In this section, "Court" has the same meaning as in section 215.

Corresponding Provision of Previous Statute: Section 340, Code of Criminal Procedure, 1973

Section 340 - Procedure in cases mentioned in section 195 - (1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of Justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,—

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.

(3) A complaint made under this section shall be signed,—

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(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.

(4) In this section, "Court" has the same meaning as in section 195.

380. Appeal

(1) Any person on whose application any Court other than a High Court has refused to make a complaint under sub- section (1) or sub-section (2) of section 379, or against whom such a complaint has been made by such Court, may appeal to the Court to which such former Court is subordinate within the meaning of sub- section (4) of section 215, and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint, or, as the case may be, making of the complaint which such former Court might have made under section 379, and, if it makes such complaint, the provisions of that section shall apply accordingly.

(2) An order under this section, and subject to any such order, an order under section 379, shall be final, and shall not be subject to revision.

Corresponding Provision of Previous Statute: Section 341, Code of Criminal Procedure, 1973

Section 341 – Appeal - (1) Any person on whose application any Court other than a High Court has refused to make a complaint under sub-section (1) or sub-section (2) of section 340, or against whom such a complaint has been made by such Court, may appeal to the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195, and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint, or, as the case may be, making of the complaint which such former Court might have made under section 340, and, if it makes such complaint, the provisions of that section shall apply accordingly.

(2) An order under this section, and subject to any such order, an order under section 340, shall be final, and shall not be subject to revision.

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381. Power to order costs

Linked Provisions

Companies Act, 2013 - Section 298 - Power to order costs

Any Court dealing with an application made to it for filing a complaint under section 379 or an appeal under section 380, shall have power to make such order as to costs as may be just.

Corresponding Provision of Previous Statute: Section 342, Code of Criminal Procedure, 1973

Section 342 – Power to order costs - Any Court dealing with an application made to it for filing a complaint under section 340 or an appeal under section 341, shall have power to make such order as to costs as may be just.

382. Procedure of Magistrate taking cognizance

(1) A Magistrate to whom a complaint is made under section 379 or section 380 shall, notwithstanding anything contained in Chapter XVI, proceed, as far as may be, to deal with the case as if it were instituted on a police report.

(2) Where it is brought to the notice of such Magistrate, or of any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage, adjourn the hearing of the case until such appeal is decided.

Corresponding Provision of Previous Statute: Section 343, Code of Criminal Procedure, 1973

Section 343 – Procedure of Magistrate taking cognizance - (1) A Magistrate to whom a complaint is made under section 340 or section 341 shall, notwithstanding anything contained in Chapter XV, proceed, as far as may be, to deal with the case as if it were instituted on a police report.

(2) Where it is brought to the notice of such Magistrate, or of any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage, adjourn the hearing of the case until such appeal is decided.

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383. Summary procedure for trial for giving false evidence

(1) If, at the time of delivery of any judgment or final order disposing of any judicial proceeding, a Court of Session or Magistrate of the first class expresses an opinion to the effect that any witness appearing in such proceeding had knowingly or wilfully given false evidence or had fabricated false evidence with the intention that such evidence should be used in such proceeding, it or he may, if satisfied that it is necessary and expedient in the interest of justice that the witness should be tried summarily for giving or fabricating, as the case may be, false evidence, take cognizance of the offence and may, after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence, try such offender summarily and sentence him to imprisonment for a term which may extend to three months, or to fine which may extend to one thousand rupees, or with both.

(2) In every such case the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials.

(3) Nothing in this section shall affect the power of the Court to make a complaint under section 379 for the offence, where it does not choose to proceed under this section.

(4) Where, after any action is initiated under sub- section (1), it is made to appear to the Court of Session or Magistrate of the first class that an appeal or an application for revision has been preferred or filed against the judgment or order in which the opinion referred to in that sub- section has been expressed, it or he shall stay further proceedings of the trial until the disposal of the appeal or the

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application for revision, as the case may be, and thereupon the further proceedings of the trial shall abide by the results of the appeal or application for revision.

Corresponding Provision of Previous Statute: Section 344, Code of Criminal Procedure, 1973

Section 344 – Summary procedure for trial for giving false evidence - (1) If, at the time of delivery of any judgment or final order disposing of any judicial proceeding, a Court of Session or Magistrate of the first class expresses an opinion to the effect that any witness appearing in such proceeding had knowingly or wilfully given false evidence or had fabricated false evidence with the intention that such evidence should be used in such proceeding, it or he may, if satisfied that it is necessary and expedient in the interest of justice that the witness should be tried summarily for giving or fabricating, as the case may be, false evidence, take cognizance of the offence and may, after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence, try such offender summarily and sentence him to imprisonment for a term which may extend to three months, or to fine which may extend to five hundred rupees, or with both.

(2) In every such case the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials.

(3) Nothing in this section shall affect the power of the Court to make a complaint under section 340 for the offence, where it does not choose to proceed under this section.

(4) Where, after any action is initiated under sub-section (1), it is made to appear to the Court of Session or Magistrate of the first class that an appeal or an application for revision has been preferred or filed against the judgment or order in which the opinion referred to in that sub-section has been expressed, it or he shall stay further proceedings of the trial until the disposal of the appeal or the application for revision, as the case may be, and thereupon the further proceedings of the trial shall abide by the results of the appeal or application for revision.

LANDMARK JUDGMENT

K. Karunakaran vs. T.V. Eachara Warrier and Ors., MANU/SC/0098/1977

384. Procedure in certain cases of contempt

(1) When any such offence as is described in section 210, section 213, section 214, section 215 or section 267 of the Bharatiya Nyaya Sanhita, 2023 is committed in the view or presence of any Civil, Criminal, or Revenue Court, the Court may cause the offender to be detained in custody, and may, at any time before the rising of the Court on the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why

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he should not be punished under this section, sentence the offender to fine not exceeding one thousand rupees, and, in default of payment of fine, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

(2) In every such case the Court shall record the fact constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

(3) If the offence is under section 267 of the Bharatiya Nyaya Sanhita, 2023, the record shall show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.

Corresponding Provision of Previous Statute: Section 345, Code of Criminal Procedure, 1973

Section 345 – Procedure in certain cases of contempt - (1) When any such offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code (45 of 1860) is committed in the view or presence of any Civil, Criminal, or Revenue Court, the Court may cause the offender to be detained in custody, and may, at any time before the rising of the Court or the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why he should not be punished under this section, sentence the offender to fine not exceeding two hundred rupees, and, in default of payment of fine, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

(2) In every such case the Court shall record the fact constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

(3) If the offence is under section 228 of the Indian Penal Code (45 of 1860), the record shall show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.

385. Procedure where Court considers that case should not be dealt with under section 384

(1) If the Court in any case considers that a person accused of any of the offences referred to in section 384 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be

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imposed upon him, or such Court is for any other reason of opinion that the case should not be disposed of under section 384, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such person before such Magistrate, or if sufficient security is not given, shall forward such person in custody to such Magistrate.

(2) The Magistrate to whom any case is forwarded under this section shall proceed to deal with, as far as may be, as if it were instituted on a police report.

Corresponding Provision of Previous Statute: Section 346, Code of Criminal Procedure, 1973

Section 346 – Procedure where Court considers that case should not be dealt with under section 345 - (1) If the Court in any case considers that a person accused of any of the offences referred to in section 345 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is for any other reason of opinion that the case should not be disposed of under section 345, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such person before such Magistrate, or if sufficient security is not given, shall forward such person in custody to such Magistrate.

(2) The Magistrate to whom any case is forwarded under this section shall proceed to deal with, as far as may be, as if it were instituted on a police report.

386. When Registrar or Sub- Registrar to be deemed a Civil Court

When the State Government so directs, any Registrar or any Sub-Registrar appointed under the Registration Act, 1908 (16 of 1908), shall be deemed to be a Civil Court within the meaning of sections 384 and 385.

Corresponding Provision of Previous Statute: Section 347, Code of Criminal Procedure, 1973

Section 347 – When Registrar or Sub-Registrar to be deemed a Civil Court - When the State Government so directs, any Registrar or any Sub-Registrar appointed under the Registration Act, 1908 (16 of 1908), shall be deemed to be a Civil Court within the meaning of sections 345 and 346.

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387. Discharge of offender on submission of apology

When any Court has under section 384 adjudged an offender to punishment, or has under section 385 forwarded him to a Magistrate for trial, for refusing or omitting to do anything which he was lawfully required to do or for any intentional insult or interruption, the Court may, in its discretion, discharge the offender or remit the punishment on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.

Corresponding Provision of Previous Statute: Section 348, Code of Criminal Procedure, 1973

Section 348 – Discharge of offender on submission of apology - When any Court has under section 345 adjudged an offender to punishment, or has under section 346 forwarded him to a Magistrate for trial, for refusing or omitting to do anything which he was lawfully required to do or for any intentional insult or interruption, the Court may, in its discretion, discharge the offender or remit the punishment on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.

388. Imprisonment or committal of person refusing to answer or produce document

If any witness or person called to produce a document or thing before a Criminal Court refuses to answer such questions as are put to him or to produce any document or thing in his possession or power which the Court requires him to produce, and does not, after a reasonable opportunity has been given to him so to do, offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant under the hand of the Presiding Magistrate or Judge commit him to the custody of an officer of the Court for any term not exceeding seven days, unless in the meantime, such person consents to be examined and to answer, or to produce the document or thing and in the event of his persisting in his refusal, he may be dealt with according to the provisions of section 384 or section 385.

Linked Provisions

Presidency Small Cause Courts Act, 1882 - Section 87 - Imprisonment or committal of person refusing to answer or produce document

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Corresponding Provision of Previous Statute: Section 349, Code of Criminal Procedure, 1973

Section 349 – Imprisonment or committal of person refusing to answer or produce document - If any witness or person called to produce a document or thing before a Criminal Court refuses to answer such questions as are put to him or to produce any document or thing in his possession or power which the Court requires him to produce, and does not, after a reasonable opportunity has been given to him so to do, offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant under the hand of the Presiding Magistrate or Judge commit him to the custody of an officer of the Court for any term not exceeding seven days, unless in the meantime, such person consents to be examined and to answer, or to produce the document or thing and in the event of his persisting in his refusal, he may be dealt with according to the provisions of section 345 or section 346.

389. Summary procedure for punishment for non- attendance by a witness in obedience to summons

(1) If any witness being summoned to appear before a Criminal Court is legally bound to appear at a certain place and time in obedience to the summons and without just excuse neglects or refuses to attend at that place or time or departs from the place where he has to attend before the time at which it is lawful for him to depart, and the Court before which the witness is to appear is satisfied that it is expedient in the interests of justice that such a witness should be tried summarily, the Court may take cognizance of the offence and after giving the offender an opportunity of showing cause why he should not be punished under this section, sentence him to fine not exceeding five hundred rupees.

(2) In every such case the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials.

Corresponding Provision of Previous Statute: Section 350, Code of Criminal Procedure, 1973

Section 350 – Summary procedure for punishment for non-attendance by a witness in obedience to summons - (1) If any witness being summoned to appear before a Criminal Court is legally bound to appear at a certain place and time in obedience to the summons and without just excuse neglects or refuses to attend at that place or time or departs from the place where he has to attend before the time at which it is lawful for him to depart, and the Court before which the witness is to appear is satisfied that it is expedient in the interest of justice that such a witness should be tried summarily, the Court may take cognizance of the offence and after giving the offender an opportunity of showing cause why he

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should not be punished under this section, sentence him to fine not exceeding one hundred rupees.

(2) In every such case the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials.

390. Appeals from convictions under sections 383, 384, 388 and 389

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 415 - Appeals from convictions

(1) Any person sentenced by any Court other than a High Court under section 383, section 384, section 388, or section 389 may, notwithstanding anything contained in this Sanhita appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

(2) The provisions of Chapter XXXI shall, so far as they are applicable, apply to appeals under this section, and the Appellate Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

(3) An appeal from such conviction by a Court of Small Causes shall lie to the Court of Session for the sessions division within which such Court is situate.

(4) An appeal from such conviction by any Registrar or Sub-Registrar deemed to be a Civil Court by virtue of a direction issued under section 386 shall lie to the Court of Session for the sessions division within which the office of such Registrar or Sub- Registrar is situate.

Corresponding Provision of Previous Statute: Section 351, Code of Criminal Procedure, 1973

Section 351 – Appeals from convictions under sections 344, 345, 349 and 350 - (1) Any person sentenced by any Court other than a High Court under section 344, section 345, section 349, or section 350 may, notwithstanding anything contained in this Code appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

(2) The provisions of Chapter XXIX shall, so far as they are applicable, apply to appeals under this section, and the Appellate Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

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(3) An appeal from such conviction by a Court of Small Causes shall lie to the Court of Session for the sessions division within which such Court is situate.

(4) An appeal from such conviction by any Registrar or Sub-Registrar deemed to be a Civil Court by virtue of a direction issued under section 347 shall lie to the Court of Session for the sessions division within which the office of such Registrar or Sub-Registrar is situate.

391. Certain Judges and Magistrates not to try certain offences when committed before themselves

Except as provided in sections 383, 384, 388 and 389, no Judge of a Criminal Court (other than a Judge of a High Court) or Magistrate shall try any person for any offence referred to in section 215, when such offence is committed before himself or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding.

Corresponding Provision of Previous Statute: Section 352, Code of Criminal Procedure, 1973

Section 352 – Certain Judges and Magistrates not to try certain offences when committed before themselves - Except as provided in sections 344, 345, 349 and 350, no Judge of a Criminal Court (other than a Judge of a High Court) or Magistrate shall try any person for any offence referred to in section 195, when such offence is committed before himself or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding.

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CHAPTER XXIX

THE JUDGMENT

392. Judgment

Linked Provisions

Patent Act, 1859 - Section 29 - Judgment

Patent Act, 1856 - Section 28 - Judgment

Family Courts Act, 1984 - Section 17 - Judgment

(1) The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in open Court by the presiding officer immediately after the termination of the trial or at some subsequent time not later than forty- five days of which notice shall be given to the parties or their advocates,- -

(a) by delivering the whole of the judgment; or

(b) by reading out the whole of the judgment; or

(c) by reading out the operative part of the judgment and explaining the substance of the judgment in a language which is understood by the accused or his advocate.

(2) Where the judgment is delivered under clause (a) of sub- section (1), the presiding officer shall cause it to be taken down in short-hand, sign the transcript and every page thereof as soon as it is made ready, and write on it the date of the delivery of the judgment in open Court.

(3) Where the judgment or the operative part thereof is read out under clause (b) or clause (c) of sub- section (1), as the case may be, it shall be dated and signed by the presiding officer in open Court, and if it is not written with his own hand, every page of the judgment shall be signed by him.

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(4) Where the judgment is pronounced in the manner specified in clause (c) of sub- section (1), the whole judgment or a copy thereof shall be immediately made available for the perusal of the parties or their advocates free of cost:

Provided that the Court shall, as far as practicable, upload the copy of the judgment on its portal within a period of seven days from the date of judgment.

(5) If the accused is in custody, he shall be brought up to hear the judgment pronounced either in person or through audio- video electronic means.

(6) If the accused is not in custody, he shall be required by the Court to attend to hear the judgment pronounced, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted:

Provided that where there are more accused persons than one, and one or more of them do not attend the Court on the date on which the judgment is to be pronounced, the presiding officer may, in order to avoid undue delay in the disposal of the case, pronounce the judgment notwithstanding their absence.

(7) No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his advocate on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their advocates, or any of them, the notice of such day and place.

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(8) Nothing in this section shall be construed to limit in any way the extent of the provisions of section 511.

Corresponding Provision of Previous Statute: Section 353, Code of Criminal Procedure, 1973

Section 353 – Judgment - (1) The judgment in every trial in any Criminal Court or original jurisdiction shall be pronounced in open Court by the presiding officer immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders,—

(a) by delivering the whole of the judgment; or

(b) by reading out the whole of the judgment; or

(c) by reading out the operative part of the judgment and explaining the substance of the judgment in a language which is understood by the accused or his pleader.

(2) Where the judgment is delivered under clause (a) of sub-section (1), the presiding officer shall cause it to be taken down in short-hand, sign the transcript and every page thereof as soon as it is made ready, and write on it the date of the delivery of the judgment in open Court.

(3) Where the judgment or the operative part thereof is read out under clause (b) or clause (c) of sub-section (1), as the case may be, it shall be dated and signed by the presiding officer in open Court, and if it is not written with his own hand, every page of the judgment shall be signed by him.

(4) Where the judgment is pronounced in the manner specified in clause (c) of sub-section (1), the whole judgment or a copy thereof shall be immediately made available for the perusal of the parties or their pleaders free of cost.

(5) If the accused is in custody, he shall be brought up to hear the judgment pronounced.

(6) If the accused is not in custody, he shall be required by the Court to attend to hear the judgment pronounced, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted:

Provided that, where there are more accused than one, and one or more of them do not attend the Court on the date on which the judgment is to be pronounced, the presiding officer may, in order to avoid undue delay in the disposal of the case, pronounce the judgment notwithstanding their absence.

(7) No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders, or any of them, the notice of such day and place.

(8) Nothing in this section shall be construed to limit in any way the extent of the provisions of section 465.

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393. Language and contents of judgment

(1) Except as otherwise expressly provided by this Sanhita, every judgment referred to in section 392,- -

(a) shall be written in the language of the Court;

(b) shall contain the point or points for determination, the decision thereon and the reasons for the decision;

(c) shall specify the offence (if any) of which, and the section of the Bharatiya Nyaya Sanhita, 2023 or other law under which, the accused is convicted, and the punishment to which he is sentenced;

(d) if it be a judgment of acquittal, shall state the offence of which the accused is acquitted and direct that he be set at liberty.

(2) When the conviction is under the Bharatiya Nyaya Sanhita, 2023 and it is doubtful under which of two sections, or under which of two parts of the same section, of that Sanhita the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.

(3) When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.

(4) When the conviction is for an offence punishable with imprisonment for a term of one year or more, but the Court imposes a sentence of imprisonment for a term of less than three months, it

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shall record its reasons for awarding such sentence, unless the sentence is one of imprisonment till the rising of the Court or unless the case was tried summarily under the provisions of this Sanhita.

(5) When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

(6) Every order under section 136 or sub- section (2) of section 157 and every final order made under section 144, section 164 or section 166 shall contain the point or points for determination, the decision thereon and the reasons for the decision.

Corresponding Provision of Previous Statute: Section 354, Code of Criminal Procedure, 1973

Section 354 – Language and contents of judgment - (1) Except as otherwise expressly provided by this Code, every judgment referred to in section 353,—

(a) shall be written in the language of the Court;

(b) shall contain the point or points for determination, the decision thereon and the reasons for the decision;

(c) shall specify the offence (if any) of which, and the section of the Indian Penal Code (45 of 1860) or other law under which, the accused is convicted, and the punishment to which he is sentenced;

(d) if it be a judgment of acquittal, shall state the offence of which the accused is acquitted and direct that he be set at liberty.

(2) When the conviction is under the Indian Penal Code (45 of 1860) and it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.

(3) When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.

(4) When the conviction is for an offence punishable with imprisonment for a term of one year or more, but the Court imposes a sentence of imprisonment for a term of less than three months, it shall record its reasons for awarding such sentence, unless the sentence is one of imprisonment till the rising of the Court or unless the case was tried summarily under the provisions of this Code.

(5) When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

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(6) Every order under section 117 or sub-section (2) of section 138 and every final order made under section 125, section 145 or section 147 shall contain the point or points for determination, the decision thereon and the reasons for the decision.

LANDMARK JUDGMENT

Mukesh and Ors. vs. State for NCT of Delhi and Ors., MANU/SC/0575/2017

394. Order for notifying address of previously convicted offender

(1) When any person, having been convicted by a Court in India of an offence punishable with imprisonment for a term of three years, or upwards, is again convicted of any offence punishable with imprisonment for a term of three years or upwards by any Court other than that of a Magistrate of the second class, such Court may, if it thinks fit, at the time of passing a sentence of imprisonment on such person, also order that his residence and any change of, or absence from, such residence after release be notified as hereinafter provided for a term not exceeding five years from the date of the expiration of such sentence.

(2) The provisions of sub- section (1) shall also apply to criminal conspiracies to commit such offences and to the abetment of such offences and attempts to commit them.

(3) If such conviction is set aside on appeal or otherwise, such order shall become void.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) The State Government may, by notification, make rules to carry out the provisions of this section relating to the notification of

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residence or change of, or absence from, residence by released convicts.

(6) Such rules may provide for punishment for the breach thereof and any person charged with a breach of any such rule may be tried by a Magistrate of competent jurisdiction in the district in which the place last notified by him as his place of residence is situated.

Corresponding Provision of Previous Statute: Section 356, Code of Criminal Procedure, 1973

Section 356 – Order for notifying address of previously convicted offender - (1) When any person, having been convicted by a Court in India of an offence punishable under section 215, section 489A, section 489B, section 489C or section 489D or section 506 (in so far as it relates to criminal intimidation punishable with imprisonment for a term which may extend to seven years, or with fine, or with both) of the Indian Penal Code (45 of 1860), or of any offence punishable under Chapter XII or Chapter XVI or Chapter XVII of that Code, with imprisonment for a term of three years, or upwards, is again convicted of any offence punishable under any of those sections or Chapters with imprisonment for a term of three years or upwards by any Court other than that of a Magistrate of the second class, such Court may, if it thinks fit, at the time of passing a sentence of imprisonment on such person, also order that his residence and any change of, or absence from, such residence after release be notified as hereinafter provided for a term not exceeding five years from the date of the expiration of such sentence.

(2) The provisions of sub-section (1) with reference to the offences named therein, apply also to criminal conspiracies to commit such offences and to the abatement of such offences and attempts to commit them.

(3) If such conviction is set aside on appeal or otherwise, such order shall become void.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) The State Government may, by notification, make rules to carry out the provisions of this section relating to the notification of residence or change of, or absence from, residence by released convicts.

(6) Such rules may provide for punishment for the breach thereof and any person charged with a breach of any such rule may be tried by a Magistrate of competent jurisdiction in the district in which the place last notified by him as his place of residence is situated.

395. Order to pay compensation

(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when

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passing judgment, order the whole or any part of the fine recovered to be applied- -

(a) in defraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused

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person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

Corresponding Provision of Previous Statute: Section 357, Code of Criminal Procedure, 1973

Section 357 – Order to pay compensation - (1) When a Court imposes a sentence of fine or a sentence (including asentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

(a) in defraying the expenses of properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

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(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

396. Victim compensation scheme

(1) Every State Government in co- ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 395 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

(5) On receipt of such recommendations or on the application under sub- section (4), the State or the District Legal Services Authority

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shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first- aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.

(7) The compensation payable by the State Government under this section shall be in addition to the payment of fine to the victim under section 65, section 70 and sub- section (1) of section 124 of the Bharatiya Nyaya Sanhita, 2023.

Corresponding Provision of Previous Statute: Section 357A, Code of Criminal Procedure, 1973

Section 357A – Victim compensation scheme - (1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.

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397. Treatment of victims

All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first- aid or medical treatment, free of cost, to the victims of any offence covered under section 64, section 65, section 66, section 67, section 68, section 70, section 71 or sub- section (1) of section 124 of the Bharatiya Nyaya Sanhita, 2023 or under sections 4, 6, 8 or section 10 of the Protection of Children from Sexual Offences Act, 2012 (32 of 2012), and shall immediately inform the police of such incident.

Corresponding Provision of Previous Statute: Section 357C, Code of Criminal Procedure, 1973

Section 357C – Treatment of victims - All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section 326A, 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or section 376E of the Indian Penal Code (45 of 1860), and shall immediately inform the police of such incident

398. Witness protection scheme

Every State Government shall prepare and notify a Witness Protection Scheme for the State with a view to ensure protection of the witnesses.

399. Compensation to persons groundlessly arrested

(1) Whenever any person causes a police officer to arrest another person, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding one thousand rupees, to be paid by the person so causing the arrest to the person so arrested, for his loss of time and expenses in the matter, as the Magistrate thinks fit.

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(2) In such cases, if more persons than one are arrested, the Magistrate may, in like manner, award to each of them such compensation, not exceeding one thousand rupees, as such Magistrate thinks fit.

(3) All compensation awarded under this section may be recovered as if it were a fine, and, if it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.

Corresponding Provision of Previous Statute: Section 358, Code of Criminal Procedure, 1973

Section 358 – Compensation to persons groundlessly arrested - (1) Whenever any person causes a police officer to arrest another person, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding one thousand rupees, to be paid by the person so causing the arrest to the person so arrested, for his loss of time and expenses in the matter, as the Magistrate thinks fit.

(2) In such cases, if more persons than one are arrested, the Magistrate may, in like manner, award to each of them such compensation, not exceeding one thousand rupees, as such Magistrate thinks fit.

(3) All compensation awarded under this section may be recovered as if it were a fine, and, if it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.

400. Order to pay costs in non- cognizable cases

(1) Whenever any complaint of a non- cognizable offence is made to a Court, the Court, if it convicts the accused, may, in addition to the penalty imposed upon him, order him to pay to the complainant, in whole or in part, the cost incurred by him in the prosecution, and may further order that in default of payment, the accused shall suffer simple imprisonment for a period not exceeding thirty days and such costs may include any expenses incurred in respect of process-

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fees, witnesses and advocate's fees which the Court may consider reasonable.

(2) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

Corresponding Provision of Previous Statute: Section 359, Code of Criminal Procedure, 1973

Section 359 – Order to pay costs in non-cognizable cases - (1) Whenever any complaint of a non-cognizable offence is made to a Court, the Court, if it convicts the accused, may, in addition to the penalty imposed upon him, order him to pay to the complainant, in whole or in part, the cost incurred by him in the prosecution, and may further order that in default of payment, the accused shall suffer simple imprisonment for a period not exceeding thirty days and such costs may include any expenses incurred in respect of process-fees, witnesses and pleader's fees which the Court may consider reasonable.

(2) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

401. Order to release on probation of good conduct or after admonition

(1) When any person not under twenty- one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty- one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond or bail bond to appear and receive sentence when called upon during such period (not exceeding three years) as

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the Court may direct, and in the meantime to keep the peace and be of good behavior:

Provided that where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class, forwarding the accused to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by sub- section (2).

(2) Where proceedings are submitted to a Magistrate of the first class as provided by sub- section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

(3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Bharatiya Nyaya Sanhita, 2023, punishable with not more than two years' imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of

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sentencing him to any punishment, release him after due admonition.

(4) An order under this section may be made by any Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) When an order has been made under this section in respect of any offender, the High Court or Court of Session may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law:

Provided that the High Court or Court of Session shall not under this sub- section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

(6) The provisions of sections 140, 143 and 414 shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section.

(7) The Court, before directing the release of an offender under sub-section (1), shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

(8) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

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(9) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence and such Court may, after hearing the case, pass sentence.

(10) Nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016) or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.

Corresponding Provision of Previous Statute: Section 360, Code of Criminal Procedure, 1973

Section 360 – Order to release on probation of good conduct or after admonition - (1) When any person not undertwenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct, and in the meantime to keep the peace and be of good behaviour:

Provided that where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class, forwarding the accused to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by sub-section (2).

(2) Where proceedings are submitted to a Magistrate of the first class as provided by sub-section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

(3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code (45 of 1860), punishable with not more than two years, imprisonment or any offence punishable with fine only and no previous conviction is proved

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against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.

(4) An order under this section may be made by any Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) When an order has been made under this section in respect of any offender, the High Court or Court of Session may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law:

Provided that the High Court or Court of Session shall not under this sub-section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

(6) The provisions of sections 121, 124 and 373 shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section.

(7) The Court, before directing the release of an offender under sub-section (1), shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

(8) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(9) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence and such Court may, after hearing the case, pass sentence.

(10) Nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or the Children Act, 1960 (60 of 1960) or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.

LANDMARK JUDGMENT

Joginder Singh vs. The State of Punjab, MANU/PH/0338/1980

402. Special reasons to be recorded in certain cases

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 452 - Reasons to be recorded

Where in any case the Court could have dealt with,- -

(a) an accused person under section 401 or under the provisions of the Probation of Offenders Act, 1958 (20 of 1958); or

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(b) a youthful offender under the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016) or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders, but has not done so, it shall record in its judgment the special reasons for not having done so.

Corresponding Provision of Previous Statute: Section 361, Code of Criminal Procedure, 1973

Section 361 – Special reasons to be recorded in certain cases - Where in any case the Court could have dealt with,— (a) an accused person under section 360 or under the provisions of the Probation of Offenders Act, 1958 (20 of 1958); or

(b) a youthful offender under the Children Act, 1960 (60 of 1960) or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders, but has not done so, it shall record in its judgment the special reasons for not having done so.

LANDMARK JUDGMENT

Joginder Singh vs. The State of Punjab, MANU/PH/0338/1980

403. Court not to alter judgment

Save as otherwise provided by this Sanhita or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.

Corresponding Provision of Previous Statute: Section 362, Code of Criminal Procedure, 1973

Section 362 – Court not to alter judgment - Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.

LANDMARK JUDGMENT

Naresh and Ors. vs. State of Uttar Pradesh, MANU/SC/0192/1981

404. Copy of judgment to be given to accused and other persons

(1) When the accused is sentenced to imprisonment, a copy of the judgment shall, immediately after the pronouncement of the judgment, be given to him free of cost.

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(2) On the application of the accused, a certified copy of the judgment, or when he so desires, a translation in his own language if practicable or in the language of the Court, shall be given to him without delay, and such copy shall, in every case where the judgment is appealable by the accused, be given free of cost:

Provided that where a sentence of death is passed or confirmed by the High Court, a certified copy of the judgment shall be immediately given to the accused free of cost whether or not he applies for the same.

(3) The provisions of sub- section (2) shall apply in relation to an order under section 136 as they apply in relation to a judgment which is appealable by the accused.

(4) When the accused is sentenced to death by any Court and an appeal lies from such judgment as of right, the Court shall inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

(5) Save as otherwise provided in sub- section (2), any person affected by a judgment or order passed by a Criminal Court shall, on an application made in this behalf and on payment of the prescribed charges, be given a copy of such judgment or order or of any deposition or other part of the record:

Provided that the Court may, if it thinks fit for some special reason, give it to him free of cost:

Provided further that the Court may, on an application made in this behalf by the Prosecuting Officer, provide to the Government, free

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of cost, a certified copy of such judgment, order, deposition or record.

(6) The High Court may, by rules, provide for the grant of copies of any judgment or order of a Criminal Court to any person who is not affected by a judgment or order, on payment, by such person, of such fees, and subject to such conditions, as the High Court may, by such rules, provide.

Corresponding Provision of Previous Statute: Section 363, Code of Criminal Procedure, 1973

Section 363 – Copy of judgment to be given to the accused and other persons - (1) When the accused is sentenced to imprisonment, a copy of the judgment shall, immediately after the pronouncement of the judgment, be given to him free of cost.

(2) On the application of the accused, a certified copy of the judgment, or when he so desires, a translation in his own language if practicable or in the language of the Court, shall be given to him without delay, and such copy shall, in every case where the judgment is appealable by the accused, be given free of cost:

Provided that where a sentence of death is passed or confirmed by the High Court, a certified copy of the judgment shall be immediately given to the accused free of cost whether or not he applies for the same.

(3) The provisions of sub-section (2) shall apply in relation to an order under section 117 as they apply in relation to a judgment which is appealable by the accused.

(4) When the accused is sentenced to death by any Court and an appeal lies from such judgment as of right, the Court shall inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

405. Judgment when to be translated

The original judgment shall be filed with the record of the proceedings and where the original is recorded in a language different from that of the Court, and if either party so requires, a translation thereof into the language of the Court shall be added to such record.

Corresponding Provision of Previous Statute: Section 364, Code of Criminal Procedure, 1973

Section 364 – Judgment when to be translated - The original judgment shall be filed with the record of the proceedings and where the original is recorded in a language different from that of the Court, and the accused so requires, a translation thereof into the language of the Court shall be added to such record.

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406. Court of Session to send copy of finding and sentence to District Magistrate

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 8 - Court of Session

In cases tried by the Court of Session or a Chief Judicial Magistrate, the Court or such Magistrate, as the case may be, shall forward a copy of its or his finding and sentence (if any) to the District Magistrate within whose local jurisdiction the trial was held.

Corresponding Provision of Previous Statute: Section 365, Code of Criminal Procedure, 1973

Section 365 – Court of Session to send copy of finding and sentence to District Magistrate - In cases tried by the Court of Session or a Chief Judicial Magistrate, the Court or such Magistrate, as the case may be, shall forward a copy of its or his finding and sentence (if any) to the District Magistrate within whose local jurisdiction the trial was held.

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CHAPTER XXX

SUBMISSION OF DEATH SENTENCES FOR CONFIRMATION

407. Sentence of death to be submitted by Court of Session for confirmation

(1) When the Court of Session passes a sentence of death, the proceedings shall forthwith be submitted to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court.

(2) The Court passing the sentence shall commit the convicted person to jail custody under a warrant.

Corresponding Provision of Previous Statute: Section 366, Code of Criminal Procedure, 1973

Section 366 – Sentence of death to be submitted by Court of Session for confirmation - (1) When the Court of Session passes a sentence of death, the proceedings shall be submitted to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court.

(2) The Court passing the sentence shall commit the convicted person to jail custody under a warrant.

408. Power to direct further inquiry to be made or additional evidence to be taken

(1) If, when such proceedings are submitted, the High Court thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence itself, or direct it to be made or taken by the Court of Session.

(2) Unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when such inquiry is made or such evidence is taken.

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(3) When the inquiry or evidence (if any) is not made or taken by the High Court, the result of such inquiry or evidence shall be certified to such Court.

Corresponding Provision of Previous Statute: Section 367, Code of Criminal Procedure, 1973

Section 367 – Power to direct further inquiry to be made or additional evidence to be taken - (1) If, when such proceedings are submitted, the High Court thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence itself, or direct it to be made or taken by the Court of Session.

(2) Unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when such inquiry is made or such evidence is taken.

(3) When the inquiry or evidence (if any) is not made or taken by the High Court, the result of such inquiry or evidence shall be certified to such Court.

LANDMARK JUDGMENT

Balwant Singh vs. State of Punjab, MANU/SC/0331/1975

409. Power of High Court to confirm sentence or annul conviction

In any case submitted under section 407, the High Court- -

(a) may confirm the sentence, or pass any other sentence warranted by law; or

(b) may annul the conviction, and convict the accused of any offence of which the Court of Session might have convicted him, or order a new trial on the same or an amended charge; or

(c) may acquit the accused person:

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.

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Corresponding Provision of Previous Statute: Section 368, Code of Criminal Procedure, 1973

Section 368 – Power of High Court to confirm sentence or annul conviction - In any case submitted under section 366, the High Court— (a) may confirm the sentence, or pass any other sentence warranted by law, or

(b) may annul the conviction, and convict the accused of any offence of which the Court of Session might have convicted him, or order a new trial on the same or an amended charge, or

(c) may acquit the accused person:

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.

410. Confirmation or new sentence to be signed by two Judges

In every case so submitted, the confirmation of the sentence, or any new sentence or order passed by the High Court, shall, when such Court consists of two or more Judges, be made, passed and signed by at least two of them.

Corresponding Provision of Previous Statute: Section 369, Code of Criminal Procedure, 1973

Section 369 – Confirmation or new sentence to be signed by two Judges - In every case so submitted, the confirmation of the sentence, or any new sentence or order passed by the High Court, shall, when such Court consists of two or more Judges, be made, passed and signed by at least two of them.

411. Procedure in case of difference of opinion

Linked Provisions

Presidency Small Cause Courts Act, 1882 - Section 11 - Procedure in case of difference of opinion

Where any such case is heard before a Bench of Judges and such Judges are equally divided in opinion, the case shall be decided in the manner provided by section 433.

Corresponding Provision of Previous Statute: Section 370, Code of Criminal Procedure, 1973

Section 370 – Procedure in case of difference of opinion - Where any such case is heard before a Bench of Judges and such Judges are equally divided in opinion, the case shall be decided in the manner provided by section 392.

412. Procedure in cases submitted to High Court for confirmation

In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High

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Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send either physically, or through electronic means, a copy of the order, under the seal of the High Court and attested with his official signature, to the Court of Session.

Corresponding Provision of Previous Statute: Section 371, Code of Criminal Procedure, 1973

Section 371 – Procedure in cases submitted to High Court for confirmation - In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order, under the seal of the High Court and attested with his official signature, to the Court of Session.

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CHAPTER XXXI

APPEALS

413. No appeal to lie unless otherwise provided

No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Sanhita or by any other law for the time being in force:

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.

Corresponding Provision of Previous Statute: Section 372, Code of Criminal Procedure, 1973

Section 372 – No appeal to lie unless otherwise provided - No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code by any other law for the time being in force:.

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.

LANDMARK JUDGMENT

Satya Pal Singh vs. State of M.P. and Ors., MANU/SC/1119/2015

414. Appeal from orders requiring security or refusal to accept or rejecting surety for keeping peace or good behaviour

Any person,- -

(i) who has been ordered under section 136 to give security for keeping the peace or for good behaviour; or

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(ii) who is aggrieved by any order refusing to accept or rejecting a surety under section 140, may appeal against such order to the Court of Session:

Provided that nothing in this section shall apply to persons the proceedings against whom are laid before a Sessions Judge in accordance with the provisions of sub- section (2) or sub- section (4) of section 141.

Corresponding Provision of Previous Statute: Section 373, Code of Criminal Procedure, 1973

Section 373 – Appeal from orders requiring security or refusal to accept or rejecting surety for keeping peace or good behaviour – Any person,—

(i) who has been ordered under section 117 to give security for keeping the peace or for good behaviour, or

(ii) who is aggrieved by any order refusing to accept or rejecting a surety under section 121, may appeal against such order to the Court of Session:

Provided that nothing in this section shall apply to persons the proceedings against whom are laid before a Sessions Judge in accordance with the provisions of sub-section (2) or sub-section (4) of section 122.

415. Appeals from convictions

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 390 - Appeals from convictions under Sections 383, 384, 388, 389

(1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial, may appeal to the High Court.

(3) Save as otherwise provided in sub- section (2), any person,- -

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(a) convicted on a trial held by Magistrate of the first class, or of the second class; or

(b) sentenced under section 364; or

(c) in respect of whom an order has been made or a sentence has been passed under section 401 by any Magistrate, may appeal to the Court of Session.

(4) When an appeal has been filed against a sentence passed under section 64, section 65, section 66, section 67, section 68, section 70 or section 71 of the Bharatiya Nyaya Sanhita, 2023, the appeal shall be disposed of within a period of six months from the date of filing of such appeal.

Corresponding Provision of Previous Statute: Section 374, Code of Criminal Procedure, 1973

Section 374 – Appeals from convictions - (1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial, may appeal to the High Court.

(3) Save as otherwise provided in sub-section (2), any person,—

(a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class, or of the second class, or

(b) sentenced under section 325, or

(c) in respect of whom an order has been made or a sentence has been passed under section 360 by any Magistrate, may appeal to the Court of Session.

(4) When an appeal has been filed against a sentence passed under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code (45 of 1860), the appeal shall be disposed of within a period of six months from the date of filing of such appeal.

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416. No appeal in certain cases when accused pleads guilty

Notwithstanding anything in section 415, where an accused person has pleaded guilty and has been convicted on such plea, there shall be no appeal,- -

(i) if the conviction is by a High Court; or

(ii) if the conviction is by a Court of Session or Magistrate of the first or second class, except as to the extent or legality of the sentence.

Corresponding Provision of Previous Statute: Section 375, Code of Criminal Procedure, 1973

Section 375 – No appeal in certain cases when accused pleads guilty - Notwithstanding anything contained in section 374, where an accused person has pleaded guilty and has been convicted on such plea, there shall be no appeal,—

(a) if the conviction is by a High Court; or

(b) if the conviction is by a Court of Session, Metropolitan Magistrate or Magistrate of the first or second class, except as to the extent or legality of the sentence.

417. No appeal in petty cases

Notwithstanding anything in section 415, there shall be no appeal by a convicted person in any of the following cases, namely:- -

(a) where a High Court passes only a sentence of imprisonment for a term not exceeding three months or of fine not exceeding one thousand rupees, or of both such imprisonment and fine;

(b) where a Court of Session passes only a sentence of imprisonment for a term not exceeding three months or of fine not exceeding two hundred rupees, or of both such imprisonment and fine;

(c) where a Magistrate of the first class passes only a sentence of fine not exceeding one hundred rupees; or

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(d) where, in a case tried summarily, a Magistrate empowered to act under section 283 passes only a sentence of fine not exceeding two hundred rupees:

Provided that an appeal may be brought against any such sentence if any other punishment is combined with it, but such sentence shall not be appealable merely on the ground- -

(i) that the person convicted is ordered to furnish security to keep the peace; or

(ii) that a direction for imprisonment in default of payment of fine is included in the sentence; or

(iii) that more than one sentence of fine is passed in the case, if the total amount of fine imposed does not exceed the amount hereinbefore specified in respect of the case.

Corresponding Provision of Previous Statute: Section 376, Code of Criminal Procedure, 1973

Section 376 – No appeal in petty cases - Notwithstanding anything contained in section 374, there shall be no appeal by a convicted person in any of the following cases, namely:—

(a) where a High Court passes only a sentence of imprisonment for a term not exceeding six months or of fine not exceeding one thousand rupees, or of both such imprisonment and fine;

(b) where a Court of Session or a Metropolitan Magistrate passes only a sentence of imprisonment for a term not exceeding three months or of fine not exceeding two hundred rupees, or of both such imprisonment and fine;

(c) where a Magistrate of the first class passes only a sentence of fine not exceeding one hundred rupees; or

(d) where, in a case tried summarily, a Magistrate empowered to act under section 260 passes only a sentence of fine not exceeding two hundred rupees:

Provided that an appeal may be brought against such sentence if any other punishment is combined with it, but such sentence shall not be appealable merely on the ground—

(i) that the person convicted is ordered to furnish security to keep the peace; or

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(ii) that a direction for imprisonment in default of payment of fine is included in the sentence; or

(iii) that more than one sentence of fine is passed in the case, if the total amount of fine imposed does not exceed the amount hereinbefore specified in respect of the case.

418. Appeal by State Government against sentence

(1) Save as otherwise provided in sub- section (2), the State Government may, in any case of conviction on a trial held by any Court other than a High Court, direct the Public Prosecutor to present an appeal against the sentence on the ground of its inadequacy- -

(a) to the Court of Session, if the sentence is passed by the Magistrate; and

(b) to the High Court, if the sentence is passed by any other Court.

(2) If such conviction is in a case in which the offence has been investigated by any agency empowered to make investigation into an offence under any Central Act other than this Sanhita, the Central Government may also direct the Public Prosecutor to present an appeal against the sentence on the ground of its inadequacy- -

(a) to the Court of Session, if the sentence is passed by the Magistrate; and

(b) to the High Court, if the sentence is passed by any other Court.

(3) When an appeal has been filed against the sentence on the ground of its inadequacy, the Court of Session or, as the case may be, the High Court shall not enhance the sentence except after giving to the accused a reasonable opportunity of showing cause against such

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enhancement and while showing cause, the accused may plead for his acquittal or for the reduction of the sentence.

(4) When an appeal has been filed against a sentence passed under section 64, section 65, section 66, section 67, section 68, section 70 or section 71 of the Bharatiya Nyaya Sanhita, 2023, the appeal shall be disposed of within a period of six months from the date of filing of such appeal.

Corresponding Provision of Previous Statute: Section 377, Code of Criminal Procedure, 1973

Section 377 – Appeal by the State Government against sentence - (1) Save as otherwise provided in sub-section (2), the State Government may, in any case of conviction on a trial held by any Court other than a High Court, direct the Public Prosecutor to present an appeal against the sentence on the ground of its inadequacy—

(a) to the Court of Session, if the sentence is passed by the Magistrate; and

(b) to the High Court, if the sentence is passed by any other Court.

(2) If such conviction is in a case in which the offence has been investigated by the Delhi Special Police Establishment, constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may also direct the Public Prosecutor to present an appeal against the sentence on the ground of its inadequacy—

(a) to the Court of Session, if the sentence is passed by the Magistrate; and

(b) to the High Court, if the sentence is passed by any other Court.

(3) When an appeal has been filed against the sentence on the ground of its inadequacy, the Court of Session or, as the case may be, the High Court shall not enhance the sentence except after giving to the accused a reasonable opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or for the reduction of the sentence.

(4) When an appeal has been filed against a sentence passed under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code (45 of 1860), the appeal shall be disposed of within a period of six months from the date of filing of such appeal.

419. Appeal in case of acquittal

(1) Save as otherwise provided in sub- section (2), and subject to the provisions of sub- sections (3) and (5),- -

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(a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non- bailable offence;

(b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court not being an order under clause (a) or an order of acquittal passed by the Court of Session in revision.

(2) If such an order of acquittal is passed in a case in which the offence has been investigated by any agency empowered to make investigation into an offence under any Central Act other than this Sanhita, the Central Government may, subject to the provisions of sub- section (3), also direct the Public Prosecutor to present an appeal- -

(a) to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non- bailable offence;

(b) to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court not being an order under clause (a) or an order of acquittal passed by the Court of Session in revision.

(3) No appeal to the High Court under sub- section (1) or sub- section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the

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complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under sub- section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If, in any case, the application under sub- section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub- section (1) or under sub- section (2).

Corresponding Provision of Previous Statute: Section 378, Code of Criminal Procedure, 1973

Section 378 – Appeal in case of acquittal - (1) Save as otherwise provided in sub-section (2), and subject to the provisions of sub-sections (3) and (5),—

(a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court ofSession from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.]

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may, subject to the provisions of sub-section (3), also direct the Public Prosecutor to present an appeal—

(a) to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court not being an order under clause (a) or an order of acquittal passed by the Court of Session in revision.

(3) No appeal to the High Court under sub-section (1) or sub-section (2) shall be entertained except with

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the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If, in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2).

LANDMARK JUDGMENT

Dinanath Singh and Ors. vs. State of Bihar, MANU/SC/0120/1980

420. Appeal against conviction by High Court in certain cases

Where the High Court has, on appeal, reversed an order of acquittal of an accused person and convicted him and sentenced him to death or to imprisonment for life or to imprisonment for a term of ten years or more, he may appeal to the Supreme Court.

Corresponding Provision of Previous Statute: Section 379, Code of Criminal Procedure, 1973

Section 379 – Appeal against conviction by High Court in certain cases - Where the High Court has, on appeal, reversed an order of acquittal of an accused person and convicted him and sentenced him to death or to imprisonment for life or to imprisonment for a term of ten years or more, he may appeal to the Supreme Court.

421. Special right of appeal in certain cases

Notwithstanding anything in this Chapter, when more persons than one are convicted in one trial, and an appealable judgment or order has been passed in respect of any of such persons, all or any of the persons convicted at such trial shall have a right of appeal.

Corresponding Provision of Previous Statute: Section 380, Code of Criminal Procedure, 1973

Section 380 – Special right of appeal in certain cases - Notwithstanding anything contained in this Chapter, when more persons than one are convicted in one trial, and an appealable judgment or order has been passed in respect of any of such persons, all or any of the persons convicted at such trial shall have a right of appeal.

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422. Appeal to Court of Session how heard

(1) Subject to the provisions of sub- section (2), an appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional Sessions Judge:

Provided that an appeal against a conviction on a trial held by a Magistrate of the second class may be heard and disposed of by the Chief Judicial Magistrate.

(2) An Additional Sessions Judge or a Chief Judicial Magistrate shall hear only such appeals as the Sessions Judge of the division may, by general or special order, make over to him or as the High Court may, by special order, direct him to hear.

Corresponding Provision of Previous Statute: Section 381, Code of Criminal Procedure, 1973

Section 381 – Appeal to Court of Session how heard - (1) Subject to the provisions of sub-section (2), an appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional Sessions Judge:

Provided that an appeal against a conviction on a trial held by a Magistrate of the second class may be heard and disposed of by an Assistant Sessions Judge or a Chief Judicial Magistrate.

(2) An Additional Sessions Judge, Assistant Sessions Judge or a Chief Judicial Magistrate shall hear only such appeals as the Sessions Judge of the division may, by general or special order, make over to him or as the High Court may, by special order, direct him to hear.

423. Petition of appeal

Every appeal shall be made in the form of a petition in writing presented by the appellant or his advocate, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against.

Corresponding Provision of Previous Statute: Section 382, Code of Criminal Procedure, 1973

Section 382 – Petition of appeal - Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against.

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424. Procedure when appellant in jail

If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court.

Corresponding Provision of Previous Statute: Section 383, Code of Criminal Procedure, 1973

Section 383 – Procedure when appellant in jail - If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court.

425. Summary dismissal of appeal

(1) If upon examining the petition of appeal and copy of the judgment received under section 423 or section 424, the Appellate Court considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily:

Provided that- -

(a) no appeal presented under section 423 shall be dismissed unless the appellant or his advocate has had a reasonable opportunity of being heard in support of the same;

(b) no appeal presented under section 424 shall be dismissed except after giving the appellant a reasonable opportunity of being heard in support of the same, unless the Appellate Court considers that the appeal is frivolous or that the production of the accused in custody before the Court would involve such inconvenience as would be disproportionate in the circumstances of the case;

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(c) no appeal presented under section 424 shall be dismissed summarily until the period allowed for preferring such appeal has expired.

(2) Before dismissing an appeal under this section, the Court may call for the record of the case.

(3) Where the Appellate Court dismissing an appeal under this section is a Court of Session or of the Chief Judicial Magistrate, it shall record its reasons for doing so.

(4) Where an appeal presented under section 424 has been dismissed summarily under this section and the Appellate Court finds that another petition of appeal duly presented under section 423 on behalf of the same appellant has not been considered by it, that Court may, notwithstanding anything contained in section 434, if satisfied that it is necessary in the interests of justice so to do, hear and dispose of such appeal in accordance with law.

Corresponding Provision of Previous Statute: Section 384, Code of Criminal Procedure, 1973

Section 384 - Summary dismissal of appeal - (1) If upon examining the petition of appeal and copy of the judgment received under section 382 or section 383, the Appellate Court considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily:

Provided that—(a) no appeal presented under section 382 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same;

(b) no appeal presented under section 383 shall be dismissed except after giving the appellant a reasonable opportunity of being heard in support of the same, unless the Appellate Court considers that the appeal is frivolous or that the production of the accused in custody before the Court would involve such inconvenience as would be disproportionate in the circumstances of the case;

(c) no appeal presented under section 383 shall be dismissed summarily until the period allowed for preferring such appeal has expired.

(2) Before dismissing an appeal under this section, the Court may call for the record of the case.

(3) Where the Appellate Court dismissing an appeal under this section is a Court of Session or of the Chief Judicial Magistrate, it shall record its reasons for doing so.

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(4) Where an appeal presented under section 383 has been dismissed summarily under this section and the Appellate Court finds that another petition of appeal duly presented under section 382 on behalf of the same appellant has not been considered by it, that Court may, notwithstanding anything contained in section 393, if satisfied that it is necessary in the interests of justice so to do, hear and dispose of such appeal in accordance with law.

426. Procedure for hearing appeals not dismissed summarily

(1) If the Appellate Court does not dismiss the appeal summarily, it shall cause notice of the time and place at which such appeal will be heard to be given- -

(i) to the appellant or his advocate;

(ii) to such officer as the State Government may appoint in this behalf;

(iii) if the appeal is from a judgment of conviction in a case instituted upon complaint, to the complainant;

(iv) if the appeal is under section 418 or section 419, to the accused, and shall also furnish such officer, complainant and accused with a copy of the grounds of appeal.

(2) The Appellate Court shall then send for the record of the case, if such record is not already available in that Court, and hear the parties:

Provided that if the appeal is only as to the extent or the legality of the sentence, the Court may dispose of the appeal without sending for the record.

(3) Where the only ground for appeal from a conviction is the alleged severity of the sentence, the appellant shall not, except with the leave of the Court, urge or be heard in support of any other ground.

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Corresponding Provision of Previous Statute: Section 385, Code of Criminal Procedure, 1973

Section 385 - Procedure for hearing appeals not dismissed summarily - (1) If the Appellate Court does not dismiss the appeal summarily, it shall cause notice of the time and place at which such appeal will be heard to be given—

(i) to the appellant or his pleader;

(ii) to such officer as the State Government may appoint in this behalf;

(iii) if the appeal is from a judgment of conviction in a case instituted upon complaint, to the complainant;

(iv) if the appeal is under section 377 or section 378, to the accused, and shall also furnish such officer, complainant and accused with a copy of the grounds of appeal.

(2) The Appellate Court shall then send for the record of the case, if such record is not already available in that Court, and hear the parties:

Provided that if the appeal is only as to the extent or the legality of the sentence, the Court may dispose of the appeal without sending for the record.

(3) Where the only ground for appeal from a conviction is the alleged severity of the sentence, the appellant shall not, except with the leave of the Court, urge or be heard in support of any other ground.

427. Powers of Appellate Court

After perusing such record and hearing the appellant or his advocate, if he appears, and the Public Prosecutor if he appears, and in case of an appeal under section 418 or section 419, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may- -

(a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re- tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction- -

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re- tried by a Court of competent

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jurisdiction subordinate to such Appellate Court or committed for trial; or

(ii) alter the finding, maintaining the sentence; or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;

(c) in an appeal for enhancement of sentence- -

(i) reverse the finding and sentence and acquit or discharge the accused or order him to be re- tried by a Court competent to try the offence; or

(ii) alter the finding maintaining the sentence; or

(iii) with or without altering the finding, alter the nature or the extent, or, the nature and extent, of the sentence, so as to enhance or reduce the same;

(d) in an appeal from any other order, alter or reverse such order;

(e) make any amendment or any consequential or incidental order that may be just or proper:

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement:

Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal.

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Corresponding Provision of Previous Statute: Section 386, Code of Criminal Procedure, 1973

Section 386 - Powers of the Appellate Court - After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may—

(a) in an appeal from an order or acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction—

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

(ii) alter the finding, maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same—

(c) in an appeal for enhancement of sentence—

(i) reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court competent to try the offence, or

(ii) alter the finding maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or, the nature and extent, of the sentence, so as to enhance or reduce the same;

(d) in an appeal from any other order, alter or reverse such order;

(e) make any amendment or any consequential or incidental order that may be just or proper:

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement:

Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal.

428. Judgments of subordinate Appellate Court

The rules contained in Chapter XXIX as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be

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practicable, to the judgment in appeal of a Court of Session or Chief Judicial Magistrate:

Provided that, unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

Corresponding Provision of Previous Statute: Section 387, Code of Criminal Procedure, 1973

Section 387 - Judgments of Subordinate Appellate Court - The rules contained in Chapter XXVII as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment in appeal of a Court of Session or Chief Judicial Magistrate:

Provided that, unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

429. Order of High Court on appeal to be certified to lower Court

(1) Whenever a case is decided on appeal by the High Court under this Chapter, it shall certify its judgment or order to the Court by which the finding, sentence or order appealed against was recorded or passed and if such Court is that of a Judicial Magistrate other than the Chief Judicial Magistrate, the High Court's judgment or order shall be sent through the Chief Judicial Magistrate, and if such Court is that of an Executive Magistrate, the High Court's judgment or order shall be sent through the District Magistrate.

(2) The Court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court; and if necessary, the record shall be amended in accordance therewith.

Corresponding Provision of Previous Statute: Section 388, Code of Criminal Procedure, 1973

Section 388 - Order of High Court on appeal to be certified to lower Court - (1) Whenever a case is decided on appeal by the High Court under this Chapter, it shall certify its judgment or order to the Court by which the finding, sentence or order appealed against was recorded or passed and if such Court is that of a Judicial Magistrate other than the Chief Judicial Magistrate, the High Court's judgment or order shall be sent through the Chief Judicial Magistrate, and if such Court is that of an Executive Magistrate, the High Court's judgment or order shall be sent through the District Magistrate.

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(2) The Court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court; and if necessary, the record shall be amended in accordance therewith.

430. Suspension of sentence pending appeal; release of appellant on bail

(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond or bail bond:

Provided that the Appellate Court shall, before releasing on his own bond or bail bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release:

Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court subordinate thereto.

(3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,- -

(i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years; or

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(ii) where the offence of which such person has been convicted is a bailable one, and he is on bail, order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub- section (1); and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(4) When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

Corresponding Provision of Previous Statute: Section 389, Code of Criminal Procedure, 1973

Section 389 - Suspension of sentence pending the appeal; release of appellant on bail - (1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond:

Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release:
Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.

(2) The power conferred by this section on a Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court subordinate thereto.

(3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,—

(i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or
(ii) where the offence of which such person has been convicted is a bailable one, and he is on bail, order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub-section (1); and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(4) When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

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431. Arrest of accused in appeal from acquittal

When an appeal is presented under section 419, the High Court may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal or admit him to bail.

Corresponding Provision of Previous Statute: Section 390, Code of Criminal Procedure, 1973

Section 390 - Arrest of accused in appeal from acquittal - When an appeal is presented under section 378, the High Court may issue a warrant directing that the accused be arrested and brought before it or any Subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal or admit him to bail.

432. Appellate Court may take further evidence or direct it to be taken

(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his advocate shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXV, as if it were an inquiry.

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Corresponding Provision of Previous Statute: Section 391, Code of Criminal Procedure, 1973

Section 391 - Appellate Court may take further evidence or direct it to be taken - (1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry.

433. Procedure where Judges of Court of appeal are equally divided

When an appeal under this Chapter is heard by a High Court before a Bench of Judges and they are divided in opinion, the appeal, with their opinions, shall be laid before another Judge of that Court, and that Judge, after such hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow that opinion:

Provided that if one of the Judges constituting the Bench, or, where the appeal is laid before another Judge under this section, that Judge, so requires, the appeal shall be re- heard and decided by a larger Bench of Judges.

Corresponding Provision of Previous Statute: Section 392, Code of Criminal Procedure, 1973

Section 392 - Procedure where Judges of Court of Appeal are equally divided - When an appeal under this Chapter is heard by a High Court before a Bench of Judges and they are divided in opinion, the appeal, with their opinions, shall be laid before another Judge of that Court, and that Judge, after such hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow that opinion:

Provided that if one of the Judges constituting the Bench, or, where the appeal is laid before another Judge under this section, that Judge, so requires, the appeal shall be re-heard and decided by a larger Bench of Judges.

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434. Finality of judgments and orders on appeal

Judgments and orders passed by an Appellate Court upon an appeal shall be final, except in the cases provided for in section 418, section 419, sub- section (4) of section 425 or Chapter XXXII:

Provided that notwithstanding the final disposal of an appeal against conviction in any case, the Appellate Court may hear and dispose of, on the merits,- -

(a) an appeal against acquittal under section 419, arising out of the same case; or

(b) an appeal for the enhancement of sentence under section 418, arising out of the same case.

Corresponding Provision of Previous Statute: Section 393, Code of Criminal Procedure, 1973

Section 393 - Finality of judgments and orders on appeal - Judgments and orders passed by an Appellate Court upon an appeal shall be final, except in the cases provided for in section 377, section 378, sub-section (4) of section 384 or Chapter XXX:

Provided that notwithstanding the final disposal of an appeal against conviction in any case, the Appellate Court may hear and dispose of, on the merits,—

(a) an appeal against acquittal under section 378, arising out of the same case, or

(b) an appeal for the enhancement of sentence under section 377, arising out of the same case.

435. Abatement of appeals

(1) Every appeal under section 418 or section 419 shall finally abate on the death of the accused.

(2) Every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant:

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Provided that where the appeal is against a conviction and sentence of death or of imprisonment, and the appellant dies during the pendency of the appeal, any of his near relatives may, within thirty days of the death of the appellant, apply to the Appellate Court for leave to continue the appeal; and if leave is granted, the appeal shall not abate.

Explanation.- - In this section, "near relative" means a parent, spouse, lineal descendant, brother or sister.

Corresponding Provision of Previous Statute: Section 394, Code of Criminal Procedure, 1973

Section 394 - Abatement of appeals - (1) Every other appeal under section 377 or section 378 shall finally abate on the death of the accused.

(2) Every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant:

Provided that where the appeal is against a conviction and sentence of death or of imprisonment, and the appellant dies during the pendency of the appeal, any of his near relatives may, within thirty days of the death of the appellant, apply to the Appellate Court for leave to continue the appeal; and if leave is granted, the appeal shall not abate.

Explanation.—In this section, "near relative" means a parent, spouse, lineal descendant, brother or sister.

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CHAPTER XXXII

REFERENCE AND REVISION

436. Reference to High Court

(1) Where any Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefor, and refer the same for the decision of the High Court.

Explanation.- - In this section, "Regulation" means any Regulation as defined in the General Clauses Act, 1897 (10 of 1897), or in the General Clauses Act of a State.

(2) A Court of Session may, if it thinks fit in any case pending before it to which the provisions of sub- section (1) do not apply, refer for the decision of the High Court any question of law arising in the hearing of such case.

(3) Any Court making a reference to the High Court under sub-section (1) or sub- section (2) may, pending the decision of the High Court thereon, either commit the accused to jail or release him on bail to appear when called upon.

Linked Provisions

Divorce Act, 1869 - Section 9 - Reference to High Court

Employees' State Insurance Act, 1948 - Section 81 - Reference to High Court

Expenditure-Tax Act, 1957 - Section 25 - Reference to High Court

Code of Civil Procedure, 1908 - Section 113 - Reference to High Court

Income-Tax Act, 1961 - Section 256 - Reference to High Court

Income-Tax Act, 1961 - Section 257 - Reference to High Court

Income-Tax Act, 1961 - Section 258 - Reference to High Court

Income-Tax Act, 1961 - Section 259 - Reference to High Court

Income-Tax Act, 1961 - Section 260 - Reference to High Court

Corresponding Provision of Previous Statute: Section 395, Code of Criminal Procedure, 1973

Section 395 - Reference to High Court - (1) Where any Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case,

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and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is Subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefor, and refer the same for the decision of the High Court.

Explanation.—In this section, "Regulation" means any Regulation as defined in the General Clauses Act, 1897 (10 of 1897), or in the General Clauses Act of a State.

(2) A Court of Session or a Metropolitan Magistrate may, if it or he thinks fit in any case pending before it or him to which the provisions of sub-section (1) do not apply, refer for the decision of the High Court any question of law arising in the hearing of such case.

(3) Any Court making a reference to the High Court under sub-section (1) or sub-section (2) may, pending the decision of the High Court thereon, either commit the accused to jail or release him on bail to appear when called upon

437. Disposal of case according to decision of High Court

(1) When a question has been so referred, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Court by which the reference was made, which shall dispose of the case conformably to the said order.

(2) The High Court may direct by whom the costs of such reference shall be paid.

Corresponding Provision of Previous Statute: Section 396, Code of Criminal Procedure, 1973

Section 396 - Disposal of case according to decision of High Court - (1) When a question has been so referred, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Court by which the reference was made, which shall dispose of the case conformably to the said order.

(2) The High Court may direct by whom the costs of such reference shall be paid.

438. Calling for records to exercise powers of revision

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the

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regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on his own bond or bail bond pending the examination of the record.

Explanation.- - All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub- section and of section 439.

(2) The powers of revision conferred by sub- section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

Corresponding Provision of Previous Statute: Section 397, Code of Criminal Procedure, 1973

Section 397 - Calling for records to exercise powers of revision - (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself; to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on bail or on his own bond pending the examination of the record.

Explanation.—All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

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LANDMARK JUDGMENT

Amar Nath and Ors. vs. State of Haryana and Ors., MANU/SC/0068/1977

439. Power to order inquiry

Linked Provisions

Dock Workers - Regulation of Employement Act, 1948 - Section 6A - Power to order inquiry

On examining any record under section 438 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 226 or sub- section (4) of section 227, or into the case of any person accused of an offence who has been discharged:

Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.

Corresponding Provision of Previous Statute: Section 398, Code of Criminal Procedure, 1973

Section 398 - Power to order inquiry - On examining any record under section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203 or sub-section (4) of section 204, or into the case of any person accused of an offence who has been discharged:

Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.

440. Sessions Judge's powers of revision

(1) In the case of any proceeding the record of which has been called for by himself, the Sessions Judge may exercise all or any of the

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powers which may be exercised by the High Court under sub-section (1) of section 442.

(2) Where any proceeding by way of revision is commenced before a Sessions Judge under sub- section (1), the provisions of sub-sections (2), (3), (4) and (5) of section 442 shall, so far as may be, apply to such proceeding and references in the said sub- sections to the High Court shall be construed as references to the Sessions Judge.

(3) Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.

Corresponding Provision of Previous Statute: Section 399, Code of Criminal Procedure, 1973

Section 399 - Sessions Judge's powers of revision - (1) In the case of any proceeding the record of which has been called for by himself, the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under sub-section (1) of section 401.

(2) Where any proceeding by way of revision is commenced before a Sessions Judge under sub-section (1), the provisions of sub-sections (2), (3), (4) and (5) of section 401 shall, so far as may be, apply to such proceeding and references in the said sub-sections to the High Court shall be construed as references to the Sessions Judge.

(3) Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.

441. Power of Additional Sessions Judge

An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him by or under any general or special order of the Sessions Judge.

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Corresponding Provision of Previous Statute: Section 400, Code of Criminal Procedure, 1973

Section 400 - Power of Additional Sessions Judge - An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him by or under any general or special order of the Sessions Judge.

442. High Court's powers of revision

(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 427, 430, 431 and 432 or on a Court of Session by section 344, and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 433.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by advocate in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Sanhita an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Sanhita an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the

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application for revision as a petition of appeal and deal with the same accordingly.

Corresponding Provision of Previous Statute: Section 401, Code of Criminal Procedure, 1973

Section 401 - High Court's powers of revision - (1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307, and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of Justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.

LANDMARK JUDGMENT

Logendra Nath Jha and Ors. vs. Polailal Biswas, MANU/SC/0029/1951

443. Power of High Court to withdraw or transfer revision cases

(1) Whenever one or more persons convicted at the same trial makes or make application to a High Court for revision and any other person convicted at the same trial makes an application to the Sessions Judge for revision, the High Court shall decide, having regard to the general convenience of the parties and the importance of the questions involved, which of the two Courts should finally dispose of the applications for revision and when the High Court decides that all the applications for revision should be disposed of by itself, the High Court shall direct that the applications for revision pending before the Sessions Judge be transferred to itself and where

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the High Court decides that it is not necessary for it to dispose of the applications for revision, it shall direct that the applications for revision made to it be transferred to the Sessions Judge.

(2) Whenever any application for revision is transferred to the High Court, that Court shall deal with the same as if it were an application duly made before itself.

(3) Whenever any application for revision is transferred to the Sessions Judge, that Judge shall deal with the same as if it were an application duly made before himself.

(4) Where an application for revision is transferred by the High Court to the Sessions Judge, no further application for revision shall lie to the High Court or to any other Court at the instance of the person or persons whose applications for revision have been disposed of by the Sessions Judge.

Corresponding Provision of Previous Statute: Section 402, Code of Criminal Procedure, 1973

Section 402 - Power of High Court to withdraw or transfer revision cases - (1) Whenever one or more persons convicted at the same trial makes or make application to a High Court for revision and any other person convicted at the same trial makes an application to the Sessions Judge for revision, the High Court shall decide, having regard to the general convenience of the parties and the importance of the questions involved, which of the two Courts should finally dispose of the applications for revision and when the High Court decides that all the applications for revision should be disposed of by itself, the High Court shall direct that the applications for revision pending before the Sessions Judge be transferred to itself and where the High Court decides that it is not necessary for it to dispose of the applications for revision, it shall direct that the applications for revision made to it be transferred to the Sessions Judge.

(2) Whenever any application for revision is transferred to the High Court, that Court shall deal with the same as if it were an application duly made before itself.

(3) Whenever any application for revision is transferred to the Sessions Judge, that Judge shall deal with the same as if it were an application duly made before himself.

(4) Where an application for revision is transferred by the High Court to the Sessions Judge, no further application for revision shall lie to the High Court or to any other Court at the instance of the person or persons whose applications for revision have been disposed of by the Sessions Judge.

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444. Option of Court to hear parties

Save as otherwise expressly provided by this Sanhita, no party has any right to be heard either personally or by an advocate before any Court exercising its powers of revision; but the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by an advocate.

Corresponding Provision of Previous Statute: Section 403, Code of Criminal Procedure, 1973

Section 403 - Option of Court to hear parties - Save as otherwise expressly provided by this Code, no party has any right to be heard either personally or by pleader before any Court exercising its powers of revision; but the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader

445. High Court's order to be certified to lower Court

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 429 - Order of High Court on appeal to be certified to lower Court

When a case is revised under this Chapter by the High Court or a Sessions Judge, it or he shall, in the manner provided by section 429, certify its decision or order to the Court by which the finding, sentence or order revised was recorded or passed, and the Court to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified, and, if necessary, the record shall be amended in accordance therewith.

Corresponding Provision of Previous Statute: Section 405, Code of Criminal Procedure, 1973

Section 405 - High Court's order to be certified to lower Court - When a case is revised under this Chapter by the High Court or a Sessions Judge, it or he shall, in the manner provided by section 388, certify its decision or order to the Court by which the finding, sentence or order revised was recorded or passed, and the Court to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified, and, if necessary, the record shall be amended in accordance therewith.

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CHAPTER XXXIII

TRANSFER OF CRIMINAL CASES

446. Power of Supreme Court to transfer cases and appeals

(1) Whenever it is made to appear to the Supreme Court that an order under this section is expedient for the ends of justice, it may direct that any particular case or appeal be transferred from one High Court to another High Court or from a Criminal Court subordinate to one High Court to another Criminal Court of equal or superior jurisdiction subordinate to another High Court.

(2) The Supreme Court may act under this section only on the application of the Attorney- General of India or of a party interested, and every such application shall be made by motion, which shall, except when the applicant is the Attorney- General of India or the Advocate- General of the State, be supported by affidavit or affirmation.

(3) Where any application for the exercise of the powers conferred by this section is dismissed, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum as it may consider appropriate in the circumstances of the case.

Corresponding Provision of Previous Statute: Section 406, Code of Criminal Procedure, 1973

Section 406 - Power of Supreme Court to transfer cases and appeals - (1) Whenever it is made to appear to the Supreme Court that an order under this section is expedient for the ends of justice, it may direct that any particular case or appeal be transferred from one High Court to another High Court or from a Criminal Court subordinate to one High Court to another Criminal Court of equal or superior jurisdiction subordinate to another High Court.

(2) The Supreme Court may act under this section only on the application of the Attorney-General of

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India or of a party interested, and every such application shall be made by motion, which shall, except when the applicant is the Attorney-General of India or the Advocate-General of the State, be supported by affidavit or affirmation.

(3) Where any application for the exercise of the powers conferred by this section is dismissed, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider appropriate in the circumstances of the case.

447. Power of High Court to transfer cases and appeals

(1) Whenever it is made to appear to the High Court- -

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto; or

(b) that some question of law of unusual difficulty is likely to arise; or

(c) that an order under this section is required by any provision of this Sanhita, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice, it may order- -

(i) that any offence be inquired into or tried by any Court not qualified under sections 197 to 205 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.

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(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative:

Provided that no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.

(3) Every application for an order under sub- section (1) shall be made by motion, which shall, except when the applicant is the Advocate- General of the State, be supported by affidavit or affirmation.

(4) When such application is made by an accused person, the High Court may direct him to execute a bond or bail bond for the payment of any compensation which the High Court may award under sub-section (7).

(5) Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty- four hours have elapsed between the giving of such notice and the hearing of the application.

(6) Where the application is for the transfer of a case or appeal from any subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interest of justice, order that, pending the disposal of the application the proceedings in the subordinate Court shall be stayed, on such terms as the High Court may think fit to impose:

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Provided that such stay shall not affect the subordinate Court's power of remand under section 346.

(7) Where an application for an order under sub- section (1) is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum as it may consider proper in the circumstances of the case.

(8) When the High Court orders under sub- section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.

(9) Nothing in this section shall be deemed to affect any order of the Government under section 218.

Corresponding Provision of Previous Statute: Section 407, Code of Criminal Procedure, 1973

Section 407 - Power of High Court to transfer cases and appeals - (1) Whenever it is made to appear to the High Court—

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise, or

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice, it may order—

(i) that any offence be inquired into or tried by any Court not qualified under sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.

(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative:

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Provided that no application shall lie to the High Court for transferring a case from one Criminal Court toanother Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.

(3) Every application for an order under sub-section (1) shall be made by motion, which shall, except when the applicant is the Advocate-General of the State, be supported by affidavit or affirmation.

(4) When such application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under sub-section (7).

(5) Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the applications unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(6) Where the application is for the transfer of a case or appeal from any Subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interest of Justice, order that, pending the disposal of the application the proceedings in the Subordinate Court shall be stayed, on such terms as the High Court may think fit to impose:

Provided that such stay shall not affect the Subordinate Court's power of remand under section 309.

(7) Where an application for an order under sub-section (1) is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider proper in the circumstances of the case.

(8) When the High Court orders under sub-section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.

(9) Nothing in this section shall be deemed to affect any order of Government under section 197.

448. Power of Sessions Judge to transfer cases and appeals

(1) Whenever it is made to appear to a Sessions Judge that an order under this sub- section is expedient for the ends of justice, he may order that any particular case be transferred from one Criminal Court to another Criminal Court in his sessions division.

(2) The Sessions Judge may act either on the report of the lower

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Court, or on the application of a party interested, or on his own initiative.

(3) The provisions of sub- sections (3), (4), (5), (6), (7) and (9) of section 447 shall apply in relation to an application to the Sessions Judge for an order under sub- section (1) as they apply in relation to an application to the High Court for an order under sub- section (1) of section 447, except that sub- section (7) of that section shall so apply as if for the word "sum" occurring therein, the words "sum not exceeding ten thousand rupees" were substituted.

Corresponding Provision of Previous Statute: Section 408, Code of Criminal Procedure, 1973

Section 408 - Power of Sessions Judge to transfer cases and appeals - (1) Whenever it is made to appear to a Sessions Judge that an order under this sub-section is expedient for the ends of justice, he may order that any particular case be transferred from one Criminal Court to another Criminal Court in his sessions division.

(2) The Sessions Judge may act either on the report of the lower Court, or on the application of a party interested, or on his own initiative.

(3) The provisions of sub-sections (3), (4), (5), (6), (7) and (9) of section 407 shall apply in relation to an application to the Sessions Judge for an order under sub-section (1) as they apply in relation to an application to the High Court for an order under sub-section (1) of section 407, except that sub-section (7) of that section shall so apply as if for the words "one thousand rupees" occurring therein, the words "two hundred and fifty rupees" were substituted.

449. Withdrawal of cases and appeals by Sessions Judges

(1) A Sessions Judge may withdraw any case or appeal from, or recall any case or appeal which he has made over to a Chief Judicial Magistrate subordinate to him.

(2) At any time before the trial of the case or the hearing of the appeal has commenced before the Additional Sessions Judge, a Sessions Judge may recall any case or appeal which he has made over to any Additional Sessions Judge.

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(3) Where a Sessions Judge withdraws or recalls case or appeal under sub- section (1) or sub- section (2), he may either try the case in his own Court or hear the appeal himself, or make it over in accordance with the provisions of this Sanhita to another Court for trial or hearing, as the case may be.

Corresponding Provision of Previous Statute: Section 409, Code of Criminal Procedure, 1973

Section 409 - Withdrawal of cases and appeals by Session Judge - (1) A Sessions Judge may withdraw any case or appeal from, or recall any case or appeal which he has made over to, any Assistant Sessions Judge or Chief Judicial Magistrate subordinate to him.

(2) At any time before the trial of the case or the hearing of the appeal has commenced before the Additional Sessions Judge, a Sessions Judge may recall any case or appeal which he has made over to any Additional Sessions Judge.

(3) Where a Sessions Judge withdraws or recalls case or appeal under sub-section (1) or sub-section (2), he may either try the case in his own Court or hear the appeal himself, or make it over in accordance with the provisions of this Code to another Court for trial or hearing, as the case may be.

450. Withdrawal of cases by Judicial Magistrates

(1) Any Chief Judicial Magistrate may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

(2) Any Judicial Magistrate may recall any case made over by him under sub- section (2) of section 212 to any other Magistrate and may inquire into or try such cases himself.

Corresponding Provision of Previous Statute: Section 410, Code of Criminal Procedure, 1973

Section 410 - Withdrawal of cases by Judicial Magistrate - (1) Any Chief Judicial Magistrate may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

(2) Any Judicial Magistrate may recall any case made over by him under sub-section (2) of section 192 to any other Magistrate and may inquire into or try such cases himself.

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451. Making over or withdrawal of cases by Executive Magistrates

Any District Magistrate or Sub- divisional Magistrate may- -

(a) make over, for disposal, any proceeding which has been started before him, to any Magistrate subordinate to him;

(b) withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and dispose of such proceeding himself or refer it for disposal to any other Magistrate.

Corresponding Provision of Previous Statute: Section 411, Code of Criminal Procedure, 1973

Section 411 - Making over or withdrawal of cases by Executive Magistrates - Any District Magistrate or Sub- Divisional Magistrate may—

(a) make over, for disposal, any proceeding which has been started before him, to any Magistrate subordinate to him;

(b) withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and dispose of such proceeding himself or refer it for disposal to any other Magistrate.

452. Reasons to be recorded

A Sessions Judge or Magistrate making an order under section 448, section 449, section 450 or section 451 shall record his reasons for making it.

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 402 - Special reasons to be recorded in certain cases

Corresponding Provision of Previous Statute: Section 412, Code of Criminal Procedure, 1973

Section 412 - Reasons to be recorded - A Sessions Judge or Magistrate making an order under section 408, section 409, section 410 or section 411 shall record his reasons for making it.

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CHAPTER XXXIV

EXECUTION, SUSPENSION, REMISSION AND COMMUTATION OF SENTENCES

A.- - Death sentences

453. Execution of order passed under section 409

When in a case submitted to the High Court for the confirmation of a sentence of death, the Court of Session receives the order of confirmation or other order of the High Court thereon, it shall cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary.

Corresponding Provision of Previous Statute: Section 413, Code of Criminal Procedure, 1973

Section 413 - Execution of order passed under section 368 - When in a case submitted to the High Court for the confirmation of a sentence of death, the Court of Session receives the order of confirmation or other order of the High Court thereon, it shall cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary.

454. Execution of sentence of death passed by High Court

When a sentence of death is passed by the High Court in appeal or in revision, the Court of Session shall, on receiving the order of the High Court, cause the sentence to be carried into effect by issuing a warrant.

Corresponding Provision of Previous Statute: Section 414, Code of Criminal Procedure, 1973

Section 414 - Execution of sentence of death passed by High Court - When a sentence of death is passed by the High Court in appeal or in revision, the Court of Session shall, on receiving the order of the High Court, cause the sentence to be carried into effect by issuing a warrant.

455. Postponement of execution of sentence of death in case of appeal to Supreme Court

(1) Where a person is sentenced to death by the High Court and an appeal from its judgment lies to the Supreme Court under sub- clause (a) or sub-

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clause (b) of clause (1) of article 134 of the Constitution, the High Court shall order the execution of the sentence to be postponed until the period allowed for preferring such appeal has expired, or if, an appeal is preferred within that period, until such appeal is disposed of.

(2) Where a sentence of death is passed or confirmed by the High Court, and the person sentenced makes an application to the High Court for the grant of a certificate under article 132 or under sub-clause (c) of clause (1) of article 134 of the Constitution, the High Court shall order the execution of the sentence to be postponed until such application is disposed of by the High Court, or if a certificate is granted on such application, until the period allowed for preferring an appeal to the Supreme Court on such certificate has expired.

(3) Where a sentence of death is passed or confirmed by the High Court, and the High Court is satisfied that the person sentenced intends to present a petition to the Supreme Court for the grant of special leave to appeal under article 136 of the Constitution, the High Court shall order the execution of the sentence to be postponed for such period as it considers sufficient to enable him to present such petition.

Corresponding Provision of Previous Statute: Section 415, Code of Criminal Procedure, 1973

Section 415 - Postponement of execution of sentence of death in case of appeal to Supreme Court - (1) Where a person is sentenced to death by the High Court and an appeal from its judgment lies to the Supreme Court under sub-clause (a) or sub-clause (b) of clause (1) of article 134 of the Constitution, the High Court shall order the execution of the sentence to be postponed until the period allowed for preferring such appeal has expired, or if, an appeal is preferred within that period, until such appeal is disposed of.

(2) Where a sentence of death is passed or confirmed by the High Court, and the person sentenced makes an application to the High Court for the grant of a certificate under article 132 or under sub-clause (c) of clause (1) of article 134 of the Constitution, the High Court shall order the execution of the sentence to be postponed until such application is disposed of by the High Court, or if a certificate is granted on

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such application, until the period allowed for preferring an appeal to the Supreme Court on such certificate has expired.

(3) Where a sentence of death is passed or confirmed by the High Court, and the High Court is satisfied that the person sentenced intends to present a petition to the Supreme Court for the grant of special leave to appeal under article 136 of the Constitution, the High Court shall order the execution of the sentence to be postponed for such period as it considers sufficient to enable him to present such petition.

456. Commutation of sentence of death on pregnant woman

If a woman sentenced to death is found to be pregnant, the High Court shall commute the sentence to imprisonment for life.

Corresponding Provision of Previous Statute: Section 416, Code of Criminal Procedure, 1973

Section 416 - Postponement of capital sentence on pregnant woman - If a woman sentenced to death is found to be pregnant, the High Court shall, commute the sentence to imprisonment for life.

B.- - Imprisonment

457. Power to appoint place of imprisonment

(1) Except when otherwise provided by any law for the time being in force, the State Government may direct in what place any person liable to be imprisoned or committed to custody under this Sanhita shall be confined.

(2) If any person liable to be imprisoned or committed to custody under this Sanhita is in confinement in a civil jail, the Court or Magistrate ordering the imprisonment or committal may direct that the person be removed to a criminal jail.

(3) When a person is removed to a criminal jail under sub- section (2), he shall, on being released therefrom, be sent back to the civil jail, unless either- -

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(a) three years have elapsed since he was removed to the criminal jail, in which case he shall be deemed to have been released from the civil jail under section 58 of the Code of Civil Procedure, 1908 (5 of 1908); or

(b) the Court which ordered his imprisonment in the civil jail has certified to the officer in charge of the criminal jail that he is entitled to be released under section 58 of the Code of Civil Procedure, 1908 (5 of 1908).

Corresponding Provision of Previous Statute: Section 417, Code of Criminal Procedure, 1973

Section 417 - Power to appoint place of imprisonment - (1) Except when otherwise provided by any law for the time being in force, the State Government may direct in what place any person liable to be imprisoned or committed to custody under this Code shall be confined.

(2) If any person liable to be imprisoned or committed to custody under this Code is in confinement in a civil jail, the Court or Magistrate ordering the imprisonment or committal may direct that the person be removed to a criminal jail.

(3) When a person is removed to a criminal jail under sub-section (2), he shall, on being released therefrom, be sent back to the civil jail, unless either—

(a) three years have elapsed since he was removed to the criminal jail, in which case he shall be deemed to have been released from the civil jail under section 58 of the Code of Civil Procedure, 1908 (5 of 1908), or section 23 of the Provincial Insolvency Act, 1920 (5 of 1920), as the case may be; or

(b) the Court which ordered his imprisonment in the civil jail has certified to the officer in charge of the criminal jail that he is entitled to be released under section 58 of the Code of Civil Procedure, 1908 (5 of 1908), or under section 23 of the Provincial Insolvency Act, 1920 (5 of 1920), as the case may be.

458. Execution of sentence of imprisonment

(1) Where the accused is sentenced to imprisonment for life or to imprisonment for a term in cases other than those provided for by section 453, the Court passing the sentence shall forthwith forward a warrant to the jail or other place in which he is, or is to be, confined, and, unless the accused is already confined in such jail or other place, shall forward him to such jail or other place, with the warrant:

Linked Provisions

Air Force Act, 1950 - Section 166 - Execution of sentence of imprisonment

Army Act, 1950 - Section 169 - Execution of sentence of imprisonment

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Provided that where the accused is sentenced to imprisonment till the rising of the Court, it shall not be necessary to prepare or forward a warrant to a jail, and the accused may be confined in such place as the Court may direct.

(2) Where the accused is not present in Court when he is sentenced to such imprisonment as is mentioned in sub- section (1), the Court shall issue a warrant for his arrest for the purpose of forwarding him to the jail or other place in which he is to be confined; and in such case, the sentence shall commence on the date of his arrest.

Assam Rifles Act, 2006 - Section 143 - Execution of sentence of imprisonment

Border Security Force Act, 1968 - Section 121 - Execution of sentence of imprisonment

Coast Guard Act, 1978 - Section 100 - Execution of sentence of imprisonment

Indian Air Force Act, 1932 - Section 113 - Execution of sentence of imprisonment

Indo-Tibetan Border Police Force Act, 1992 - Section 135 - Execution of sentence of imprisonment

National Security Guard Act, 1986 - Section 117 - Execution of sentence of imprisonment

Sashastra Seema Bal Act, 2007 - Section 135 - Execution of sentence of imprisonment

Corresponding Provision of Previous Statute: Section 418, Code of Criminal Procedure, 1973

Section 418 - Execution of sentence of imprisonment - (1) Where the accused is sentenced to imprisonment for life or to imprisonment for a term in cases other than those provided for by section 413, the Court passing the sentence shall forthwith forward a warrant to the jail or other place in which he is, or is to be, confined, and, unless the accused is already confined in such jail or other place, shall forward him to such jail or other place, with the warrant:

Provided that where the accused is sentenced to imprisonment till the rising of the Court, it shall not be necessary to prepare or forward a warrant to a jail, and the accused may be confined in such place as the Court may direct.

(2) Where the accused is not present in Court when he is sentenced to such imprisonment as is mentioned

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in sub-section (1), the Court shall issue a warrant for his arrest for the purpose of forwarding him to the jail or other place in which he is to be confined; and in such case, the sentence shall commence on the date of his arrest.

459. Direction of warrant for execution

Every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail or other place in which the prisoner is, or is to be, confined.

Corresponding Provision of Previous Statute: Section 419, Code of Criminal Procedure, 1973

Section 419 - Direction of warrant for execution - Every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail or other place in which the prisoner is, or is to be, confined.

460. Warrant with whom to be lodged

When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor.

Corresponding Provision of Previous Statute: Section 420, Code of Criminal Procedure, 1973

Section 420 - Warrant with whom to be lodged - When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor.

C.- - Levy of fine

461. Warrant for levy of fine

(1) When an offender has been sentenced to pay a fine, but no such payment has been made, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may- -

(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;

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(b) issue a warrant to the Collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter:

Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under section 395.

(2) The State Government may make rules regulating the manner in which warrants under clause (a) of sub- section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Court issues a warrant to the Collector under clause (b) of sub- section (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law:

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.

Corresponding Provision of Previous Statute: Section 421, Code of Criminal Procedure, 1973

Section 421 - Warrant for levy of fine - (1) When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may—

(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;

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(b) issue a warrant to the Collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter:

Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under section 357.

(2) The State Government may make rules regulating the manner in which warrants under clause (a) of sub-section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Court issues a warrant to the Collector under clause (b) of sub-section (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law:

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.

462. Effect of such warrant

A warrant issued under clause (a) of sub- section (1) of section 461 by any Court may be executed within the local jurisdiction of such Court, and it shall authorise the attachment and sale of any such property outside such jurisdiction, when it is endorsed by the District Magistrate within whose local jurisdiction such property is found.

Corresponding Provision of Previous Statute: Section 422, Code of Criminal Procedure, 1973

Section 422 - Effect of such warrant - A warrant issued under clause (a) of sub-section (1) of section 421 by any Court may be executed within the local jurisdiction of such Court, and it shall authorise the attachment and sale of any such property outside such jurisdiction, when it is endorsed by the District Magistrate within whose local jurisdiction such property is found.

463. Warrant for levy of fine issued by a Court in any territory to which this Sanhita does not extend

Notwithstanding anything in this Sanhita or in any other law for the time being in force, when an offender has been sentenced to pay a fine by a Criminal Court in any territory to which this Sanhita does

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not extend and the Court passing the sentence issues a warrant to the Collector of a district in the territories to which this Sanhita extends, authorising him to realise the amount as if it were an arrear of land revenue, such warrant shall be deemed to be a warrant issued under clause (b) of sub- section (1) of section 461 by a Court in the territories to which this Sanhita extends, and the provisions of sub-section (3) of the said section as to the execution of such warrant shall apply accordingly.

Corresponding Provision of Previous Statute: Section 423, Code of Criminal Procedure, 1973

Section 423 - Warrant for levy of fine issued by a Court in any territory to which this Code does not extend - Notwithstanding anything contained in this Code or in any other law for the time being in force, when an offender has been sentenced to pay a fine by a Criminal Court in any territory to which this Code does not extend and the Court passing the sentence issues a warrant to the Collector of a district in the territories to which this Code extends, authorising him to realise the amount as if it were an arrear of land revenue, such warrant shall be deemed to be a warrant issued under clause (b) of sub-section (1) of section 421 by a Court in the territories to which this Code extends, and the provisions of sub-section (3) of the said section as to the execution of such warrant shall apply accordingly.

LANDMARK JUDGMENT

Logendra Nath Jha and Ors. vs. Polailal Biswas, MANU/SC/0029/1951

464. Suspension of execution of sentence of imprisonment

(1) When an offender has been sentenced to fine only and to imprisonment in default of payment of the fine, and the fine is not paid forthwith, the Court may- -

(a) order that the fine shall be payable either in full on or before a date not more than thirty days from the date of the order, or in two or three installments, of which the first shall be payable on or before a date not more than thirty days from the date of the order and the other or others at an interval or at intervals, as the case may be, of not more than thirty days;

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(b) suspend the execution of the sentence of imprisonment and release the offender, on the execution by the offender of a bond or bail bond, as the Court thinks fit, conditioned for his appearance before the Court on the date or dates on or before which payment of the fine or the installments thereof, as the case may be, is to be made; and if the amount of the fine or of any installment, as the case may be, is not realised on or before the latest date on which it is payable under the order, the Court may direct the sentence of imprisonment to be carried into execution at once.

(2) The provisions of sub- section (1) shall be applicable also in any case in which an order for the payment of money has been made on non- recovery of which imprisonment may be awarded and the money is not paid forthwith; and, if the person against whom the order has been made, on being required to enter into a bond such as is referred to in that sub- section, fails to do so, the Court may at once pass sentence of imprisonment.

Corresponding Provision of Previous Statute: Section 424, Code of Criminal Procedure, 1973

Section 424 - Suspension of execution of sentence of imprisonment - (1) When an offender has been sentenced to fine only and to imprisonment in default of payment of the fine, and the fine is not paid forthwith, the Court may—

(a) order that the fine shall be payable either in full on or before a date not more than thirty days from the date of the order, or in two or three instalments, of which the first shall be payable on or before a date not more than thirty days from the date of the order and the other or others at an interval or at intervals, as the case may be, of not more than thirty days;

(b) suspend the execution of the sentence of imprisonment and release the offender, on the execution by the offender of a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before the Court on the date or dates on or before which payment of the fine or the instalments thereof, as the case may be, is to be made; and if the amount of the fine or of any instalment, as the case may be, is not realised on or before the latest date on which it is payable under the order, the Court may direct the sentence of imprisonment to be carried into execution at once.

(2) The provisions of sub-section (1) shall be applicable also in any case in which an order for the payment of money has been made on non-recovery of which imprisonment may be awarded and the money is not paid forthwith; and, if the person against whom the order has been made, on being required to enter into a bond such as is referred to in that sub-section, fails to do so, the Court may at once pass sentence of imprisonment.

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D.- - General provisions regarding execution

465. Who may issue warrant

Every warrant for the execution of a sentence may be issued either by the Judge or Magistrate who passed the sentence, or by his successor- in- office.

Corresponding Provision of Previous Statute: Section 425, Code of Criminal Procedure, 1973

Section 425 - Who may issue warrant - Every warrant for the execution of a sentence may be issued either by the Judge or Magistrate who passed the sentence, or by his successor-in-office.

466. Sentence on escaped convict when to take effect

(1) When a sentence of death, imprisonment for life or fine is passed under this Sanhita on an escaped convict, such sentence shall, subject to the provisions hereinbefore contained, take effect immediately.

(2) When a sentence of imprisonment for a term is passed under this Sanhita on an escaped convict,- -

(a) if such sentence is severer in kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately;

(b) if such sentence is not severer in kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

(3) For the purposes of sub- section (2), a sentence of rigorous imprisonment shall be deemed to be severer in kind than a sentence of simple imprisonment.

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Corresponding Provision of Previous Statute: Section 426, Code of Criminal Procedure, 1973

Section 426 - Sentence on escaped convict when to take effect - (1) When a sentence of death, imprisonment for life or fine is passed under this Code on an escaped convict, such sentence shall, subject to the provisions hereinbefore contained, take effect immediately.

(2) When a sentence of imprisonment for a term is passed under this Code on an escaped convict, —

(a) if such sentence is severer in kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately;

(b) if such sentence is not severer in kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

(3) For the purposes of sub-section (2), a sentence of rigorous imprisonment shall be deemed to be severer in kind than a sentence of simple imprisonment.

467. Sentence on offender already sentenced for another offence

(1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence:

Provided that where a person who has been sentenced to imprisonment by an order under section 141 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

(2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for

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a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.

Corresponding Provision of Previous Statute: Section 427, Code of Criminal Procedure, 1973

Section 427 - Sentence on offender already sentenced for another offence - (1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence: Provided that where a person who has been sentenced to imprisonment by an order under section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

(2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.

468. Period of detention undergone by accused to be set off against sentence of imprisonment

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 297 - Period of detention undergone by the accused to be set off against the sentence of imprisonment

Where an accused person has, on conviction, been sentenced to imprisonment for a term, not being imprisonment in default of payment of fine, the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him:

Provided that in cases referred to in section 475, such period of detention shall be set off against the period of fourteen years referred to in that section.

Corresponding Provision of Previous Statute: Section 428, Code of Criminal Procedure, 1973

Section 428 - Period of detention undergone by the accused to be set off against the sentence of imprisonment - Where an accused person has, on conviction, been sentenced to imprisonment for a term, not being imprisonment in default of payment of fine], the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction,

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shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him:

Provided that in cases referred to in section 433A, such period of detention shall be set off against the period of fourteen years referred to in that section.

LANDMARK JUDGMENT

Suraj Bhan vs. Om Prakash and Ors., MANU/SC/0194/1976

469. Saving

(1) Nothing in section 466 or section 467 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

(2) When an award of imprisonment in default of payment of a fine is annexed to a substantive sentence of imprisonment and the person undergoing the sentence is after its execution to undergo a further substantive sentence or further substantive sentences of imprisonment, effect shall not be given to the award of imprisonment in default of payment of the fine until the person has undergone the further sentence or sentences.

Corresponding Provision of Previous Statute: Section 429, Code of Criminal Procedure, 1973

Section 429 – Saving - (1) Nothing in section 426 or section 427 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

(2) When an award of imprisonment in default of payment of a fine is annexed to a substantive sentence of imprisonment and the person undergoing the sentence is after its execution to undergo a further substantive sentence or further substantive sentences of imprisonment, effect shall not be given to the award of imprisonment in default of payment of the fine until the person has undergone the further sentence or sentences.

470. Return of warrant on execution of sentence

When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it is issued, with an

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endorsement under his hand certifying the manner in which the sentence has been executed.

Corresponding Provision of Previous Statute: Section 430, Code of Criminal Procedure, 1973

Section 430 – Return of warrant on execution of sentence - When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it is issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

471. Money ordered to be paid recoverable as a fine

Any money (other than a fine) payable by virtue of any order made under this Sanhita, and the method of recovery of which is not otherwise expressly provided for, shall be recoverable as if it were a fine:

Provided that section 461 shall, in its application to an order under section 400, by virtue of this section, be construed as if in the proviso to sub- section (1) of section 461, after the words and figures "under section 395", the words and figures "or an order for payment of costs under section 400" had been inserted.

Corresponding Provision of Previous Statute: Section 431, Code of Criminal Procedure, 1973

Section 431 – Money ordered to be paid recoverable as a fine - Any money (other than a fine) payable by virtue of any order made under this Code, and the method of recovery of which is not otherwise expressly provided for, shall be recoverable as if it were a fine:

Provided that section 421 shall, in its application to an order under section 359, by virtue of this section, be construed as if in the proviso to sub-section (1) of section 421, after the words and figures "under section 357", the words and figures "or an order for payment of costs under section 359" had been inserted.

LANDMARK JUDGMENT

K.M. Nanavati vs. State of Maharashtra, MANU/SC/0147/1961

E.- - Suspension, remission and commutation of sentences

472. Mercy petition in death sentence cases

(1) A convict under the sentence of death or his legal heir or any other

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relative may, if he has not already submitted a petition for mercy, file a mercy petition before the President of India under article 72 or the Governor of the State under article 161 of the Constitution within a period of thirty days from the date on which the Superintendent of the jail,- -

(i) informs him about the dismissal of the appeal, review or special leave to appeal by the Supreme Court; or

(ii) informs him about the date of confirmation of the sentence of death by the High Court and the time allowed to file an appeal or special leave in the Supreme Court has expired.

(2) The petition under sub- section (1) may, initially be made to the Governor and on its rejection or disposal by the Governor, the petition shall be made to the President within a period of sixty days from the date of rejection or disposal of such petition.

(3) The Superintendent of the jail or officer in charge of the jail shall ensure, that every convict, in case there are more than one convict in a case, also files the mercy petition within a period of sixty days and on non- receipt of such petition from the other convicts, Superintendent of the jail shall send the names, addresses, copy of the record of the case and all other details of the case to the Central Government or the State Government for consideration along with the said mercy petition.

(4) The Central Government shall, on receipt of the mercy petition seek the comments of the State Government and consider the petition along with the records of the case and make recommendations to the President in this behalf, as expeditiously as possible, within a period of sixty days from the date of receipt of

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comments of the State Government and records from Superintendent of the Jail.

(5) The President may, consider, decide and dispose of the mercy petition and, in case there are more than one convict in a case, the petitions shall be decided by the President together in the interests of justice.

(6) Upon receipt of the order of the President on the mercy petition, the Central Government shall within forty- eight hours, communicate the same to the Home Department of the State Government and the Superintendent of the jail or officer in charge of the jail.

(7) No appeal shall lie in any Court against the order of the President or of the Governor made under article 72 or article 161 of the Constitution and it shall be final, and any question as to the arriving of the decision by the President or the Governor shall not be inquired into in any Court.

473. Power to suspend or remit sentences

(1) When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

(2) Whenever an application is made to the appropriate Government for the suspension or remission of a sentence, the appropriate Government may require the presiding Judge of the Court before or

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by which the conviction was had or confirmed, to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

(3) If any condition on which a sentence has been suspended or remitted is, in the opinion of the appropriate Government, not fulfilled, the appropriate Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police officer, without warrant and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

(5) The appropriate Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with:

Provided that in the case of any sentence (other than a sentence of fine) passed on a person above the age of eighteen years, no such petition by the person sentenced or by any other person on his behalf shall be entertained, unless the person sentenced is in jail, and- -

(a) where such petition is made by the person sentenced, it is presented through the officer in charge of the jail; or

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(b) where such petition is made by any other person, it contains a declaration that the person sentenced is in jail.

(6) The provisions of the above sub- sections shall also apply to any order passed by a Criminal Court under any section of this Sanhita or of any other law, which restricts the liberty of any person or imposes any liability upon him or his property.

(7) In this section and in section 474, the expression "appropriate Government" means,- -

(a) in cases where the sentence is for an offence against, or the order referred to in sub- section (6) is passed under, any law relating to a matter to which the executive power of the Union extends, the Central Government;

(b) in other cases, the Government of the State within which the offender is sentenced or the said order is passed.

Corresponding Provision of Previous Statute: Section 432, Code of Criminal Procedure, 1973

Section 432 – Power to suspend or remit sentences - (1) When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

(2) Whenever an application is made to the appropriate Government for the suspension or remission of a sentence, the appropriate Government may require the presiding Judge of the Court before or by which the conviction was had or confirmed, to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

(3) If any condition on which a sentence has been suspended or remitted is, in the opinion of the appropriate Government, not fulfilled, the appropriate Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police officer, without warrant and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

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(5) The appropriate Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with:

Provided that in the case of any sentence (other than a sentence of fine) passed on a male person above the age of eighteen years, no such petition by the person sentenced or by any other person on his behalf shall be entertained, unless the person sentenced is in jail, and—

(a) where such petition is made by the person sentenced, it is presented through the officer in charge of the jail; or

(b) where such petition is made by any other person, it contains a declaration that the person sentenced is in jail.

(6) The provisions of the above sub-sections shall also apply to any order passed by a Criminal Court under any section of this Code or of any other law, which restricts the liberty of any person or imposes any liability upon him or his property.

(7) In this section and in section 433, the expression "appropriate Government" means,—

(a) in cases where the sentence is for an offence against, or the order referred to in sub-section (6) is passed under, any law relating to a matter to which the executive power of the Union extends, the Central Government;

(b) in other cases, the Government of the State within which the offender is sentenced or the said order is passed.

474. Power to commute sentence

The appropriate Government may, without the consent of the person sentenced, commute- -

(a) a sentence of death, for imprisonment for life;

(b) a sentence of imprisonment for life, for imprisonment for a term not less than seven years;

(c) a sentence of imprisonment for seven years or more, for imprisonment for a term not less than three years;

(d) a sentence of imprisonment for less than seven years, for fine;

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(e) a sentence of rigorous imprisonment, for simple imprisonment for any term to which that person might have been sentenced.

Corresponding Provision of Previous Statute: Section 433, Code of Criminal Procedure, 1973

Section 433 – Power to commute sentence - The appropriate Government may, without the consent of the person sentenced, commute—

(a) a sentence of death, for any other punishment provided by the Indian Penal Code (45 of 1860);

(b) a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years or for fine;

(c) a sentence of rigorous imprisonment, for simple imprisonment for any term to which that person might have been sentenced, or for fine;

(d) a sentence of simple imprisonment, for fine

475. Restriction on powers of remission or commutation in certain cases

Notwithstanding anything contained in section 473, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under section 474 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.

Corresponding Provision of Previous Statute: Section 433A, Code of Criminal Procedure, 1973

Section 433A – Restriction on powers of remission or commutation in certain cases - Notwithstanding anything contained in section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.

LANDMARK JUDGMENT

Ashok Kumar vs. Union of India (UOI) and Ors, MANU/SC/0406/1991

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476. Concurrent power of Central Government in case of death sentences

The powers conferred by sections 473 and 474 upon the State Government may, in the case of sentences of death, also be exercised by the Central Government.

Corresponding Provision of Previous Statute: Section 434, Code of Criminal Procedure, 1973

Section 434 – Concurrent power of Central Government in case of death sentences - The powers conferred by sections 432 and 433 upon the State Government may, in the case of sentences of death, also be exercised by the Central Government.

477. State Government to act after concurrence with Central Government in certain cases

(1) The powers conferred by sections 473 and 474 upon the State Government to remit or commute a sentence, in any case where the sentence is for an offence- -

(a) which was investigated by any agency empowered to make investigation into an offence under any Central Act other than this Sanhita; or

(b) which involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government; or

(c) which was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty, shall not be exercised by the State Government except after concurrence with the Central Government.

(2) No order of suspension, remission or commutation of sentences passed by the State Government in relation to a person, who has been convicted of offences, some of which relate to matters to which

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the executive power of the Union extends, and who has been sentenced to separate terms of imprisonment which are to run concurrently, shall have effect unless an order for the suspension, remission or commutation, as the case may be, of such sentences has also been made by the Central Government in relation to the offences committed by such person with regard to matters to which the executive power of the Union extends.

Corresponding Provision of Previous Statute: Section 435, Code of Criminal Procedure, 1973

Section 435 – State Government to act after consultation with Central Government in certain cases - (1) The powers conferred by sections 432 and 433 upon the State Government to remit or commute a sentence, in any case where the sentence is for an offence—

(a) which was investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, or

(b) which involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or

(c) which was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty, shall not be exercised by the State Government except after consultation with the Central Government.

(2) No order of suspension, remission or commutation of sentences passed by the State Government in relation to a person, who has been convicted of offences, some of which relate to matters to which the executive power of the Union extends, and who has been sentenced to separate terms of imprisonment which are to run concurrently, shall have effect unless an order for the suspension, remission or commutation, as the case may be, of such sentences has also been made by the Central Government in relation to the offences committed by such person with regard to matters to which the executive power of the Union extends.

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CHAPTER XXXV

PROVISIONS AS TO BAIL AND BONDS

478. In what cases bail to be taken

(1) When any person other than a person accused of a non- bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail, such person shall be released on bail:

Provided that such officer or Court, if he or it thinks fit, may, and shall, if such person is indigent and is unable to furnish surety, instead of taking bail bond from such person, discharge him on his executing a bond for his appearance as hereinafter provided.

Explanation.- - Where a person is unable to give bail bond within a week of the date of his arrest, it shall be a sufficient ground for the officer or the Court to presume that he is an indigent person for the purposes of this proviso:

Provided further that nothing in this section shall be deemed to affect the provisions of sub- section (3) of section 135 or section 492.

(2) Notwithstanding anything in sub- section (1), where a person has failed to comply with the conditions of the bond or bail bond as regards the time and place of attendance, the Court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the Court or is brought in custody and any such refusal shall be without prejudice to the powers of the Court to call

upon any person bound by such bond or bail bond to pay the penalty thereof under section 491.

Corresponding Provision of Previous Statute: Section 436, Code of Criminal Procedure, 1973

Section 436 – In what cases bail to be taken - (1) When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail, such person shall be released on bail:

Provided that such officer or Court, if he or it thinks fit, may, and shall, if such person is indigent and is unable to furnish surety, instead of taking bail] from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided.

Explanation.—Where a person is unable to give bail within a week of the date of his arrest, it shall be a sufficient ground for the officer or the Court to presume that he is an indigent person for the purposes of this proviso:

Provided further that nothing in this section shall be deemed to affect the provisions of sub-section (3) ofsection 116 or section 446A.

(2) Notwithstanding anything contained in sub-section (1), where a person has failed to comply with the conditions of the bail-bond as regards the time and place of attendance, the Court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the Court or is brought in custody and any such refusal shall be without prejudice to the powers of the Court to call upon any person bound by such bond to pay the penalty thereof under section 446.

LANDMARK JUDGMENT

Rasiklal vs. Kisore, MANU/SC/0255/2009

Satender Kumar Antil vs. Central Bureau of Investigation and Ors., MANU/SC/0851/2022

479. Maximum period for which undertrial prisoner can be detained

(1) Where a person has, during the period of investigation, inquiry or trial under this Sanhita of an offence under any law (not being an offence for which the punishment of death or life imprisonment has been specified as one of the punishments under that law) undergone detention for a period extending up to one- half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on bail:

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Provided that where such person is a first- time offender (who has never been convicted of any offence in the past) he shall be released on bond by the Court, if he has undergone detention for the period extending up to one- third of the maximum period of imprisonment specified for such offence under that law:

Provided further that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one- half of the said period or release him on bail bond instead of his bond:

Provided also that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.- - In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.

(2) Notwithstanding anything in sub- section (1), and subject to the third proviso thereof, where an investigation, inquiry or trial in more than one offence or in multiple cases are pending against a person, he shall not be released on bail by the Court.

(3) The Superintendent of jail, where the accused person is detained, on completion of one- half or one- third of the period mentioned in sub- section (1), as the case may be, shall forthwith make an application in writing to the Court to proceed under sub- section (1) for the release of such person on bail.

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Corresponding Provision of Previous Statute: Section 436A, Code of Criminal Procedure, 1973

Section 436A – Maximum period for which an undertrial prisoner can be detained - Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded

480. When bail may be taken in case of non- bailable offence

(1) When any person accused of, or suspected of, the commission of any non- bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but- -

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a cognizable offence punishable with imprisonment for three years or more but less than seven years:

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Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is a child or is a woman or is sick or infirm:

Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation or for police custody beyond the first fifteen days shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court:

Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more, be released on bail by the Court under this sub- section without giving an opportunity of hearing to the Public Prosecutor.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non- bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, subject to the provisions of section 494 and pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond for his appearance as hereinafter provided.

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(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter VII or Chapter XVII of the Bharatiya Nyaya Sanhita, 2023 or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub- section (1), the Court shall impose the conditions,- -

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter;

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected; and

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence, and may also impose, in the interests of justice, such other conditions as it considers necessary.

(4) An officer or a Court releasing any person on bail under sub-section (1) or sub- section (2), shall record in writing his or its reasons or special reasons for so doing.

(5) Any Court which has released a person on bail under sub- section (1) or sub- section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

(6) If, in any case triable by a Magistrate, the trial of a person accused of any non- bailable offence is not concluded within a period of sixty

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days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

(7) If, at any time, after the conclusion of the trial of a person accused of a non- bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond for his appearance to hear judgment delivered.

Corresponding Provision of Previous Statute: Section 437, Code of Criminal Procedure, 1973

Section 437 – When bail may be taken in case of non-bailable offence - 5

(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of session, he may be released on bail, but—

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years a cognizable offence punishable with imprisonment for three years or more but not less than seven years:

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court:

Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more, be released on bail by the Court under this sub-section without giving an opportunity of hearing to the Public Prosecutor.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may

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be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, subject to the provisions of section 446A and pending such inquiry, be released on bail], or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code (45 of 1860) or abatement of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1), the Court shall impose the conditions,—

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence, and may also impose, in the interests of justice, such other conditions as it considers necessary.

(4) An officer or a Court releasing any person on bail under sub-section (1) or sub-section (2), shall record in writing his or its reasons or special reasons for so doing.

(5) Any Court which has released a person on bail under sub-section (1) or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

(6) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

(7) If, at any time, after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

LANDMARK JUDGMENT

Gurbaksh Singh Sibbia and Ors. vs. State of Punjab, MANU/SC/0215/1980

481. Bail to require accused to appear before next Appellate Court

(1) Before conclusion of the trial and before disposal of the appeal, the Court trying the offence or the Appellate Court, as the case may be, shall require the accused to execute a bond or bail bond, to appear before the higher Court as and when such Court issues notice in

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respect of any appeal or petition filed against the judgment of the respective Court and such bond shall be in force for six months.

(2) If such accused fails to appear, the bond stand forfeited and the procedure under section 491 shall apply.

Corresponding Provision of Previous Statute: Section 437A, Code of Criminal Procedure, 1973

Section 437A – Bail to require accused to appear before next appellate Court - (1) Before conclusion of the trial and before disposal of the appeal, the Court trying the offence or the Appellate Court, as the case may be, shall require the accused to execute bail bonds with sureties, to appear before the higher Court as and when such Court issues notice in respect of any appeal or petition filed against the judgment of the respective Court and such bail bonds shall be in force for six months.

(2) If such accused fails to appear, the bond stand forfeited and the procedure under section 446 shall apply.

482. Direction for grant of bail to person apprehending arrest

(1) When any person has reason to believe that he may be arrested on an accusation of having committed a non- bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

(2) When the High Court or the Court of Session makes a direction under sub- section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including- -

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with

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the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub- section (3) of section 480, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should be issued in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub- section (1).

(4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under section 65 and sub- section (2) of section 70 of the Bharatiya Nyaya Sanhita, 2023.

Corresponding Provision of Previous Statute: Section 438, Code of Criminal Procedure, 1973

Section 438 – Direction for grant of bail to person apprehending arrest - (1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including—

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise

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To any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should be issued in the first instance against that person, he shall issue a bailable warrant in confirmity with the direction of the Court under sub-section (1).

(4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code (45 of 1860).

LANDMARK JUDGMENT

Gurbaksh Singh Sibbia and Ors. vs. State of Punjab, MANU/SC/0215/1980

483. Special powers of High Court or Court of Session regarding bail

(1) A High Court or Court of Session may direct,- -

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub- section (3) of section 480, may impose any condition which it considers necessary for the purposes mentioned in that sub- section;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the

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application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice:

Provided further that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under section 65 or sub- section (2) of section 70 of the Bharatiya Nyaya Sanhita, 2023, give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application.

(2) The presence of the informant or any person authorised by him shall be obligatory at the time of hearing of the application for bail to the person under section 65 or sub- section (2) of section 70 of the Bharatiya Nyaya Sanhita, 2023.

(3) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.

Corresponding Provision of Previous Statute: Section 439, Code of Criminal Procedure, 1973

Section 439 – Special powers of High Court or Court of Session regarding bail - (1) A High Court or Court of Session may direct,—

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

Provided further that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under sub-section (3) of section 376 or section 376AB or section 376DA or

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section 376DB of the Indian Penal Code (45 of 1860), give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application.

(1A) The presence of the informant or any person authorised by him shall be obligatory at the time of hearing of the application for bail to the person under sub-section (3) of section 376 or section 376AB or section 376DA or section DB of the Indian Penal Code (45 of 1860).

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.

LANDMARK JUDGMENT

Gurbaksh Singh Sibbia and Ors. vs. State of Punjab, MANU/SC/0215/1980

Logendra Nath Jha and Ors. vs. Polailal Biswas, MANU/SC/0029/1951

484. Amount of bond and reduction thereof

(1) The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case and shall not be excessive.

(2) The High Court or the Court of Session may direct that the bail required by a police officer or Magistrate be reduced.

Corresponding Provision of Previous Statute: Section 440, Code of Criminal Procedure, 1973

Section 440 – Amount of bond and reduction thereof - (1) The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case and shall not be excessive.

(2) The High Court or the Court of Session may direct that the bail required by a police officer or Magistrate be reduced.

485. Bond of accused and sureties

(1) Before any person is released on bond or bail bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bond or bail bond, by one or more sufficient sureties conditioned that such person shall attend at the time and place

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mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.

(2) Where any condition is imposed for the release of any person on bail, the bond or bail bond shall also contain that condition.

(3) If the case so requires, the bond or bail bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

(4) For the purpose of determining whether the sureties are fit or sufficient, the Court may accept affidavits in proof of the facts contained therein relating to the sufficiency or fitness of the sureties, or, if it considers necessary, may either hold an enquiry itself or cause an inquiry to be made by a Magistrate subordinate to the Court, as to such sufficiency or fitness.

Corresponding Provision of Previous Statute: Section 441, Code of Criminal Procedure, 1973

Section 441 – Bond of accused and sureties - (1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.

(2) Where any condition is imposed for the release of any person on bail, the bond shall also contain that condition.

(3) If the case so requires, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

(4) For the purpose of determining whether the sureties are fit or sufficient, the Court may accept affidavits in proof of the facts contained therein relating to the sufficiency or fitness of the sureties, or, if it considers necessary, may either hold an enquiry itself or cause an inquiry to be made by a Magistrate subordinate to the Court, as to such sufficiency or fitness.

486. Declaration by sureties

Every person standing surety to an accused person for his release on bail, shall make a declaration before the Court as to the number of

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persons to whom he has stood surety including the accused, giving therein all the relevant particulars.

Corresponding Provision of Previous Statute: Section 441A, Code of Criminal Procedure, 1973

Section 441A – Declaration by sureties - Every person standing surety to an accused person for his release on bail, shall make a declaration before the Court as to the number of persons to whom he has stood surety including the accused, giving therein all the relevant particulars.

487. Discharge from custody

(1) As soon as the bond or bail bond has been executed, the person for whose appearance it has been executed shall be released; and, when he is in jail, the court admitting him to bail shall issue an order of release to the officer in charge of the jail, and such officer on receipt of the orders shall release him.

(2) Nothing in this section, section 478 or section 480, shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond or bail bond was executed.

Corresponding Provision of Previous Statute: Section 442, Code of Criminal Procedure, 1973

Section 442 – Discharge from custody - (1) As soon as the bond has been executed, the person for whose appearance it has been executed shall be released; and, when he is in jail, the court admitting him to bail shall issue an order of release to the officer in charge of the jail, and such officer on receipt of the orders shall release him.

(2) Nothing in this section, section 436 or section 437, shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

488. Power to order sufficient bail when that first taken is insufficient

If, through mistake, fraud or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on

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bail be brought before it and may order him to find sufficient sureties, and, on his failing so to do, may commit him to jail.

Corresponding Provision of Previous Statute: Section 443, Code of Criminal Procedure, 1973

Section 443 – Power to order sufficient bail when that first taken is insufficient - If, through mistake, fraud or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him to find sufficient sureties, and, on his failing so to do, may commit him to jail.

489. Discharge of sureties

(1) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond, either wholly or so far as relates to the applicants.

(2) On such application being made, the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to jail.

Corresponding Provision of Previous Statute: Section 444, Code of Criminal Procedure, 1973

Section 444 – Discharge of sureties - (1) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond, either wholly or so far as relates to the applicants.

(2) On such application being made, the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to jail.

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490. Deposit instead of recognizance

When any person is required by any Court or officer to execute a bond or bail bond, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix in lieu of executing such bond.

Corresponding Provision of Previous Statute: Section 445, Code of Criminal Procedure, 1973

Section 445 – Deposit instead of recognizance - When any person is required by any Court or officer to execute a bond with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix in lieu of executing such bond.

491. Procedure when bond has been forfeited

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 495 - Appeal from orders under Section 491

(1) Where,- -

(a) a bond under this Sanhita is for appearance, or for production of property, before a Court and it is proved to the satisfaction of that Court, or of any Court to which the case has subsequently been transferred, that the bond has been forfeited; or

(b) in respect of any other bond under this Sanhita, it is proved to the satisfaction of the Court by which the bond was taken, or of any Court to which the case has subsequently been transferred, or of the Court of any Magistrate of the first class, that the bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid.

Explanation.- - A condition in a bond for appearance, or for production of property, before a Court shall be construed as including a condition for appearance, or as the case may be, for

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production of property, before any Court to which the case may subsequently be transferred.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same as if such penalty were a fine imposed by it under this Sanhita:

Provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound as surety shall be liable, by order of the Court ordering the recovery of the penalty, to imprisonment in civil jail for a term which may extend to six months.

(3) The Court may, after recording its reasons for doing so, remit any portion of the penalty mentioned and enforce payment in part only.

(4) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(5) Where any person who has furnished security under section 125 or section 136 or section 401 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under section 494, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and, if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved.

Corresponding Provision of Previous Statute: Section 446, Code of Criminal Procedure, 1973

Section 446 – Procedure when bond has been forfeited - (1) Where a bond under this Code is for appearance, or for production of property, before a Court and it is proved to the satisfaction of that Court, or of any Court to which the case has subsequently been transferred, that the bond has been forfeited, or where, in respect of any other bond under this Code, it is proved to the satisfaction of the

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Court by which the bond was taken, or of any Court to which the case has subsequently been transferred, or of the Court of any Magistrate of the first class, that the bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid.

Explanation.—A condition in a bond for appearance, or for production of property, before a Court shall be construed as including a condition for appearance, or as the case may be, for production of property, before any Court to which the case may subsequently be transferred.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same as if such penalty were a fine imposed by it under this Code:

Provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound as surety shall be liable, by order of the Court ordering the recovery of the penalty, to imprisonment in civil jail for a term which may extend to six months.

(3) The Court may, after recording its reasons for doing so, remit any portion of the penalty mentioned and enforce payment in part only.

(4) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(5) Where any person who has furnished security under section 106 or section 117 or section 360 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under section 448, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and, if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved.

492. Cancellation of bond and bail bond

Without prejudice to the provisions of section 491, where a bond or bail bond under this Sanhita is for appearance of a person in a case and it is forfeited for breach of a condition,- -

(a) the bond executed by such person as well as the bond, if any, executed by one or more of his sureties in that case shall stand cancelled; and

(b) thereafter no such person shall be released only on his own bond in that case, if the police officer or the Court, as the case may be, for appearance before whom the bond was executed, is satisfied that

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there was no sufficient cause for the failure of the person bound by the bond to comply with its condition:

Provided that subject to any other provisions of this Sanhita he may be released in that case upon the execution of a fresh personal bond for such sum of money and bond by one or more of such sureties as the police officer or the Court, as the case may be, thinks sufficient.

Corresponding Provision of Previous Statute: Section 446A, Code of Criminal Procedure, 1973

Section 446A – Cancellation of bond and bail bond - Without prejudice to the provisions of section 446, where a bond under this Code is for appearance of a person in a case and it is forfeited for breach of a condition,—

(a) the bond executed by such person as well as the bond, if any, executed by one or more of his sureties in that case shall stand cancelled; and
(b) thereafter no such person shall be released only on his own bond in that case, if the Police Officer or the Court, as the case may be, for appearance before whom the bond was executed, is satisfied that there was no sufficient cause for the failure of the person bound by the bond to comply with its condition:

Provided that subject to any other provisions of this Code he may be released in that case upon the execution of a fresh personal bond for such sum of money and bond by one or more of such sureties as the Police Officer or the Court, as the case may be, thinks sufficient

493. Procedure in case of insolvency or death of surety or when a bond is forfeited

When any surety to a bail bond under this Sanhita becomes insolvent or dies, or when any bond is forfeited under the provisions of section 491, the Court by whose order such bond was taken, or a Magistrate of the first class may order the person from whom such security was demanded to furnish fresh security in accordance with the directions of the original order, and if such security is not furnished, such Court or Magistrate may proceed as if there had been a default in complying with such original order.

Corresponding Provision of Previous Statute: Section 447, Code of Criminal Procedure, 1973

Section 447 – Procedure in case of insolvency of death of surety or when a bond is forfeited - When any surety to a bond under this Code becomes insolvent or dies, or when any bond is forfeited under

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the provisions of section 446, the Court by whose order such bond was taken, or a Magistrate of the first class may order the person from whom such security was demanded to furnish fresh securities in accordance with the directions of the original order, and if such security is not furnished, such Court or Magistrate may proceed as if there had been a default in complying with such original order.

494. Bond required from child

When the person required by any Court, or officer to execute a bond is a child, such Court or officer may accept, in lieu thereof, a bond executed by a surety or sureties only.

Corresponding Provision of Previous Statute: Section 448, Code of Criminal Procedure, 1973

Section 448 – Bond required from minor - When the person required by any Court, or officer to execute a bond is a minor, such Court or officer may accept, in lieu thereof, a bond executed by a surety or sureties only.

495. Appeal from orders under section 491

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 491 - Procedure when bond has been forfeited

All orders passed under section 491 shall be appealable,- -

(i) in the case of an order made by a Magistrate, to the Sessions Judge;
(ii) in the case of an order made by a Court of Session, to the Court to which an appeal lies from an order made by such Court.

Corresponding Provision of Previous Statute: Section 449, Code of Criminal Procedure, 1973

Section 449 – Appeal from orders under section 446 - All orders passed under section 446 shall be appealable,—

(i) in the case of an order made by a Magistrate, to the Sessions Judge; (ii) in the case of an order made by a Court of Session, to the Court to which an appeal lies from an order made by such Court.

496. Power to direct levy of amount due on certain recognizances

The High Court or Court of Session may direct any Magistrate to levy the amount due on a bond for appearance or attendance at such High Court or Court of Session.

Corresponding Provision of Previous Statute: Section 450, Code of Criminal Procedure, 1973

Section 450 – Power to direct levy of amount due on certain recognizances - The High Court or Court of Sessions may direct any Magistrate to levy the amount due on a bond for appearance or attendance at such High Court orCourt of Session.

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CHAPTER XXXVI

DISPOSAL OF PROPERTY

497. Order for custody and disposal of property pending trial in certain cases

Linked Provisions

Indian Army Act, 1911 - Section 126A - Order for custody and disposal of property pending trial in certain Cases

(1) When any property is produced before any Criminal Court or the Magistrate empowered to take cognizance or commit the case for trial during any investigation, inquiry or trial, the Court or the Magistrate may make such order as it thinks fit for the proper custody of such property pending the conclusion of the investigation, inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court or the Magistrate may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation.- - For the purposes of this section, "property" includes- -

(a) property of any kind or document which is produced before the Court or which is in its custody;

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

(2) The Court or the Magistrate shall, within a period of fourteen days from the production of the property referred to in sub- section (1) before it, prepare a statement of such property containing its description in such form and manner as the State Government may, by rules, provide.

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(3) The Court or the Magistrate shall cause to be taken the photograph and if necessary, videograph on mobile phone or any electronic media, of the property referred to in sub- section (1).

(4) The statement prepared under sub- section (2) and the photograph or the videography taken under sub- section (3) shall be used as evidence in any inquiry, trial or other proceeding under the Sanhita.

(5) The Court or the Magistrate shall, within a period of thirty days after the statement has been prepared under sub- section (2) and the photograph or the videography has been taken under sub- section (3), order the disposal, destruction, confiscation or delivery of the property in the manner specified hereinafter.

Corresponding Provision of Previous Statute: Section 451, Code of Criminal Procedure, 1973

Section 451 – Order for custody and disposal of property pending trial in certain cases - When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation.—For the purposes of this section, "property" includes—

(a) property of any kind or document which is produced before the Court or which is in its custody;

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

498. Order for disposal of property at conclusion of trial

(1) When an investigation, inquiry or trial in any criminal case is concluded, the Court or the Magistrate may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or

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regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) An order may be made under sub- section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond, with or without securities, to the satisfaction of the Court or the Magistrate, engaging to restore such property to the Court if the order made under sub- section (1) is modified or set aside on appeal or revision.

(3) A Court of Session may, instead of itself making an order under sub- section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in sections 503, 504 and 505.

(4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub- section (2), an order made under sub- section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(5) In this section, the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

Corresponding Provision of Previous Statute: Section 452, Code of Criminal Procedure, 1973

Section 452 – Order for disposal of property at conclusion of trial - (1) When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by

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destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) An order may be made under sub-section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond, with or without securities, to the satisfaction of the Court, engaging to restore such property to the Court if the order made under sub-section (1) is modified or set aside on appeal or revision.

(3) A Court of Session may, instead of itself making an order under sub-section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in sections 457, 458 and 459.

(4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub-section (2), an order made under sub-section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(5) In this section, the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

499. Payment to innocent purchaser of money found on accused

When any person is convicted of any offence which includes, or amounts to, theft or receiving stolen property, and it is proved that any other person bought the stolen property from him without knowing or having reason to believe that the same was stolen, and that any money has on his arrest been taken out of the possession of the convicted person, the Court may, on the application of such purchaser and on the restitution of the stolen property to the person entitled to the possession thereof, order that out of such money a sum not exceeding the price paid by such purchaser be delivered to him within six months from the date of such order.

Corresponding Provision of Previous Statute: Section 453, Code of Criminal Procedure, 1973

Section 453 – Payment to innocent purchaser of money found on accused - When any person is convicted of any offence which includes, or amounts to, theft or receiving stolen property, and it is proved that any other person bought the stolen property from him without knowing or having reason to believe that the same was stolen, and that any money has on his arrest been taken out of the possession

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of the convicted person, the Court may, on the application of such purchaser and on the restitution of the stolen property to the person entitled to the possession thereof, order that out of such money a sum not exceeding the price paid by such purchaser be delivered to him.

500. Appeal against orders under section 498 or section 499

(1) Any person aggrieved by an order made by a Court or Magistrate under section 498 or section 499, may appeal against it to the Court to which appeals ordinarily lie from convictions by the former Court.

(2) On such appeal, the Appellate Court may direct the order to be stayed pending disposal of the appeal, or may modify, alter or annul the order and make any further orders that may be just.

(3) The powers referred to in sub- section (2) may also be exercised by a Court of appeal, confirmation or revision while dealing with the case in which the order referred to in sub- section (1) was made.

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 498 - Order for disposal of property at conclusion of trial

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 499 - Payment to innocent purchaser of money found on accused

Corresponding Provision of Previous Statute: Section 454, Code of Criminal Procedure, 1973

Section 454 – Appeal against orders under section 452 or section 453 - (1) Any person aggrieved by an order made by a Court under section 452 or section 453, may appeal against it to the Court to which appeals ordinarily lie from convictions by the former Court.

(2) On such appeal, the Appellate Court may direct the order to be stayed pending disposal of the appeal, or may modify, alter or annul the order and make any further orders that may be just.

(3) The powers referred to in sub-section (2) may also be exercised by a Court of appeal, confirmation or revision while dealing with the case in which the order referred to in sub-section (1) was made.

501. Destruction of libellous and other matter

(1) On a conviction under section 294, section 295, or sub- sections (3) and (4) of section 356 of the Bharatiya Nyaya Sanhita, 2023, the Court may order the destruction of all the copies of the thing in respect of which the conviction was had, and which are in the custody of the Court or remain in the possession or power of the person convicted.

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(2) The Court may, in like manner, on a conviction under section 274, section 275, section 276 or section 277 of the Bharatiya Nyaya Sanhita, 2023, order the food, drink, drug or medical preparation in respect of which the conviction was had, to be destroyed.

Corresponding Provision of Previous Statute: Section 455, Code of Criminal Procedure, 1973

Section 455 – Destruction of libellous and other matter - (1) On a conviction under section 292, section 293, section 501 or section 502 of the Indian Penal Code (45 of 1860), the Court may order the destruction of all the copies of the thing in respect of which the conviction was had, and which are in the custody of the Court or remain in the possession or power of the person convicted.

(2) The Court may, in like manner, on a conviction under section 272, section 273, section 274 or section 275 of the Indian Penal Code (45 of 1860), order the food, drink, drug or medical preparation in respect of which the conviction was had, to be destroyed.

502. Power to restore possession of immovable property

(1) When a person is convicted of an offence by use of criminal force or show of force or by criminal intimidation, and it appears to the Court that, by such use of force or show of force or intimidation, any person has been dispossessed of any immovable property, the Court may, if it thinks fit, order that possession of the same be restored to that person after evicting by force, if necessary, any other person who may be in possession of the property:

Provided that no such order shall be made by the Court more than one month after the date of the conviction.

(2) Where the Court trying the offence has not made an order under sub-section (1), the Court of appeal, confirmation or revision may, if it thinks fit, make such order while disposing of the appeal, reference or revision, as the case may be.

(3) Where an order has been made under sub- section (1), the provisions of

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section 500 shall apply in relation thereto as they apply in relation to an order under section 499.

(4) No order made under this section shall prejudice any right or interest to or in such immovable property which any person may be able to establish in a civil suit.

Corresponding Provision of Previous Statute: Section 456, Code of Criminal Procedure, 1973

Section 456 – Power to restore possession of immovable property - (1) When a person is convicted of an offence attended by criminal force or show of force or by criminal intimidation, and it appears to the Court that, by such force or show of force or intimidation, any person has been dispossessed of any immovable property, the Court may, if it thinks fit, order that possession of the same be restored to that person after evicting by force, if necessary, any other person who may be in possession of the property:

Provided that no such order shall be made by the Court more than one month after the date of the conviction.

(2) Where the Court trying the offence has not made an order under sub-section (1), the Court of appeal, confirmation or revision may, if it thinks fit, make such order while disposing of the appeal, reference or revision, as the case may be.

(3) Where an order has been made under sub-section (1), the provisions of section 454 shall apply in relation thereto as they apply in relation to an order under section 453.

(4) No order made under this section shall prejudice any right or interest to or in such immovable property which any person may be able to establish in a civil suit.

503. Procedure by police upon seizure of property

(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Sanhita, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

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(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

Corresponding Provision of Previous Statute: Section 457, Code of Criminal Procedure, 1973

Section 457 – Procedure by police upon seizure of property - (1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

504. Procedure where no claimant appears within six months

(1) If no person within such period establishes his claim to such property, and if the person in whose possession such property was found is unable to show that it was legally acquired by him, the Magistrate may by order direct that such property shall be at the disposal of the State Government and may be sold by that Government and the proceeds of such sale shall be dealt with in such manner as the State Government may, by rules, provide.

(2) An appeal shall lie against any such order to the Court to which appeals ordinarily lie from convictions by the Magistrate.

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Corresponding Provision of Previous Statute: Section 458, Code of Criminal Procedure, 1973

Section 458 – Procedure where no claimant appears within six months - (1) If no person within such period establishes his claim to such property, and if the person in whose possession such property was found is unable to show that it was legally acquired by him, the Magistrate may by order direct that such property shall be at the disposal of the State Government and may be sold by that Government and the proceeds of such sale shall be dealt with in such manner as may be prescribed.

(2) An appeal shall lie against any such order to the Court to which appeals ordinarily lie from convictions by the Magistrate

505. Power to sell perishable property

If the person entitled to the possession of such property is unknown or absent and the property is subject to speedy and natural decay, or if the Magistrate to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, or that the value of such property is less than ten thousand rupees, the Magistrate may at any time direct it to be sold; and the provisions of sections 503 and 504 shall, as nearly as may be practicable, apply to the net proceeds of such sale.

Corresponding Provision of Previous Statute: Section 459, Code of Criminal Procedure, 1973

Section 459 – Power to sell perishable property - If the person entitled to the possession of such property is unknown or absent and the property is subject to speedy and natural decay, or if the Magistrate to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, or that the value of such property is less than five hundred rupees, the Magistrate may at any time direct it to be sold; and the provisions of sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale.

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CHAPTER XXXVII

IRREGULAR PROCEEDINGS

506. Irregularities which do not vitiate proceedings

If any Magistrate not empowered by law to do any of the following things, namely:- -

(a) to issue a search- warrant under section 97;

(b) to order, under section 174, the police to investigate an offence;

(c) to hold an inquest under section 196;

(d) to issue process under section 207, for the apprehension of a person within his local jurisdiction who has committed an offence outside the limits of such jurisdiction;

(e) to take cognizance of an offence under clause (a) or clause (b) of sub- section (1) of section 210;

(f) to make over a case under sub- section (2) of section 212;

(g) to tender a pardon under section 343;

(h) to recall a case and try it himself under section 450; or

(i) to sell property under section 504 or section 505, erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

Corresponding Provision of Previous Statute: Section 460, Code of Criminal Procedure, 1973

Section 460 – Irregularities which do not vitiate proceedings - If any Magistrate not empowered by law to do any of the following things, namely:—

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(a) to issue a search-warrant under section 94;

(b) to order, under section 155, the police to investigate an offence;

(c) to hold an inquest under section 176;

(d) to issue process under section 187, for the apprehension of a person within his local jurisdiction who has committed an offence outside the limits of such jurisdiction;

(e) to take cognizance of an offence under clause (a) or clause (b) of sub-section (1) of section 190;

(f) to make over a case under sub-section (2) of section 192;

(g) to tender a pardon under section 306;

(h) to recall a case and try it himself under section 410; or

(i) to sell property under section 458 or section 459,

erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

507. Irregularities which vitiate proceedings

If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely:- -

(a) attaches and sells property under section 85;

(b) issues a search- warrant for a document, parcel or other things in the custody of a postal authority;

(c) demands security to keep the peace;

(d) demands security for good behaviour;

(e) discharges a person lawfully bound to be of good behaviour;

(f) cancels a bond to keep the peace;

(g) makes an order for maintenance;

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(h) makes an order under section 152 as to a local nuisance;

(i) prohibits, under section 162, the repetition or continuance of a public nuisance;

(j) makes an order under Part C or Part D of Chapter XI;

(k) takes cognizance of an offence under clause (c) of sub- section (1) of section 210;

(l) tries an offender;

(m) tries an offender summarily;

(n) passes a sentence, under section 364, on proceedings recorded by another Magistrate;

(o) decides an appeal;

(p) calls, under section 438, for proceedings; or

(q) revises an order passed under section 491, his proceedings shall be void.

Corresponding Provision of Previous Statute: Section 461, Code of Criminal Procedure, 1973

Section 461 – Irregularities which vitiate proceedings - If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely:—

(a) attaches and sells property under section 83;

(b) issues a search-warrant for a document, parcel or other things in the custody of a postal or telegraph authority;

(c) demands security to keep the peace;

(d) demands security for good behaviour;

(e) discharges a person lawfully bound to be of good behaviour;

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(f) cancels a bond to keep the peace;

(g) makes an order for maintenance;

(h) makes an order under section 133 as to a local nuisance;

(i) prohibits, under section 143, the repetition or continuance of a public nuisance;

(j) makes an order under Part C or Part D of Chapter X;

(k) takes cognizance of an offence under clause (c) of sub-section (1) of section 190;

(l) tries an offender;

(m) tries an offender summarily;

(n) passes a sentence, under section 325, on proceedings recorded by another Magistrate;

(o) decides an appeal;

(p) calls, under section 397, for proceedings; or

(q) revises an order passed under section 446,

his proceedings shall be void.

508. Proceedings in wrong place

No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub- division or other local area, unless it appears that such error has in fact occasioned a failure of justice.

Corresponding Provision of Previous Statute: Section 462, Code of Criminal Procedure, 1973

Section 462 – Proceedings in wrong place - No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice.

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509. Non- compliance with provisions of section 183 or section 316

(1) If any Court before which a confession or other statement of an accused person recorded, or purporting to be recorded under section 183 or section 316, is tendered, or has been received, in evidence finds that any of the provisions of either of such sections have not been complied with by the Magistrate recording the statement, it may, notwithstanding anything contained in section 94 of the Bharatiya Sakshya Adhiniyam, 2023, take evidence in regard to such non- compliance, and may, if satisfied that such non- compliance has not injured the accused in his defence on the merits and that he duly made the statement recorded, admit such statement.

(2) The provisions of this section apply to Courts of appeal, reference and revision.

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 316 - Record of examination of accused

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 183 - Recording of confessions and statements

Corresponding Provision of Previous Statute: Section 463, Code of Criminal Procedure, 1973

Section 463 – Non-compliance with provisions of section 164 or section 281 - (1) If any Court before which a confession or other statement of an accused person recorded, or purporting to be recorded under section 164 or section 281, is tendered, or has been received, in evidence finds that any of the provisions of either of such sections have not been complied with by the Magistrate recording the statement, it may, notwithstanding anything contained in section 91 of the Indian Evidence Act, 1872 (1 of 1872), take evidence in regard to such non-compliance, and may, if satisfied that such non-compliance has not injured the accused in his defence on the merits and that he duly made the statement recorded, admit such statement.

(2) The provisions of this section apply to Courts of appeal, reference and revision.

510. Effect of omission to frame, or absence of, or error in, charge

(1) No finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges,

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unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal, confirmation or revision, is of opinion that a failure of justice has in fact been occasioned, it may,- -

(a) in the case of an omission to frame a charge, order that a charge be framed, and that the trial be recommenced from the point immediately after the framing of the charge;

(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit:

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

Corresponding Provision of Previous Statute: Section 464, Code of Criminal Procedure, 1973

Section 464 – Effect of omission to frame, or absence of, or error in, charge - (1) No finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal, confirmation or revision, is of opinion that a failure of justice has in fact been occasioned, it may,—

(a) in the case of an omission to frame a charge, order that a charge be framed, and that the trial be recommended from the point immediately after the framing of the charge;

(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit:

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

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511. Finding or sentence when reversible by reason of error, omission or irregularity

(1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation of revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Sanhita, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.

(2) In determining whether any error, omission or irregularity in any proceeding under this Sanhita, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

Corresponding Provision of Previous Statute: Section 465, Code of Criminal Procedure, 1973

Section 465 – Finding or sentence when reversible by reason of error, omission or irregularity - (1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation of revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.

(2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

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512. Defect or error not to make attachment unlawful

No attachment made under this Sanhita shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ of attachment or other proceedings relating thereto.

Corresponding Provision of Previous Statute: Section 466, Code of Criminal Procedure, 1973

Section 466 – Defect or error not to make attachment unlawful - No attachment made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ of attachment or other proceedings relating thereto.

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CHAPTER XXXVIII

LIMITATION FOR TAKING COGNIZANCE OF CERTAIN OFFENCES

513. Definitions

For the purposes of this Chapter, unless the context otherwise requires, "period of limitation" means the period specified in section 514 for taking cognizance of an offence.

Corresponding Provision of Previous Statute: Section 467, Code of Criminal Procedure, 1973

Section 467 – Definitions - For the purposes of this Chapter, unless the context otherwise requires, "period of limitation" means the period specified in section 468 for taking cognizance of an offence.

514. Bar to taking cognizance after lapse of period of limitation

(1) Except as otherwise provided in this Sanhita, no Court shall take cognizance of an offence of the category specified in sub- section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be- -

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more

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severe punishment or, as the case may be, the most severe punishment.

Explanation.- - For the purpose of computing the period of limitation, the relevant date shall be the date of filing complaint under section 223 or the date of recording of information under section 173.

Corresponding Provision of Previous Statute: Section 468, Code of Criminal Procedure, 1973

Section 468 – Bar to taking cognizance after lapse of the period of limitation - (1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be—

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

515. Commencement of period of limitation

(1) The period of limitation, in relation to an offender, shall commence,- -

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

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(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded.

Corresponding Provision of Previous Statute: Section 469, Code of Criminal Procedure, 1973

Section 469 – Commencement of the period of limitation - (1) The period of limitation, in relation to an offender, shall commence,—

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded.

516. Exclusion of time in certain cases

(1) In computing the period of limitation, the time during which any person has been prosecuting with due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or revision, against the offender, shall be excluded:

Provided that no such exclusion shall be made unless the prosecution relates to the same facts and is prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

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(2) Where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, then, in computing the period of limitation, the period of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(3) Where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then, in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.

Explanation.- - In computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be excluded.

(4) In computing the period of limitation, the time during which the offender- -

(a) has been absent from India or from any territory outside India which is under the administration of the Central Government; or

(b) has avoided arrest by absconding or concealing himself, shall be excluded.

Corresponding Provision of Previous Statute: Section 470, Code of Criminal Procedure, 1973

Section 470 – Exclusion of time in certain cases - (1) In computing the period of limitation, the time during which any person has been prosecuting with due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or revision, against the offender, shall be excluded:

Provided that no such exclusion shall be made unless the prosecution relates to the same facts and is

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prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) Where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, then, in computing the period of limitation, the period of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(3) Where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then, in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.

Explanation.—In computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be excluded.

(4) In computing the period of limitation, the time during which the offender—

(a) has been absent from India or from any territory outside India which is under the administration of the Central Government, or

(b) has avoided arrest by absconding or concealing himself,

shall be excluded.

517. Exclusion of date on which Court is closed

Where the period of limitation expires on a day when the Court is closed, the Court may take cognizance on the day on which the Court reopens.

Explanation.- - A Court shall be deemed to be closed on any day within the meaning of this section, if, during its normal working hours, it remains closed on that day.

Corresponding Provision of Previous Statute: Section 471, Code of Criminal Procedure, 1973

Section 471 – Exclusion of date on which Court is closed - Where the period of limitation expires on a day when the Court is closed, the Court may take cognizance on the day on which the Court reopens

Explanation.—A Court shall be deemed to be closed on any day within the meaning of this section, if, during its normal working hours, it remains closed on that day.

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518. Continuing offence

In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.

Corresponding Provision of Previous Statute: Section 472, Code of Criminal Procedure, 1973

Section 472 – Continuing offence - In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.

519. Extension of period of limitation in certain cases

Linked Provisions

Delhi sales tax Act, 1975 - Section 62 - Extension of period of limitation in certain cases

Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.

Corresponding Provision of Previous Statute: Section 473, Code of Criminal Procedure, 1973

Section 473 – Extension of period of limitation in certain cases - Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.

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CHAPTER XXXIX

MISCELLANEOUS

520. Trials before High Courts

When an offence is tried by the High Court otherwise than under section 447, it shall, in the trial of the offence, observe the same procedure as a Court of Sessions would observe if it were trying the case.

Corresponding Provision of Previous Statute: Section 474, Code of Criminal Procedure, 1973

Section 474 – Trials before High Courts - When an offence is tried by the High Court otherwise than under section 407, it shall, in the trial of the offence, observe the same procedure as a Court of Sessions would observe if it were trying the case.

521. Delivery to commanding officers of persons liable to be tried by Court- martial

(1) The Central Government may make rules consistent with this Sanhita and the Air Force Act, 1950 (45 of 1950), the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957), and any other law, relating to the Armed Forces of the Union, for the time being in force, as to cases in which persons subject to army, naval or air- force law, or such other law, shall be tried by a Court to which this Sanhita applies, or by a Court- martial; and when any person is brought before a Magistrate and charged with an offence for which he is liable to be tried either by a Court to which this Sanhita applies or by a Court- martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the unit to which he belongs, or to the commanding officer of the nearest

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army, naval or air- force station, as the case may be, for the purpose of being tried by a Court- martial.

Explanation.- - In this section- -

(a) "unit" includes a regiment, corps, ship, detachment, group, battalion or company;

(b) "Court- martial" includes any Tribunal with the powers similar to those of a Court- martial constituted under the relevant law applicable to the Armed Forces of the Union.

(2) Every Magistrate shall, on receiving a written application for that purpose by the commanding officer of any unit or body of soldiers, sailors or airmen stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.

(3) A High Court may, if it thinks fit, direct that a prisoner detained in any jail situate within the State be brought before a Court- martial for trial or to be examined touching any matter pending before the Court- martial.

Corresponding Provision of Previous Statute: Section 475, Code of Criminal Procedure, 1973

Section 475 – Delivery to commanding officers of persons liable to be tried by Court-martial - (1) The Central Government may make rules consistent with this Code and the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957), and the Air Force Act, 1950 (45 of 1950), and any other law, relating to the Armed Forces of the Union, for the time being in force, as to cases in which persons subject to military, naval or air-force law, or such other law, shall be tried by a Court to which this Code applies, or by a Court-martial; and when any person is brought before a Magistrate and charged with an offence for which he is liable to be tried either by a Court to which this Code applies or by a Court-martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the unit to which he belongs, or to the commanding officer of the nearest military, naval or air-force station, as the case may be, for the purpose of being tried by a Court-martial.

Explanation.—In this section—

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(a) "Unit" includes a regiment, corps, ship, detachment, group, battalion or Company,

(b) "Court-martial" includes any Tribunal with the powers similar to those of a Court-martial constituted under the relevant law applicable to the Armed Forces of the Union.

(2) Every Magistrate shall, on receiving a written application for that purpose by the commanding officer of any unit or body of soldiers, sailors or airmen stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.

(3) A High Court may, if it thinks fit, direct that a prisoner detained in any jail situate within the State be brought before a Court-martial for trial or to be examined touching any matter pending before the Court-martial.

522. Forms

Subject to the power conferred by article 227 of the Constitution, the forms set forth in the Second Schedule, with such variations as the circumstances of each case require, may be used for the respective purposes therein mentioned, and if used shall be sufficient.

Corresponding Provision of Previous Statute: Section 476, Code of Criminal Procedure, 1973

Section 476 – Forms - Subject to the power conferred by article 227 of the Constitution, the forms set forth in the Second Schedule, with such variations as the circumstances of each case require, may be used for the respective purposes therein mentioned, and if used shall be sufficient.

LANDMARK JUDGMENT

K. Karunakaran vs. T.V. Eachara Warrier and Ors., MANU/SC/0098/1977

523. Power of High Court to make rules

(1) Every High Court may, with the previous approval of the State Government, make rules- -

(a) as to the persons who may be permitted to act as petition- writers in the Criminal Courts subordinate to it;

Linked Provisions

Arbitration and Conciliation Act, 1996 - Section 82 - Power of High Court to make rules

Banking Regulation Act, 1949 - Section 45U - Power of High Court to make rules

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(b) regulating the issue of licences to such persons, the conduct of business by them, and the scale of fees to be charged by them;

(c) providing a penalty for a contravention of any of the rules so made and determining the authority by which such contravention may be investigated and the penalties imposed;

(d) any other matter which is required to be, or may be, provided by rules made by the State Government.

(2) All rules made under this section shall be published in the Official Gazette.

Family Courts Act, 1984 - Section 21 - Power of High Court to make rules

Guardians and Wards Act, 1890 - Section 50 - Power of High Court to make rules

Pondicherry - Administration Act, 1962 - Section 12 - Power of High Court to make rules

Special Marriage Act, 1954 - Section 41 - Power of High Court to make rules

Corresponding Provision of Previous Statute: Section 477, Code of Criminal Procedure, 1973

Section 477 – Power of High Court to make rules - (1) Every High Court may, with the previous approval of the State Government, make rules—

(a) as to the persons who may be permitted to act as petition-writers in the Criminal Courts subordinate to it;

(b) regulating the issue of licences to such persons, the conduct of business by them, and the scale of fees to be charged by them;

(c) providing a penalty for a contravention of any of the rules so made and determining the authority by which such contravention may be investigated and the penalties imposed;

(d) any other matter which is required to be, or may be, prescribed.

(2) All rules made under this section shall be published in the Official Gazette.

524. Power to alter functions allocated to Executive Magistrate in certain cases

If the Legislative Assembly of a State by a resolution so permits, the State Government may, after consultation with the High Court, by notification, direct that references in sections 127, 128, 129, 164 and

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166 to an Executive Magistrate shall be construed as references to a Judicial Magistrate of the first class.

Corresponding Provision of Previous Statute: Section 478, Code of Criminal Procedure, 1973

Section 478 – Power to alter functions allocated to Executive Magistrate in certain cases - If the Legislative Assembly of a State by a resolution so permits, the State Government may, after consultation with the High Court, by notification, direct that references in sections 108, 109, 110, 145 and 147 to an Executive Magistrate shall be construed as references to a Judicial Magistrate of the first class.

525. Cases in which Judge or Magistrate is personally interested

No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself.

Explanation.- - A Judge or Magistrate shall not be deemed to be a party to, or personally interested in, any case by reason only that he is concerned therein in a public capacity, or by reason only that he has viewed the place in which an offence is alleged to have been committed, or any other place in which any other transaction material to the case is alleged to have occurred, and made an inquiry in connection with the case.

Corresponding Provision of Previous Statute: Section 479, Code of Criminal Procedure, 1973

Section 479 – Case in which Judge or Magistrate is personally interested - No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself.

Explanation.—A Judge or Magistrate shall not be deemed to be a party to, or personally interested in, any case by reason only that he is concerned therein in a public capacity, or by reason only that he has viewed the place in which an offence is alleged to have been committed, or any other place in which any other transaction material to the case is alleged to have occurred, and made an inquiry in connection with the case.

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526. Practising advocate not to sit as Magistrate in certain Courts

No advocate who practices in the Court of any Magistrate shall sit as a Magistrate in that Court or in any Court within the local jurisdiction of that Court.

Corresponding Provision of Previous Statute: Section 480, Code of Criminal Procedure, 1973

Section 480 – Practising pleader not to sit as Magistrate in certain Courts - No pleader who practises in the Court of any Magistrate shall sit as a Magistrate in that Court or in any Court within the local jurisdiction of that Court.

527. Public servant concerned in sale not to purchase or bid for property

A public servant having any duty to perform in connection with the sale of any property under this Sanhita shall not purchase or bid for the property.

Corresponding Provision of Previous Statute: Section 481, Code of Criminal Procedure, 1973

Section 481 – Public servant concerned in sale not to purchase or bid for property - A public servant having any duty to perform in connection with the sale of any property under this Code shall not purchase or bid for the property.

528. Saving of inherent powers of High Court

Nothing in this Sanhita shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Sanhita, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

Corresponding Provision of Previous Statute: Section 482, Code of Criminal Procedure, 1973

Section 482 – Saving of inherent powers of High Court - Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

LANDMARK JUDGMENT

Amar Nath and Ors. vs. State of Haryana and Ors., MANU/SC/0068/1977

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Rajinder Singh Chadha vs. Union of India and Ors., MANU/DE/7847/2023

Jagdish Ram vs. State of Rajasthan and Ors., MANU/SC/0196/2004

Arnab Ranjan Goswami vs. Union of India (UOI) and Ors., MANU/SC/0448/2020

529. Duty of High Court to exercise continuous superintendence over Courts

Every High Court shall so exercise its superintendence over the Courts of Session and Courts of Judicial Magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cases by the Judges and Magistrates.

Corresponding Provision of Previous Statute: Section 483, Code of Criminal Procedure, 1973

Section 483 – Duty of High Court to exercise continuous superintendence over Courts of Judicial Magistrates - Every High Court shall so exercise its superintendence over the Courts of Judicial Magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cases by such Magistrates.

530. Trial and proceedings to be held in electronic mode

All trials, inquires and proceedings under this Sanhita, including- -

(i) issuance, service and execution of summons and warrant;

(ii) examination of complainant and witnesses;

(iii) recording of evidence in inquiries and trials; and

(iv) all appellate proceedings or any other proceeding, may be held in electronic mode, by use of electronic communication or use of audio- video electronic means.

531. Repeal and savings

(1) The Code of Criminal Procedure, 1973 (2 of 1974) is hereby repealed.

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(2) Notwithstanding such repeal- -

(a) if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as in force immediately before such commencement (hereinafter referred to as the said Code), as if this Sanhita had not come into force;

(b) all notifications published, proclamations issued, powers conferred, forms provided by rules, local jurisdictions defined, sentences passed and orders, rules and appointments, not being appointments as Special Magistrates, made under the said Code and which are in force immediately before the commencement of this Sanhita, shall be deemed, respectively, to have been published, issued, conferred, specified, defined, passed or made under the corresponding provisions of this Sanhita;

(c) any sanction accorded or consent given under the said Code in pursuance of which no proceeding was commenced under that Code, shall be deemed to have been accorded or given under the corresponding provisions of this Sanhita and proceedings may be commenced under this Sanhita in pursuance of such sanction or consent.

(3) Where the period specified for an application or other proceeding under the said Code had expired on or before the commencement of this Sanhita, nothing in this Sanhita shall be construed as enabling

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any such application to be made or proceeding to be commenced under this Sanhita by reason only of the fact that a longer period therefor is specified by this Sanhita or provisions are made in this Sanhita for the extension of time.

Corresponding Provision of Previous Statute: Section 484, Code of Criminal Procedure, 1973

Section 484 – Repeal and savings - (1) The Code of Criminal Procedure, 1898 (5 of 1898), is hereby repealed.

(2) Notwithstanding such repeal—

(a) if, immediately before the date on which this Code comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1898 (5 of 1898), as in force immediately before such commencement (hereinafter referred to as the old Code), as if this Code had not come into force:

Provided that every inquiry under Chapter XVIII of the Old Code, which is pending at the commencement of this Code, shall be dealt with and disposed of in accordance with the provisions of this Code;

(b) all notifications published, proclamations issued, powers conferred, forms prescribed, local jurisdictions defined, sentences passed and orders, rules and appointments, not being appointments as Special Magistrates, made under the Old Code and which are in force immediately before the commencement of this Code, shall be deemed, respectively, to have been published, issued, conferred, prescribed, defined, passed or made under the corresponding provisions of this Code;

(c) any sanction accorded or consent given under the Old Code in pursuance of which no proceeding was commenced under that Code, shall be deemed to have been accorded or given under the corresponding provisions of this Code and proceedings may be commenced under this Code in pursuance of such sanction of consent;

(d) the provisions of the Old Code shall continue to apply in relation to every prosecution against a Ruler within the meaning of article 363 of the Constitution.

(3) Where the period prescribed for an application or other proceeding under the Old Code had expired on or before the commencement of this Code, nothing in this Code shall be construed as enabling any such application to be made or proceeding to be commenced under this Code by reason only of the fact that a longer period therefor is prescribed by this Code or provisions are made in this Code for the extension of time.

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THE FIRST SCHEDULE

CLASSIFICATION OF OFFENCES

EXPLANATORY NOTES: (1) In regard to offences under the Bharatiya Nyaya Sanhita, the entries in the second and third columns against a section the number of which is given in the first column are not intended as the definition of, and the punishment prescribed for, the offence in the Bharatiya Nyaya Sanhita, but merely as indication of the substance of the section.

(2) In this Schedule, (i) the expression "Magistrate of the first class" and "any Magistrate" does not include Executive Magistrates; (ii) the word "cognizable" stands for "a police officer may arrest without warrant"; and (iii) the word "non- cognizable" stands for "a police officer shall not arrest without warrant".

I.- - OFFENCES UNDER THE BHARATIYA NYAYA SANHITA

Section	Offence	Punishment	Cognizable or Non- cognizable	Bailable or Non- bailable	By what Court triable
1	2	3	4	5	6
49	Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment.	Same as for offence abetted.	According as offence abetted is cognizable or non- cognizable.	According as offence abetted is bailable or non- bailable.	Court by which offence abetted is triable.
50	Abetment of any offence, if the person abetted does act with different intention from that of abettor.	Same as for offence abetted.	According as offence abetted is cognizable or non- cognizable.	According as offence abetted is bailable or non- bailable.	Court by which offence abetted is triable.
51	Abetment of any offence, when one act is abetted and	Same as for offence	According as offence abetted is	According as offence abetted	Court by which offence abetted is triable.

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	a different act is done; subject to the proviso.	intended to be abetted.	cognizable or non- cognizable.	is bailable or non- bailable.	
52	Abettor when liable to cumulative punishment for act abetted and for act done.	Same as for offence abetted.	According as offence abetted is cognizable or non- cognizable.	According as offence abetted is bailable or non- bailable.	Court by which offence abetted is triable.
53	Abetment of any offence, when an effect is caused by the act abetted different from that intended by the abettor.	Same as for offence committed.	According as offence abetted is cognizable or non- cognizable.	According as offence abetted is bailable or non- bailable.	Court by which offence abetted is triable.
54	Abetment of any offence, if abettor present when offence is committed.	Same as for offence committed.	According as offence abetted is cognizable or non- cognizable.	According as offence abetted is bailable or non- bailable.	Court by which offence abetted is triable.
55	Abetment of an offence, punishable with death or imprisonment for life, if the offence be not committed in consequence of the abetment.	Imprisonment for 7 years and fine.	According as offence abetted is cognizable or non- cognizable.	Non- bailable.	Court by which offence abetted is triable.
	If an act which causes harm to be done in consequence of the abetment.	Imprisonment for 14 years and fine.	According as offence abetted is cognizable or non- cognizable.	Non- bailable.	Court by which offence abetted is triable.

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56	Abetment of an offence, punishable with imprisonment, if the offence be not committed in consequence of the abetment.	Imprisonment extending to one- fourth of the longest term provided for the offence, or fine, or both.	According as offence abetted is cognizable or non- cognizable.	According as offence abetted is bailable or non- bailable.	Court by which offence abetted is triable.
	If the abettor or the person abetted be a public servant whose duty it is to prevent the offence.	Imprisonment extending to one- half of the longest term provided for the offence, or fine, or both.	According as offence abetted is cognizable or non- cognizable.	According as offence abetted is bailable or non- bailable.	Court by which offence abetted is triable.
57	Abetting commission of an offence by the public or by more than ten persons.	Imprisonment which may extend to 7 years and fine.	According as offence abetted is cognizable or non- cognizable.	According as offence abetted is bailable or non- bailable.	Court by which offence abetted is triable.
58 (a)	Concealing design to commit offence punishable with death or imprisonment for life, if the offence be committed.	Imprisonment for 7 years and fine.	According as offence abetted is cognizable or non- cognizable.	Non- bailable.	Court by which offence abetted is triable.
58(b)	If offence be not committed.	Imprisonment for 3 years and fine.	According as offence abetted is cognizable or non- cognizable.	Bailable.	Court by which offence abetted is triable.
59(a)	A public servant concealing a design to commit an offence which it is his duty to	Imprisonment extending to one- half of the longest term provided	According as offence abetted is cognizable or non- cognizable.	According as offence abetted is bailable or non- bailable.	Court by which offence abetted is triable.

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	prevent, if the offence be committed.	for the offence, or fine, or both.			
59(b)	If the offence be punishable with death or imprisonment for life.	Imprisonment for 10 years.	According as offence abetted is cognizable or non- cognizable.	Non- bailable.	Court by which offence abetted is triable.
59(c)	If the offence be not committed.	Imprisonment extending to one- fourth of the longest term provided for the offence, or fine, or both.	According as offence abetted is cognizable or non- cognizable.	Bailable.	Court by which offence abetted is triable.
60(a)	Concealing a design to commit an offence punishable with imprisonment, if offence be committed.	Imprisonment extending to one- fourth of the longest term provided for the offence, or fine, or both.	According as offence abetted is cognizable or non- cognizable.	According as offence abetted is bailable or non- bailable.	Court by which offence abetted is triable.
60(b)	If the offence be not committed.	Imprisonment extending to one- eighth part of the longest term provided for the offence, or fine, or both.	According as offence abetted is cognizable or non- cognizable.	Bailable.	Court by which offence abetted is triable.
61(2)(a)	Criminal conspiracy to commit an offence punishable with death,	Same as for abetment of the offence which is the	According as the offence which is the object of conspiracy is	According as offence which is object of conspiracy is	Court by which abetment of the offence which is the object of

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	imprisonment for life or rigorous imprisonment for a term of 2 years or upwards.	object of the conspiracy.	cognizable or non- cognizable.	bailable or non- bailable.	conspiracy is triable.
61(2)(b)	Any other criminal conspiracy.	Imprisonment for 6 months, or fine, or both.	Non- cognizable.	Bailable.	Magistrate of the first class.
62	Attempting to commit offence punishable with imprisonment for life, or imprisonment, and in such attempt doing any act towards the commission of the offence.	One half of the imprisonment for life, or imprisonment not exceeding one- half of the longest term, provided for the offence, or fine, or both.	According as the men offence is cognizable or non- cognizable.	According as the offence attempted by the offender is bailable or non- bailable.	The court by which the offence attempted is triable.
64(1)	Rape.	Rigorous imprisonment for not less than 10 years but which may extend to imprisonment for life, and fine.	Cognizable.	Non- bailable.	Court of Session.
64(2)	Rape by a police officer or a public servant or member of armed forces or a person being on the management or on	Rigorous imprisonment for not less than 10 years but which may extend to imprisonment	Cognizable.	Non- bailable.	Court of Session.

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	the staff of a jail, remand home or other place of custody or women's or children's institution or by a person on the management or on the staff of a hospital, and rape committed by a person in a position of trust or authority towards the person raped or by a near relative of the person raped.	for life which shall mean the remainder of that person's natural life and fine.			
65(1)	Persons committing offence of rape on a woman under sixteen years of age.	Rigorous imprisonment for not less than 20 years but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life and fine.	Cognizable.	Non- bailable.	Court of Session.
65(2)	Persons committing offence of rape on	Rigorous imprisonment for not less	Cognizable.	Non- bailable.	Court of Session.

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	a woman under twelve years of age.	than 20 years but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life and with fine or death.			
66	Person committing an offence of rape and inflicting injury which causes death or causes the woman to be in a persistent vegetative state.	Rigorous imprisonment for not less than 20 years but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life or death.	Cognizable.	Non- bailable.	Court of Session.
67	Sexual intercourse by husband upon his wife during separation.	Imprisonment for not less than 2 years but which may extend to 7 years and fine.	Cognizable (only on the complaint of the victim).	Bailable.	Court of Session.

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68	Sexual intercourse by a person in authority, etc.	Rigorous imprisonment for not less than 5 years, but which may extend to 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
69	Sexual intercourse by employing deceitful means, etc.	Imprisonment which may extend to 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
70(1)	Gang rape.	Rigorous imprisonment for not less than 20 years but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life and fine.	Cognizable.	Non- bailable.	Court of Session.
70(2)	Gang rape on a woman under eighteen years of age.	Imprisonment for life which shall mean imprisonment for the remainder of that person's natural life and with fine or with death.	Cognizable.	Non- bailable.	Court of Session.

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71	Repeat offenders.	Imprisonment for life which shall mean imprisonment for the remainder of that person's natural life or with death.	Cognizable.	Non- bailable.	Court of Session.
72(7)	Disclosure of identity of the victim of certain offences, etc.	Imprisonment for 2 years and fine.	Cognizable.	Bailable.	Any Magistrate.
73	Printing or publication of a proceeding without prior permission of court.	Imprisonment for 2 years and fine.	Cognizable.	Bailable.	Any Magistrate.
74	Assault or use of criminal force to woman with intenl to outrage her modesty.	Imprisonment for 1 year which may extend to 5 years and fine.	Cognizable.	Non- bailable.	Any Magistrate.
75(2)	Sexual harassment and punishment for sexual harassment specified in clause (;') or clause (;';') or clause (Hi) of sub-section (7).	Rigorous imprisonment with 3 years, or fine, or both.	Cognizable.	Non- bailable.	Court of Session.
75(3)	Sexual harassment and punishment for sexual harassment specified in clause	Imprisonment for 1 year, or fine, or both.	Cognizable.	Non- bailable.	Court of Session.

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	(iv) of sub- section (7).				
76	Assault or use of criminal force to woman with intenl to disrobe.	Imprisonment for not less than 3 years but which may extend to 7 years and fine.	Cognizable.	Non- bailable.	Court of Session.
77	Voyeurism.	Imprisonment for not less than 1 year but which may extend to 3 years and fine.	Cognizable.	Bailable.	Court of Session.
	Second or subsequent conviction.	Imprisonment for not less than 3 years but which may extend to 7 years and fine.	Cognizable.	Non- bailable.	Court of Session.
78(2)	Stalking.	Imprisonment up to 3 years and fine.	Cognizable.	Bailable.	Any Magistrate.
	Second or subsequent conviction.	Imprisonment up to 5 years and fine.	Cognizable.	Non- bailable.	Any Magistrate.
19	Uttering any word or making any gesture intended to insult the modesty of a woman, etc.	Simple imprisonment for 3 years and fine.	Cognizable.	Bailable.	Any Magistrate.

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80(2)	Dowry death.	Imprisonment for not less than 7 years but which may extend to imprisonment for life.	Cognizable.	Non- bailable.	Court of Session.
81	A man by deceit causing a woman not lawfully married to him to believe, that she is lawfully married to him and to cohabit with him in that belief.	Imprisonment for 10 years and fine.	Non- cognizable.	Non- bailable.	Magistrate of the first class.
82(1)	Marrying again during the life time of a husband or wife.	Imprisonment for 7 years and fine.	Non- cognizable.	Bailable.	Magistrate of the first class.
82(2)	Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.	Imprisonment for 10 years and fine.	Non- cognizable.	Bailable.	Magistrate of the first class.
83	A person with fraudulent intention going through the ceremony of being married, knowing that he is not thereby lawfully married.	Imprisonment up to 7 years and fine.	Non- cognizable.	Non- bailable.	Magistrate of the first class.

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84	Enticing or taking away or detaining with a criminal intent a married woman.	Imprisonment for 2 years, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
85	Punishment for subjecting a married woman to cruelty.	Imprisonment for 3 years and fine.	Cognizable if information relating to the commission of the offence is given to an officer in charge of a police station by the person aggrieved by the offence or by any person related to her by blood, marriage or adoption or if there is no such relative, by any public servant belonging to such class or category as may be notified by the State Government in this behalf.	Non- bailable.	Magistrate of the first class.
87	Kidnapping, abducting or inducing woman to compel her marriage, etc.	Imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.

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88	Causing miscarriage.	Imprisonment for 3 years, or fine, or both.	Non- cognizable.	Bailable.	Magistrate of the first class.
	If the woman be quick with child.	Imprisonment for 7 years and fine.	Non- cognizable.	Bailable.	Magistrate of the first class.
89	Causing miscarriage without women's consent.	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
90(1)	Death caused by an act done with intent to cause miscarriage.	Imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
90(2)	If act done without women's consent.	Imprisonment for life, or as above.	Cognizable.	Non- bailable.	Court of Session.
91	Act done with intent to prevent a child being born alive, or to cause it to die after its birth.	Imprisonment for 10 years, or fine, or both.	Cognizable.	Non- bailable.	Court of Session.
92	Causing death of a quick unborn child by an act amounting to culpable	Imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
93	Exposure of a child under 12 years of age by parent or person having care of it with intention of	Imprisonment for 7 years, or fine, or both.	Cognizable.	Bailable.	Magistrate of the first class.

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	wholly abandoning it.				
94	Concealment of birth by secret disposal of dead body.	Imprisonment for 2 years, or fine, or both.	Cognizable.	Bailable.	Magistrate of the first class.
95	Hiring, employing or engaging a child to commit an offence.	Imprisonment for not less than 3 years but which may extend to 10 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.
	If offence be committed.	Same as for the offence committed.	Cognizable.	Non- bailable.	Court by which offence committed is triable.
96	Procuration of child.	Imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
97	Kidnapping or abducting a child under ten years with intent to steal from its person.	Imprisonment for 7 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.
98	Selling child for purposes of prostitution, etc.	Imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
99	Buying child for purposes of prostitution, etc.	Imprisonment for not less than 7 years but which may extend to 14 years and fine.	Cognizable.	Non- bailable.	Court of Session.

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103(1)	Murder.	Death or imprisonment for life and fine.	Cognizable.	Non- bailable.	Court of Session.
103(2)	Murder by group of five or more persons.	Death or with imprisonment for life and fine.	Cognizable.	Non- bailable.	Court of Session.
104	Murder by life-convict.	Death or imprisonment for life, which shall mean the remainder of that person's natural life.	Cognizable.	Non- bailable.	Court of Session.
105	Culpable homicide not amounting to murder, if act by which the death is caused is done with intention of causing death,	Imprisonment for life, or Imprisonment for not less than 5 years but which may extend to 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
	If act be done with knowledge that it is likely to cause death, but without any intention to cause death, etc.	Imprisonment for 10 years and with fine.	Cognizable.	Non- bailable.	Court of Session.
106(1)	Causing death by negligence.	Imprisonment for 5 years and fine.	Cognizable.	Bailable.	Magistrate of the first class.
	Causing death by negligenc by registered medical practitioner.	e Imprisonment for 2 years and fine	Cognizable.	Bailable.	Magistrate of the first class.

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106(2)	Causing death by rash and negligent driving of vehicle and escaping.	Imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.
107	Abetment of suicide of child or person of unsound mind, etc.	Death, or imprisonment for life, or imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
108	Abetment of suicide.	Imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
109(1)	Attempt to murder.	Imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
	If such act causes hurt to any person.	Imprisonment for life, or as above.	Cognizable.	Non- bailable.	Court of Session.
109(2)	Attempt by life-convict to murder, if hurt is caused.	Death, or imprisonment for life which shall mean the remainder of that person's natural life.	Cognizable.	Non- bailable.	Court of Session.
110	Attempt to commit culpable homicide.	Imprisonment for 3 years, or fine or both.	Cognizable.	Non- bailable.	Court of Session.
	If such act causes hurt to any person.	Imprisonment for 7 years, or fine, or both.	Cognizable.	Non- bailable.	Court of Session.
111(2)(a)	Organised crime resulting in death of any person.	Death or imprisonment for life and	Cognizable.	Non- bailable.	Court of Session.

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		fine of not less than 10 lakh rupees.			
111(2)(b)	In any other case.	Imprisonment for not less than 5 years but which may extend to imprisonment for life and fine of not less than 5 lakh rupees.	Cognizable.	Non- bailable.	Court of Session.
111(3)	Abetting, attempting, conspiring or knowingly facilitating the commission of organised crime.	Imprisonment for not less than 5 years but which may extend to imprisonment for life and fine of not less than 5 lakh rupees.	Cognizable.	Non- bailable.	Court of Session.
111(4)	Being a member of an organised crime syndicate.	Imprisonment for not less than 5 years but which may extend to imprisonment for life and fine of not less than 5 lakh rupees.	Cognizable.	Non- bailable.	Court of Session.
111(5)	Intentionally harbouring or concealing any person who	Imprisonment for not less than 3 years but which	Cognizable.	Non- bailable.	Court of Session.

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	committed offence of organised crime.	may extend to imprisonment for life and fine of not less than 5 lakh rupees.			
111(6)	Possessing property derived or obtained from the commission of organised crime.	, Imprisonment for not less than 3 years but which may extend to imprisonment for life and fine of not less than 2 lakh rupees.	Cognizable.	Non- bailable.	Court of Session.
111(7)	Possessing property on behalf of a member of an organised crime syndicate.	Imprisonment for not less than 3 years but which may extend to imprisonment for 10 years and fine of not less than 1 lakh rupees.	Cognizable.	Non- bailable.	Court of Session.
112	Petty Organised crime.	Imprisonment for not less than 1 year but which may extend to 7 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.
113(2)(a)	Terrorist act resulting in the	Death or imprisonment	Cognizable.	Non- bailable.	Court of Session.

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	death of any person.	for life and fine.			
113(2)(b)	In any other case.	Imprisonment for not less than 5 years but which may extend to imprisonment for life and fine.	Cognizable.	Non- bailable.	Court of Session.
113(3)	Conspiring, attempting, abetting, etc., or knowingly facilitating the commission of terrorist act.	Imprisonment for not less than 5 years but which may extend to imprisonment for life and fine.	Cognizable.	Non- bailable.	Court of Session.
113(4)	Organising camps, training, etc., for commission of terrorist act.	Imprisonment for not less than 5 years but which may extend to imprisonment for life and fine.	Cognizable.	Non- bailable.	Court of Session.
113(5)	Being a member of an organisation involved in terrorist act.	Imprisonment for life and fine.	Cognizable.	Non- bailable.	Court of Session.
113(6)	Harbouring, concealing, etc., of any person who committed a terrorist act.	Imprisonment for not less than 3 years but which may extend to imprisonment	Cognizable.	Non- bailable.	Court of Session.

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		for life and fine.			
113(7)	Possessing property derived or obtained from commission of terrorist act.	Imprisonment for life and fine.	Cognizable.	Non- bailable.	Court of Session.
115(2)	Voluntarily causing hurt.	Imprisonment for 1 year or fine of 10,000 rupees, or both.	Non- cognizable.	Bailable.	Any Magistrate.
117(2)	Voluntarily causing grievous hurt.	Imprisonment for 7 years and fine.	Cognizable.	Bailable.	Any Magistrate.
117(3)	If hurt to results in permanent disability or persistent vegetative state.	Rigorous imprisonment for not less than 10 years but which may extend to imprisonment for life which shall mean the remainder of that person's natural life.	Cognizable.	Non- bailable.	Court of Session.
117(4)	Grievous hurt caused by a group of 5 or more persons.	Imprisonment for 7 years and fine.	Cognizable.	Non- bailable.	Court of Session.
118(1)	Voluntarily causing hurt by dangerous weapons or means.	Imprisonment for 3 years, or fine of 20,000 rupees, or both.	Cognizable.	Non- bailable.	Any Magistrate.

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118(2)	Voluntarily causing grievous hurt by dangerous weapons or means [except as provided in section 122(2)].	Imprisonment for life or imprisonment of not less than 1 year but which may extend to 10 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.
119(1)	Voluntarily causing hurt to extort property, or to constrain to an illegal act.	Imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.
119(2)	Voluntarily causing grievous hurt for any purpose referred to in sub- section (1).	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
120(1)	Voluntarily causing hurt to extort confession or information, or to compel restoration of property, etc.	Imprisonment for 7 years and fine.	Cognizable.	Bailable.	Magistrate of the first class.
120(2)	Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property, etc.	Imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
121(1)	Voluntarily causing hurt to deter public	Imprisonment for 5 years, or fine, or both.	Cognizable.	Non- bailable.	Magistrate of the first class.

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	servant from his duty.				
121(2)	Voluntarily causing grievous hurt to deter public servant from his duty.	Imprisonment not less than 1 year, or imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
122(1)	Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Imprisonment for 1 month, or fine of 5,000 rupees, or both.	Non- cognizable.	Bailable.	Any Magistrate.
122(2)	Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Imprisonment for 5 years, or fine of 10,000 rupees, or both.	Cognizable.	Bailable.	Magistrate of the first class.
123	Causing hurt by means of poison, etc., with intent to commit an offence.	Imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
124(1)	Voluntarily causing grievous hurt by use of acid, etc.	Imprisonment for not less than 10 years but which may extend to imprisonment for life and fine.	Cognizable.	Non- bailable.	Court of Session.

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124(2)	Voluntarily throwing or attempting to throw acid.	Imprisonment for 5 years but which may extend to 7 years and fine.	Cognizable.	Non- bailable.	Court of Session.
125	Doing any act endangering human life or personal safety of others.	Imprisonment for 3 months, or fine of 2,500 rupees, or both.	Cognizable.	Bailable.	Any Magistrate.
125(a)	Where hurt is caused.	Imprisonment for 6 months, or fine of 5,000 rupees, or both.	Cognizable.	Bailable.	Any Magistrate.
125(b)	Where grievous hurt is caused.	Imprisonment for 3 years, or fine of 10,000 rupees, or both.	Cognizable.	Bailable.	Any Magistrate.
126(2)	Wrongfully restraining any person.	Simple imprisonment for 1 month, or fine of 5,000 rupees, or both.	Cognizable.	Bailable.	Any Magistrate.
127(2)	Wrongfully confining any person.	Imprisonment for 1 year, or fine of 5,000 rupees, or both.	Cognizable.	Bailable.	Any Magistrate.
127(3)	Wrongfully confining for three or more days.	Imprisonment for 3 years, or fine of 10,000 rupees, or both.	Cognizable.	Bailable.	Any Magistrate.

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127(4)	Wrongfully confining for 10 or more days.	Imprisonment for 5 years and fine of 10,000 rupees.	Cognizable.	Non- bailable.	Magistrate of the first class.
127(5)	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation.	Imprisonment for 2 years in addition to any term of imprisonment to under any other section and fine.	Cognizable.	Bailable.	Magistrate of the first class.
127(6)	Wrongful confinement in secret.	Imprisonment for 3 years in addition to other punishment which he is liable to and fine.	Cognizable.	Bailable.	Magistrate of the first class.
127(7)	Wrongful confinement for the purpose of extorting property, or constraining to an illegal act, etc.	Imprisonment for 3 years and fine.	Cognizable.	Bailable.	Any Magistrate.
127(8)	Wrongful confinement for the purpose of extorting confession or information, or for compelling restoration of property, etc.	Imprisonment for 3 years and fine.	Cognizable.	Bailable.	Any Magistrate.

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131	Assault or criminal force otherwise than on grave provocation.	Imprisonment for 3 months, or fine of 1,000 rupees, or both.	Non- cognizable.	Bailable.	Any Magistrate.
132	Assault or use of criminal force to deter public servant from discharge of his duty.	Imprisonment for 2 years, or fine, or both.	Cognizable.	Non- bailable.	Any Magistrate.
133	Assault or criminal force with intent to dishonour a person, otherwise than on grave and sudden provocation.	Imprisonment for 2 years, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
134	Assault or criminal force in attempt to commit theft of property worn or carried by a person.	Imprisonment for 2 years, or fine, or both.	Cognizable.	Bailable.	Any Magistrate.
135	Assault or use of criminal force in attempt wrongfully to confine a person.	Imprisonment for 1 year, or fine of 5,000 rupees, or both.	Cognizable.	Bailable.	Any Magistrate.
136	Assault or use of criminal force on grave and sudden provocation.	Simple imprisonment for one month, or fine of 1,000 rupees, or both.	Non- cognizable.	Bailable.	Any Magistrate.

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137(2)	Kidnapping.	Imprisonment for 7 years and fine.	Cognizable.	Bailable.	Magistrate of the first class.
139(1)	Kidnapping a child for purposes of begging.	Rigorous imprisonment not be less than 10 years but which may extend to imprisonment for life, and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.
139(2)	Maiming a child for purposes of begging.	Imprisonment not be less than 20 years which may extend to remainder of that person's natural life, and fine.	Cognizable.	Non- bailable.	Court of Session.
140(1)	Kidnapping or abducting in order to murder.	Imprisonment for life, or rigorous imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
140(2)	Kidnapping for ransom, etc.	Death, or imprisonment for life and fine.	Cognizable.	Non- bailable.	Court of Session.
140(3)	Kidnapping or abducting with intent secretly and wrongfully to confine a person.	Imprisonment for 7 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.

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140(4)	Kidnapping or abducting in order to subject a person to grievous hurt, slavery, etc.	Imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
141	Importation of a girl or boy from foreign country.	Imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
142	Wrongfully concealing or keeping in confinement, kidnapped or abducted person.	Punishment for kidnapping or abduction.	Cognizable.	Non- bailable.	Court by which the kidnapping or abduction is triable.
143(2)	Trafficking of person.	Rigorous imprisonment for not less than 7 years but which may extend to 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
143(3)	Trafficking of more than one person.	Rigorous imprisonment for not less than 10 years but which may extend to imprisonment for life and fine.	Cognizable.	Non- bailable.	Court of Session.
143(4)	Trafficking of a child.	Rigorous imprisonment for not less than 10 years but which may extend to	Cognizable.	Non- bailable.	Court of Session.

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		imprisonment for life and fine.			
143(5)	Trafficking of more than one child.	Rigorous imprisonment for not less than 14 years but which may extend to imprisonment for life and fine.	Cognizable.	Non- bailable.	Court of Session.
143(6)	Person convicted of offence of trafficking of child on more than one occasion.	Imprisonment for life which shall mean the remainder of that person's natural life and fine.	Cognizable.	Non- bailable.	Court of Session.
143(7)	Public servant or a police officer involved in trafficking of child.	Imprisonment for life which shall mean the remainder of that person's natural life and fine.	Cognizable.	Non- bailable.	Court of Session.
144(1)	Exploitation of a trafficked child.	Rigorous imprisonment for not less than 5 years but which may extend to 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
144(2)	Exploitation of a trafficked person.	Rigorous imprisonment for not less	Cognizable.	Non- bailable.	Court of Session.

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		than 3 years but which may extend to 7 years and fine.			
145	Habitual dealing in slaves.	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
146	Unlawful compulsory labour.	Imprisonment for 1 year, or fine, or both.	Cognizable.	Bailable.	Any Magistrate.
147	Waging or attempting to wage war, or abetting the waging of war, against the Government of India.	Death, or imprisonment for life and fine.	Cognizable.	Non- bailable.	Court of Session.
148	Conspiring to commit certain offences against the State.	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
149	Collecting arms, etc., with the intention of waging war against the Government of India.	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
150	Concealing with intent to facilitate a design to wage	Imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.

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151	Assaulting President, Governor, etc., with intent to compel or restrain the exercise of any lawful power.	Imprisonment for 7 years and fine.	Cognizable.	Non- bailable.	Court of Session.
152	Act endangering sovereignty, unity and integrity of India.	Imprisonment for life, or imprisonment for 7 years and fine.	Cognizable.	Non- bailable.	Court of Session.
153	Waging war against Government of any foreign State at peace with the Government of India.	Imprisonment for life and fine, or imprisonment for 7 years and fine, or fine.	Cognizable.	Non- bailable.	Court of Session.
154	Committing depredation on the territories of any foreign state at peace with the Government of India.	Imprisonment for 7 years and fine, and forfeiture of certain property.	Cognizable.	Non- bailable.	Court of Session.
155	Receiving property taken by war or depredation mentioned in sections 153 and 154.	Imprisonment for 7 years and fine, and forfeiture of certain property.	Cognizable.	Non- bailable.	Court of Session.
156	Public servant voluntarily allowing prisoner of state or war in	Imprisonment for life, or imprisonment	Cognizable.	Non- bailable.	Court of Session.

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	his custody to escape.	for 10 years and fine.			
157	Public servant negligently suffering prisoner of State or war in his custody to escape.	Simple imprisonment for 3 years and fine.	Cognizable.	Bailable.	Magistrate of the first class.
158	Aiding escape of, rescuing or harbouring such prisoner.	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
159	Abetting mutiny, or attempting to seduce an officer, soldier, sailor or airman from his allegiance or duty.	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
160	Abetment of mutiny, if mutiny is committed in consequence thereof.	Death, or imprisonment for life, or imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
161	Abetment of assault by an officer, soldier, sailor or airman on his superior officer, when in execution of his office.	Imprisonment for 3 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.
162	Abetment of such assault, if the assault committed.	Imprisonment for 7 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.

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163	Abetment of the desertion of an officer, soldier, sailor or airman.	Imprisonment for 2 years, or fine, or both.	Cognizable.	Bailable.	Any Magistrate.
164	Harbouring deserter.	Imprisonment for 2 years, or fine, or both.	Cognizable	Bailable.	Any Magistrate.
165	Deserter concealed on board merchant vessel through negligence of master or person in charge thereof.	Fine of 3,000 rupees.	Non- cognizable.	Bailable.	Any Magistrate.
166	Abetment of act of insubordination by an officer, soldier, sailor or airman if the offence be committed in consequence.	Imprisonment for 2 years, or fine, or both.	Cognizable.	Bailable.	Any Magistrate.
168	Wearing garb or carrying token used by soldier, sailor or airman.	Imprisonment for 3 months, or fine of 2,000 rupees, or both.	Cognizable.	Bailable.	Any Magistrate.
173	Bribery.	Imprisonment for 1 year or fine, or both, or if treating only, fine only.	Non- cognizable.	Bailable.	Magistrate of the first class.
174	Undue influence or personation at an election.	Imprisonment for 1 year, or fine, or both.	Non- cognizable.	Bailable.	Magistrate of the first class.

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175	False statement in connection with an election.	Fine.	Non- cognizable.	Bailable.	Magistrate of the first class.
176	Illegal payments in connection with elections.	Fine of 10,000 rupees.	Non- cognizable.	Bailable.	Magistrate of the first class.
177	Failure to keep election accounts.	Fine of 5,000 rupees.	Non- cognizable.	Bailable.	Magistrate of the first class.
178	Counterfeiting coins, government stamps, currency-notes or bank-notes.	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
179	Using as genuine forged or counterfeit coin, Government stamp currency-notes or bank-notes.	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
180	Possession of forged or counterfeit coin, Government stamp, currency-notes or bank-notes.	Imprisonment for 7 years, or fine, or both.	Cognizable.	Non- bailable.	Court of Session.
181	Making, buying, selling or possessing machinery, instrument or material for forging or counterfeiting coins, Government	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.

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	stamp, currency-notes or bank-notes.				
182(1)	Making or using documents resembling currency- notes or bank- notes.	Fine of 300 rupees.	Non- cognizable.	Bailable.	Any Magistrate.
182(2)	On refusal to disclose the name and address of the printer.	Fine of 600 rupees.	Non- cognizable.	Bailable.	Any Magistrate.
183	Effacing any writing from a substance bearing a Government stamp, removing from a document a stamp used for it, with intent to cause a loss to Government.	Imprisonment for 3 years, or fine, or both.	Cognizable.	Bailable.	Magistrate of the first class.
184	Using a Government stamp known to have been before used.	Imprisonment for 2 years, or fine, or both.	Cognizable.	Bailable.	Any Magistrate.
185	Erasure of mark denoting that stamps have been used.	Imprisonment for 3 years, or fine, or both.	Cognizable.	Bailable.	Magistrate of the first class.
186	Fictitious stamps.	Fine of 200 rupees.	Cognizable.	Bailable.	Any Magistrate.
187	Person employed in a Mint causing coin to be of a	Imprisonment for 7 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.

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	different weight or composition from that fixed by law.				
188	Unlawfully taking from a Mint any coining instrument.	Imprisonment for 7 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.
189(2)	Being member of an unlawful assembly.	Imprisonment for 6 months, or fine, or both.	Cognizable.	Bailable.	Any Magistrate.
189(3)	Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse.	Imprisonment for 2 years, or fine, or both.	Cognizable.	Bailable.	Any Magistrate.
189(4)	Joining an unlawful assembly armed with any deadly weapon.	Imprisonment for 2 years, or fine, or both.	Cognizable.	Bailable.	Any Magistrate.
189(5)	Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.	Imprisonment for 6 months, or fine, or both.	Cognizable.	Bailable.	Any Magistrate.
189(6)	Hiring, engaging or employing persons to take part in an unlawful assembly.	The same as for a member of such assembly, and for any offence	Cognizable.	According as offence is bailable or non- bailable.	The Court by which the offence is triable.

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		committed by any member of such assembly.			
189(7)	Harbouring persons hired for an unlawful assembly.	Imprisonment for 6 months, or fine, or both.	Cognizable.	Bailable.	Any Magistrate.
189(8)	Being hired to take part in an unlawful assembly or riot.	Imprisonment for 6 months, or fine, or both.	Cognizable.	Bailable.	Any Magistrate.
189(9)	Or to go armed.	Imprisonment for 2 years, or fine, or both.	Cognizable.	Bailable.	Any Magistrate.
190	Every member of unlawful assembly guilty of offence committed in prosecution of common object.	The same as for the offence.	According as offence is cognizable or non- cognizable.	According as offence is bailable or non- bailable.	The Court by which the offence is triable.
191(2)	Rioting.	Imprisonment for 2 years, or fine, or both.	Cognizable.	Bailable.	Any Magistrate.
191(3)	Rioting, armed with a deadly weapon.	Imprisonment for 5 years, or fine, or both.	Cognizable.	Bailable.	Magistrate of the first class.
192	Wantonly giving provocation with intent to cause riot, if rioting be committed.	Imprisonment for 1 year, or fine, or both.	Cognizable.	Bailable.	Any Magistrate.
	If not committed.	Imprisonment for 6 months, or fine, or both.	Cognizable.	Bailable.	Any Magistrate.

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193(1)	Owner or occupier of land not giving information of riot, etc.	Fine of 1,000 rupees.	Non- cognizable.	Bailable.	Any Magistrate.
193(2)	Person for whose benefit or on whose behalf a riot takes place not using all lawful means to prevent it.	Fine.	Non- cognizable.	Bailable.	Any Magistrate.
193(3)	Agent of owner or occupier for whose benefit a riot is committed not using all lawful means to prevent it.	Fine.	Non- cognizable.	Bailable.	Any Magistrate.
194(2)	Committing affray.	Imprisonment for one month, or fine of 1,000 rupees, or both.	Cognizable.	Bailable.	Any Magistrate.
195(1)	Assaulting or obstructing public servant when suppressing riot, etc.	Imprisonment for 3 years, or fine not less than 25,000 rupees, or both.	Cognizable.	Bailable.	Magistrate of the first class.
195(2)	Threatening to assault or attempting to obstruct public servant when suppressing riot, etc.	Imprisonment for 1 year, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.

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196(1)	Promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.	Imprisonment for 3 years, or fine, or both.	Cognizable.	Non- bailable.	Magistrate of the first class.
196(2)	Promoting enmity between classes in place of worship, etc.	Imprisonment for 5 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.
197(1)	Imputations, assertions prejudicial to national integration.	Imprisonment for 3 years, or fine, or both.	Cognizable.	Non- bailable.	Magistrate of the first class.
197(2)	If committed in a place of public worship, etc.	Imprisonment for 5 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.
198	Public servant disobeying direction of the law with intent to cause injury to any person.	Simple imprisonment for 1 year, or fine, or both.	Non- cognizable.	Bailable.	Magistrate of the first class.
199	Public servant disobeying direction under law.	Rigorous imprisonment for not less than 6 months which may extend to 2 years and fine.	Cognizable.	Bailable.	Magistrate of the first class.

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200	Non- treatment of victim by hospital.	Imprisonment for 1 year, or fine, or both.	Non- cognizable.	Bailable.	Magistrate of the first class.
201	Public servant framing an incorrect document with intent to cause injury.	Imprisonment for 3 years, or fine, or both.	Cognizable.	Bailable.	Magistrate of the first class.
202	Public servant unlawfully engaging in trade.	Simple imprisonment for 1 year, or fine, or both, or community service.	Non- cognizable.	Bailable.	Magistrate of the first class.
203	Public servant unlawfully buying or bidding for property.	Simple imprisonment for 2 years, or fine, or both and confiscation of property, if purchased.	Non- cognizable.	Bailable.	Magistrate f the firstclass.
204	Personating a public servant.	Imprisonment for not less than 6 months but which may extend to 3 years and fine.	Cognizable.	Non- bailable.	Any Magistrate.
205	Wearing garb or carrying token used by public servant with fraudulent intent.	Imprisonment for 3 months, or fine of 5,000 rupees, or both.	Cognizable.	Bailable.	Any Magistrate.
206(a)	Absconding to avoid service of	Simple imprisonment	Non- cognizable.	Bailable.	Any Magistrate.

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	summons or other proceeding from a public servant.	for 1 month, or fine of 5,000 rupees, or both.			
206(b)	If summons or notice require attendance in person, etc., in a Court.	Simple imprisonment for 6 months, or fine of 10,000 rupees, or both.	Non- cognizable.	Bailable.	Any Magistrate.
207(a)	Preventing service of summons or other proceeding, or preventing publication thereof.	Simple imprisonment for 1 month, or fine of 5,000 rupees, or both.	Non- cognizable.	Bailable.	Any Magistrate.
207(b)	If summons, etc., require attendance in person, etc., in a Court.	Simple imprisonment for 6 months, or fine of 10,000 rupees, or both.	Non- cognizable.	Bailable.	Any Magistrate.
208(a)	Non- attendance in obedience to an order from public servant.	Simple imprisonment for 1 month, or fine of 5,000 rupees, or both.	Non- cognizable.	Bailable.	Any Magistrate.
208(b)	If the order requires personal attendance, etc., in a Court	Simple imprisonment for 6 months, or fine of 10,000 rupees, or both.	Non- cognizable.	Bailable.	Any Magistrate.
209	Non- appearance in response to a proclamation	Imprisonment for 3 years, or fine, or both,	Cognizable.	Non- bailable.	Magistrate of the first class.

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	under section 84 of this Sanhita.	or community service.			
	In a case where declaration has been made under sub- section (4) of section 84 of this Sanhita pronouncing a person as proclaimed offender.	Imprisonment for 7 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.
210(a)	Omission to produce document to public servant by person legally bound to produce or deliver it.	Simple imprisonment for 1 month, or fine of 5,000 rupees, or both.	Non- cognizable.	Bailable.	The Court in which the offence is committed, subject to the provisions of Chapter XXVIII; or, if not committed, in a Court, any Magistrate.
210(b)	If the document is required to be produced in or delivered to a Court.	Simple imprisonment for 6 months, or fine of 10,000 rupees, or both.	Non- cognizable.	Bailable.	The Court in which the offence is committed, subject to the provisions of Chapter XXVIII; or, if not committed, in a Court, any Magistrate.
211(a)	Intentional omission to give notice or	Simple imprisonment for 1 month,	Non- cognizable.	Bailable.	Any Magistrate.

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	information to public servant by person legally bound to give it.	or fine of 5,000 rupees, or both.			
211(b)	If the notice or information required respects the commission of an offence, etc.	Simple imprisonment for 6 months, or fine of 10,000 rupees, or both.	Non- cognizable.	Bailable.	Any Magistrate.
211(c)	If the notice or information is required by an order passed under sub- section (1) of section 394 of this Sanhita.	Imprisonment for 6 months, or fine of 1,000 rupees, or both.	Non- cognizable.	Bailable.	Any Magistrate.
212(a)	Knowingly furnishing false information to public servant.	Simple imprisonment for 6 months, or fine of 5,000 rupees, or both.	Non- cognizable.	Bailable.	Any Magistrate.
212(b)	If the information required respects the commission of an offence, etc.	Imprisonment for 2 years, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
213	Refusing oath when duly required to take oath by a public servant.	Simple imprisonment for 6 months, or fine of 5,000 rupees, or both.	Non- cognizable.	Bailable.	The Court in which the offence is committed, subject to the provisions of Chapter XXVIII; or, if not committed,

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					in a Court, any Magistrate.
214	Being legally bound to state truth, and refusing to answer public servant authorised to question.	Simple imprisonment for 6 months, or fine of 5,000 rupees, or both.	Non- cognizable.	Bailable.	The Court in which the offence is committed, subject to the provisions of Chapter XXVIII; or, if not committed, in a Court, any Magistrate.
215	Refusing to sign a statement made to a public servant when legally required to do so.	Simple imprisonment for 3 months, or fine of 3,000 rupees, or both.	Non- cognizable.	Bailable.	The Court in which the offence is committed, subject to the provisions of Chapter XXVIII; or, if not committed, in a Court, any Magistrate.
216	Knowingly stating to a public servant on oath as true that which is false.	Imprisonment for 3 years and fine.	Non- cognizable.	Bailable.	Magistrate of the first class.
217	Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.	Imprisonment for 1 year, or with fine of 10,000 rupees, or both.	Non- cognizable.	Bailable.	Any Magistrate.

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218	Resistance to the taking of property by the lawful authority of a public servant.	Imprisonment for 6 months, or fine of 10,000 rupees, or both.	Non- cognizable.	Bailable.	Any Magistrate.
219	Obstructing sale of property offered for sale by authority of a public servant.	Imprisonment for 1 month, or fine of 5,000 rupees, or both.	Non- cognizable.	Bailable.	Any Magistrate.
220	Illegal purchase or bid for property offered for sale by authority of public servant.	Imprisonment for 1 month, or fine of 200 rupees, or both.	Non- cognizable.	Bailable.	Any Magistrate.
221	Obstructing public servant in discharge of his public functions.	Imprisonment for 3 months, or fine of 2,500 rupees, or both.	Non- cognizable.	Bailable.	Any Magistrate.
222(a)	Omission to assist public servant when bound by law to give such assistance.	Simple imprisonment for 1 month, or fine of 2,500 rupees, or both.	Non- cognizable.	Bailable.	Any Magistrate.
222(b)	Wilfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences, etc.	Simple imprisonment for 6 months, or fine of 5,000 rupees, or both.	Non- cognizable.	Bailable.	Any Magistrate.
223(a)	Disobedience to an order lawfully promulgated by a	Simple imprisonment for 6 months,	Cognizable.	Bailable.	Any Magistrate.

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	public servant, if such disobedience causes obstruction, annoyance or injury to persons lawfully employed.	or fine of 2,500 rupees, or both.			
223(b)	If such disobedience causes danger to human life, health or safety, or causes or tends to cause a riot or affray.	Imprisonment for 1 year, or fine of 5,000 rupees, or both.	Cognizable.	Bailable.	Any Magistrate.
224	Threat of injury to public servant, etc.	Imprisonment for 2 years, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
225	Threat of injury to induce person to refrain from applying for protection to public servant.	Imprisonment for 1 year, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
226	Attempt to commit suicide to compel or restraint exercise of lawful power.	Imprisonment for 1 year, or fine, or both, or community service.	Non- cognizable.	Bailable.	Any Magistrate.
229(1)	Intentionally giving or fabricating false evidence in a judicial proceeding.	Imprisonment for 7 years and 10,000 rupees.	Non- cognizable.	Bailable.	Magistrate of the first class.
229(2)	Giving or fabricating false	Imprisonment for 3 years	Non- cognizable.	Bailable.	Any Magistrate.

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	evidence in any other case.	and 5,000 rupees.			
230(1)	Giving or fabricating false evidence with intent to cause any person to be convicted of capital offence.	Imprisonment for life, or rigorous imprisonment for 10 years and 50,000 rupees.	Non- cognizable.	Non- bailable.	Court of Session.
230(2)	If innocent person be thereby convicted and executed.	Death, or as above.	Non- cognizable.	Non- bailable.	Court of Session.
231	Giving or fabricating false evidence with intent to procure conviction of an offence punishable with imprisonment for life or with imprisonment for 7 years, or upwards.	The same as for the offence.	Non- cognizable.	Non- bailable.	Court of Session.
232(1)	Threatening any person to give false evidence.	Imprisonment for 7 years, or fine, or both.	Cognizable.	Non- bailable.	Court by which offence of giving false evidence is triable.
232(2)	If innocent person is convicted and sentenced in consequence of false evidence with death, or	The same as for the offence.	Cognizable.	Non- bailable.	Court by which offence of giving false evidence is triable.

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	imprisonment for more than 7 years.				
233	Using in a judicial proceeding evidence known to be false or fabricated.	The same as for giving or fabricating false evidence.	Non- cognizable.	According as offence of giving such evidence is bailable or non- bailable.	Court by which offence of giving or fabricating false evidence is triable.
234	Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence.	The same as for giving false evidence.	Non- cognizable.	Bailable.	Court by which offence of giving false evidence is triable.
235	Using as a true certificate one known to be false in a material point.	The same as for giving false evidence.	Non- cognizable.	Bailable.	Court by which offence of giving false evidence is triable.
236	False statement made in any declaration which is by law receivable as evidence.	The same as for giving false evidence.	Non- cognizable.	Bailable.	Court by which offence of giving false evidence is triable.
237	Using as true any such declaration known to be false.	The same as for giving false evidence.	Non- cognizable.	Bailable.	Court by which offence of giving false evidence is triable.
238(a)	Causing disappearance of evidence of an offence committed, or	Imprisonment for 7 years and fine.	According as the offence in relation to which disappearance of evidence is	Bailable.	Court of Session.

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	giving false information touching it to screen the offender, if a capital offence.		caused is cognizable or non- cognizable.		
238(b)	If punishable with imprisonment for life or imprisonment for 10 years.	Imprisonment for 3 years and fine.	Non- cognizable.	Bailable.	Magistrate of the first class.
238(c)	If punishable with less than 10 years' imprisonment.	Imprisonment for one-fourth of the longest term provided for the offence, or fine, or both.	Non- cognizable.	Bailable.	Court by which the offence is triable.
239	Intentional omission to give information of an offence by a person legally bound to inform.	Imprisonment for 6 months, or fine of 5,000 rupees, or both.	Non- cognizable.	Bailable.	Any Magistrate.
240	Giving false information respecting an offence committed.	Imprisonment for 2 years, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
241	Secreting or destroying any document to prevent its production as evidence.	Imprisonment for 3 years, or fine of 5,000 rupees, or both.	Non- cognizable.	Bailable.	Magistrate of the first class.

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242	False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security.	Imprisonment for 3 years, or fine, or both.	Non- cognizable.	Bailable.	Magistrate of the first class.
243	Fraudulent removal or concealment, etc., of property to prevent its seizure as a forfeiture or in satisfaction of a fine under sentence, or in execution of a decree.	Imprisonment for 3 years, or fine, of 5,000 rupees, or both.	Non- cognizable.	Bailable.	Any Magistrate.
244	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Imprisonment for 2 years, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
245	Fraudulently suffering a decree to pass for a sum not due, or suffering decree to	Imprisonment for 2 years, or fine, or both.	Non- cognizable.	Bailable.	Magistrate of the first class.

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	be executed after it has been satisfied.				
246	False claim in a Court.	Imprisonment for 2 years and fine.	Non- cognizable.	Bailable.	Magistrate of the first class.
247	Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied.	Imprisonment for 2 years, or fine, or both.	Non- cognizable.	Bailable.	Magistrate of the first class.
248(a)	False charge of offence made with intent to injure.	Imprisonment for 5 years, or fine of 2 lakh rupees, or both.	Non- cognizable.	Bailable.	Magistrate of the first class.
248(b)	Criminal proceeding instituted on a false charge of an offence punishable with death, imprisonment for life, or imprisonment for ten years or upwards.	Imprisonment for 10 years and fine.	Non- cognizable.	Bailable.	Court of Session.
249(a)	Harbouring an offender, if the offence is punishable with death.	Imprisonment for 5 years and fine.	Cognizable.	Bailable.	Magistrate of the first class.
249(b)	If punishable with imprisonment for life or with	Imprisonment for 3 years and fine.	Cognizable.	Bailable.	Magistrate of the first class.

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	imprisonment for 10 years.				
249(c)	If punishable with imprisonment for 1 year and not for 10 years.	Imprisonment for one-fourth of the longest term, and of the descriptions, provided for the offence, or fine, or both.	Cognizable.	Bailable.	Magistrate of the first class.
250(a)	Taking gift, etc., to screen an offender from punishment if the offence is punishable with death.	Imprisonment for 7 years and fine.	Cognizable.	Bailable.	Magistrate of the first class.
250(b)	If punishable with imprisonment for life or with imprisonment for 10 years.	Imprisonment for 3 years and fine.	Cognizable.	Bailable.	Magistrate of the first class.
250(c)	If punishable with imprisonment for less than 10 years.	Imprisonment for one-fourth of the longest term provided for the offence, or fine, or both.	Cognizable.	Bailable.	Magistrate of the first class.
251(a)	Offering gift or restoration of property in consideration of screening offender if the offence is punishable with death.	Imprisonment for 7 years and fine.	Non- cognizable.	Bailable.	Magistrate of the first class.

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251(b)	If punishable with imprisonment for life or with imprisonment for 10 years.	Imprisonment for 3 years and fine.	Non- cognizable.	Bailable.	Magistrate of the first class.
251(c)	If punishable with imprisonment for less than 10 years.	Imprisonment for one-fourth of the longest term, provided for the offence, or fine, or both.	Non- cognizable.	Bailable.	Magistrate of the first class.
252	Taking gift to help to recover movable property of which a person has been deprived by an offence without causing apprehension of offender.	Imprisonment for 2 years, or fine, or both.	Cognizable.	Bailable.	Magistrate of the first class.
253(a)	Harbouring an offender who has escaped from custody, or whose apprehension has been ordered, if the offence is punishable with death.	Imprisonment for 7 years and fine.	Cognizable.	Bailable.	Magistrate of the first class.
253(b)	If punishable with imprisonment for life or with imprisonment for 10 years.	Imprisonment for 3 years, with or without fine.	Cognizable.	Bailable.	Magistrate of the first class.
253(c)	If punishable with imprisonment for	Imprisonment for one-	Cognizable.	Bailable.	Magistrate of the first class.

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	1 year and not for 10 years.	fourth of the longest term provided for the offence, or fine, or both.			
254	Harbouring robbers or dacoits.	Rigorous imprisonment for 7 years and fine.	Cognizable.	Bailable.	Magistrate of the first class.
255	Public servant disobeying a direction of law with intent to save person from punishment, or property from forfeiture.	Imprisonment for 2 years, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
256	Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture.	Imprisonment for 3 years, or fine, or both.	Cognizable.	Bailable.	Magistrate of the first class.
257	Public servant in a judicial proceeding corruptly making and pronouncing an order, report, etc. contrary to law.	Imprisonment for 7 years, or fine, or both.	Non- cognizable.	Bailable.	Magistrate of the first class.
258	Commitment for trial or confinement by a	Imprisonment for 7 years, or fine, or both.	Non- cognizable.	Bailable.	Magistrate of the first class.

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	person having authority, who knows that he is acting contrary to law.				
259(a)	Intentional omission to apprehend on the part of a public servant bound by law to apprehend an offender, if the offence is punishable with death.	Imprisonment for 7 years, with or without fine.	According as the offence in relation to which such omission has been made is cognizable or non- cognizable.	Bailable.	Magistrate of the first class.
259(b)	If punishable with imprisonment for life or imprisonment for 10 years.	Imprisonment for 3 years, with or without fine.	Cognizable.	Bailable.	Magistrate of the first class.
259(c)	If punishable with imprisonment for less than 10 years.	Imprisonment for 2 years, with or without fine.	Cognizable.	Bailable.	Magistrate of the first class.
260(a)	Intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence of a Court if under sentence of death.	Imprisonment for life, or imprisonment for 14 years, with or without fine.	Cognizable.	Non- bailable.	Court of Session.
260(b)	If under sentence of imprisonment for life or	Imprisonment for 7 years,	Cognizable.	Non- bailable.	Magistrate of the first class.

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	imprisonment for 10 years, or upwards.	with or without fine.			
260(c)	If under sentence of imprisonment for less than 10 years or lawfully committed to custody.	Imprisonment for 3 years, or fine, or both.	Cognizable.	Bailable.	Magistrate of the first class.
261	Escape from confinement negligently suffered by a public servant.	Simple imprisonment for 2 years, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
262	Resistance or obstruction by a person to his lawful apprehension.	Imprisonment for 2 years, or fine, or both.	Cognizable.	Bailable.	Any Magistrate.
263(a)	Resistance or obstruction to the lawful apprehension of any person, or rescuing him from lawful custody.	Imprisonment for 2 years, or fine, or both.	Cognizable.	Bailable.	Any Magistrate.
263(b)	If charged with an offence punishable with imprisonment for life or imprisonment for 10 years.	Imprisonment for 3 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.
263(c)	If charged with offence punishable with death.	Imprisonment for 7 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.

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263(d)	If the person is sentenced to imprisonment for life, or imprisonment for 10 years, or upwards.	Imprisonment for 7 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.
263(e)	If under sentence of death.	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
264	Omission to apprehend, or sufferance of escape on part of public servant, in cases not otherwise provided for:- -				
	(a) in case of intentional omission or sufferance;	Imprisonment for 3 years, or fine, or both.	Non- cognizable.	Bailable.	Magistrate of the first class.
	(b) in case of negligent omission or sufferance.	Simple imprisonment for 2 years, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
265	Resistance or obstruction to lawful apprehension, or escape or rescue in cases not otherwise provided for.	Imprisonment for 6 months, or fine, or both.	Cognizable.	Bailable.	Any Magistrate.

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266	Violation of condition of remission of punishment.	Punishment of original sentence, or if part of the punishment has been undergone, the residue.	Cognizable.	Non- bailable.	The Court by which the original offence was triable.
267	Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.	Simple imprisonment for 6 months, or fine of 5,000 rupees, or both.	Non- cognizable.	Bailable.	The Court in which the offence is committed, subject to the provisions of Chapter XXVIII; or, if not committed, in a Court, any Magistrate.
268	Personation of an assessor.	Imprisonment for 2 years, or fine, or both.	Non- cognizable.	Bailable.	Magistrate of the first class.
269	Failure by person released on bond or bail bond to appear in Court.	Imprisonment for 1 year, or fine, or both.	Cognizable.	Non- bailable.	Any Magistrate.
271	Negligently doing any act known to be likely to spread infection of any disease dangerous to life.	Imprisonment for 6 months, or fine, or both.	Cognizable.	Bailable.	Any Magistrate.
272	Malignantly doing any act known to be likely to spread infection of any	Imprisonment for 2 years, or fine, or both.	Cognizable.	Bailable.	Any Magistrate.

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	disease dangerous to life.				
273	Knowingly disobeying any quarantine rule.	Imprisonment for 6 months, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
274	Adulterating food or drink intended for sale, so as to make the same noxious.	Imprisonment for 6 months, or fine of 5,000 rupees, or both.	Non- cognizable.	Bailable.	Any Magistrate.
275	Selling any food or drink as food and drink, knowing the same to be noxious.	Imprisonment for 6 months, or fine of 5,000 rupees, or both.	Non- cognizable.	Bailable.	Any Magistrate.
276	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious.	Imprisonment for 1 year, or fine of 5,000 rupees, or both.	Non- cognizable.	Non- bailable.	Any Magistrate.
277	Sale of adulterated drugs.	Imprisonment for 6 months, or fine of 5,000 rupees, or both.	Non- cognizable.	Bailable.	Any Magistrate.
278	Knowingly selling of drug as a different drug or preparation.	Imprisonment for 6 months, or fine of 5,000 rupees, or both.	Non- cognizable.	Bailable.	Any Magistrate.

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279	Fouling water of public spring or reservoir.	Imprisonment for 6 months, or fine of 5,000 rupees, or both.	Cognizable.	Bailable.	Any Magistrate.
280	Making atmosphere noxious to health.	Fine of 1,000 rupees.	Non- cognizable.	Bailable.	Any Magistrate.
281	Rash driving or riding on a public way.	Imprisonment for 6 months, or fine of 1,000 rupees, or both.	Cognizable.	Bailable.	Any Magistrate.
282	Rash navigation of vessel.	Imprisonment for 6 months, or fine of 10,000 rupees, or both.	Cognizable.	Bailable.	Any Magistrate.
283	Exhibition of a false light, mark or buoy.	Imprisonment for 7 years, and fine which shall not be less than 10,000 rupees.	Cognizable.	Bailable.	Magistrate of the first class.
284	Conveying person by water for hire in unsafe or overloaded vessel.	Imprisonment for 6 months, or fine of 5,000 rupees, or both.	Cognizable.	Bailable.	Any Magistrate.
285	Causing danger or obstruction in public way or line of navigation.	Fine of 5,000 rupees.	Cognizable.	Bailable.	Any Magistrate.
286	Negligent conduct with respect to	Imprisonment for 6 months,	Cognizable.	Bailable.	Any Magistrate.

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	poisonous substance.	or fine of 5,000 rupees, or both.			
287	Negligent conduct with respect to fire or combustible matter.	Imprisonment for 6 months, or fine of 2,000 rupees, or both.	Cognizable.	Bailable.	Any Magistrate.
288	Negligent conduct with respect to explosive substance.	Imprisonment for 6 months, or fine of 5,000 rupees, or both.	Cognizable.	Bailable.	Any Magistrate.
289	Negligent conduct with respect to machinery.	Imprisonment for 6 months, or fine of 5,000 rupees, or both.	Non- cognizable.	Bailable.	Any Magistrate.
290	Negligent conduct with respect to pulling down, repairing or constructing buildings, etc.	Imprisonment for 6 months, or fine of 5,000 rupees, or both.	Non- cognizable.	Bailable.	Any Magistrate.
291	Negligent conduct with respect to animal.	Imprisonment for 6 months, or fine of 5,000 rupees, or both.	Cognizable.	Bailable.	Any Magistrate.
292	Committing public nuisance in cases not otherwise provided for.	Fine of 1,000 rupees.	Non- cognizable.	Bailable.	Any Magistrate.
293	Continuance of nuisance after	Simple imprisonment	Cognizable.	Bailable.	Any Magistrate.

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	injunction to discontinue.	for 6 months, or fine of 5,000 rupees, or both.			
294(2)	Sale, etc., of obscene books, etc.	On first conviction, with imprisonment for 2 years, and with fine of 5,000 rupees, and, in the event of second or subsequent conviction, with imprisonment for 5 years, and with fine of 10,000 rupees.	Cognizable.	Bailable.	Any Magistrate.
295	Sale, etc., of obscene objects to child.	On first conviction, with imprisonment for 3 years, and with fine of 2,000 rupees, and in the event of second or subsequent conviction, with imprisonment for 7 years,	Cognizable.	Bailable.	Any Magistrate.

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		and with fine of 5,000 rupees.			
296	Obscene acts and songs.	Imprisonment for 3 months, or fine of 1,000 rupees, or both.	Cognizable.	Bailable.	Any Magistrate.
297(1)	Keeping a lottery office.	Imprisonment for 6 months, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
297(2)	Publishing proposals relating to lotteries.	Fine of 5,000 rupees.	Non- cognizable.	Bailable.	Any Magistrate.
298	Defiling, etc., place of worship, with intent to insult the religion of any class.	Imprisonment for 2 years, or fine, or both.	Cognizable.	Non- bailable.	Any Magistrate.
299	Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs.	Imprisonment for 3 years, or fine, or both.	Cognizable.	Non- bailable.	Magistrate of the first class.
300	Disturbing religious assembly.	Imprisonment for 1 year, or fine, or both.	Cognizable.	Bailable.	Any Magistrate.
301	Trespassing on burial places, etc.	Imprisonment for 1 year, or fine, or both.	Cognizable.	Bailable.	Any Magistrate.

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302	Uttering words, etc., with deliberate intent to wound religious feelings.	Imprisonment for 1 year, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
303(2)	Theft.	Rigorous imprisonment for not be less than 1 year but which may extend to 5 years, and fine.	Cognizable.	Non- bailable.	Any Magistrate.
	Where value of property is less than 5,000 rupees.	Upon return of the value of property or restoration of the stolen property, shall be punished with community service.	Non- cognizable.	Bailable.	Any Magistrate.
304(2)	Snatching.	Imprisonment for 3 years and fine.	Cognizable.	Non- bailable.	Any Magistrate.
305	Theft in a dwelling house, or means of transportation or place of worship, etc.	Imprisonment for 7 years and fine.	Cognizable.	Non- bailable.	Any Magistrate.
306	Theft by clerk or servant of property in possession of	Imprisonment for 7 years and fine.	Cognizable.	Non- bailable.	Any Magistrate.

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	master or employer.				
307	Theft after preparation made for causing death, hurt or restraint in order to the committing of theft.	Rigorous imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.
308(2)	Extortion.	Imprisonment for 7 years, or fine, or both.	Cognizable.	Non- bailable.	Magistrate of the first class.
308(3)	Putting or attempting to put in fear of injury, in order to commit extortion.	Imprisonment for 2 years, or fine, or both.	Cognizable.	Bailable.	Any Magistrate.
308(4)	Putting or attempting to put a person in fear of death or grievous hurt in order to commit extortion.	Imprisonment for 7 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.
308(5)	Extortion by putting a person in fear of death or grievous hurt.	Imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.
308(6)	Putting a person in fear of accusation of an offence punishable with death, imprisonment for life, or imprisonment for 10 years in order	Imprisonment for 10 years and fine.	Cognizable.	Bailable.	Magistrate of the first class.

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	to commit extortion.				
308(7)	Extortion by threat of accusation of an offence punishable with death, imprisonment for life, or imprisonment for 10 years.	Imprisonment for 10 years and fine.	Cognizable.	Bailable.	Magistrate of the first class.
309(4)	Robbery.	Rigorous imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.
	If robbery committed on highway between sunset and sunrise.	Rigorous imprisonment for 14 years.	Cognizable.	Non- bailable.	Magistrate of the first class.
309(5)	Attempt to commit robbery.	Rigorous imprisonment for 7 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.
309(6)	Causing hurt.	Imprisonment for life, or rigorous imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.
310(2)	Dacoity.	Imprisonment for life, or rigorous imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.

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310(3)	Murder in dacoity.	Death, imprisonment for life, or rigorous imprisonment for not less than 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
310(4)	Making preparation to commit dacoity.	Rigorous imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
310(5)	Being one of five or more persons assembled for the purpose of committing dacoity.	Rigorous imprisonment for 7 years and fine.	Cognizable.	Non- bailable.	Court of Session.
310(6)	Belonging to a gang of persons associated for the purpose of habitually committing dacoity.	Imprisonment for life, or rigorous imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
311	Robbery or dacoity, with attempt to cause death or grievous hurt.	Imprisonment for not less than 7 years.	Cognizable.	Non- bailable.	Court of Session.
312	Attempt to commit robbery or dacoity when armed with deadly weapon.	Imprisonment for not less than 7 years.	Cognizable.	Non- bailable.	Court of Session.
313	Belonging to a wandering gang	Rigorous imprisonment	Cognizable.	Non- bailable.	Magistrate of the first class.

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	of persons associated for the purpose of habitually committing thefts.	for 7 years and fine.			
314	Dishonest misappropriation of movable property, or converting it to one's own use.	Imprisonment of not less than 6 months but which may extend to 2 years and fine.	Non- cognizable.	Bailable.	Any Magistrate.
315	Dishonest misappropriation of property possessed by deceased person at the time of his death.	Imprisonment for 3 years and fine.	Non- cognizable.	Bailable.	Magistrate of the first class.
	If by clerk or person employed by deceased.	Imprisonment for 7 years.	Non- cognizable.	Bailable.	Magistrate of the first class.
316(2)	Criminal breach of trust.	Imprisonment for 5 years, or fine, or both.	Cognizable.	Non- bailable.	Magistrate of the first class.
316(3)	Criminal breach of trust by a carrier, wharfinger, etc.	Imprisonment for 7 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.
316(4)	Criminal breach of trust by a clerk or servant.	Imprisonment for 7 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.
316(5)	Criminal breach of trust by public servant or by banker, merchant or agent, etc.	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.

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317(2)	Dishonestly receiving stolen property knowing it to be stolen.	Imprisonment for 3 years, or fine, or both.	Cognizable.	Non- bailable.	Any Magistrate.
317(3)	Dishonestly receiving stolen property, knowing that it was obtained by dacoity.	Imprisonment for life, or rigorous imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
317(4)	Habitually dealing in stolen property.	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
317(5)	Assisting in concealment or disposal of stolen property, knowing it to be stolen.	Imprisonment for 3 years, or fine, or both.	Cognizable.	Non- bailable.	Any Magistrate.
318(2)	Cheating.	Imprisonment for 3 years, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
318(3)	Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	Imprisonment for 5 years, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
318(4)	Cheating and dishonestly inducing delivery of property.	Imprisonment for 7 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.
319(2)	Cheating by personation.	Imprisonment for 5 years, or	Cognizable	Bailable.	Any Magistrate.

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		with fine, or with both.			
320	Fraudulent removal or concealment of property, etc., to prevent distribution among creditors.	Imprisonment of not be less than 6 months but which may extend to 2 years, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
321	Dishonest or fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	Imprisonment for 2 years, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
322	Dishonest or fraudulent execution of deed of transfer containing a false statement of consideration.	Imprisonment for 3 years, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
323	Fraudulent removal or concealment of property, of himself or any other person or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled.	Imprisonment for 3 years, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.

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324(2)	Mischief.	Imprisonment for 6 months, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
324(3)	Mischief causing loss or damage to any property including property of Government or Local Authority.	Imprisonment for 1 year, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
324(4)	Mischief causing loss or damage to the amount of twenty thousand rupees but less than 2 lakh rupees.	Imprisonment for 2 years, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
324(5)	Mischief causing loss or damage to the amount of one lakh rupees or upwards.	Imprisonment for 5 years, or fine, or both.	Cognizable.	Bailable.	Magistrate of the first class.
324(6)	Mischief with preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint.	Imprisonment for 5 years, and fine.	Cognizable.	Bailable.	Magistrate of the first class.
325	Mischief by killing or maiming animal.	Imprisonment for 5 years, or fine, or both.	Cognizable.	Bailable.	Magistrate of the first class.

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326(a)	Mischief by causing diminution of supply of water for agricultural purposes, etc.	Imprisonment for 5 years, or fine, or both.	Cognizable.	Bailable.	Magistrate of the first class.
326(b)	Mischief by injury to public road, bridge, navigable river, or navigable channel, and rendering it impassable or less safe for travelling or conveying property.	Imprisonment for 5 years, or fine, or both.	Cognizable.	Bailable.	Magistrate of the first class.
326(c)	Mischief by causing inundation or obstruction to public drainage attended with damage.	Imprisonment for 5 years, or with fine, or with both.	Cognizable.	Bailable.	Magistrate of the first class.
326(d)	Mischief by destroying or moving or rendering less useful a lighthouse or seamark, or by exhibiting false lights.	Imprisonment for 7 years, or fine, or both.	Cognizable.	Bailable.	Magistrate of the first class.
326(e)	Mischief by destroying or moving, etc., a landmark fixed by public authority.	Imprisonment for 1 year, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.

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326(f)	Mischief by fire or explosive substance with intent to cause damage.	Imprisonment for 7 years and fine.	Cognizable.	Bailable.	Magistrate of the first class.
326(g)	Mischief by fire or explosive substance with intent to destroy a house, etc.	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
327(1)	Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tonnes burden.	Imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
327(2)	The mischief described in the last section when committed by fire or any explosive substance.	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
328	Running vessel with intent to commit theft, etc.	Imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
329(3)	Criminal trespass.	Imprisonment for 3 months, or fine of 5,000 rupees, or both.	Cognizable.	Bailable.	Any Magistrate.
329(4)	House- trespass.	Imprisonment for 1 year, or fine of 5,000 rupees, or both.	Cognizable.	Bailable.	Any Magistrate.

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331(1)	Lurking house-trespass or house-breaking.	Imprisonment for 2 years and fine.	Cognizable.	Non- bailable.	Any Magistrate.
331(2)	Lurking house-trespass or house-breaking by night.	Imprisonment for 3 years and fine.	Cognizable.	Non- bailable.	Any Magistrate.
331(3)	Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.	Imprisonment for 3 years and fine.	Cognizable.	Non- bailable.	Any Magistrate.
	If the offence be theft.	Imprisonment for 10 years.	Cognizable.	Non- bailable.	Magistrate of the first class.
331(4)	Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.	Imprisonment for 5 years and fine.	Cognizable.	Non- bailable.	Any Magistrate.
	If the offence be theft.	Imprisonment for 14 years.	Cognizable.	Non- bailable.	Magistrate of the first class.
331(5)	Lurking house-trespass or house-breaking after preparation made for causing hurt, assault, etc.	Imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.
331(6)	Lurking house-trespass or house-breaking by night, after preparation	Imprisonment for 14 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.

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	made for causing hurt, etc.				
331(7)	Grievous hurt caused whilst committing lurking house-trespass or house-breaking.	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
331(8)	Death or grievous hurt caused by one of several persons jointly concerned in house- breaking by night, etc.	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
332(a)	House- trespass in order to the commission of an offence punishable with death.	Imprisonment for life, or rigorous imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
332(b)	House- trespass in order to the commission of an offence punishable with imprisonment for life.	Imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
332(c)	House- trespass in order to the commission of an offence punishable with imprisonment.	Imprisonment for 2 years and fine.	Cognizable.	Bailable.	Any Magistrate.
	If the offence is theft.	Imprisonment for 7 years.	Cognizable.	Non- bailable.	Any Magistrate.

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333	House- trespass, having made preparation for causing hurt, assault, etc.	Imprisonment for 7 years and fine.	Cognizable.	Non- bailable.	Any Magistrate.
334(1)	Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property.	Imprisonment for 2 years, or fine, or both.	Cognizable.	Non- bailable.	Any Magistrate.
334(2)	Being entrusted with any closed receptacle containing or supposed to contain any property, and fraudulently opening the same.	Imprisonment for 3 years, or fine, or both.	Cognizable.	Bailable.	Any Magistrate.
336(2)	Forgery.	Imprisonment for 2 years, or fine, or both.	Non- cognizable.	Bailable.	Magistrate of the first class.
336(3)	Forgery for the purpose of cheating.	Imprisonment for 7 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.
336(4)	Forgery for the purpose of harming the reputation of any person or knowing that it is likely to be used for that purpose.	Imprisonment for 3 years and fine.	Cognizable.	Bailable.	Magistrate of the first class.

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337	Forgery of a record of a Court or of a Registrar of Births, etc., kept by a public servant.	Imprisonment for 7 years and fine	Non- cognizable.	Non- bailable.	Magistrate of the first class.
338	Forgery of a valuable security, will, or authority to make or transfer any valuable security, or to receive any money, etc.	Imprisonment for life, or imprisonment for 10 years and fine.	Non- cognizable.	Non- bailable.	Magistrate of the first class.
	When the valuable security is a promissory note of the Central Government.	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.
339	Having possession of a document, knowing it to be forged, with intent to use it as genuine; if the document is one of the description mentioned in section 337.	Imprisonment for 7 years and fine.	Cognizable.	Bailable.	Magistrate of the first class.
	If the document is one of the description mentioned in section 338.	Imprisonment for life, or imprisonment for 7 years and fine.	Non- cognizable.	Bailable.	Magistrate of the first class.
340(2)	Using as genuine a forged document	Punishment for forgery of	Cognizable.	Bailable.	Magistrate of the first class.

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	which is known to be forged.	such document.			
341(1)	Making or counterfeiting a seal, plate, etc., with intent to commit a forgery punishable under section 338 or possessing with like intent any such seal, plate, etc., knowing the same to be counterfeit.	Imprisonment for life, or imprisonment for 7 years and fine.	Cognizable.	Bailable.	Magistrate of the first class.
341(2)	Making or counterfeiting a seal, plate, etc., with intent to commit a forgery punishable otherwise than under section 338 or possessing with like intent any such seal, plate, etc., knowing the same to be counterfeit.	Imprisonment for 7 years and fine.	Cognizable.	Bailable.	Magistrate of the first class.
341(3)	Possesses any seal, plate or other instrument knowing the same to be counterfeit.	Imprisonment for 3 years and fine.	Cognizable.	Bailable.	Magistrate of the first class.
341(4)	Fraudulently or dishonestly uses as genuine any	Same as if he had made or counterfeited	Cognizable.	Bailable.	Magistrate of the first class.

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	seal, plate or other instrument knowing or having reason to believe the same to be counterfeit.	such seal, plate or other instrument.			
342(1)	Counterfeiting a device or mark used for authenticating documents described in section 338 or possessing counterfeit marked material.	Imprisonment for life, or imprisonment for 7 years and fine.	Non- cognizable.	Bailable.	Magistrate of the first class.
342(2)	Counterfeiting a device or mark used for authenticating documents other than those described in section 338 or possessing counterfeit marked material.	Imprisonment for 7 years and fine.	Non- cognizable.	Non- bailable.	Magistrate of the first class.
343	Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting, a will, etc.	Imprisonment for life, or imprisonment for 7 years and fine.	Non- cognizable.	Non- bailable.	Magistrate of the first class.
344	Falsification of accounts.	Imprisonment for 7 years, or fine, or both.	Non- cognizable.	Bailable.	Magistrate of the first class.

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345(3)	Using a false property mark with intent to deceive or injure any person.	Imprisonment for 1 year, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
346	Removing, destroying or defacing property mark with intent to cause injury.	Imprisonment for 1 year, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
347(1)	Counterfeiting a property mark used by another, with intent to cause damage or injury.	Imprisonment for 2 years, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
347(2)	Counterfeiting a property mark used by a public servant, or any mark used by him to denote the manufacture, quality, etc., of any property.	Imprisonment for 3 years and fine.	Non- cognizable.	Bailable.	Magistrate of the first class.
348	Fraudulently making or having possession of any die, plate or other instrument for counterfeiting any public or private property mark.	Imprisonment for 3 years, or fine, or both.	Non- cognizable.	Bailable.	Magistrate of the first class.
349	Knowingly selling goods marked with a counterfeit property mark.	Imprisonment for 1 year, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.

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350(1)	Fraudulently making a false mark upon any package or receptacle containing goods, with intent to cause it to be believed that it contains goods, which it does not contain, etc.	Imprisonment for 3 years, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
350(2)	Making use of any such false mark.	Imprisonment for 3 years, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
351(2)	Criminal intimidation.	Imprisonment for 2 years, or fine, or both.	Non- cognizable	Bailable	Any Magistrate.
351(3)	If threat be to cause death or grievous hurt, etc.	Imprisonment for 7 years, or fine, or both.	Non- cognizable	Bailable	Magistrate of the first class.
351(4)	Criminal intimidation by anonymous communication or having taken precaution to conceal whence the threat comes.	Imprisonment for 2 years, in addition to the punishment under section 351(1).	Non- cognizable.	Bailable.	Magistrate of the first class.
352	Insult intended to provoke breach of the peace.	Imprisonment for 2 years, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
353(1)	False statement, rumour, etc., circulated with intent to cause mutiny or offence	Imprisonment for 3 years, or fine, or both.	Non- cognizable.	Non- bailable.	Any Magistrate.

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	against the public peace.				
353(2)	False statement, rumour, etc., with intent to create enmity, hatred or ill- will between different classes.	Imprisonment for 3 years, or fine, or both.	Cognizable.	Non- bailable.	Any Magistrate.
353(3)	False statement, rumour, etc., made in place of worship, etc., with intent to create enmity, hatred or ill- will.	Imprisonment for 5 years and fine.	Cognizable.	Non- bailable.	Any Magistrate.
354	Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure.	Imprisonment for 1 year, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
355	Appearing in a public place, etc., in a state of intoxication, and causing annoyance to any person.	Simple imprisonment for 24 hours, or fine of 1,000 rupees, or both or with community service.	Non- cognizable.	Bailable.	Any Magistrate.
356(2)	Defamation against the President or the Vice- President or the Governor of a State or Administrator of a	Simple imprisonment for 2 years, or fine or both, or community service.	Non- cognizable.	Bailable.	Court of Session.

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	Union territory or a Minister in respect of his conduct in the discharge of his public functions when instituted upon a complaint made by the Public Prosecutor.				
	Defamation in any other case.	Simple imprisonment for 2 years, or fine or both or community service.	Non- cognizable.	Bailable.	Magistrate of the first class.
356(3)	Printing or engraving matter knowing it to be defamatory against the President or the Vice- President or the Governor of a State or Administrator of a Union territory or a Minister in respect of his conduct in the discharge of his public functions when instituted upon a complaint made by the Public Prosecutor.	Simple imprisonment for 2 years, or fine, or both.	Non- cognizable.	Bailable.	Court of Session.

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	Printing or engraving matter knowing it to be defamatory, in any other case.	Simple imprisonment for 2 years, or fine, or both.	Non- cognizable.	Bailable.	Magistrate of the first class.
356(4)	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter against the President or the Vice- President or the Governor of a State or Administrator of a Union territory or a Minister in respect of his conduct in the discharge of his public functions when instituted upon a complaint made by the Public Prosecutor.	Simple imprisonment for 2 years, or fine, or both.	Non- cognizable.	Bailable.	Court of Session.
	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter in any other case.	Simple imprisonment for 2 years, or fine, or both.	Non- cognizable.	Bailable.	Magistrate of the first class.

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357	Being bound to attend on or supply the wants of a person who is helpless from youth, unsoundness of mind or disease, and voluntarily omitting to do so.	Imprisonment for 3 months, or fine of 5,000 rupees, or both.	Non- cognizable.	Bailable.	Any Magistrate.

II.- - CLASSIFICATION OF OFFENCES AGAINST OTHER LAWS

Offence	Cognizable or non- cognizable.	Bailable or non-bailable.	By what court triable.
1	2	3	4
If punishable with death, imprisonment for life, or imprisonment for more than 7 years.	Cognizable.	Non- bailable.	Court of Session.
If punishable with imprisonment for 3 years and upwards but not more than 7 years.	Cognizable.	Non- bailable.	Magistrate of the first class.
If punishable with imprisonment for less than 3 years or with fine only.	Non- cognizable.	Bailable.	Any Magistrate.

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THE SECOND SCHEDULE

(See section 522)

FORM No. 1

NOTICE FOR APPEARANCE BY THE POLICE

[See section 35(3)]

Serial No……. Police Station……

To,

.....

[Name of the Accused/Noticee]

.....

[Last known Address]

.....

[Phone No./Email ID (if any)]

In pursuance of sub- section (3) of section 35 of the Bharatiya Nagarik Suraksha Sanhita, 2023, I hereby inform you that during the investigation of FIR/ Case No …….. dated …… u/s. …… registered at Police Station ……..., it is revealed that there are reasonable grounds to question you to ascertain facts and circumstances from you, in relation to the present investigation. Hence you are directed to appear before me at …… ..... …… AM/PM on……... at

Police Station.

Name and Designation of the Officer In charge

(Seal)

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FORM No. 2

SUMMONS TO AN ACCUSED PERSON

(See section 63)

To ..... (name of accused) of ..... (address)

Whereas your attendance is necessary to answer to a charge of .... (state shortly the offence charged), you are hereby required to appear in person (or by an advocate, before the (Magistrate) of ....., on the ..... day ..... Herein fail not.

Dated, this ..... day of ....., 20 .....

(Seal of the Court)

(Signature)

FORM No. 3

WARRANT OF ARREST

(See section 72)

To ..... (name and designation of the person or persons who is or are to execute the warrant).

Whereas (name of accused) of (address) stands charged with the offence of ..... (state the offence), you are hereby directed to arrest the said ....., and to produce him before me. Herein fail not.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

(See section 73)

This warrant may be endorsed as follows:- -

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If the said ..... shall give bail himself in the sum of rupees ..... with one surety in the sum of rupees ..... (or two sureties each in the sum of rupees .....) to attend before me on the . ..... day of ..... and to continue so to attend until otherwise directed by me, he may be released.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 4

BOND AND BAIL- BOND AFTER ARREST UNDER A WARRANT

(See section 83)

I, ... (name), of ....., being brought before the District Magistrate of ..... (or as the case may be) under a warrant issued to compel my appearance to answer to the charge of ....., do hereby bind myself to attend in the Court of ..... on the ..... day of ..... next, to answer to the said charge, and to continue so to attend until otherwise directed by the Court; and, in case of my making default herein, I bind myself to forfeit, to Government, the sum of rupees .....

Dated, this ..... day of ....., 20 ..... .

(Signature)

I do hereby declare myself surety for the above- named ..... of ..... that he shall attend before in the Court of on the ..... day of ..... next, to answer to the charge on which he has been arrested, and shall continue so to attend until otherwise directed by the Court; and, in case of his making default therein, I bind myself to forfeit, to Government, the sum of rupees .....

Dated, this ..... day of ....., 20 ..... .

(Signature)

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FORM No. 5

PROCLAMATION REQUIRING THE APPEARANCE OF A PERSON ACCUSED

(See section 84)

Whereas a complaint has been made before me that ..... (name, description and address) has committed (or is suspected to have committed) the offence of ....., punishable under section ..... of the Bharatiya Nyaya Sanhita, 2023, and it has been returned to a warrant of arrest thereupon issued that the said ..... (name) cannot be found, and whereas it has been shown to my satisfaction that the said ..... (name) has absconded (or is concealing himself to avoid the service of the said warranty);

Proclamation is hereby made that the said ..... of ..... is required to appear at ..... (place) before this Court (or before me) to answer the said complaint on the ..... day of .....

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 6

PROCLAMATION REQUIRING THE ATTENDANCE OF A WITNESS

(See sections 84, 90 and 93)

Whereas complaint has been made before me that ..... (name, description and address) has committed (or is suspected to have committed) the offence of ..... (mention the offence concisely) and a warrant has been issued to compel the attendance of ..... (name, description and address of the witness) before this Court to be examined touching the matter of the said complaint; and whereas it has been returned to the said warrant that the said ..... (name of witness) cannot be served, and it has been shown to my satisfaction that he has absconded (or is concealing himself to avoid the service of the said warrant);

Proclamation is hereby made that the said ..... (name) is required to appear at ..... (place) before the Court

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..... on the ..... day of .....
next at ..... o'clock to be examined touching
..... the offence complained of.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 7

ORDER OF ATTACHMENT TO COMPEL THE ATTENDANCE OF A WITNESS

(See section 85)

To the officer in charge of the police station at .....

Whereas a warrant has been duly issued to compel the attendance of ..... (name, description and address) to testify concerning a complaint pending before this Court, and it has been returned to the said warrant that it cannot be served; and whereas it has been shown to my satisfaction that he has absconded (or is concealing himself to avoid the service of the said warrant); and thereupon a Proclamation has been or is being duly issued and published requiring the said ..... to appear and give evidence at the time and place mentioned therein;

This is to authorise and require you to attach by seizure the movable property belonging to the said ..... to the value of rupees ..... which you may find within the District ..... of ..... and to hold the said property under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 8

ORDER OF ATTACHMENT TO COMPEL THE APPEARANCE OF A PERSON ACCUSED

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(See section 85)

To ..... (name and designation of the person or persons who is or are to execute the warrant).

Whereas complaint has been made before me that ..... (name, description and address) has committed (or is suspected to have committed) the offence of ..... punishable under section ..... of the Bharatiya Nyaya Sanhita, 2023 and it has been returned to a warrant of arrest thereupon issued that the said ..... (name) cannot be found; and whereas it has been shown to my satisfaction that the said ..... (name) has absconded (or is concealing himself to avoid the service of the said warrant) and thereupon a Proclamation has been or is being duly issued and published requiring the said ..... to appear to answer the said charge within ..... days; and whereas the said ..... is possessed of the following property, other than land paying revenue to Government, in the village (or town), of ....., in the District of ....., viz., ..., and an order has been made for the attachment thereof;

You are hereby required to attach the said property in the manner specified in clause (a), or clause (c), or both*, of sub- section (3) of section 85, and to hold the same under attachment pending further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

*Strike out the one which is not applicable, depending on the nature of the property to be attached.

FORM No. 9

ORDER AUTHORISING AN ATTACHMENT BY THE DISTRICT MAGISTRATE

(See section 85)

To the District Magistrate/Collector of the District of .....

Whereas complaint has been made before me that ..... (name, description and address) has committed (or is suspected to have committed) the offence

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of ....., punishable under section ..... of the Bharatiya Nyaya Sanhita, 2023 and it has been returned to a warrant of arrest thereupon issued that the said ..... (name) cannot be found; and whereas it has been shown to my satisfaction that the said ..... (name) has absconded (or is concealing himself to avoid the service of the said warrant) and thereupon a Proclamation has been or is being duly issued and published requiring the said ..... (name) to appear to answer the said charge within ..... days; and whereas the said ..... is possessed of certain land paying revenue to Government in the village (or town) of ....., in the District of .....;

You are hereby authorised and requested to cause the said land to be attached, in the manner specified in clause (a), or clause (c), or both*, of sub- section (4) of section 85, and to be held under attachment pending the further order of this Court, and to certify without delay what you may have done in pursuance of this order.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

*Strike out the one which is not desired.

FORM No. 10

WARRANT IN THE FIRST INSTANCE TO BRING UP A WITNESS

(See section 90)

To ..... (name and designation of the police officer or other person or persons who is or are to execute the warrant).

Whereas complaint has been made before me that ..... (name and description of accused) of ..... (address) has (or is suspected to have) committed the offence of ..... (mention the offence concisely), and it appears likely that ..... (name and description of witness) can give evidence concerning the said complaint, and whereas I have good and sufficient reason to believe that he will not attend as a witness on the hearing of the said complaint unless compelled to do so;

This is to authorise and require you to arrest the said ..... (name of witness), and on the ..... day of ..... to

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bring him before this Court ....., to be examined touching the offence complained of.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 11

WARRANT TO SEARCH AFTER INFORMATION OF A PARTICULAR OFFENCE

(See section 96)

To ..... (name and designation of the police officer or other person or persons who is or are to execute the warrant).

Whereas information has been laid ..... (or complaint has been made) before me of the commission ..... (or suspected commission) of the offence of ..... (mention the offence concisely), and it has been made to appear to me that the production of ..... (specify the thing clearly) is essential to the inquiry now being made (or about to be made) into the said offence (or suspected offence);

This is to authorise and require you to search for the said ..... (the thing specified) in the ..... (describe the house or place or part thereof to which the search is to be confined), and, if found, to produce the same forthwith before this Court, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

Signature)

FORM No. 12

WARRANT TO SEARCH SUSPECTED PLACE OF DEPOSIT

(See section 97)

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To ..... (name and designation of the police officer above the rank of a constable).

Whereas information has been laid before me, and on due inquiry thereupon had, I have been led to believe that the ..... (describe the house or other place) is used as a place for the deposit (or sale) of stolen property (or if for either of the other purposes expressed in the section, state the purpose in the words of the section);

This is to authorise and require you to enter the said house (or other place) with such assistance as shall be required, and to use, if necessary, reasonable force for that purpose, and to search every part of the said house (or other place, or if the search is to be confined to a part, specify the part clearly), and to seize and take possession of any property (or documents, or stamps, or seals, or coins, or obscene objects, as the case may be) (add, when the case requires it) and also of any instruments and materials which you may reasonably believe to be kept for the manufacture of forged documents, or counterfeit stamps, or false seals, or counterfeit coins or counterfeit currency notes (as the case may be), and forthwith to bring before this Court such of the said things as may be taken possession of, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 13

BOND TO KEEP THE PEACE

(See sections 125 and 126)

Whereas I, ... (name), inhabitant of ..... (place), have been called upon to enter into a bond to keep the peace for the term of ..... or until the completion of the inquiry in the matter of ..... now pending in the Court of ....., I hereby bind myself not to commit a breach of the peace, or do any act that may probably occasion a breach of the peace, during the said term or until the completion of the said inquiry and, in case of my making default therein, I hereby bind myself to forfeit, to Government, the sum of rupees .....

Dated, this ..... day of ....., 20 ..... .

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(Signature)

FORM No. 14

BOND FOR GOOD BEHAVIOUR

(See sections 127, 128 and 129)

Whereas I, ... (name), inhabitant of ..... (place), have been called upon to enter into a bond to be of good behaviour to Government and all the citizens of India for the term of ..... (state the period) or until the completion of the inquiry in the matter of ..... now pending in the Court of ....., I hereby bind myself to be of good behaviour to Government and all the citizens of India during the said term or until the completion of the said inquiry; and, in case of my making default therein, I hereby bind myself to forfeit to Government the sum of rupees .....

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

(Where a bond with sureties is to be executed, add)

We do hereby declare ourselves sureties for the above- named ..... that he will be of good behaviour to Government and all the citizens of India during the said term or until the completion of the said inquiry; and, in case of his making default therein, we bind ourselves, jointly and severally, to forfeit to Government the sum of rupees .....

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 15

SUMMONS ON INFORMATION OF A PROBABLE BREACH OF THE PEACE

(See section 132)

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To ..... of .....

Whereas it has been made to appear to me by credible information that ..... (state the substance of the information), and that you are likely to commit a breach of the peace (or by which act a breach of the peace will probably be occasioned), you are hereby required to attend in person (or by a duly authorised agent) at the office of the Magistrate of ..... on the ..... day of ..... 20 ....., at ten o'clock in the forenoon, to show cause why you should not be required to enter into a bond for rupees ..... [when sureties are required, add, and also to give security by the bond of one (or two, as the case may be) surety (or sureties) in the sum of rupees ..... (each if more than one)], that you will keep the peace for the term of .....

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 16

WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY TO KEEP THE PEACE

(See section 141)

To the Officer in charge of the Jail at .....

Whereas ..... (name and address) appeared before me in person (or by his authorised agent) on the ..... day of ..... in obedience to a summons calling upon him to show cause why he should not enter into a bond for rupees ..... with one surety (or a bond with two sureties each in rupees .....), that he, the said ..... (name) would keep the peace for the period of months; and whereas an order was then made requiring the said ..... (name) to enter into and find such security ..... (state the security ordered when it differs from that mentioned in the summons), and he has failed to comply with the said order;

This is to authorise and require you to receive the said ..... (name) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of ..... (term of imprisonment) unless he

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shall in the meantime be lawfully ordered to be released, and to return this warrant with an endorsement certifying the manner of its execution.

Dated, this .... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 17

WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY FOR GOOD BEHAVIOUR

(See section 141)

To the Officer in charge of the Jail at .....

Whereas it has been made to appear to me that ..... (name and description) has been concealing his presence within the district of ..... and that there is reason to believe that he is doing so with a view to committing a cognizable offence;

or

Whereas evidence of the general character of ..... (name and description) has been adduced before me and recorded, from which it appears that he is an habitual robber (or house- breaker, etc., as the case may be);

And Whereas an order has been recorded stating the same and requiring the said (name) to furnish security for his good behaviour for the term of (state the period) by entering into a bond with one surety (or two or more sureties, as the case may be), himself for rupees ..... and the said surety (or each of the said sureties) rupees ..... and the said ..... (name) has failed to comply with the said order and for such default has been adjudged imprisonment for (state the term) unless the said security be sooner furnished;

This is to authorise and require you receive the said ..... (name) into your custody, together with this warrant and him safely to keep in the Jail, or if he is already in prison, be detained therein, for the said period of (term of imprisonment) unless he shall in the meantime be lawfully ordered to be released, and to return this warrant with an endorsement certifying the manner of its execution.

Dated, this ..... day of ....., 20 ..... .

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(Seal of the Court)

(Signature)

FORM No. 18

WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY

(See sections 141 and 142)

To the Officer in charge of the Jail at ..... (or other officer in whose custody the person is).

Whereas ..... (name and description of prisoner) was committed to your custody under warrant of the Court, dated the ..... day of ..... 20 .....; and has since duly given security under section ..... of the Bharatiya Nagarik Suraksha Sanhita, 2023.

or

Whereas ..... (name and description of prisoner) was committed to your custody under warrant of the Court, dated the ..... day of ..... 20 .....; and there have appeared to me sufficient grounds for the opinion that he can be released without hazard to the community;

This is to authorise and require you forthwith to discharge the said ..... (name) from your custody unless he is liable to be detained for some other cause.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 19

WARRANT OF IMPRISONMENT ON FAILURE TO PAY MAINTENANCE

(See section 144)

To the Officer in charge of the Jail at .....

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Whereas ..... (name, description and address) has been proved before me to be possessed of sufficient means to maintain his wife ..... (name) [or his child ..... (name) or his father or mother ..... (name), who is by reason of (state the reason) unable to maintain herself (or himself)] and to have neglected (or refused) to do so, and an order has been duly made requiring the said ..... (name) to allow to his said ..... wife (or child or father or mother) for maintenance the monthly sum of rupees .....; and whereas it has been further proved that the said ..... (name) in wilful disregard of the said order has failed to pay rupees ....., being the amount of the allowance for the month (or months) of .....;

And thereupon an order was made adjudging him to undergo imprisonment in the said Jail for the period of .....;

This is to authorise and require you receive the said ..... (name) into your custody in the said Jail, together with this warrant, and there carry the said order into execution according to law, returning this warrant with an endorsement certifying the manner of its execution.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 20

WARRANT TO ENFORCE THE PAYMENT OF MAINTENANCE BY ATTACHMENT AND SALE

(See section 144)

To .....
..... (name and designation of the police officer or other person to execute the warrant).

Whereas an order has been duly made requiring ..... (name) to allow to his said wife (or child or father or mother) for maintenance the monthly sum of rupees ....., and whereas the said ..... (name) in wilful disregard of the said order has failed to pay rupees ....., being the amount of the allowance for the month (or months) of .....

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This is to authorise and require you to attach any movable property belonging to the said ..... (name) which may be found within the district of ....., and if within ..... (state the number of days or hours allowed) next after such attachment the said sum shall not be paid (or forthwith), to sell the movable property attached, or so much thereof as shall be sufficient to satisfy the said sum, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 21

ORDER FOR THE REMOVAL OF NUISANCES

(See section 152)

To ..... (name, description and address).

Whereas it has been made to appear to me that you have caused an obstruction (or nuisance) to persons using the public roadway (or other public place) which, etc., (describe the road or public place) ..... by, etc., ... (state what it is that causes the obstruction or nuisance), and that such obstruction (or nuisance) still exists;

or

Whereas it has been made to appear to me that you are carrying on, as owner, or manager, the trade or occupation of ..... (state the particular trade or occupation and the place where it is carried on), and that the same is injurious to the public health (or comfort) by reason ..... (state briefly in what manner the injurious effects are caused), and should be suppressed or removed to different place;

or

Whereas it has been made to appear to me that you are the owner (or are in possession of or have the control over) a certain tank (or well or excavation) adjacent to the public way ..... (describe the thoroughfare), and that the safety of the public is endangered by reason of the said tank (or well or excavation) being without a fence or insecurely fenced);

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or

Whereas, etc., etc., (as the case may be);

I do hereby direct and require you within ..... (state the time allowed) (state what is required to be done to abate the nuisance) ..... or to appear at ..... in the ..... Court of ..... on the ..... day of ..... next, and to show cause why this order should not be enforced;

or

I do hereby direct and require you within ..... (state the time allowed) to cease carrying on the said trade or occupation at the said place, and not again to carry on the same, or to remove the said trade from the place where it is now carried on, or to appear, etc.;

or

I do hereby direct and require you within ..... (state the time allowed) to put up a sufficient fence (state the kind of fence and the part to be fenced); or to appear, etc.;

or

I do hereby direct and require you, etc., etc. (as the case may be).

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 22

MAGISTRATE'S NOTICE AND PEREMPTORY ORDER

(See section 160)

To ..... (name, description and address).

I hereby give you notice that it has been found that the order issued on the ..... day of ..... requiring you

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..... (state substantially the requisition in the order) is reasonable and proper. Such order has been made absolute, and I hereby direct and require you to obey the said order within (state the time allowed), on peril of the penalty provided by the Bharatiya Nyaya Sanhita, 2023 for disobedience thereto.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 23

INJUNCTION TO PROVIDE AGAINST IMMINENT DANGER PENDING INQUIRY

(See section 161)

To ..... (name, description and address).

Whereas the inquiry into the conditional order issued by me on the ..... day of ....., 20 ....., is pending, and it has been made to appear to me that the nuisance mentioned in the said order is attended with such imminent danger or injury of a serious kind to the public as to render necessary immediate measures to prevent such danger or injury, I do hereby, under the provisions of section 161 of the Bharatiya Nagarik Suraksha Sanhita, 2023, direct and enjoin you forthwith to ..... (state plainly what is required to be done as a temporary safeguard), pending the result of the inquiry.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 24

MAGISTRATE'S ORDER PROHIBITING THE REPETITION, ETC., OF A NUISANCE

(See section 162)

To ..... (name, description and address).

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Whereas it has been made to appear to me that, etc. . ..... (state the proper recital, guided by Form No. 21 or Form No. 25, as the case may be);

I do hereby strictly order and enjoin you not to repeat or continue, the said nuisance.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 25

MAGISTRATE'S ORDER TO PREVENT OBSTRUCTION, RIOT, ETC.

(See section 163)

To ..... (name, description and address).

Whereas it has been made to appear to me that you are in possession (or have the management) of ..... (describe clearly the property), and that, in digging a drain on the said land, you are about to throw or place a portion of the earth and stones dug- up upon the adjoining public road, so as to occasion risk of obstruction to persons using the road;

or

Whereas it has been made to appear to me that you and a number of other persons (mention the class of persons) are about to meet and proceed in a procession along the public street, etc., (as the case may be) and that such procession is likely to lead to a riot or an affray;

or

Whereas, etc., etc., (as the case may be);

I do hereby order you not to place or permit to be placed any of the earth or stones dug from land on any part of the said road;

or

I do hereby prohibit the procession passing along the said street, and strictly warn and enjoin you not to take any part in such procession (or as the case recited may require).

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Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 26

MAGISTRATE'S ORDER DECLARING PARTY ENTITLED TO RETAIN POSSESSION OF LAND, ETC., IN DISPUTE

(See section 164)

It appears to me, on the grounds duly recorded, that a dispute, likely to induce a breach of the peace, existed between ..... (describe the parties by name and residence or residence only if the dispute be between bodies of villagers) concerning certain ..... (state concisely the subject of dispute), situate within my local jurisdiction, all the said parties were called upon to give in a written statement of their respective claims as to the fact of actual possession of the said ..... (the subject of dispute), and being satisfied by due inquiry had thereupon, without reference to the merits of the claim of either of the said parties to the legal right of possession, that the claim of actual possession by the said ..... (name or names or description) is true; I do decide and declare that he is (or they are) in possession of the said ..... (the subject of dispute) and entitled to retain such possession until ousted by due course of law, and do strictly forbid any disturbance of his (or their) possession in the meantime.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 27

WARRANT OF ATTACHMENT IN THE CASE OF A DISPUTE AS TO THE POSSESSION OF LAND, ETC.

(See section 165)

To the officer in charge of the police station at ..... (or, To the Collector of .....).

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Whereas it has been made to appear to me that a dispute likely to induce a breach of the peace, existed between ..... (describe the parties concerned by name and residence, or residence only if the dispute be between bodies of villagers) concerning certain ..... (state concisely the subject of dispute) situate within the limits of my jurisdiction, and the said parties were thereupon duly called upon to state in writing their respective claims as to the fact of actual possession of the said ..... (the subject of dispute), and whereas, upon due inquiry into the said claims, I have decided that neither of the said parties was in possession of the said ..... (the subject of dispute) (or I am unable to satisfy myself as to which of the said parties was in possession as aforesaid);

This is to authorise and require you to attach the said ..... (the subject of dispute) by taking and keeping possession thereof, and to hold the same under attachment until the decree or order of a competent Court determining the rights of the parties, or the claim to possession, shall have been obtained, and to return this warrant with an endorsement certifying the manner of its execution.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 28

MAGISTRATE'S ORDER PROHIBITING THE DOING OF ANYTHING ON LAND OR WATER

(See section 166)

A dispute having arisen concerning the right of use of ..... (state concisely the subject of dispute) situate within my local jurisdiction, the possession of which land (or water) is claimed exclusively by ..... (describe the person or persons), and it appears to me, on due inquiry into the same, that the said land (or water) has been open to the enjoyment of such use by the public (or if by an individual or a class of persons, describe him or them) and (if the use can be enjoyed throughout the year) that the said use has been enjoyed within three months of the institution of the said inquiry (or if the use is enjoyable only at a particular season, say, "during the last of the seasons at which the same is capable of being enjoyed");

I do order that the said ..... (the claimant or claimants of possession) or any one in their interest, shall not take (or retain) possession of the said land (or water) to the exclusion of the enjoyment of the right of use aforesaid, until he

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(or they) shall obtain the decree or order of a competent Court adjudging him (or them) to be entitled to exclusive possession.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 29

BOND AND BAIL- BOND ON A PRELIMINARY INQUIRY BEFORE A POLICE OFFICER

(See section 189)

I, ... (name), of ....., being charged with the offence of ....., and after inquiry required to appear before the Magistrate of ..... or and after inquiry called upon to enter into my own recognizance to appear when required, do hereby bind myself to appear at ....., in the Court of ....., on the ..... day of ..... next (or on such day as I may hereafter be required to attend) to answer further to the said charge, and in case of my making default herein. I bind myself to forfeit to Government, the sum of rupees .....;

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

I hereby declare myself (or we jointly and severally declare ourselves and each of us) surety (or sureties) for the above said ..... (name) that he shall attend at ..... in the Court of ....., on the ..... day of ..... next (or on such day as he may hereafter be required to attend), further to answer to the charge pending against him, and, in case of his making default therein, I hereby bind myself (or we hereby bind ourselves) to forfeit to Government the sum of rupees .....

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

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(Signature)

FORM No. 30

BOND TO PROSECUTE OR GIVE EVIDENCE

(See section 190)

I, ... (name) of ..... (place), do hereby bind myself to attend at ..... in the Court of ..... at ..... o'clock on the ..... day of ..... next and then and there to prosecute (or to prosecute and give evidence) (or to give evidence) in the matter of a charge of ..... against one A.B., and, in case of making default herein, I bind myself to forfeit to Government the sum of rupees .....

Dated, this ..... day of ....., 20 ..... .

(Signature)

FORM No. 31

SPECIAL SUMMONS TO A PERSON ACCUSED OF A PETTY OFFENCE

(See section 229)

To, ...

(Name of the accused)

of ..... (address)

Whereas your attendance is necessary to answer a charge of a petty offence ..... (state shortly the offence charged), you are hereby required to appear in person (or by an advocate) before ..... (Magistrate) of ..... on the ..... day of ..... 20 ....., or if you desire to plead guilty to the charge without appearing before the Magistrate, to transmit before the aforesaid date the plea of guilty in writing and the sum of ..... rupees as fine, or if you desire to appear by an advocate and to plead guilty through such an advocate, to authorise such advocate in writing to make such a plea of guilty on your behalf and to pay the fine through such advocate. Herein fail not.

Dated, this ..... day of ....., 20 ..... .

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(Seal of the Court)

(Signature)

(Note.- - The amount of fine specified in this summons shall not exceed five thousand rupees.)

FORM No. 32

NOTICE OF COMMITMENT BY MAGISTRATE TO PUBLIC PROSECUTOR

(See section 232)

The Magistrate of ..... hereby gives notice that he has committed one ..... for trial at the next Sessions; and the Magistrate hereby instructs the Public Prosecutor to conduct the prosecution of the said case.

The charge against the accused is that, ... etc. (state the offence as in the charge)

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 33

CHARGES

(See sections 234, 235 and 236)

I. Charges with one- head

(1) (a) I, ... (name and office of Magistrate, etc.), hereby charge you ..... (name of accused person) as follows:- -

(b) On section 147.- - That you, on or about the ..... day of ....., at ....., waged war against the Government of India and thereby committed an offence punishable under section 147 of the Bharatiya Nyaya Sanhita, 2023 and within the cognizance of this Court.

(c) And I hereby direct that you be tried by this Court on the said charge.

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(Signature and seal of the Magistrate)

[To be substituted for (b)]:- -

(2) On section 151.- - That you, on or about the ..... day of ....., at ....., with the intention of inducing the President of India [or, as the case may be, the Governor of ..... (name of State)] to refrain from exercising a lawful power as such President (or, as the case may be, the Government) assaulted President (or, as the case may be, the Governor), and thereby committed an offence punishable under section 151 of the Bharatiya Nyaya Sanhita, 2023, and within the cognizance of this Court.

(3) On section 198.- - That you, on or about the ..... day of ....., at ....., did (or omitted to do, as the case may be) ....., such conduct being contrary to the provisions of ..... Act ....., section ....., and known by you to be prejudicial to ....., and thereby committed an offence punishable under section 198 of the Bharatiya Nyaya Sanhita, 2023, and within the cognizance of this Court.

(4) On section 229.- - That you, on or about the ..... day of ....., at ....., in the course of the trial of ..... before ....., stated in evidence that "....." which statement you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 229 of the Bharatiya Nyaya Sanhita, 2023, and within the cognizance of this Court.

(5) On section 105.- - That you, on or about the ..... day of ....., at ....., committed culpable homicide not amounting to murder, causing the death of ....., and thereby committed an offence punishable under section 105 of the Bharatiya Nyaya Sanhita, 2023, and within the cognizance of this Court.

(6) On section 108.- - That you, on or about the ..... day of ....., at ....., abetted the commission of suicide by A.B., a person in a state of intoxication, and thereby committed an offence punishable under section 108 of the Bharatiya Nyaya Sanhita, 2023, and within the cognizance of this Court.

(7) On section 117(2).- - That you, on or about the ..... day of ....., at ....., voluntarily caused grievous hurt to ....., and thereby committed an offence punishable under

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section 117(2) of the Bharatiya Nyaya Sanhita, 2023, and within the cognizance of this Court.

(8) On section 309(2).- - That you, on or about the ..... day of ....., at ....., robbed ..... (state the name), and thereby committed an offence punishable under section 309(2) of the Bharatiya Nyaya Sanhita, 2023, and within the cognizance of this Court.

(9) On section 310(2).- - That you, on or about the ..... day of ....., at ....., committed dacoity, an offence punishable under section 310(2) of the Bharatiya Nyaya Sanhita, 2023 and within the cognizance of this Court.

II. CHARGES WITH TWO OR MORE HEADS

(1) (a) I, ... (name and office of Magistrate, etc.), hereby charge you ..... (name of accused person) as follows:- -

(b) On section 179.- - First- - That you, on or about the ..... day of ....., at ....., knowing a coin to be counterfeit, delivered the same to another person, by name, A.B., as genuine, and thereby committed an offence punishable under section 179 of the Bharatiya Nyaya Sanhita, 2023 and within the cognizance of the Court of Session.

Secondly- - That you, on or about the ..... day of ....., at ....., knowing a coin to be counterfeit attempted to induce another person, by name, A.B., to receive it as genuine, and thereby committed an offence punishable under section 179 of the Bharatiya Nyaya Sanhita, 2023 and within the cognizance of the Court of Session.

(c) And I hereby direct that you be tried by the said Court on the said charge.

(Signature and seal of the Magistrate)

[To be substituted for (b)]:- -

(2) On sections 103 and 105.- - First- - That you, on or about the ..... day of ....., at ....., committed murder by causing the death of ....., and thereby committed an offence punishable under section 103 of the Bharatiya Nyaya Sanhita, 2023 and within the cognizance of the Court of Session.

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Secondly- - That you, on or about the ..... day of ....., at ....., by causing the death of ....., committed culpable homicide not amounting to murder, and thereby committed an offence punishable under section 105 of the Bharatiya Nyaya Sanhita, 2023 and within the cognizance of the Court of Session.

(3) On sections 303(2) and 307.- - First- - That you, on or about the ..... day of ....., at, committed theft, and thereby committed an offence punishable under section 303(2) of the Bharatiya Nyaya Sanhita, 2023 and within the cognizance of the Court of Session.

Secondly- - That you, on or about the ..... day of ....., at ....., committed theft, having made preparation for causing death to a person in order to the committing of such theft, and thereby committed an offence punishable under section 307 of the Bharatiya Nyaya Sanhita, 2023 and within the cognizance of the Court of Session.

Thirdly- - That you, on or about the ..... day of ....., at ....., committed theft, having made preparation for causing restraint to a person in order to the effecting of your escape after the committing of such theft, and thereby committed an offence punishable under section 307 of the Bharatiya Nyaya Sanhita, 2023 and within the cognizance of the Court of Session.

Fourthly- - That you, on or about the ..... day of ....., at ....., committed theft, having made preparation for causing fear of hurt to a person in order to the restraining of property taken by such theft and thereby committed an offence punishable under section 307 of the Bharatiya Nyaya Sanhita, 2023 and within the cognizance of the Court of Session.

(4) Alternative charge on section 229.- - That you, on or about the ..... day of ....., at ....., in the course of the inquiry into ....., before ....., stated in evidence that ‘‘.....’’, and that you, on or about the ..... day of ....., at ....., in the course of the trial of, ... before, stated in the evidence that ‘‘.....’’, one of which statements you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 229 of the Bharatiya Nyaya Sanhita, 2023 and within the cognizance of the Court of Session.

(In cases tried by Magistrates substitute ‘‘within my cognizance’’ for ‘‘within the cognizance of the Court of Session’’.)

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III. CHARGES FOR THEFT AFTER PREVIOUS CONVICTION

I, ... (name and office of Magistrate, etc.) hereby charge you ..... (name of accused person) as follows:- -

That you, on or about the ..... day of ....., at ....., committed theft, and thereby committed an offence punishable under section 303(2) of the Bharatiya Nyaya Sanhita, 2023 and within the cognizance of the Court of Session (or Magistrate, as the case may be).

And you, the said ..... (name of accused), stand further charged that you, before the committing of the said offence, that is to say, on the ..... day of ....., had been convicted by the ..... (state Court by which conviction was had) at ..... of an offence punishable under Chapter XVII of the Bharatiya

Nyaya Sanhita, 2023 with imprisonment for a term of three years, that is to say, the offence of house- breaking by night ..... (describe the offence in the words used in the section under which the accused was convicted), which conviction is still in full force and effect, and that you are thereby liable to enhanced punishment under section 13 of the Bharatiya Nyaya Sanhita, 2023.

And I hereby direct that you be tried, etc.

FORM No. 34

SUMMONS TO WITNESS

(See sections 63 and 267)

To ..... of .....

Whereas complaint has been made before me that ..... (name of the accused) of ..... (address) has (or is suspected to have) committed the offence of ..... (state the offence concisely with time and place), and it appears to me that you are likely to give material evidence or to produce any document or other thing for the prosecution.

You are hereby summoned to appear before this Court on the ..... day of ..... next at ten o'clock in the forenoon, to produce such document or thing or to testify what you know concerning the matter of the said complaint, and not to depart thence without leave of the Court; and you are hereby warned that, if you shall without just excuse neglect or refuse to appear on the said date, a warrant will be issued to compel your attendance.

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Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 35

WARRANT OF COMMITMENT ON A SENTENCE OF IMPRISONMENT OR FINE IF PASSED BY A COURT

(See sections 258, 271 and 278)

To the Officer in charge of Jail at .....

Whereas on the ..... day of ....., ... (name of the prisoner), the (1st, 2nd, 3rd, as the case may be) prisoner in case No. . ..... of the Calendar for 20 ....., was convicted before me ..... (name and official designation) of the offence of ..... (mention the offence or offences concisely) under section (or sections) ..... of the Bharatiya Nyaya Sanhita, 2023 (or of ..... Act .....), and was sentenced to ..... (state the punishment fully and distinctly).

This is to authorise and require you to receive the said ..... (prisoner's name) into your custody in the said Jail, together with this warrant, and thereby carry the aforesaid sentence into execution according to law.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 36

WARRANT OF IMPRISONMENT ON FAILURE TO PAY COMPENSATION

(See section 273)

To the Officer in charge of Jail at .....

Whereas ..... (name and description) has brought against ..... (name and description of the accused person) the complaint

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that ..... (mention it concisely) and the same has been dismissed on the ground that there was no reasonable ground for making the accusation against the said ..... (name) and the order of dismissal awards payment by the said ..... (name of complainant) of the sum of rupees ..... as compensation; and whereas the said sum has not been paid and an order has been made for his simple imprisonment in Jail for the period of ..... days, unless the aforesaid sum be sooner paid;

This is to authorise and require you to receive the said ..... (name) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of ..... (term of imprisonment), subject to the provisions of section 8(6)(b) of the Bharatiya Nyaya Sanhita, 2023, unless the said sum be sooner paid, and on the receipt thereof, forthwith to set him at liberty, returning this warrant with an endorsement certifying the manner of its execution.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 37

ORDER REQUIRING PRODUCTION IN COURT OF PERSON IN PRISON FOR ANSWERING TO CHARGE OF OFFENCE

(See section 302)

To the Officer in charge of Jail at .....

Whereas the attendance of ..... (name of prisoner) at present confined/detained in the above- mentioned prison, is required in this Court to answer to a charge of ..... (state shortly the offence charged) or for the purpose of a proceeding ..... (state shortly the particulars of the proceeding).

You are hereby required to produce the said ..... under safe and sure conduct before this Court at ..... on the ..... day of ....., 20 ....., by ..... A.M. there to answer to the said charge, or for the purpose of the said proceeding, and after this Court has dispensed with his further attendance, cause him to be conveyed under safe and sure conduct back to the said prison.

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And you are further required to inform the said ..... of the contents of this order and deliver to him the attached copy thereof.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

Countersigned.

(Seal)

(Signature)

FORM No. 38

ORDER REQUIRING PRODUCTION IN COURT OF PERSON IN PRISON FOR GIVING EVIDENCE

(See section 302)

To the Officer in charge of the Jail at .....

Whereas complaint has been made before this Court that ..... (name of the accused) of has committed the offence of ..... (state offence concisely with time and place) and it appears that ..... (name of prisoner) at present confined/detained in the above- mentioned prison, is likely to give material evidence for the prosecution/defence.

You are hereby required to produce the said ..... under safe and sure conduct before this Court at ..... on the ..... day of ....., 20 ....., by A.M. there to give evidence in the matter now pending before this Court, and after this Court has dispensed with his further attendance, cause him to be conveyed under safe and sure conduct back to the said prison.

And you are further required to inform the said ..... of the contents of this order and deliver to him the attached copy thereof.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

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(Signature)

Countersigned.

(Seal)

(Signature)

FORM No. 39

WARRANT OF COMMITMENT IN CERTAIN CASES OF CONTEMPT WHEN A FINE IS IMPOSED

(See section 384)

To the Officer in charge of the Jail at .....

Whereas at a Court held before me on this day ..... (name and description of the offender) in the presence (or view) of the Court committed wilful contempt.

And whereas for such contempt the said ..... (name of the offender) has been adjudged by the Court to pay a fine of rupees ....., or in default to suffer simple imprisonment for the period of ..... (state the number of months or days).

This is to authorise and require you to receive the said ..... (name of the offender) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of ..... (term of imprisonment), unless the said fine be sooner paid; and, on the receipt thereof, forthwith to set him at liberty, returning this warrant with an endorsement certifying the manner of its execution.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 40

MAGISTRATE'S OR JUDGE'S WARRANT OF COMMITMENT OF WITNESS REFUSING TO ANSWER OR TO PRODUCE DOCUMENT

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(See section 388)

To .....

(name and designation of officer of Court)

Whereas ..... (name and description), being summoned (or brought before this Court) as a witness and this day required to give evidence on an inquiry into an alleged offence, refused to answer a certain question (or certain questions) put to him touching the said alleged offence, and duly recorded, or having been called upon to produce any document has refused to produce such document, without alleging any just excuse for such refusal, and for his refusal has been ordered to be detained in custody for ..... (term of detention adjudged);

This is to authorise and require you to take the said ..... (name) into custody, and him safely to keep in your custody for the period of ..... days, unless in the meantime he shall consent to be examined and to answer the questions asked of him, or to produce the document called for from him, and on the last of the said days, or forthwith on such consent being known, to bring him before this Court to be dealt with according to law, returning this warrant with an endorsement certifying the manner of its execution.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 41

WARRANT OF COMMITMENT UNDER SENTENCE OF DEATH

(See section 407)

To the Officer in charge of the Jail at .....

Whereas at the session held before me on the ..... day of ....., 20 ....., ... (name of prisoner), the (1st, 2nd, 3rd, as the case may be), prisoner in case No. . ..... of the Calendar for 20 ..... at the said Session, was duly convicted of the offence of culpable homicide amounting to murder under section ..... of the Bharatiya Nyaya Sanhita, 2023, and sentenced to death, subject to the confirmation of the said sentence by the ..... Court of .....

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This is to authorise and require you to receive the said ..... (prisoner's name) into your custody in the said Jail, together with this warrant, and him there safely to keep until you shall receive the further warrant or order of this Court, carrying into effect the order of the said ..... Court.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 42

WARRANT AFTER A COMMUTATION OF A SENTENCE

(See sections 427, 453 and 456)

To the Officer in charge of the Jail at .....

Whereas at a Session held on the ..... day of ....., 20 ....., ... (name of the prisoner), the (1st, 2nd, 3rd, as the case may be), prisoner in case No. . ..... of the Calendar for 20 ....., at the said Session, was convicted of the offence of ....., punishable under section ..... of the Bharatiya Nyaya Sanhita, 2023, and was sentenced to ..... and thereupon committed to your custody; and whereas by the order of the ..... Court of ..... order of the ..... (a duplicate of which is hereunto annexed) the punishment adjudged by the said sentence has been commuted to the punishment of imprisonment for life;

This is to authorise and require you safely to keep the said ..... (prisoner's name) in your custody in the said Jail, as by law is required, until he shall be delivered over by you to the proper authority and custody for the purpose of his undergoing the punishment of imprisonment for life under the said order,

or

if the mitigated sentence is one of imprisonment, say, after the words "custody in the said Jail", "and there to carry into execution the punishment of imprisonment under the said order according to law".

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

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(Signature)

FORM No. 43

WARRANT OF EXECUTION OF A SENTENCE OF DEATH

(See sections 453 and 454)

To the Officer in charge of the Jail at ..... Whereas ..... (name of the prisoner), the (1st, 2nd, 3rd, as the case may be) prisoner in case No. . ..... of the Calendar for 20 ..... at the Session held before me on the ..... day of ....., 20 ....., has been by a warrant of the Court, dated the ..... day of ....., committed to your custody under sentence of death; ..... and whereas the order of the High Court at ..... confirming the said sentence has been received by this Court.

This is to authorise and require you to carry the said sentence into execution by causing the said ..... to be hanged by the neck until he be dead, at ..... (time and place of execution), and to return this warrant to the Court with an endorsement certifying that the sentence has been executed.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 44

WARRANT TO LEVY A FINE BY ATTACHMENT AND SALE

(See section 461)

To .....

(name and designation of the police officer or other person or persons who is or are to execute the warrant).

Whereas ..... (name and description of the offender) was on the ..... day of ....., 20 ....., convicted before me of the offence of ..... (mention the offence concisely), and sentenced to pay a fine of rupees .....; and whereas the said

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..... (name), although required to pay the said fine, has not paid the same or any part thereof;

This is to authorise and require you to attach any movable property belonging to the said ..... (name), which may be found within the district of .....; and, if within ..... (state the number of days or hours allowed) next after such attachment the said sum shall not be paid (or forthwith), to sell the movable property attached, or so much thereof as shall be sufficient to satisfy the said fine, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 45

WARRANT FOR RECOVERY OF FINE

(See section 461)

To the Collector of the district of ..... Whereas ..... (name, address and description of the offender) was on the ..... day of ....., 20 ....., convicted before me of the offence of ..... (mention the offence concisely), and sentenced to pay a fine of rupees .....; and Whereas the said ..... (name), although require to pay the said fine, has not paid the same or any part of thereof;

You are hereby authorised and requested to realise the amount of the said fine as arrears of land revenue from the movable or immovable property, or both, of the said ..... (name) and to certify without delay what you have done in pursuance of this order.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 46

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BOND FOR APPEARANCE OF OFFENDER RELEASED PENDING REALISATION OF FINE

[See section 464 (1) (b)]

Whereas I, ... (name) inhabitant of .....

(place), have been sentenced to pay a fine of rupees ..... and in default of payment thereof to undergo imprisonment for .....; and whereas the Court has been pleased to order my release on condition of my executing a bond for my appearance on the following date (or dates), namely:- -

I hereby bind myself to appear before the Court of ..... at ..... o'clock on the following date (or dates), namely:- - and, in case of making default herein, I bind myself to forfeit to Government the sum of rupees .....

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

WHERE A BOND WITH SURETIES IS TO BE EXECUTED, ADD- -

We do hereby declare ourselves sureties for the above- named that he will appear before the Court of ..... on the following date (or dates), namely:- -

And, in case of his making default therein, we bind ourselves jointly and severally to forfeit to Government the sum of rupees .....

(Signature)

FORM No. 47

BOND AND BAIL- BOND FOR ATTENDANCE BEFORE OFFICER IN CHARGE OF POLICE STATION OR COURT

[See sections 478, 479, 480, 481, 482(3) and 485]

I, ... (name), of ..... (place), having been arrested or detained without warrant by the Officer in charge of ..... police station (or having been brought before the Court of

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.....), charged with the offence of ....., and required to give security for my attendance before such Officer of Court on condition that I shall attend such Officer or Court on every day on which any investigation or trial is held with regard to such charge, and in case of my making default herein, I bind myself to forfeit to Government the sum of rupees .....

Dated, this ..... day of ....., 20 ..... .

(Signature)

I hereby declare myself (or we jointly and severally declare ourselves and each of us) surety (or sureties) for the above said ..... (name) that he shall attend the Officer in charge of ..... police station or the Court of ..... on every day on which any investigation into the charge is made or any trial on such charge is held, that he shall be, and appear, before such Officer or Court for the purpose of such investigation or to answer the charge against him (as the case may be), and, in case of his making default herein, I hereby bind myself (or we, hereby bind ourselves) to forfeit to Government the sum of rupees .....

Dated, this ..... day of ....., 20 ..... .

(Signature)

FORM No. 48

WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY

(See section 487)

To the Officer in charge of the Jail at .....

(or other officer in whose custody the person is)

Whereas ..... (name and description of prisoner) was committed to your custody under warrant of this Court, dated the ..... day of ....., and has since with his surety (or sureties) duly executed a bond under section 485 of the Bharatiya Nagarik Suraksha Sanhita, 2023;

This is to authorise and require you forthwith to discharge the said ..... (name) from your custody, unless he is liable to be detained for some other matter.

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Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 49

WARRANT OF ATTACHMENT TO ENFORCE A BOND

(See section 491)

To the Police Officer in charge of the police station at .....

Whereas ..... (name, description and address of person) has failed to appear on ..... (mention the occasion) pursuant to his recognizance, and has by default forfeited to Government the sum of rupees ..... (the penalty in the bond); and whereas the said ..... (name of person) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him;

This is to authorise and require you to attach any movable property of the said ..... (name) that you may find within the district of ....., by seizure and detention, and, if the said amount be not paid within ....., days to sell the property so attached or so much of it as may be sufficient to realise the amount aforesaid, and to make return of what you have done under this warrant immediately upon its execution.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 50

NOTICE TO SURETY ON BREACH OF A BOND

(See section 491)

To ..... of .....

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Whereas on the ..... day of ..... , 20 ....., you became surety for ..... (name) of ..... (place) that he should appear before this Court on the ..... day of ..... and bound yourself in default thereof to forfeit the sum of rupees ..... to Government; and whereas the said ..... (name) has failed to appear before this Court and by reason of such default you have forfeited the aforesaid sum of rupees.

You are hereby required to pay the said penalty or show cause, within ..... days from this date, why payment of the said sum should not be enforced against you.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 51

NOTICE TO SURETY OF FORFEITURE OF BOND FOR GOOD BEHAVIOUR

(See section 491)

To ..... of .....

Whereas on the ..... day of ....., 20 ....., you became surety by a bond for ..... (name) of ..... (place) that he would be of good behaviour for the period of ..... and bound yourself in default thereof to forfeit the sum of rupees ..... to Government; and whereas the said ..... (name) has been convicted of the offence of ..... (mention the offence concisely) committed since you became such surety, whereby your security bond has become forfeited;

You are hereby required to pay the said penalty of rupees ..... or to show cause within ..... days why it should not be paid.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

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FORM No. 52

WARRANT OF ATTACHMENT AGAINST A SURETY

(See section 491)

To ..... of ....

Whereas ..... (name, description and address) has bound himself as surety for the appearance of ..... (mention the condition of the bond) and the said ..... (name) has made default, and thereby forfeited to Government the sum of rupees ..... (the penalty in the bond);

This is to authorise and require you to attach any movable property of the said ..... (name) which you may find within ..... the district of ....., by seizure and detention; and, if the said amount be not paid within days, to sell the property so attached, or so much of it as may be sufficient to realise the amount aforesaid, and make return of what you have done under this warrant immediately upon its execution.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 53

WARRANT OF COMMITMENT OF THE SURETY OF AN ACCUSED PERSON ADMITTED TO BAIL

(See section 491)

To the Superintendent (or Keeper) of the Civil Jail at .....

Whereas ..... (name and description of surety) has bound himself as a surety for the appearance of ..... (state the condition of the bond) and the said ..... (name) has therein made default whereby the penalty mentioned in the said bond has been forfeited to Government; and whereas the said ..... (name of surety) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him, and the same cannot be recovered by attachment and sale of his movable property, and an order has been made for his imprisonment in the Civil Jail for ..... (Specify the period);

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This is to authorise and require you, the said Superintendent (or Keeper) to receive the said ..... (name) into your custody with the warrant and to keep him safely in the said Jail for the said ..... (term of imprisonment), and to return this warrant with an endorsement certifying the manner of its execution.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 54

NOTICE TO THE PRINCIPAL OF FORFEITURE OF BOND TO KEEP THE PEACE

(See section 491)

To ..... (name, description and address)

Whereas on the ..... day of ....., 20 ..... , you entered into a bond not to commit, etc., ... (as in the bond), and proof of the forfeiture of the same has been given before me and duly recorded;

You are hereby called upon to pay the said penalty of rupees ..... or to show cause before me within ..... days why payment of the same should not be enforced against you.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 55

WARRANT TO ATTACH THE PROPERTY OF THE PRINCIPAL ON BREACH OF A BOND TO KEEP THE PEACE

(See section 491)

To .....

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(name and designation of police officer), at the police station of .....

Whereas ..... (name and description) did, on the ..... day of ....., 20 ....., enter into a bond for the sum of rupees ..... binding himself not to commit a breach of the peace, etc., (as in the bond), and proof of the forfeiture of the said bond has been given before me and duly recorded; and whereas notice has been given to the said ..... (name) calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum;

This is to authorise and require you to attach by seizure movable property belonging to the said ..... (name) to the value of rupees ....., which you may find within the district of ....., and, if the said sum be not paid within ....., to sell the property so attached, or so much of it as may be sufficient to realise the same; and to make return of what you have done under this warrant immediately upon its execution.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 56

WARRANT OF IMPRISONMENT ON BREACH OF A BOND TO KEEP THE PEACE

(See section 491)

To the Superintendent (or Keeper) of the Civil Jail at .....

Whereas proof has been given before me and duly recorded that ..... (name and description) has committed a breach of the bond entered into by him to keep the peace, whereby he has forfeited to Government the sum of rupees .....; and whereas the said ..... (name) has failed to pay the said sum or to show cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his movable property, and an order has been made for the imprisonment of the said ..... (name) in the Civil Jail of the period of ..... (term of imprisonment);

This is to authorise and require you, the said Superintendent (or Keeper) of the said Civil Jail to receive the said ..... (name) into your custody, together with this warrant, and to keep his safely in the said Jail for the said period of

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..... (term of imprisonment), and to return this warrant with an endorsement certifying the manner of its execution.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 57

WARRANT OF ATTACHMENT AND SALE ON FORFEITURE OF BOND FOR GOOD BEHAVIOUR

(See section 491)

To the Police Officer in charge of the police station at .....

Whereas ..... (name, description and address) did, on the ..... day of ....., 20 ....., give security by bond in the sum of rupees ..... for the good behaviour of ..... (name, etc., of the principal), and proof has been given before me and duly recorded of the commission by the said ..... (name) of the offence of ..... whereby the said bond has been forfeited; and whereas notice has been given to the said ..... (name) calling upon him to show cause why the said sum should not be paid, and he has failed to do so to pay the said sum;

This is to authorise and require you to attach by seizure movable property belonging to the said ..... (name) to the value of rupees ..... which you may find within the district of ....., and, if the said sum be not paid within ....., to sell the property so attached, or so much of it as may be sufficient to realise the same, and to make return of what you have done under this warrant immediately upon its execution.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

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FORM No. 58

WARRANT OF IMPRISONMENT ON FORFEITURE OF BOND FOR GOOD BEHAVIOUR

(See section 491)

To the Superintendent (or Keeper) of the Civil Jail at .....

Whereas ..... (name, description and address) did, on the ..... day of ....., 20 ....., give security by bond in the sum of rupees ..... for the good behaviour of ..... (name, etc., of the principal), and proof of the breach of the said bond has been given before me and duly recorded, whereby the said ..... (name) has forfeited to Government the sum of rupees ....., and whereas he has failed to pay the said sum or to show cause why the said sum should not be paid although duly called upon to do so, and payment thereof cannot be enforced by attachment of his movable property, and an order has been made for the imprisonment of the said ..... (name) in the Civil Jail for the period of ..... (term of imprisonment);

This is to authorise and require you, the Superintendent (or Keeper), to receive the said ..... (name) into your custody, together with this warrant, and to keep him safely in the said Jail for the said period of ..... (term of imprisonment), returning this warrant with an endorsement certifying the manner of its execution. Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

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STATEMENT OF OBJECTS AND REASONS

1. The Code of Criminal Procedure, 1973 regulates the procedure for arrest, investigation, inquiry and trial of offences under the Indian Penal Code and under any other law governing criminal offences. The Code provides for a mechanism for conducting trials in a criminal case. It gives the procedure for registering a complaint, conducting a trial and passing an order, and filing an appeal against any order.

2. Fast and efficient justice system is an essential component of good governance. However, delay in delivery of justice due to complex legal procedures, large pendency of cases in the Courts, low conviction rates, insufficient use of technology in legal system, delays in investigation system, inadequate use of forensics are the biggest hurdles in speedy delivery of justice, which impacts the poor man adversely. In order to address these issues a citizens centric criminal procedure is the need of the hour.

3. The experience of seven decades of Indian democracy calls for a comprehensive review of our criminal laws, including the Code of Criminal Procedure and adapt them in accordance with the contemporary needs and aspirations of the people.

4. The Government with the mantra, "Sabka Saath, Sabka Vikas, Sabka Vishwas and Sabka Prayas" is committed to ensure speedy justice to all citizens in conformity with these constitutional and democratic aspirations. The Government is committed to make a comprehensive review of the framework of criminal laws to provide accessible and speedy justice to all.

5. In view of the above, it is proposed to repeal the Code of Criminal Procedure, 1973 and enact a new law. It provides for the use of technology and forensic sciences in the investigation of crime and furnishing and lodging of information, service of summons, etc., through electronic communication. Specific time- lines have been prescribed for time bound investigation, trial and pronouncement of judgements. Citizen centric approach have been adopted for supply of copy of first information report to the victim and to inform them about the progress of investigation, including by digital means. In cases where punishment is

7. years or more, the victims shall be given an opportunity of being heard before withdrawal of the case by the Government. Summary trial has been made mandatory for petty and less serious cases. The accused persons may be examined through electronic means, like video conferencing. The magisterial system has also been streamlined.

6. Accordingly, a Bill, namely, the Bharatiya Nagarik Suraksha Sanhita, 2023 was introduced in the Lok Sabha on 11th August, 2023. The Bill was referred to the Departmentrelated Parliamentary Standing Committee on Home Affairs for its

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consideration and report. The Committee after deliberations made its recommendations in its report submitted on 10th November, 2023. The recommendations made by the Committee have been considered by the Government and it has been decided to withdraw the Bill pending in the Lok Sabha and introduce a new Bill incorporating therein those recommendations made by the Committee that have been accepted by the Government.

7. The Notes on Clauses explains the various provision of the Bill.

8. The Bill seeks to achieve the above objectives.

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Linked Provisions of Section 2(1)(k) of Bharatiya Nagarik Suraksha Sanhita, 2023:

Juvenile Justice - Care and Protection of Children Act, 2015 - Section 36 – inquiry:

(1) On production of a child or receipt of a report under section 31, the Committee shall hold an inquiry in such manner as may be prescribed and the Committee, on its own or on the report from any person or agency as specified in sub- section (2) of section 31, may pass an order to send the child to the children's home or a fit facility or fit person, and for speedy social investigation by a social worker or Child Welfare Officer or Child Welfare Police Officer:

Provided that all children below six years of age, who are orphan, surrendered or appear to be abandoned shall be placed in a Specialised Adoption Agency, where available.

(2) The social investigation shall be completed within fifteen days so as to enable the Committee to pass final order within four months of first production of the child:

Provided that for orphan, abandoned or surrendered children, the time for completion of inquiry shall be as specified in section 38.

(3) After the completion of the inquiry, if Committee is of the opinion that the said child has no family or ostensible support or is in continued need of care and protection, it may send the child to a Specialised Adoption Agency if the child is below six years of age, children's home or to a fit facility or person or foster family, till suitable means of rehabilitation are found for the child, as may be prescribed, or till the child attains the age of eighteen years:

Provided that the situation of the child placed in a children's home or with a fit facility or person or a foster family, shall be reviewed by the Committee, as may be prescribed.

(4) The Committee shall submit a quarterly report on the nature of disposal of cases and pendency of cases to the District Magistrate in the manner as may be prescribed, for review of pendency of cases.

(5) After review under sub- section (4), the District Magistrate shall direct the Committee to take necessary remedial measures to address the pendency, if necessary and send a report of such reviews to the State Government, who may cause the constitution of additional Committees, if required:

Provided that if the pendency of cases continues to be unaddressed by the Committee even after three months of receiving such directions, the State Government shall terminate the said Committee and shall constitute a new Committee.

(6) In anticipation of termination of the Committee and in order that no time is lost in constituting a new Committee, the State Government shall maintain a standing panel of eligible persons to be appointed as members of the Committee.

(7) In case of any delay in the constitution of a new Committee under sub- section (5), the Child Welfare Committee of a nearby district shall assume responsibility in the intervening period.

Go Back to Section 2(1)(k), Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 2(1)(v) of Bharatiya Nagarik Suraksha Sanhita, 2023:

Terrorist Affected Areas - Special Courts Act, 1984 - Section 9 - Public Prosecutors:

(1) For every Special Court, the Central Government shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors:

Provided that the Central Government may also appoint for any case or class of cases a Special Public Prosecutor.

(2) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section only if he has been in practice as an Advocate for not less than seven years or has held any post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law,

(3) Every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (ii) of section 2 of the Code, and the provisions of the Code shall have effect accordingly.

National Investigation Agency Act 2008 - Section 15 - Public Prosecutors:

(1) The Central Government shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors:

Provided that the Central Government may also appoint for any case or class or group of cases a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an Advocate for not less than seven years or has held any post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code, and the provisions of the Code shall have effect accordingly.

Go Back to Section 2(1)(v), Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 14 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Delhi Police Act, 1978 - Section 70 - Power of Central Government to authorise Commissioner of Police and certain other officers to exercise powers of District Magistrates and Executive Magistrates under Code of Criminal Procedure, 1973:

(1) The Central Government may, by notification in the Official Gazette and subject to such conditions and limitations as may be specified therein, empower- -

(a) the Commissioner of Police to exercise and perform in relation to Delhi the powers and duties of an Executive Magistrate and of a District Magistrate under such of the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as may be specified in the notification;

(b) any officer subordinate to the Commissioner of Police (not being an officer below the rank of an Assistant Commissioner of Police) to exercise and perform in relation to such areas in Delhi as may be specified in the notification the powers and duties of an Executive Magistrate under such of the provisions of the said Code as may be specified in the notification.

(2) Every officer subordinate to the Commissioner of Police shall, in the exercise and performance of any powers and duties which he is empowered to exercise or perform under sub- section (1), be subject to the general control of the Commissioner of Police in the same manner and to the same extent as an Executive Magistrate appointed under section 20 of the said Code would be subject to the general control of the District Magistrate appointed under that section.

(3) The Commissioner of Police or any officer subordinate to him shall not be subject in the exercise and performance of any powers and duties which he is empowered to exercise and perform under sub- section (1), to the general control of the District Magistrate appointed under section 20 of the said Code.

(4) The provisions of this section shall have effect notwithstanding anything contained in the Code.

Union Territories - Separation of Judicial and Executive Functions Act, 1969 - Section 5 - Functions exercisable by judicial and executive Magistrates:

Where under any law the functions exercisable by a Magistrate relate to matters which involve the application or sifting of evidence or the formulation of any decision which exposes any person to any punishment, or penalty, or detention in custody pending investigation, inquiry or trial or would have the effect of sending him for trial before any Court, such functions shall, subject to the provisions of this Act and the Code of Criminal Procedure, 1898, as amended by this Act, be exercisable by a Judicial Magistrate and where such functions relate to matters which are administrative or executive in nature, such as the grant of a licence, the suspension or cancellation of a licence, sanctioning a prosecution, or withdrawing from a prosecution, they shall, subject as aforesaid, be exercisable by an Executive Magistrate.

Bonded Labour System Abolition Act, 1976 - Section 21 - Offences to be tried by Executive Magistrates:

(1) The State Government may confer on an Executive Magistrate, the powers of a Judicial Magistrate of the first class or of the second class for the trial of offences under this Act; and, on such conferment of powers, the Executive Magistrate on whom the powers are so conferred, shall be deemed, for the purposes of the Code of Criminal Procedure, 1973 (2 of 1974), to be a Judicial Magistrate of the first class, or of the second class, as the case may be.

(2) An offence under this Act may be tried summarily by a Magistrate.

Go Back to Section 14, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 18 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Terrorist Affected Areas - Special Courts Act, 1984 - Section 9 - Public Prosecutors:

(1) For every Special Court, the Central Government shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors:

Provided that the Central Government may also appoint for any case or class of cases a Special Public Prosecutor.

(2) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section only if he has been in practice as an Advocate for not less than seven years or has held any post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law,

(3) Every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (ii) of section 2 of the Code, and the provisions of the Code shall have effect accordingly.

National Investigation Agency Act, 2008 - Section 15- Public Prosecutors:

(1) The Central Government shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors:

Provided that the Central Government may also appoint for any case or class or group of cases a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an Advocate for not less than seven years or has held any post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code, and the provisions of the Code shall have effect accordingly.

Go Back to Section 18, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 26 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Punjab Courts Act, 1918 - Section 45 - Mode of conferring powers:

Except as otherwise provided by this part, any powers that may be conferred by the High Court on any person under this part may be conferred on such person either by name or by virtue of office.

Go Back to Section 26, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 35 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Cantonments Act, 2006 - Section 314 - Arrest without warrant:

Any member of the police force employed in a cantonment may, without a warrant, arrest any person committing in his view a breach of any of the provisions of this Act which are specified in Schedule IV:

Provided that- -

(a) no person shall be so arrested who consents to give his name and address, unless there is reasonable ground for doubting the accuracy of the name or address so given, the burden of proof of which shall lie on the arresting officer, and no person so arrested shall be detained after his name and address have been ascertained; and

(b) no person shall be so arrested for an offence under section 300 except - -

(i) at the request of the person importuned, or of a military officer in whose presence the offence was committed; or

(ii) by or at the request of a member of the Military, Naval or Air Force Police, who is employed in the cantonment and authorised in this behalf by the Officer Commanding the Station, and in whose presence the offence was committed or by or at the request of any police officer not below the rank of assistant sub- inspector who is deployed in the cantonment and authorised in this behalf by the Officer Commanding the station.

Northern Indian Canal and Drainage Act, 1873 - Section 73 - Power to arrest without warrant:

Any person incharge of or employed upon any canal or drainage work may remove from the lands or buildings belonging thereto, or may take into custody without a warrant and take forthwith before a Magistrate or to nearest police station, to be dealt with according to law, any person who, within his view, commits any of the following offences :-

(1)Wilfully damages or obstructs any canal or drainage work.

(2) Without proper authority interferes with the supply or flow of water in or from any canal or drainage work, or in any river or stream, so as to endanger, damage or render less useful any canal or drainage work.

Northern India Ferries Act, 1878 - Section 29 - Power to arrest without warrant:

The police may arrest without warrant any person committing an offence against section 25 or section 28.

Railway Property (Unlawful Possession) Act, 1966 - Section 6 - Power to arrest without warrant:

Any superior officer or member of the Force may, without an order from a Magistrate and without a warrant, arrest any person who has been concerned in an offence punishable under this Act or against whom a reasonable suspicion exists of his having been so concerned.

Railway Protection Force Act, 1957 - Section 12 - Power to arrest without warrant:

Any member of the Force may, without an order from a Magistrate and without a warrant, arrest-
-

(i) any person who voluntarily causes hurt to, or attempts voluntarily to cause hurt to, or wrongfully restrain or attempts wrongfully to restrain, or assaults, threatens to assault, or uses, or threatens or attempts to use, criminal force to him or any other member of the Force in the execution of his duty as such member, or with intent to prevent or to deter him from discharging his duty as such member, or in consequence of anything done or attempted to be done by him in the lawful discharge of his duty as such member; or

(ii) any person who has been concerned in, or against whom a reasonable suspicion exists of his having been concerned in, or who is found taking precautions to conceal his presence under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence which relates to railway property, passenger area and passengers; or

(iii) any person found taking precautions to conceal his presence within the railway limits under circumstances which afford reason to believe that he is taking such precautions with a view to committing theft of, or damage to railway property, passenger area and passengers; or

(iv) any person who commits or attempts to commit a cognizable offence which involves or which is likely to involve imminent danger to the life of any person engaged in carrying on any work relating to railway property.

Delhi Police Act, 1978 - Section 78 - Arrest without warrant in case of certain offences under Act 59 of 1960:

Any police officer may arrest, without a warrant from a Magistrate, any person committing in his presence any offence punishable under clauses (a) to (m) (both inclusive) of sub- section (1) of section 11 of the Prevention of Cruelly to Animals Act, 1960 (59 of 1960).

Essential Services Maintenance (Assam) Act, 1980 - Section 8 - Power to arrest without warrant:

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any police officer may arrest without warrant any person who is reasonably suspected of having committed any offence under this Act.

Essential Services Maintenance Act, 1968 - Section 7 - Power to arrest without warrant:

Notwithstanding anything contained in the Code of Criminal Procedure, 1898, any police officer may arrest without warrant any person who is reasonably suspected of having committed any offence under this Act.

Essential Services Maintenance Act, 1981 - Section 10 - Power to arrest without warrant:

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any police officer may arrest without warrant any person who is reasonably suspected of having committed any offence under this Act.

Explosives Act, 1884 - Section 13 - Power to arrest without warrant persons committing dangerous offences:

Whoever is found committing any act for which he is punishable under this Act or the rules under this Act, and which tends to cause explosion or fire in or about any place where an explosive is manufactured or stored, or any railway or port, or any carriage, aircraft or vessel, may be apprehended without a warrant by a police officer, or by the occupier of, or the agent or servant of, or other person authorised by the occupier of, that place, or by any agent or servant of, or other person authorised by, the railway administration or conservator of the port or officer in charge of the airport, and be removed from the place where he is arrested and conveyed as soon as conveniently may be before a Magistrate.

Indian Forest Act, 1927 - Section 64 - Power to arrest without warrant:

(1) Any Forest- officer or Police- officer may, without orders from a Magistrate and without a warrant, arrest any person against whom a reasonable suspicion exists of his having been concerned in any forest- offence punishable with imprisonment for one month or upwards.

(2) Every officer making an arrest under this section shall, without unnecessary delay and subject to the provisions of this Act as to release on bond, take or send the person arrested before the Magistrate having jurisdiction in the case, or to the officer in charge of the nearest police station.

(3) Nothing in this section shall be deemed to authorise such arrest for any act which is an offence under Chapter IV unless such act has been prohibited under clause (c) of section 30.

Metro Railway (Operation and Maintenance) Act, 2002 - Section 82 - Power of arrest without warrant:

(1) If a person commits any offence mentioned in sections 59, 61, 1[sections 65 to 68, 71 to 79], he may be arrested without warrant or other written authority by any metro railway official or by a police officer not below the rank of a head constable or by any other person whom such metro railway official or police officer may call to his aid:

Provided that where a person has been arrested, by any person other than the police officer, he shall be made over to a police officer, or, in the absence of a police officer, take such person or cause him to be taken in custody to the nearest police station.

(2) A person so arrested under sub- section (1) shall be produced before the nearest Magistrate, having authority to try him or commit him for trial, as early as possible but within a period not exceeding twenty- four hours of such arrest exclusive of the time necessary for the journey from the place of arrest to the court of the Magistrate.

Motor Vehicles Act, 1988 - Section 202 - Power to arrest without warrant:

(1) A police officer in uniform may arrest without warrant any person who in his presence commits an offence punishable under section 184 or section 185 or section 197:

Provided that any person so arrested in connection with an offence punishable under section 185 shall, within two hours of his arrest, be subjected to a medical examination referred to in sections 203 and 204 by a registered medical practitioner failing which he shall be released from custody.

(2) A police officer in uniform may arrest without warrant any person, who has committed an offence under this Act, if such person refuses to give his name and address.

(3) A police officer arresting without warrant the driver of a motor vehicle shall if the circumstances so require take or cause to be taken any steps he may consider proper for the temporary disposal of the vehicle.

Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 42 - Power of entry, search, seizure and arrest without warrant or authorisation:

(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including paramilitary forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,- -

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub- inspector:

Provided further that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub- section (1) or records grounds for his belief under the proviso thereto, he shall within seventy- two hours send a copy thereof to his immediate official superior.

Navy Act, 1957- Section 84 arrest without warrant:

(1) Any person subject to naval law may be ordered without warrant into naval custody by any superior officer for any offence triable under this Act.

(2) A person subject to naval law may arrest without warrant any other person subject to naval law though he may be of a higher rank who in his view commits an offence punishable with death, or imprisonment for life or for a term which may extend to fourteen years.

(3) A provost- marshal may arrest any person subject to naval law in accordance with the provisions of section 89.

(4) It shall be lawful for the purpose of effecting arrest, or taking a person into custody, without warrant to use such force as may be necessary for the purpose.

Go Back to Section 35, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 41 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Extradition Act, 1962 - Section 9 - Power of Magistrate to issue warrant of arrest in certain cases:

(1) Where it appears to any Magistrate that a person within the local limits of his jurisdiction, is a fugitive criminal of a foreign State, he may, if he thinks fit, issue a warrant for the arrest of that person on such information and on such evidence as would, in his opinion, justify the issue of a warrant if the offence of which the person is accused or has been convicted had been committed within the local limits of his jurisdiction.

(2) The Magistrate shall forthwith report the issue of a warrant under sub- section (1) to the Central Government and shall forward the informa-tion, and the evidence, or certified copies thereof to that Government.

(3) A person arrested on a warrant issued under sub- section (1) shall not be detained for more than three months unless within that period the Magistrate receives from the Central Government an order made with reference to such person under Section 5.

Go Back to Section 41, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 60 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Extradition Act, 1962 - Section 24 - Discharge of person apprehended if not surrendered or returned within two months:

If a fugitive criminal who, in pursuance of this Act, has been committed to prison to await his surrender or return to any foreign State is not conveyed out of India within two months after such committal, the High Court upon application made to it by or on behalf of the fugitive criminal and upon proof that reasonable notice of the intention to make such application has been given to the Central Govern-ment may order such prisoner to be discharged unless sufficient cause is shown to the contrary.

Go Back to Section 60, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 63 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 - Section 33D - Form of summons and mode of serving it:

(1) Every summons shall be in writing, in duplicate, and shall state the purpose for which it is issued, and shall be signed by the Consolidation Officer issuing it, and if he have a seal, shall also bear his seal.

(2) Such summons shall be served by tendering or delivering a copy of it to the person summoned or, if he cannot be found, by affixing a copy of it to some conspicuous part of his usual residence. If his usual residence is in another district, the summons may be sent by post to the Collector of that district, who shall cause it to be served as aforesaid.

Go Back to Section 63, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 98 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Criminal law Amendment Act, 1961 - Section 4 - Power to declare certain publications forfeited and to issue search warrants for the same:

(1) Where any newspaper or book as defined in the Press and Registration of Books Act, 1867, or any other document, wherever printed appears to the State Government to contain any matter the publication of which is punishable under section 2 or sub- section (2) of section 3, the State Government may, by notification in the Official Gazette, staling the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter and every copy of such book or other document to be forfeited to the Government, and thereupon any police officer may seize the same wherever found and any Magistrate may by warrant authorise any police officer not below the rank of Sub- Inspector to enter upon and search for the same in any premises where any copy of such issue or any copy of such book or other document may be or may be reasonably suspected to be,

(2) The powers conferred by sub- section (1) on the State Government may also be exercised by the Central Government.

(3) In sub- section (1) "document" includes also any painting, drawing or photograph, or other visible representation

Go Back to Section 98, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 118 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Wild Life - Protection Act, 1972 - Section 58G - Management of properties seized or forfeited under this Chapter:

(1) The State Government may, by order published in the Official Gazette, appoint as many of its officers (not below the rank of Conservator of Forests) as it thinks fit, to perform the functions of an Administrator.

(2) The Administrator appointed under sub- section (1) shall receive and manage the property in relation to which an order has been made under sub- section (1) of section 58F or under section 58- I in such manner and subject to such conditions as may be prescribed.

(3) The Administrator shall also take such measures as the State Government may direct, to dispose of the property which is forfeited to the State Government.

Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 68G - Management of properties seized or forfeited under this Chapter:

(1) The Central Government may, by order published in the Official Gazette, appoint as many of its officers (not below the rank of a Joint Secretary to the Government) as it thinks fit, to perform the functions of an Administrator.

(2) The Administrator appointed under sub- section (1) shall receive and manage the property in relation to which an order has been made under subsection (1) of section 68F or under section 68- I in such manner and subject to such conditions as may be prescribed.

(3) The Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is forfeited to the Central Government.

Go Back to Section 118, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 119 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Wild Life (Protection) Act, 1972 - Section 58H - Notice of forfeiture of property:

(1) If having regard to the value of the properties held by any person to whom this Chapter applies, either by himself or through any other person on his behalf, his known sources of income, earnings or assets, and any other information or material available to it as a result of a report from any officer making an investigation under section 58E or otherwise, the competent authority for reasons to be recorded in writing believes that all or any of such properties are illegally acquired

properties, it may serve a notice upon such person (hereinafter referred to as the person affected) calling upon him within a period of thirty days specified in the notice to show cause why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the State Government under this Chapter and in support of his case indicate the sources of his income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars.

(2) Where a notice under sub- section (1) to any person specifies any property as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person.

Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 103 - Notice of forfeiture of property:

(1) If, having regard to the value of the properties held by any person to whom this Chapter applies, either by himself or through any other person on his behalf, his known sources of income, earnings or assets, and any other information or material available to it as a result of a report from any officer making an investigation under section 68E or otherwise, the competent authority has reason to believe (the reasons for such belief to be recorded in writing) that all or any of such properties are illegally acquired properties, it may serve a notice upon such person (hereinafter referred to as the person affected) calling upon him within a period of thirty days specified in the notice to indicate the sources of his income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the Central Government under this Chapter.

(2) Where a notice under sub- section (1) to any person specifies any property as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person:

Provided that no notice for forfeiture shall be served upon any person referred to in clause (cc) of sub- section (2) of section 68A or relative of a person referred to in that clause or associate of a person referred to in that clause or holder of any property which was at any time previously held by a person referred to in that clause.

Explanation.- - For the removal of doubts, it is hereby declared that in a case where the provisions of section 68J are applicable, no notice under this section shall be invalid merely on the ground that it fails to mention the evidence relied upon or it fails to establish a direct nexus between the property sought to be forfeited and any activity in contravention of the provisions of this Act.

Go Back to Section 119, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 120 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Wild Life - Protection Act, 1972 - Section 58- I - Forfeiture of property in certain cases:

(1) The competent authority may, after considering the explanation, if any, to the show cause notice issued under section 58H, and the materials available before it and after giving to the person affected and in a case where the person affected holds any property specified in the notice through any other person, to such other person, also a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are illegally acquired properties:

Provided that if the person affected (and in a case where the person affected holds any property specified in the notice through any other person, such other person also), does not appear before the competent authority or represent his case before it within a period of thirty days specified in the show cause notice, the competent authority may proceed to record a finding under this sub-section ex parte on the basis of evidence available before it.

(2) Where the competent authority is satisfied that some of the properties referred to in the show cause notice are illegally acquired properties but is not able to identify specifically such properties, then, it shall be lawful for the competent authority to specify the properties which, to the best of its judgment, are illegally acquired properties and record a finding accordingly under sub- section (1) within a period of ninety days.

(3) Where the competent authority records a finding under this section to the effect that any property is illegally acquired property, it shall declare that such property shall, subject to the provisions of this Chapter stand forfeited to the State Government free from all encumbrances.

(4) In case the person affected establishes that the property specified in the notice issued under section 58H is not an illegally acquired property and therefore not liable to be forfeited under the Act, the said notice shall be withdrawn and the property shall be released forthwith.

(5) Where any shares in a company stand forfeited to the State Government under this Chapter, the company shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or the article of association of the company, forthwith register the State Government as the transferee of such shares.

Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 68- I - Forfeiture of property in certain cases:

(1) The competent authority may, after considering the explanation, if any, to the show cause notice issued under section 68H, and the materials available before it and after giving to the person affected (and in a case where the person affected holds any property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are illegally acquired properties:

Provided that if the person affected (and in a case where the person affected holds any property specified in the notice through any other person such other person also) does not appear before the competent authority or represent his case before it within a period of thirty days specified in

the show cause notice, the competent authority may proceed to record a finding under this sub-section ex parte on the basis of evidence available before it.

(2) Where the competent authority is satisfied that some of the properties referred to in the show cause notice are illegally acquired properties but is not able to identify specifically such properties, then, it shall be lawful for the competent authority to specify the properties which, to the best of its judgment, are illegally acquired properties and record a finding accordingly under subsection (1).

(3) Where the competent authority records a finding under this section to the effect that any property is illegally acquired property, it shall declare that such property shall, subject to the provisions of this Chapter stand forfeited to the Central Government free from all encumbrances:

Provided that no illegally acquired property of any person who is referred to in clause (cc) of sub-section (2) of section 68A or relative of a person referred to in that clause or associate of a person referred to in that clause or holder of any property which was at any time previously held by a person referred to in that clause shall stand forefeited.

(4) Where any shares in a company stand forfeited to the Central Government under this Chapter, then, the company shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or the article of association of the company, forthwith register the Central Government as the transferee of such shares.

Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 - Section 7 - Forfeiture of property in certain cases:

(1) The competent authority may, after considering the explanation, if any, to the show cause notice issued under section 6, and the materials available before it and after giving to the person affected (and in a case where the person affected holds any property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are illegally acquired properties.

(2) Where the competent authority is satisfied that some of the properties referred to in the show cause notice are illegally acquired properties but is not able to identity specifically such properties, then it shall be lawful for the competent authority to specify the properties which, to the best of its judgment, are illegally acquired properties and record a finding accordingly under sub- section (1).

(3) Where the competent authority records a finding under this section to the effect that any property is illegally acquired property, it shall declare that such property shall, subject to the provisions of this Act, stand forfeited to the Central Government free from all encumbrances.

(4) Where any shares in a company stand forfeited to the Central Government under this Act then, the company shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or the articles of association of the company, forthwith register the Central Government as the transferee of such shares.

Go Back to Section 120, Bharatiya Nagrik Suraksha Sanhita, 2023

Linked Provisions of Section 121 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Wild Life - Protection Act, 1972 - Section 58K - Fine in lieu of forfeiture:

(1) Where the competent authority makes a declaration that any property stands forfeited to the State Government under section 58- I and it is a case where the source of only a part of the illegally acquired property has not been proved to the satisfaction of the competent authority, it shall make an order giving option to the person affected to pay, in lieu of forfeiture, a fine equal to the market value of such part.

(2) Before making an order imposing a fine under sub- section (1), the person affected shall be given a reasonable opportunity of being heard.

(3) Where the person affected pays the fine due under sub- section (1), within such time as may be allowed in that behalf, the competent authority may, by order revoke the declaration of forfeiture under section 58- I and thereupon such property shall stand released.

Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 68K - Fine in lieu of forfeiture:

(1) Where the competent authority makes a declaration that any property stands forfeited to the Central Government under section 68- I and it is a case where the source of only a part of the illegally acquired property has not been proved to the satisfaction of the competent authority, it shall make an order giving an option to the person affected to pay, in lieu of forfeiture, a fine equal to the market value of such part.

(2) Before making an order imposing a fine under sub- section (1), the person affected shall be given a reasonable opportunity of being heard.

(3) Where the person affected pays the fine due under sub- section (1), within such time as may be allowed in that behalf, the competent authority may, by order revoke the declaration of forfeiture under section 68- I and thereupon such property shall stand released.

Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 - Section 9 - Fine in lieu of forfeiture:

(1) Where the competent authority makes a declaration that any property stands forfeited to the Central Government under section 7 and it is a case where the source of only a part, being less than one- half, of the income, earnings or assets with which such property was acquired has not been proved to the satisfac-tion of the competent authority, it shall make an order giving an option to the person affected to pay, in lieu of forfeiture, a fine equal to one and one fifth times the value of such part.

Explanation. – For the purposes of this sub- section, the value of any part of income, earnings, assets, with which any property has been acquired, shall be –

(a) in the case of any part of income or earnings, the amount of such part of income or earnings;

(b) in the case of any part of assets, the proportionate part of the full value of the consideration for the acquisition of such assets.

(2) Before making an order imposing a fine under sub- section (1),the person affected shall be given a reasonable opportunity of being heard.

(3) Where the person affected pays the fine due under sub- section (1),within such time as may be allowed in that behalf, the competent authority, may by order, revoke the declaration of forfeiture under section 7 and thereupon such property shall stand released.

Go Back to Section 121, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 122 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 68M - Certain transfers to be null and void:

Where after the making of an order under sub- section (1) of section 68F or the issue of a notice under section 68H or under section 68L, any property referred to in the said order or notice is transferred by any mode whatsoever such transfer shall, for the purposes of the proceedings under the Chapter, be ignored and if such property is subsequently forfeited to the Central Government under section 68- I, then, the transfer of such property shall be deemed to be null and void.

Prohibhition of Benami Property Transactions Act, 1988 - Section 57 - Certain transfers to be null and void:

Notwithstanding anything contained in the Transfer of the Property Act, 1882 (4 of 1882) or any other law for the time being in force, where, after the issue of a notice under section 24, any property referred to in the said notice is transferred by any mode whatsoever, the transfer shall, for the purposes of the proceedings under this Act, be ignored and if the property is subsequently confiscated by the Central Government under section 27, then, the transfer of the property shall be deemed to be null and void.

Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 - Section 11 - Certain transfers to be null and void:

Where after the issue of a notice under section 6 or under section 10, any property referred to in the said notice is transferred by any mode whatsoever such transfer shall, for the purposes of the proceedings under this Act, be ignored and if such property is subsequently forfeited to the Central Government under section 7, then, the transfer of such property shall be deemed to be null and void.

Unlawful Activities (Prevention) Act, 1967 - Section 32 - Certain transfers to be null and void:

Where, after the issue of an order under section 25 or issue of a notice under section 27, any property referred to in the said order or notice is transferred by any mode whatsoever, such transfer shall, for the purpose of the proceedings under this Chapter, be ignored and if such

property is subsequently forfeited, the transfer of such property shall be deemed to be null and void.

Wild Life (Protection) Act, 1972 - 58M - Certain transfers to be null and void:

Where after the making of an order under sub- section (1) of section 58F or the issue of a notice under section 58H or under section 58L, any property referred to in the said order or notice is transferred by any mode whatsoever, such transfer shall, for the purposes of the proceedings under this Chapter, be ignored and if such property is subsequently forfeited to the State Government under section 58- I, then, the transfer of such property shall be deemed to be null and void.

Go Back to Section 122, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 123 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Prevention of Money- Laundering Act, 2002 - Section 61 - Procedure in respect of letter of request:

Every letter of request, summons or warrant, received by the Central Government from, and every letter of request, summons or warrant, to be transmitted to a contracting State under this Chapter shall be transmitted to a contracting State or, as the case may be, sent to the concerned Court in India and in such form and in such manner as the Central Government may, by notification, specify in this behalf.

Go Back to Section 123, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 129 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Suppression of Immoral Traffic In Women and Girls Act, 1956 - Section 12 - Security for good behaviour from habitual offenders:

(1) When a court convicting a person of an offence under this Act finds that he has been habitually committing, or attempting to commit, or abetting the commission of, that offence or any other offence under this Act and the court is of opinion that it is necessary or desirable to require that person to execute a bond for good behaviour, such court may at the time of passing the sentence on the person order him to execute a bond for a sum proportionate to his means with or without sureties for his good behaviour during such period not exceeding three years as it thinks fit.

(2) If the conviction is set aside on appeal or otherwise the bond so executed shall become void.

(3) An order under this section may also be made by an Appellate Court or by the High Court when exercising its powers of revision.

(4) When a magistrate receives information from the police or otherwise that any person within the local limits of his jurisdiction habitually commits, or attempts to commit, or abets the commission of, any offence under this Act, such magistrate may require such person to show cause why he should not be ordered to execute a bond with sureties for his good behaviour for

such period not exceeding three years as the magistrate thinks fit and thereupon the provisions of sections 112 to 126 of the Code of Criminal Procedure, 1898 (5 of 1898), shall apply in such a case.

Go Back to Section 129, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 250 of Bharatiya Nagarik Suraksha Sanhita, 2023:

The Territorial Army Act, 1948 - Section 8 – Discharge:

Every person enrolled under this Act shall be entitled to receive his discharge from the Territorial Army on the expiration of the period for which he was enrolled and any such person may, prior to the expiration of that period, be discharged from the said army by such authority and subject to such conditions as may be prescribed:

Provided that no enrolled person who is for the time being engaged in military service under the provisions of this Act, shall be entitled to receive his discharge before the termination of such service.

Provincial Insolvency Act, 1920 - Section 41 – Discharge:

(1) a debtor may, at any time after the order of adjudication and shall, within the period specified by the Court, apply to the Court for an order of discharge, and the Court shall fix a day, notice whereof shall be given in such manner as may be prescribed, for hearing such application, and any objections which may be made thereto.

(2) Subject to the provisions of this section, the Court may, after considering the objections of any creditor and, where a receiver has been appointed, the report of the receiver

(a) grant or refuse an absolute order of discharge; or

(b) suspend the operation of the order for a specified time; or

(c) grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the insolvent, or with respect to his after- acquired property.

Provincial Insolvency Act, 1920 - Section 42 – Cases in which Court must refuse an absolute discharge:

(1) The Court shall refuse to grant an absolute order of discharge under section 41 on proof of any of the following facts, namely:

(a) that the insolvents assets are not of a value equal to eight annas in the rupee on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of a value equal to eight annas in the rupee on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible;

(b) that the insolvent has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his insolvency;

(c) that the insolvent has continued to trade after knowing himself to be insolvent;

(d) that the insolvent has contracted any debt provable under this Act without having at the time of contracting it any reasonable or probable ground of expectation (the burden of proving which shall lie on him) that he would be able to pay it;

(e) that the insolvent has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities;

(f) that the insolvent has brought on, or contributed to, his insolvency by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs;

(g) that the insolvent has, within three months preceding the date of the presentation of the petition, when unable to pay his debts as they became due, given an undue preference to any of his creditors;

(h) that the insolvent has on any previous occasion been adjudged an insolvent or made a composition or arrangement with his creditors;

(i) that the insolvent has concealed or removed his property or any part thereof, or has been guilty of any other fraud or fraudulent breach of trust.

(2) For the purposes of this section, the report of the receiver shall be deemed to be evidence; and the Court may presume the correctness of any statement contained therein.

(3) The powers of suspending, and of attaching conditions to, an insolvents discharge may be exercised concurrently.

Provincial Insolvency Act, 1920 - Section 43 – Adjudication to be annulled on failure to apply for discharge:

(1) If the debtor does not appear on the day fixed for hearing his application for discharge or on such subsequent day as the Court may direct, or if the debtor does not apply for an order of discharge within the period specified by the Court, [the Court may annul the order of adjudication or make such other order as it may think fit, and if the adjudication is so annulled, the provisions of section 37 shall apply.

(2) Where a debtor has been released from custody under the provisions of this Act and the order of adjudication is annulled under sub- section (1), the Court may, if it thinks fit, re- commit the debtor to his former custody, and the Officer- in- charge of the prison to whose custody such debtor is so re- committed shall receive such debtor into his custody according to such re-commitment, and thereupon all processes which were in force against the person of such debtor at the time of such release as aforesaid shall be deemed to be still in force against him as if no order of adjudication had been made.

Provincial Insolvency Act, 1920 - Section 44 – Effect of order of discharge:

(1) An order of discharge shall not release the insolvent from

(a) any debt due to the Government;

(b) any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party;

(c) any debt or liability in respect of which he has obtained forbearance by any fraud to which he was a party; or

(d) any liability under an order for maintenance made under section 488 of the [Code of Criminal Procedure, 1898 (5 of 1898)].

(2) Save as otherwise provided by sub- section (1), an order of discharge shall release the insolvent from all debts provable under this Act.

(3) An order of discharge shall not release any person who, at the date of the presentation of the petition, was a partner or co- trustee with the insolvent, or was jointly bound or had made any joint contract with him or any person who was surety for him.

National Cadet Corps Act, 1948 - Section 8 - Discharge:

Every person enrolled under this Act shall be entitled to receive his or her discharge from the Corps on the expiration of the period for which he or she was enrolled or on his or her ceasing to be borne on the roll of the university or school to which he or she may belong:

Provided that any person enrolled may be discharged at any time by such authority and subject to such conditions as may be prescribed.

Lok Sahayak Sena Act, 1956 - Section 7 – Discharge:

Every volunteer shall be entitled to receive his discharge from the force on the Expiration of the period for which he was enrolled, but may, prior to the expiration of that period, be discharged from the Force by such authority and subject to such conditions as may be prescribed.

Indian Territorial Force Act, 1920 - Section 8 - Discharge:

Every person enrolled shall be entitled to receive his discharge from the Indian Territorial Force on the expiration of the period for which he was enrolled, and any such person may, prior to the expiration of that period, be discharged from the said Force by such authority and subject to such conditions as may be prescribed, and shall be so discharged on a recommendation of the Advisory Committee in this behalf:

Provided that no person enrolled who is for the time being engaged in military service under the provisions of this Act shall be entitled to receive his discharge before the termination of such service.

Indian Securities Act, 1920 - Section 17 – Immediate discharge in certain cases:

On payment by or on behalf of the Government to the holder of a bearer bond or other Government security payable to bearer of the amount expressed therein on or after the date when it becomes due, or on renewal of a bearer, bond or other security payable to bearer under section 11, or on renewal of a Government promissory note under section 13, or on conversion, consolidation or subdivision of a bearer bond or other security payable in the same way and to the same extent as if such bearer bond, promissory note other security were a promissory note payable to bearer:

Provided that in the case of a Government promissory note renewed under section 13, nothing in this section shall be deemed to bar a claim against the Government in respect of such note by any person who had no notice of the proceedings under that section, or who derives title through any such person.

Indian Securities Act, 1920 - Section 18 – Discharge in other cases:

Save as otherwise provided in this Act –

(i) on payment of the amount due on a Government security on or after the date on which payment becomes due, or Discharge in other cases

(ii) When a duplicate security has been issued under section 10, or

(iii) When a renewed renewed security has been issued under section 12 or section 13, or a new security or has or have been issued upon conversion, consolidation or sub- division under section 15 ,the Government shall be discharged from all liability in respect of the security or securities so paid or in place of which a duplicate, renewed, or new securities has or have been issued:

(a) in the case of payment- after the lapse of six years from the date on which payment was due;

(b) in years a duplicate security- after the lapse of six years from the date of publication under sub – section (3) of section 10 of the list in which the security is first mentioned, or from the date of the last payment of interest on the original security, whichever date is later;

(c)in the case of a renewed security or of a new security issued upon conversion , consolidation or sub- division after the lapse of six years from the date of the issue thereof.

Indian Securities Act, 1920 - Section 18A - Discharge in respect of interest:

Save as otherwise expressly provided in the terms of a Government security, no person shall entitled to claim interest on any such security in respect of any period which has elapsed after the earliest date on which demand could have been made for the payment of the amount due on such security.

Indian Army Act, 1911 - Section 16 – Discharge:

The prescribed, authority may, in conformity with any rules prescribed in this behalf, discharge from the service any person, subject to this Act.

Indian Air Force Act, 1932 - Section 15 – Discharge:

The prescribed authority may, in conformity with any rules prescribed in this behalf, discharge from the service any person subject to this Act.

Auxiliary Force Act, 1920 - Section 17 – Discharge:

(1) Any enrolled person who has attained the age of forty- five years or has completed four years' service from the date of his enrolment shall, on application made by him in the prescribed manner, be entitled to receive his discharge from the Auxiliary Force, India.

(2) An enrolled person who is not entitled to his discharge under sub- section (1) may be discharged by the competent military authority on a recommendation of the Advisory Committee in this behalf.

Go Back to Section 250 of Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 273 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Companies Act, 2013 - Section 445 - Compensation for accusation without reasonable cause:

The provisions of section 250 of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply mutatis mutandis to compensation for accusation without reasonable cause before the Special Court or the Court of Session.

Go Back to Section 273, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 283 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Essential Commodities Act, 1955 - Section 12A - Power to try summarily:

(1) If the Central Government is of opinion that a situation has arisen where, in the interests of production, supply or distribution of any essential commodity not being an essential commodity referred to in clause (a) of sub- section (2) or trade or commerce therein and other relevant considerations, it is necessary that the contravention of any order made under section 3 in relation to such essential commodity should be tried summarily, the Central Government may, by notification in the Official Gazette, specify such order to be a special order for purposes of summary trial under this section, and every such notification shall be laid, as soon as may be after it is issued, before both Houses of Parliament:

Provided that-

(a) every such notification issued after the commencement of the Essential Commodities (Amendment) Act, 1971, shall, unless sooner rescinded, cease to operate at the expiration of two years after the publication of such notification in the Official Gazette;

(b) every such notification in force immediately before such commencement shall, unless sooner rescinded, cease to operate at the expiration of two years after such commencement:

Provided further that nothing in the foregoing proviso shall affect any case relating to the contravention of a special order specified in any such notification if proceedings by way of summary trial have commenced before that notification is rescinded or ceases to operate and the provisions of this section shall continue to apply to that case as if that notification had not been rescinded or had not ceased to operate.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) all, offences relating to-

(a) the contravention of an order made under section 3 with respect to- -

(ii) foodstuffs, including edible oilseeds and oil; or (iii) drugs; and

(b) where any notification issued under sub- section (1) in relation to a special order is in force, the contravention of such special order,

shall be tried in a summary way by a Judicial Magistrate of the First Class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:

Provided that, in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or re- hear the case in the manner provided by the said Code.

(3) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), there shall be no appeal by a convicted person in any case tried summarily under this section in which the Magistrate passes a sentence of imprisonment not exceeding one month, and of fine not exceeding two thousand rupees whether or not any order of forfeiture of property or an order under section 452 of the said Code is made in addition to such sentences, but an appeal shall lie where any sentence in excess of the aforesaid limits is passed by the Magistrate.

(4) All cases relating to the contravention of an order referred to in clause (a) of sub- section (2), not being a special order, and pending before a Magistrate immediately before the commencement of the Essential Commodities (Amendment) Act, 1974, and, where any notification is issued under sub- section (1) in relation to a special order, all cases relating to the contravention of such special order and pending before a Magistrate immediately before the date of the issue of such notification, shall, if no witnesses have been examined before such commencement or the said date, as the case may be, be tried in a summary way under this section,

and if any such case is pending before a Magistrate who is not competent to try the same in a summary way under this section, it shall be forwarded to a Magistrate so competent.

Northern India Ferries Act, 1878 - Section 30 - Power to try summarily:

Any Magistrate or Bench of Magistrates having summary jurisdiction under Chapter XVIII of the Code of Criminal Procedure, may try any offence against this Act in manner provided by that Chapter.

Prevention of Corruption Act, 1988 - Section 6 - Power to try summarily:

(1) Where a special Judge tries any offence specified in sub- section (1) of section 3, alleged to have been committed by a public servant in relation to the contravention of any special order referred to in sub- section (1) of section 12A of the Essential Commodities Act, 1955 (10 of 1955) or of an order referred to in clause (a) of sub- section (2) of that section, them, notwithstanding anything contained in sub- section (1) of section 5 of this Act or section 260 of the Code of Criminal Procedure, 1973 (2 of 1974), the special Judge shall try the offence in a summary way, and the provisions of sections 262 to 265 both inclusive) of the said Code shall, as far as may be, apply to such trial:

Provided that, in the case of any conviction in a summary trial under this section, it shall be lawful for the special Judge to pass a sentence of imprisonment for a term not exceeding one year:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the special Judge that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the special Judge shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or re- hear the case in accordance with the procedure prescribed by the said Code for the trial of warrant cases by Magistrates.

(2) Notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 (2 of 1974), there shall be no appeal by a convicted person in any case tried summarily under this section in which the special Judge passes a sentence of imprisonment not exceeding one month, and of fine not exceeding two thousand rupees whether or not any order under section 452 of the said Code is made in addition to such sentence, but an appeal shall lie where any sentence in excess of the aforesaid limits is passed by the special Judge.

Go Back to Section 283, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 305 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Code of Civil Procedure, 1908 - Section 6 - Prisoner to be brought to Court in custody:

In any other case, the officer in charge of the prison shall, upon delivery of the Court's order, cause the person named therein to be taken to the Court so as to be present at the time mentioned in such order, and shall cause him to be kept in custody in or near the Court until he has been

examined or until the Court authorises him to be taken back to the prison in which he is confined or detained.

Go Back to Section 305, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 306 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Code of Civil Procedure, 1908 – Order 16A Rule 7 - Power to issue commission for examination of witness in prison:

(1) Where it appears to the Court that the evidence of a person confined or detained in a prison, whether within the State or elsewhere in India, is material in a suit but the attendance of such person cannot be secured under the preceding provisions of this order, the Court may issue a commission for the examination of that person in the prison in which he is confined or detained.

(2) The provisions of Order XXVI shall, so far may be, apply in relation to the examination on commission of such person in prison as they apply in relation to the examination on commission of any other person.

Go Back to Section 306, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 332 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Gram Nyayalayas Act, 2008 - Section 32 - Evidence of formal character on affidavit: (1) The evidence of any person where such evidence is of a formal character, may be given by affidavit and may, subject to all just exceptions, be read in evidence in any suit or proceeding before a Gram Nyayalaya.

(2) The Gram Nyayalaya may, if it thinks fit, and shall, on the application of any of the parties to the suit or proceeding, summon and examine any such person as to the facts contained in his affidavit.

Family Courts Act, 1984 - Section 16 - Evidence of formal character on affidavit:

(1) The evidence of any person where such evidence is of a formal character, may be given by affidavit and may, subject to all just exceptions, be read in evidence in any suit or proceeding before a Family Court.

(2) The Family Court may, if it thinks fit, and shall, on the application of any of the parties to the suit or proceeding summon and examine any such person as to the facts contained in his affidavit.

Go Back to Section 332, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 343 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Indo- Tibetan Border Police Force Act, 1992 - Section 119 - Tender of pardon to accomplice:

(1) With a view to obtaining the evidence of any person supposed to have been directly or indirectly concern in or privy to an offence triable by a Force Court other than a Summary Force Court under this Act, the commanding officer, the convening officer or the Force Court, at any stage of the investigation or inquiry into or the trial of, the offence, may tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances

within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.

(2) The commanding officer or the convening officer who tenders a pardon under sub- section (1) shall record-

(a) his reasons for so doing;

(b) whether the tender was or was not accepted by the person to whom it was made, and shall, on application made by the accused, furnish him with a copy of such record free of cost.

(3) Every person accepting a tender of pardon made under sub- section (1)-

(a) shall be examined as a witness by the commanding officer of the accused and in the subsequent trial, if any;

(b) may be detained in Force custody until the termination of the trial.

Sashastra Seema Bal Act, 2007 - Section 119 - Tender of pardon to accomplice:

(1) With a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence triable by a Force Court other than a Summary Force Court under this Act, the commanding officer, the convening officer or the Force Court, at any stage of investigation or inquiry into or the trial of, the offence, may tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.

(2) The commanding officer or the convening officer who tenders pardon under sub- section (1) shall record,- -

(a) his reasons for so doing;

(b) whether the tender was or was not accepted by the person to whom it was made, and shall, on application made by accused, furnish him with a copy of such record free of cost.

(3) Every person accepting a tender of pardon made under sub- section (1)- -

(a) shall be examined as a witness by the commanding officer of the accused and in the subsequent trial, if any;

(b) may be detained in Force custody until the termination of the trial.

Go Back to Section 343, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 345 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Indo- Tibetan Border Police Force Act, 1992 - Section 120 - Trial of person not complying with conditions of pardon:

(1) Where, in regard to a person who has accepted a tender of pardon made under section 119, the Judge Attorney, or as the case may be, the Deputy Judge Attorney- General, or the Additional Judge Attorney- General or the officer approved under section 95, certifies that in his opinion

such person has, either by willfully concealing anything essential or by giving false evidence, not complied with the conditions on which the tender was made, such person may be tried for the offence in respect of which the pardon was so tendered or for any other offence of which he appears to have been guilty in connection with the same matter, and also for the offence of giving false evidence :

Provided that such person shall not be tried jointly with any of the other accused.

(2) Any statement made by such person accepting the tender of pardon and recorded by his commanding officer or Force Court may be given in evidence against him at such trial.

(3) At such trial, the accused shall be entitled to plead that he has complied with the condition upon which such tender was made; in which case it shall be for the prosecution to prove that the condition has not been complied with.

(4) At such trial, the Force Court shall, before arraignment, ask the accused whether he pleads that he has complied with the conditions on which the tender of pardon was made.

(5) If the accused does so plead, the Court shall record the plea and proceed with the trial and it shall, before giving its finding on the charge, find whether or not the accused has complied with the conditions of the pardon, and, if it finds that he has so complied, it shall give a verdict of not guilty.

Sashastra Seema Bal Act, 2007 - Section 120 - Trial of person not complying with conditions of pardon:

(1) Where, in regard to a person who has accepted a tender of pardon made under section 119, the Judge Attorney, or as the case may be, the Deputy Judge Attorney- General, or the Additional Judge Attorney- General, or the officer approved under section 95, certifies that in his opinion such person has either by willfully concealing anything essential or by giving false evidence, not complied with the conditions on which the tender was made, such person may be tried for the offence in respect of which the pardon was so tendered or for any other offence of which he appears to have been guilty in connection with the same matter, and also for the offence of giving false evidence:

Provided that such person shall not be tried jointly with any of the other accused.

(2) Any statement made by such person accepting the tender of pardon and recorded by his commanding officer or Force Court may be given in evidence against him at such trial.

(3) At such trial, the accused shall be entitled to plead that he has complied with the condition upon which such tender was made; in which case it shall be for the prosecution to prove that the condition has not been complied with.

(4) At such trial, the Force Court shall, before arraignment, ask the accused whether he pleads that he has complied with the conditions on which the tender of pardon was made.

(5) If the accused does so plead, the Court shall record the plea and proceed with the trial and it shall, before giving its finding on the charge, find whether or not the accused has complied with

the conditions of the pardon, and, if it finds that he has so complied, it shall give a verdict of not guilty.

Go Back to Section 345, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 359 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Child And Adolescent Labour - Prohibhition And Regulation Act, 1986 - Section 14D - Compounding of offences:

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the District Magistrate may, on the application of the accused person, compound any offence committed for the first time by him, under sub- section (3) of section 14 or any offence committed by an accused person being parent or a guardian, in such manner and on payment of such amount to the appropriate Government, as may be prescribed.

(2) If the accused fails to pay such amount for composition of the offence, then, the proceedings shall be continued against such person in accordance with the provisions of this Act.

(3) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded.

(4) Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought in writing, to the notice of the Court in which the prosecution is pending and on the approval of the composition of the offence being given, the person against whom the offence is so compounded, shall be discharged.

Consumer Protection Act, 2019 - Section 96 - Compounding of offences:

(1) Any offence punishable under sections 88 and 89, may, either before or after the institution of the prosecution, be compounded, on payment of such amount as may be prescribed:

Provided that no compounding of such offence shall be made without the leave of the court before which a complaint has been filed under section 92:

Provided further that such sum shall not, in any case, exceed the maximum amount of the fine, which may be imposed under this Act for the offence so compounded.

(2) The Central Authority or any officer as may be specially authorised by him in this behalf, may compound offences under sub- section (1).

(3) Nothing in sub- section (1) shall apply to person who commits the same or similar offence, within a period of three years from the date on which the first offence, committed by him, was compounded.

Explanation.- - For the purposes of this sub- section, any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence.

(4) Where an offence has been compounded under sub- section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded.

(5) The acceptance of the sum of money for compounding an offence in accordance with sub-section (1) by the Central Authority or an officer of the Central Authority empowered in this behalf shall be deemed to amount to an acquittal within the meaning of the Code of Criminal Procedure, 1973 (2 of 1974).

Electricity Act, 2003 - Section 152 - Compounding of offences:

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Appropriate Government or any officer authorised by it in this behalf may accept from any consumer or person who committed or who is reasonably suspected of having committed an offence of theft of electricity punishable under this Act, a sum of money by way of compounding of the offence as specified in the Table below:

TABLE

Name of Service	Rate at which the sum of money for compounding to b per Kilowatt (KW)/ Horse Power (HP) or part there Tension (LT) supply and per Kilo Volt Ampere contracted demand for High Tension (HT)
(1)	**(2)**
1. Industrial Service	twenty thousand rupees;
2. Commercial Service	ten thousand rupees;
3. Agricultural Service	two thousand rupees;
4. Other Services	four thousand rupees;

PROVIDED that the Appropriate Government may, by notification in the Official Gazette, amend the rates specified in the Table above.

(2) On payment of the sum of money in accordance with sub- section (1), any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such consumer or person in any criminal court.

(3) The acceptance of the sum of money for compounding an offence in accordance with sub-section (1) by the Appropriate Government or an officer empowered in this behalf shall be deemed to amount to an acquittal within the meaning of section 300 of the Code of Criminal Procedure, 1973 (2 of 1974).

(4) The compounding of an offence under sub- section (1) shall be allowed only once for any person or consumer.

Information Technology Act, 2000 - Section 77A - Compounding of offences:

A court of competent jurisdiction may compound offences, other than offences for which the punishment for life or imprisonment for a term exceeding three years has been provided, under this Act:

Provided that the court shall not compound such offence where the accused is, by reason of his previous conviction, liable to either enhanced punishment or to a punishment of a different kind:

Provided further that the court shall not compound any offence where such offence affects the socio economic conditions of the country or has been committed against a child below the age of 18 years or a woman.

(2) The person accused of an offence under this Act may file an application for compounding in the court in which offence is pending for trial and the provisions of sections 265B and 265C of the Code of Criminal Procedure, 1973 shall apply.

Legal Metrology Act, 2009 - Section 48 - Compounding of offences:

(1) Any offence punishable under section 25, sections 27 to 39, Section 41, sections 45 to 47, or any rule made under sub- section (3) of section 52 may, either before or after the institution of the prosecution, be compounded, on payment for credit to the Government of such sum as may be prescribed.

(2) The Director or legal metrology officer as may be specially authorised by him in this behalf, may compound offences punishable under section 25, sections 27 to 39, Section 41, or any rule made under sub- section (3) of section 52.

(3) The Controller or legal metrology officer specially authorised by him, may compound offences punishable under section 25, sections 27 to 31, sections 33 to 37, Section 41, sections 45 to 47, and any rule made under sub- section (3) of section 53:

Provided that such sum shall not, in any case, exceed the maximum amount of the fine, which may be imposed under this Act for the offence so compounded.

(4) Nothing in sub- section (1) shall apply to person who commits the same or similar offence, within a period of three years from the date on which the first offence, committed by him, was compounded.

Explanation.- - For the purposes of this sub- section, any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence.

(5) Where an offence has been compounded under sub- section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded.

(6) No offence under this Act shall be compounded except as provided by this section.

Limited Liability Partnership Act, 2008 - Section 39 - Compounding of offences:

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Regional Director or any other officer not below the rank of Regional Director authorised by the Central Government may compound any offence under this Act which is punishable with fine only, by collecting from a person reasonably suspected of having committed the offence, a sum which may extend to the amount of the maximum fine provided for the offence but shall not be lower than the minimum amount provided for the offence.

(2) Nothing contained in sub- section (1) shall apply to an offence committed by a limited liability partnership or its partner or its designated partner within a period of three years from the date on which similar offence committed by it or him was compounded under this section.

Explanation.- - For the removal of doubts, it is hereby clarified that any second or subsequent offence committed after the expiry of the period of three years from the date on which the offence was previously compounded, shall be deemed to be the first offence.

(3) Every application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments thereon, to the Regional Director or any other officer not below the rank of Regional Director authorised by the Central Government, as the case may be.

(4) Where any offence is compounded under this section, whether before or after the institution of any prosecution, intimation thereof shall be given to the Registrar within a period of seven days from the date on which the offence is so compounded.

(5) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence.

(6) Where the compounding of any offence is made after the institution of any prosecution, such compounding shall be brought by the Registrar in writing, to the notice of the court in which prosecution is pending and on such notice of the compounding of the offence being given, the offender in relation to which the offence is so compounded shall be discharged.

(7) The Regional Director or any other officer not below the rank of Regional Director authorised by the Central Government, while dealing with the proposal for compounding of an offence may, by an order, direct any partner, designated partner or other employee of the limited liability partnership to file or register, or on payment of fee or additional fee as required to be paid under this Act, such return, account or other document within such time as may be specified in the order.

(8) Notwithstanding anything contained in this section, if any partner or designated partner or other employee of the limited liability partnership who fails to comply with any order made by the Regional Director or any other officer not below the rank of Regional Director authorised by the Central Government, under sub- section (7), the maximum amount of fine for the offence, which was under consideration of Regional Director or such authorised officer for compounding under this section shall be twice the amount provided in the corresponding section in which punishment for such offence is provided.

Mines and Minerals (Development and Regulation) Act, 1957 - Section 23A - Compounding of offences:

(1) Any offence punishable under this Act or any rule made thereunder may, either before or after the institution of the prosecution, be compounded by the person authorised under section 22 to make a complaint to the court with respect to that offence, on payment to that person, for credit to the Government, of such sum as that person may specify:

Provided that in the case of an offence punishable with fine only, no such sum shall exceed the maximum amount of fine which may be imposed for that offence.

(2) Where an offence is compounded under sub- section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded, and the offender, if in custody, shall be released forthwith.

Offshore Areas Mineral (Development And Regulation) Act, 2002 - Section 30 - Compounding of offences:

(1) Any offence punishable under this Act may, either before or after the institution of the prosecution, be compounded by the administering authority or any other officer authorised by the Central Government with respect to that offence, on payment for credit to that Government of such sum as that administering authority or officer, as the case may be, may specify:

Provided that such sum shall not, in any case, exceed the maximum amount of the fine which may be imposed under this Act for the offence so compounded.

(2) Where an offence is compounded under sub- section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded and the offender, if in custody, shall be released forthwith.

Rubber Act, 1947 - Section 26A - Compounding of offences:

Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974), any offence punishable under this Act may, either before the institution of prosecution or with the permission of the Court after the institution of the prosecution, be compounded by the Board on payment to the Board such sum of money as does not exceed the value of the goods in respect of which contravention has been committed.

Go Back to Section 359, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 381 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Companies Act, 2013 - Section 298 - Power to order costs:

The Tribunal may, in the event of the assets of a company being insufficient to satisfy its liabilities, make an order for the payment out of the assets, of the costs, charges and expenses incurred in the winding up, in such order of priority inter se as the Tribunal thinks just and proper.

Go Back to Section 381, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 388 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Presidency Small Cause Courts Act, 1882 - Section 87 - Imprisonment or committal of person refusing to answer or produce document:

If any witness before the Small Cause Court refuses to answer such questions as are put to him, or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, the Court may sentence him to simple imprisonment, or commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the mean- time such person consents to answer such questions or to produce such document, as the case may be, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of section {Substituted by Act 10 of 1914, section 2 and Schedule I, for "83 or section 85"} [480 or section 482 of the Code of Criminal Procedure, 1898 (5 of 1898)

Go Back to Section 388, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 392 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Patent Act, 1859 - Section 29 – Judgment:

Costs.

If it stall appear to any of the said Courts of Judicature at the hearing of any application under the provisions of Sections XXIV or XXV of this Act that, by reason of any of the objections therein mentioned, the said exclusive privilege in the invention or in any part thereof has not been acquired, the Court shall give judgment accordingly, and shall make such order as to the costs of and consequent upon the application as it may think just: and thereupon the petitioner, his executors, administrators, and assigns shall, so long as the judgment continues in force, cease to be entitled to such exclusive privilege.

Patent Act, 1856 - Section 28 – Judgment:

Costs

If it shall appear to any of the said Courts of Judicature at the hearing of any application under the provisions of Section XXIII or XXIV of this Act that, by reason of any of the objections therein mentioned, the said exclusive privilege in the invention or in any part thereof has not been

acquired, the Court shall give judgment accordingly, and shall make such order as to the costs of and consequent upon the application as it may think just; and thereupon the petitioner, his executors, administrators, and assigns, shall, so long as the judgment continues in force, cease to be entitled to such exclusive privilege.

Family Courts Act, 1984 - Section 17 – Judgment:

Judgment of a Family Court shall contain a concise statement of the case, the point for determination, the decision thereon and the reasons for such decision.

Go Back to Section 392, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 411 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Presidency Small Cause Courts Act, 1882 - Section 11 - Procedure in case of difference of opinion:

Save as hereinafter otherwise provided, when two or more of the Judges sitting together differ on any question, the opinion of the majority shall prevail; and if the Court is equally divided, the Chief Judge, if he is one of the Judges so differing, or, in his absence, the Judge first in rank and precedence of the Judges so differing, shall have the casting voice.

Go Back to Section 411, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 436 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Divorce Act, 1869 - Section 9 - Reference to High Court:

When any question of law or usage having the force of law arises at any point in the proceedings previous to the hearing of any suit under this Act by a District Court or at any subsequent stage of such suit, or in the execution of the decree therein or order thereon,

the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the case and refer it, with the Court's own opinion thereon, to the decision of the High Court.

If the question has arisen previous to or in the hearing, the District Court may either stay such proceedings, or proceed in the case pending such reference, and pass a decree contingent upon the opinion of the High Court upon it.

If a decree or order has been made, its execution shall be stayed until the receipt of the order of the High Court upon such reference.

Employees' State Insurance Act, 1948 - Section 81 - Reference to High Court:

An Employees' Insurance Court may submit any question of law for the decision of the High Court and if it does so shall decide the question pending before it in accordance with such decision.

Expenditure- Tax Act, 1957 - Section 25 - Reference to High Court:

(1) Within ninety days of the date upon which he is served with an order under section 22 or section 24, the assessee or the Commissioner may present an application in the prescribed form and where the application is by the assessee, accompanied by a fee of one hundred rupees, to the Appellate Tribunal requiring the Appellate Tribunal to refer to the High Court any question of law arising out of such order, and the Appellate Tribunal shall, if in its opinion a question of law arises out of such order, state the case for the opinion of the High Court.

(2) An application under sub- section (1) may be admitted after the expiry of the period of ninety days aforesaid if the Tribunal is satisfied that there was sufficient cause for not presenting it within the said period.

(3) If on an application made under sub- section (1) the Appellate Tribunal- -

(a) refuses to state a case on the ground that no question of law arises; or

(b) rejects it on the ground that it is time- barred; the applicant may, within three months from the date on which he is served with a notice of refusal or rejection, as the case may be, apply to the High Court, and the High Court may, if it is not satisfied with the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case to the High Court, and on receipt of such requisition the Appellate Tribunal shall state the case:

Provided that if in any case where the Appellate Tribunal has been required by an assessee to state a case the Appellate Tribunal refuses to do so on the ground that no question of law arises, the assessee may, within thirty days from the date on which he receives notice of refusal to state the case, withdraw his application, and if he does so, the fee paid by him under sub- section (1) shall be refunded to him.

(4) The statement to the High Court shall set forth the facts, the determination of the Appellate Tribunal and the question of law which arises out of the case.

(5) If the High Court is not satisfied that the case as stated is sufficient to enable it to determine the question of law raised thereby, it may require the Appellate Tribunal to make such modifications therein as it may direct.

(6) The High Court, upon hearing any such case, shall decide the question of law raised therein, and in doing so may, if it thinks fit, alter the form of the question of law and shall deliver judgment thereon containing the ground on which such decision is founded and shall send a copy of the judgment under the seal of the Court and the signature of the Registrar to the Appellate Tribunal and the Appellate Tribunal shall pass such orders as are necessary to dispose of the case conformably to such judgment.

(7) Where the amount of any assessment is reduced as a result of any reference to the High Court, the amount if any, over- paid as expenditure- tax shall be refunded with such interest as the Commissioner may allow, unless the High Court, on intimation given by the Commissioner within thirty days of the result of such reference that he intends to ask for leave to appeal to the Supreme Court, makes an order authorising the Commissioner to postpone payment of such refund until the disposal of the appeal in the Supreme Court.

(8) The costs of any reference to the High Court shall be in the discretion of the Court.

(9) Section 5 of the Indian Limitation Act, 1908 (09 of 1908), shall apply to an application to the High Court under this section.

Code of Civil Procedure, 1908 - Section 113 - Reference to High Court:

Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit:

Provided that where the Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefore, and refer the same for the opinion of the High Court.

Explanation.- In this section, "Regulation" means any Regulation of the Bengal, Bombay or Madras Code or Regulation as defined in the General Clauses Act, 1897 (10 of 1897), or in the General Clauses Act of a State.

Income- Tax Act, 1961 - Section 256 - Statement of case to the High Court (Omitted):

(1) The assessee or the Principal Commissioner or Commissioner may, within sixty days of the date upon which he is served with notice of an order passed before the 1st day of October, 1998, under section 254, by application in the prescribed form, accompanied where the application is made by the assessee by a fee of two hundred rupees, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order and, subject to the other provisions contained in this section, the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such application, draw up a statement of the case and refer it to the High Court:

Provided that the Appellate Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period hereinbefore specified, allow it to be presented within a further period not exceeding thirty days.

(2) If, on an application made under sub- section (1), the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the assessee or the Principal Commissioner or Commissioner, as the case may be, may, within six months from the date on which he is served with notice of such refusal, apply to the High Court, and the High Court may, if it is not satisfied with the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to

state the case and to refer it, and on receipt of any such requisition, the Appellate Tribunal shall state the case and refer it accordingly.

(2A) The High Court may admit an application after the expiry of the period of six months referred to in sub- section (2), if it is satisfied that there was sufficient cause for not filing the same within that period.

(3) Where in the exercise of its powers under sub- section (2), the Appellate Tribunal refuses to state a case which it has been required by the assessee to state, the assessee may, within thirty days from the date on which he receives notice of such refusal, withdraw his application, and, if he does so, the fee paid shall be refunded.

Income- Tax Act, 1961 - Section 257 - Statement of case to Supreme Court in certain cases:

If, on an application made against an order made under section 254 before the 1st day of October, 1998, under section 256 the Appellate Tribunal is of the opinion that, on account of a conflict in the decisions of High Courts in respect of any particular question of law, it is expedient that a reference should be made direct to the Supreme Court, the Appellate Tribunal may draw up a statement of the case and refer it through its President direct to the Supreme Court.

Income- Tax Act, 1961 - Section 258 - Power of High Court or Supreme Court to require statement to be amended (Omitted):

If the High Court or the Supreme Court is not satisfied that the statements in a case referred to it are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Appellate Tribunal for the purpose of making such additions thereto or alterations therein as it may direct in that behalf.

Income- Tax Act, 1961 - Section 259 – Case before High Court to be heard by not less than two judges:

(1) When any case has been referred to the High Court under section 256, it shall be heard by a Bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such judges or of the majority, if any, of such judges.

(2) Where there is no such majority, the judges shall state the point of law upon which they differ, and the case shall then be heard upon that point only by one or more of the other judges of the High Court, and such point shall be decided according to the opinion of the majority of the judges who have heard the case including those who first heard it.

Income- Tax Act, 1961 - Section 260 – Decision of High Court or Supreme Court on the case stated:

(1) The High Court or the Supreme Court upon hearing any such case shall decide the questions of law raised therein, and shall deliver its judgment thereon containing the grounds on which

such decision is founded, and a copy of the judgment shall be sent under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgment.

(1A) Where the High Court delivers a judgment in an appeal filed before it under section 260A, effect shall be given to the order passed on the appeal by the Assessing Officer on the basis of a certified copy of the judgment.

(2) The costs of any reference to the High Court or the Supreme Court which shall not include the fee for making the reference shall be in the discretion of the Court.

Go Back to Section 436, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 439 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Dock Workers Regulation of Employement Act, 1948 - Section 6A - Power to order inquiry:

1. The Government may, at any time, appoint any person to investigate or enquire into the working of a Board and submit a report to the Government.

2. The Board shall give to the person so appointed all facilities for the proper conduct of the investigation or inquiry and furnish to him such documents, accounts or information in the possession of the Board as he may require.

Go Back to Section 439, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 458 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Air Force Act, 1950 - Section 166 - Execution of sentence of imprisonment:

(1) Whenever any sentence of imprison-ment is passed under this Act or whenever any sentence of death or transportation is commuted to imprisonment, the confirming officer or such other officer as may be prescribed, shall, save as otherwise provided in sub- sections (3) and (4), direct either that the sentence shall be carried out by confinement in a military or air force prison or that it shall be carried out by confinement in a civil prison.

(2) When a direction has been made under sub- section (1) the commanding officer of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer- in- charge of the prison in which such person is to be confined and shall arrange for his dispatch to such prison with the warrant.

(3) In the case of a sentence of imprisonment for a period not exceeding three months, the officers referred to in sub- section (1) may direct that the sentence shall be carried out by confinement in air force custody instead of in a civil or military or air force prison.

(4) On active service, a sentence of imprisonment may be carried out by confinement in such place as the officer commanding the forces in the field may, from time to time, appoint.

Army Act, 1950 - Section 169 - Execution of sentence of imprisonment:

(1) Whenever any sentence of imprisonment is passed under this Act by a court- martial or whenever any sentence of death of transportation is commuted to imprisonment, the confirming officer or in case of a summary court- martial, the officer holding the court or such other officer as may be prescribed, shall, save as otherwise provided in sub- sections (3) and (4), direct either that the sentence shall be carried out by confinement in a military prison or that it shall be carried out by confinement in a civil prison.

(2) When a direction has been made under sub- section (1), the commanding officer, of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer incharge of the prison in which such person is to be confined and shall arrange for his despatch to such prison with the warrant.

(3) In the case of a sentence of imprisonment for a period not exceeding three months and passed under this Act by a court- martial, the appropriate officer under sub-section (1), may direct that the sentence shall be carried out by confinement in military custody instead of in a civil or military prison.

(4) On active service, a sentence of imprisonment may be carried out by confinement in such place as the officer commanding the forces in the field may from time to time, appoint.

Assam Rifles Act, 2006 - Section 143 - Execution of sentence of imprisonment:

(1) Whenever any sentence of imprisonment is passed under this Act by an Assam Rifles Court or whenever any sentence of death is commuted to imprisonment, the confirming officer or in case of a Summary Assam Rifles Court, the officer holding the Court or such other officer as may be prescribed, shall, save as otherwise provided in sub- sections (3) and (4), direct that the sentence shall be carried out by confinement in a civil prison.

(2) When a direction has been made under sub- section (1), the Commandant of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the prison in which such person is to be confined and shall arrange for his dispatch to such prison with the warrant.

(3) In the case of a sentence of imprisonment for a period not exceeding three months and passed under this Act by an Assam Rifles Court the appropriate officer under subsection (1) may direct that the sentence shall be carried out by confinement in force custody instead of in a civil prison.

(4) On active duty, a sentence of imprisonment may be carried out by confinement in such place as the Deputy Inspector- General within whose command the person sentenced is serving or any prescribed officer may from time to time appoint.

Border Security Force Act, 1968 - Section 121 - Execution of sentence of imprisonment:

(1) Whenever any sentence of imprisonment is passed under this Act by a Security Force Court or whenever any sentence of death is commuted to imprisonment, the confirming officer or in case of a Summary Security Force Court the officer holding the court or such other officer as may

be prescribed shall, save as otherwise provided in sub- sections (3) and (4) direct that the sentence shall be carried out by confinement in a civil prison.

(2) When a direction has been made under sub- section (1) the Commandant of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the prison in which such person is to be confined and shall arrange for his dispatch to such prison with the warrant.

(3) In the case of a sentence of imprisonment for a period not exceeding three months and passed under this Act by a Security Force Court, the appropriate officer under subsection (1) may direct that the sentence shall be carried out by confinement in Force custody instead of in a civil prison.

(4) On active duty, a sentence of imprisonment may be carried out by confinement in such place as the Deputy Inspector- General within whose command the person sentenced is serving or any prescribed officer, may from time to time appoint.

Coast Guard Act, 1978 - Section 100 - Execution of sentence of imprisonment:

(1) Whenever any sentence of imprisonment is passed under this Act or whenever any sentence of death is commuted to imprisonment, the presiding officer of the Coast Guard Court which passed the sentence or such other officer as may be prescribed shall direct that the sentence shall be carried out by confinement in a civil prison.

(2) When a direction has been made under sub- section (1), the Commanding Officer of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the prison in which such person is to be confined and shall arrange for his dispatch to such prison with the warrant.

Indian Air Force Act, 1932 - Section 113 - Execution of sentence of imprisonment:

Whenever any sentence of imprisonment is passed under this Act, or whenever any sentence so passed is commuted to imprisonment, the commanding officer of the person under sentence, or such other officer as may be prescribed, shall forward a warrant in the prescribed form to the officer in charge of the civil prison in which such person is to be confined, and shall forward him to such prison with the warrant:

Provided that, in the case of a sentence of imprisonment for a period not exceeding three months, the confirming authority, or, in the case of a sentence which does not require confirmation, the court, may direct that the sentence shall be carried out by confinement in air force custody:

Provided further that on active service a sentence of imprisonment may be carried out by confinement in such place as the officer commanding the forces in the field may, from time to time, appoint.

Indo- Tibetan Border Police Force Act, 1992 - Section 135 - Execution of sentence of imprisonment:

(1) Whenever any sentence of im-prisonment is passed under this Act by a Force Court or whenever any sentence of death is commuted to imprisonment, the confirming officer or in case of a Summary Force Court the officer holding the Court or such other officer as may be prescribed shall, save as otherwise provided in sub- sections (3) and (4), direct that the sentence shall be carried out by confinement in a civil prison.

(2) When a direction has been made under sub- section (1), the commanding officer of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the prison in which such person is to be confined and shall arrange for his dispatch to such prison with the warrant.

(3) In the case of a sentence of imprisonment for a period not exceeding three months and passed under this Act by a Force Court, the appropriate officer under sub- section (1) may direct that the sentence shall be carried out by confinement in Force custody instead of in a civil prison.

(4) On active duty, a sentence of imprisonment may be carried out by confinement in such place as the officer not below the rank of Additional Deputy Inspector- General within whose command the person sentenced is serving or any prescribed officer may from time to time appoint.

National Security Guard Act, 1986 - Section 117 - Execution of sentence of imprisonment:

(1) Whenever any sentence of imprisonment is passed under this Act by a Security Guard Court or whenever any sentence of death is commuted to imprisonment, the confirming officer, or in case of a Summary Security Guard Court the officer holding the Court or such other officer as may be prescribed, shall, save as otherwise provided in sub- sections (3) and (4), direct that the sentence shall be carried out by confinement in a civil prison.

(2) When a direction has been made under sub- section (1), the Commander of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the prison in which such person is to be confined and shall arrange for his despatch to such prison with the warrant.

(3) In the case of a sentence of imprisonment for a period not exceeding three months and passed under this Act by a Security Guard Court, the appropriate officer under sub- section (1) may direct that the sentence shall be carried out by confinement in Security Guard custody instead of in a civil prison.

(4) On active duty, a sentence of imprisonment may be carried out by confinement in such place as the Deputy Inspector- General within whose command the person sentenced is serving or any prescribed officer, may, from time to time, appoint.

Sashastra Seema Bal Act, 2007 - Section 135 - Execution of sentence of imprisonment:

(1) Whenever any sentence of imprisonment is passed under this Act by a Force Court or whenever any sentence of death is commuted to imprisonment, the confirming officer or in case of a Summary Force Court the officer holding the Court or such other officer as may be prescribed shall, save as otherwise provided in sub- sections (3) and (4), direct that the sentence shall be carried out by confinement in a civil prison.

(2) When a direction has been made under sub- section (1), the commanding officer of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the prison in which such person is to be confined and shall arrange for his dispatch to such prison with the warrant

(3) In the case of a sentence of imprisonment for a period not exceeding three months and passed under this Act by a Force Court, the appropriate officer under sub- section (1) may direct that the sentence shall be carried out by confinement in Force custody instead of in a civil prison.

(4) On active duty, a sentence of imprisonment may be carried out by confinement in such place as the officer not below the rank of Additional Deputy Inspector- General within whose command the person sentenced is serving or any prescribed officer may from time to time appoint.

Go Back to Section 458, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 497 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Indian Army Act, 1911 - Section 126A - Order for custody and disposal of property pending trial in certain Cases:

When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before a court- martial during a trial, the court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the trial, and if the property is subject to speedy or natural decay may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Go Back to Section 497, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 519 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Delhi sales tax Act, 1975 - Section 62 - Extension of period of limitation in certain cases:

(1) An Appellate Authority may admit an appeal under section 43 after the period of limitation laid down in that section, if the appellant satisfies the appellate authority that he has sufficient cause for not preferring the appeal within such period.

(2) In computing the period laid down under sections 43, 45, 46 and 47, the provisions of sections 4 and 12 of the Limitation Act, 1963 (36 of 1963) shall, so far as may be, apply.

(3) In computing the period of limitation prescribed by or under any provisions of this Act, or the rules made thereunder, other than sections 43, 45, 46 or 47, any period during which any proceeding is stayed by an order or injunction of any court shall be excluded.

Go Back to Section 519, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 523 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Arbitration and Conciliation Act, 1996 - Section 82 - Power of High Court to make rules:

The High court may make rules consistent with this Act as to all proceedings before the court under this Act.

Banking Regulation Act, 1949 - Section 45U - Power of High Court to make rules:

The High Court may make rules consistent with this Act and the rules made under section 52 prescribing—

(a) the manner in which inquiries and proceedings under Part III or Part IIIA may be held;

(b) the offences which may be tried summarily;

(c) the authority to which, and the conditions subject to which, appeals may be preferred and the manner in which such appeals may be filed and heard;

(d) any other matter for which provision has to be made for enabling the High Court to effectively exercise its functions under this Act.

Family Courts Act, 1984 - Section 21 - Power of High Court to make rules:

(1) The High Court may, by notification in the Official Gazette, make such rules as it may deem necessary for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) normal working hours of Family Courts and holding of sittings of Family Courts on holidays and outside normal working hours;

(b) holding of sittings of Family Courts at places other than their ordinary places of sitting;

(c) efforts which may be made by, and the procedure which may be followed by, a Family Court for assisting and persuading parties to arrive at a settlement.

Guardians and Wards Act, 1890 - Section 50 - Power of High Court to make rules:

(1) In addition to any other power to make rules conferred expressly or impliedly by this Act, the High Court may from time to time make rules consistent with this Act-

(a) as to the matters respecting which, and the time at which, reports should be called for from Collectors and subordinate Courts;

(b) as to the allowances to be granted to, and the security to be required from, guardians, and the cases in which such allowances should be granted;

(c) as to the procedure to be followed with respect to applications of guardians for permission to do acts referred to in sections 28 and 29;

(d) as to the circumstances in which such requisitions as are mentioned in clauses (a), (b), (c) and (d) of section 34 should be made;

(e) as to the preservation of statements and accounts delivered and exhibited by guardians;

(f) as to the inspection of those statements and accounts by persons interested;

(ff) as to the audit of accounts under section 34A, the class of persons who should be appointed to audit accounts, and the scales of remuneration to be granted to them;

(g) as to the custody of money, and securities for money, belonging to wards;

(h) as to the securities on which money belonging to wards may be invested;

(i) as to the education of wards for whom guardians, not being Collectors, have been appointed or declared by the Court; and

(j) generally, for the guidance of the Courts in carrying out the purposes of this Act.

(2) Rules under clauses (a) and (i) of sub- section (1) shall not have effect until they have been approved by the State Government, nor shall any rule under this section have effect until it has been published in the Official Gazette.

Pondicherry (Administration) Act, 1962 - Section 12 - Power of High Court to make rules:

The High Court may, from time to time, make rules, consistent with this Act, to provide for all or any of the following matters, namely:—

(a) the translation of any papers filed in the High Court and the preparation of paper- books for hearing all appeals and the copying, typing or printing of any such papers or translation and the recovery from the persons at whose instance or on whose behalf papers are filed of the expenses thereby incurred.

(b) the court- fees payable for instituting proceedings in the High Court, the fees to be charged for processes issued by the High Court or by any officer of the court and the amount payable in any proceeding in the High Court in respect of fees of the advocate of any party to such proceedings;

(c) the procedure to be followed in the High Court;

(d) the approval, admission, enrolment, removal and suspension of advocates from Pondicherry.

Special Marriage Act, 1954 - Section 41 - Power of High Court to make rules regulating procedure:

(1) The High Court shall, by notification in the Official Gazette, make such rules consistent with the provisions contained in this Act and the Code of Civil Procedure, 1908 (5 of 1908), as it may consider expedient for the purpose of carrying into effect the provisions of Chapters V, VI and VII.

(2) In particular, and without prejudice to the generality of the foregoing provision, such rules shall provide for,- -

(a) the impleading by the petitioner of the adulterer as a co- respondent on a petition for divorce on the ground of adultery, and the circumstances in which the petitioner may be excused from doing so;

(b) the awarding of damages against any such co- respondent;

(c) the intervention in any proceeding under Chapter V or Chapter VI by any person not already a party thereto;

(d) the form and contents of petitions for nullity of marriage or for divorce and the payment of costs incurred by parties to such petitions; and

(e) any other matter for which no provision or no sufficient provision is made in this Act, and for which provision is made in the Indian Divorce Act, 1869 (4 of 1869).

Go Back to Section 523, Bharatiya Nagarik Suraksha Sanhita, 2023

MANU/SC/0158/1962

Back to Section 2b of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 224/60

Decided On: 20.11.1962

Birichh Bhuian and Ors. Vs. State of Bihar

Hon'ble Judges/Coram:

J.R. Mudholkar, K. Subba Rao, N. Rajagopala Ayyangar and Syed Jaffer Imam, JJ.

JUDGMENT

K. Subba Rao, J.

1. This appeal by Certificate raises the question of the scope of s. 537 of the Criminal Procedure Code.

2. The facts are not in dispute and may be briefly stated. On September 16, 1956, at about 3- 55 P.M. the Sub Inspector of Police, attached to Chainpur outpost, found 10 to 15 persons gambling by the side of the road. He arrested five out of them and the rest had escaped. The Sub Inspector took the arrested persons to the out- post and as one of the arrested persons Jamal adopted a violent attitude, he ordered him to be handcuffed whereupon he began to abuse the Sub Inspector. It happened that a large number of Bhuians, male and female, were dancing close to the outpost. Some of them hearing the noise rushed with lathies to the out- post, assaulted the Sub- Inspector and two constables and looted the out- post. Three charge- sheets were filed in the court of the Sub- Divisional Officer in respect of the said incidents, first against the appellants Nos. 1 to 4 and others under Sections 147, 452 and 379 of the Indian Penal Code alleging that they raised the outpost, looted some properties and assaulted the informant and others; the second against the appellants 5 and 4 others under s. 224 of the Indian Penal Code and the third against appellant No. 5 and 4 others under s. 11 of the Bengal Public Gambling Act. The said Sub Divisional Officer took cognizance of the said cases and transferred them to the court of the Magistrate 1st Class, Daltonganj. On December 29, 1956, on a petition filed by the Prosecuting Inspector the said Magistrate held a joint trial. On July 22, 1957, he delivered a single judgment convicting appellants Nos. 1 to 4 under s. 147 of the India Penal Code and also under Sections 452 and 380/34 of the Indian Penal Code and sentencing them to undergo rigorous imprisonment for one year for the former offence. No sentence was imposed for the latter offences. The appellant No. 5, along with 4 others was convicted under s. 224 of the Indian Penal Code and sentenced to two years' rigorous imprisonment and was also convicted under s. 11 of the Bengal Public Gambling Act, and Sections 353 and 380/34 of the Indian Penal Code, but no separate sentence was awarded for the said offences, The appellant and others preferred an appeal against the said concessions and sentences to the court of the Additional Judicial Commissioner of Ranchi and he

by his judgment dated July 10, 1958, convicted the appellants Nos. 1 to 4 under s. 147 of the Indian Penal Code and acquitted them in respect of other charges. The conviction of the appellant No. 5 under s. 224, Indian Penal Code, was maintained but the sentence was reduced to one year's rigorous imprisonment and a sentence of rigorous imprisonment for one month was imposed on appellants Nos. 4 and 5 and others under s. 11 of the Bengal Public Gambling Act. The learned Judicial Commissioner held that the offence under s. 11 of the Bengal Public Gambling Act was not committed in the course of the same transaction as the other offences were committed at the police- post and therefore there was a misjoinder of charges. Nonetheless he held that the said defect was curable as no prejudice had been caused to the appellants. The appellants preferred a revision petition to the High Court of Judicature at Patna and the said High Court dismissed the same on the ground that by reason of s. 537(b) of the Criminal Procedure Code the conviction could not be set aside as the said misjoinder of charges did not occasion a failure of justice. The present appeal was filed against the said order on a certificate issued by the High Court.

3. The learned counsel for the appellants contended that s. 537(b) of the Criminal Procedure Code could only save irregularities in the matter of framing of charges but could not cure a joint trial of charges against one person or several persons, that was not sanctioned by the Code. Elaborating his argument the learned counsel contended that the expression 'mis- joinder of charges' in s. 537(b) of the Code must be confined only to mis- joinder of accusations - according to him charge in the Code means only an accusation - and therefore a joint trial of offences and persons outside the scope of Sections 233 to 239, of the Criminal Procedure Code, would not be misjoinder of charges within the meaning of said expression.

4. As the question raised turns upon the construction of the provisions of s. 537 of the Criminal Procedure Code, it would be convenient to read the material part of it at this stage :-

"Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII or on appeal or revision on account.....

(a) of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or

(b) of any error, omission or irregularity in the charge, including any misjoinder of charges, or

(c) XX XX XX XX

(d) of any misdirection in any charge to a jury unless such error, omission, irregularity, or mis-direction has in fact occasioned a failure of justice.

EXPLANATION :- In determining whether any error, omission or irregularity in any proceeding under this Code has occasioned failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

5. Clause (b) was inserted by Act XXVI of 1955. The word 'charge' which occurred after 'warrant' in clause (a) was omitted and the new clause which specifically relates to charge was added. Further the expression 'mis- joinder of charges' was included in the general terms 'error, omission or irregularity in the charge'. The object of the section is manifest from its provisions. As the object of all rules of procedure is to ensure a fair trial so that justice may be done, the section in terms says that any violation of the provisions to the extent narrated therein not resulting in a failure of

justice does not render a trial void. The scope of clause (b) could be best understood, if a brief historical background necessitating the amendment was noticed. The Judicial Committee in Subrahmania Ayyar v. King Emperor I.L.R. (1902) Mad. 61 L.R. 28 IndAp 257 held that the disregard of an express provision of law as to the mode of trial was not a mere irregularity such as could be remedied by s. 537 of the Criminal Procedure Code. There the trial was held in contravention of the provisions of Sections 233 and 234 of the Code of Criminal Procedure which provide that every separate offence shall be charged and tried separately except that the three offences of the same kind may be tried together in one charge if committed within a period of one year. It was held that the mis- joinder of charges was not an irregularity but an illegality and therefore the trial having been conducted in a manner prohibited by law was held to the altogether illegal. The Judicial Committee in Abdul Rehman v. The King Emperor I.L.R. (1927) Rang 53; L.R. 54 IndAp 96.) considered that a violation of the provisions of s. 360 of the Code which provides that the depositions should be read over to the witnesses before they sign, was only an irregularity curable under s. 537 of the Code. Adverting to Subrahmania Ayyar's case it pointed out that the procedure adopted in that case was one which the Code positively prohibited and it was possible that in might have worked actual injustice to the accused. The question again came before the Privy Council in Babu Lal Choukhani v. Emperor I.L.R. (1938) Cal. 295. One of the points there was whether the trial was held in infringement of s. 239(d) of the Criminal Procedure Code. The Board held that it was not. Then the question was posed that if there was a contravention of the said section, whether the case would be governed by Subrahmania Ayyar's case or Abdul Rehman's case. The Board did not think it was necessary to discuss the precise scope of what was decided in Subrahmania Ayyar's case because in their understanding of s. 239(d) of the Code that question did not arise in that case. The point was again mooted by the Board in Pulukuri Kotayya v. King Emperor I.L.R. 1948 Mad. 1. In that case there had been a breach of the proviso to s. 162 of the Code. It was held that in the circumstances of the case the said breach did not prejudice the accused and therefore the trial was saved by s. 537 thereof. Sir Join Beaumont speaking for the Board observed at p. 12 "When a trial is conducted in a manner different from that prescribed by the Code, as in Subrahmania Ayyar v. King Emperor I.L.R. (1902) Mad. 1, the trial is bad, and no question of curing an irregularity arises, but if the trial is conducted substantially in the manner prescribed by the Code, but some irregularity occurs in the course of such conduct, the irregularity can be cured under s. 537, and no the less so because the irregularity involves, as must nearly always be the case, a breach of one or more of the very comprehensive provisions of the Code. The distinction drawn in many of the cases in India between an illegality and an irregularity is one of the degree rather than of kind". It will be seen from the said observations that the Judicial Committee left to the courts to ascertain in each case whether an infringement of a provision of Code is an illegality or an irregularity. There was a marked cleavage of opinion in India whether the later decisions of the Privy Council modified the rigor of the rule laid down in Subrahmania Ayyar's case and a view was expressed in several decisions that a mere mis- joinder of charges did not necessarily vitiate the trial unless there was a failure of justice, while other decisions took a contrary view. This court in Janardan Reddy v. The State of Hyderabad MANU/SC/0027/1951 : [1951]2SCR344 left open the question for future decision. In this state of law, the Parliament has intervened to set at rest the conflict by passing Act XXVI of 1955 making a separate provision in respect of errors, omissions or irregularities in a charge and also enlarging the meaning of the expression such errors etc. so as to include a misjoinder of charges. After the amendment there is no scope for contending that mis- joinder of charges is not saved by s. 537 of the Criminal Procedure Code if it has not occasioned a failure of justice.

6. The next question is what is the meaning of the word 'charges' in the expression 'mis- joinder of charges'. The word 'charge', the learned counsel of the appellants contends means only an accusation of a crime or an information given by the Court of an allegation made against the accused. Does the section only save irregularities in the matter of mis- joinder of such accusations ? Does it only save the irregularities committed in mixing up accessions in respect of offences or persons the joinder whereof has been permitted by the provisions of the Criminal Procedure Code ? The mis- joinder cured by the section, it is said, is illustrated by the decision in Kadiri Kunhahammad v. The State of Madras MANU/SC/0212/1959 : 1960CriLJ1013 There in a case of conspiracy of commit a breach of trust a separate charge was framed in contravention of the proviso to s. 222 of the Criminal Procedure Code i.e. in regard to an amount misappropriated during the period exceeding one year. This Court held that as acts of misappropriation committed during the curse of the same transaction could be tried together in one trial, the contravention of s. 222 was only an irregularity, for that act of misappropriation could have been split up into two parts, each of them covering a period less than one year and made subject of a separate charge. In that view it was held that s. 537 saved the trial, as there was no failure of justice. There a joint trial was permitted by the relevant provisions of the Code, but the defect was only in having one charge instead of two charges. The question is whether the expression should be given only the limited meaning as contended above. The word 'charge' is defined in s. 4(c). It says that the charge includes any head of a charge where charge contained more heads than one. This definition does not throw any light, but it may be noted that that is only an inclusive one. Chapter XIX provides for the form of charges and for joinder of charges. Section 221 to 232 give the particulars that a charge shall contain and the manner of rectifying defects if found therein. Section 221 says that in every charge the court shall state the offence with which the accused is charged. Section 222 provides that the charge shall contain such particulars as to the time and place of the alleged offence and the person against whom or the thing in respect of which it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged. Section 233 repeats that a charge shall also contain such particulars mentioned in Sections 221 and 222. The form of a charge prescribed in Schedule 5 shows that it contains an accusation that a person committed a particular offence. It is, therefore, clear that a charge is not an accusation made or information given in abstract but an accusation made against a person in respect of an act committed or omitted in violation of a penal law forbidding or commanding it. In other words it is an accusation made against a person in respect of an offence alleged to have been committed by him. If so, section 234 to 239 deal with joinder of such charges. Section 233 says that for every distinct offence of which any person is accused, there shall be a separate charge and every such charge shall be tried separately, except in cases maintained in Sections 234, 235, 236 and 239. Sections 234 to 236 permit joinder of charges and trial of different offences against a single accused in the circumstances mentioned in those sections and s. 239 provides for the joinder of charges and the trial of several persons. The scheme of the said sections also indicates that a charge is not a mere abstraction but a concrete accusation against a person in respect to an offence and that their joinder is permitted under certain circumstances whether the joinder of charges is against one person or different persons. If the joinder of such charges is made in contravention of the said provisions, it will be misjoinder of charges. As we have noted already, before sub- section (b) was added to s. 537 of the Criminal Procedure Code there was a conflict of view on the question whether such a misjoinder was only an irregularity which could be cured under that section, or an illegality which made it void. The amendment steered clear of that conflict and expressly

included the misjoinder of charges in the errors and irregularities which could be cured thereunder. To summarise : a charge is a precise formulation of a specific accusation made against person of an offence alleged to have been committed by him. Sections 234 to 239 permit the joinder of such charges under specified conditions for the purpose of a single trial. Such a joinder may be of charges in respect of different offences committed by a single person or several persons. If the joinder of charges was contrary to the provisions of the Code it would be a mis- joinder of charges. Section 537 prohibits the revisional or the appellate court from setting aside a finding, sentence or order passed by a court of competent jurisdiction on the ground of such a misjoinder unless it has occasioned a failure of justice. In this case there was a clear misjoinder of charges against several persons. But the High Court held that there was no failure of justice and the appellants held their full say in the matter and they were not prejudiced in any way. We, therefore, hold that the High Court was right in not setting aside the convictions of the accused and the sentence passed against them.

7. In the result the appeal fails and is dismissed.

8. Appeal dismissed.

MANU/SC/0794/2000

Back to Section 2d of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal Nos. 1111- 1112 of 2000 [Arising out of SLP (Crl.) Nos. 2221- 2222 of 2000]

Decided On: 13.12.2000

The State of Bihar Vs. Chandra Bhushan Singh and Ors.

Hon'ble Judges/Coram:

K.T. Thomas and R.P. Sethi, JJ.

JUDGMENT

R.P. Sethi, J.

1. Leave granted.

2. Respondents, who are the employees of the Railways, were caught red handed on 25.3.1987 while carrying away Railway Cement unlawfully for sale. Upon inquiry, offences under The Railways Property (Unlawful Possession) Act, 1966 (hereinafter referred to as "the Act") were held proved against the accused persons. Inquiry Report (Complaint) under the Act was filed by M.I, Khan, Inspector, RPF, Samastipur, against the accused persons in the court i of Judicial Magistrate, First Class, Samastipur. The accused persons filed applications before the Magistrate praying for their discharge on the ground that Sub- Inspector of Railway Protection Force, who submitted charge- sheet against them was not a "police officer" within the meaning of Section 173 of the CrPC (hereinafter referred to as "the Code") and upon his report submitted in the court, the Magistrate had no jurisdiction to take cognizance. Their prayer was rejected by the Magistrate against which they filed petitions in the High Court for quashing the order of the Magistrate. The High Court allowed the petitions of the respondents- accused and quashed the proceedings pending against them before the Railway Magistrate, vide the order impugned in these appeals.

3. We have heard the learned Counsel appearing for the parties and perused the record and relevant provisions of the Act besides the Code.

4. Mr. P.S. Mishra, the learned Sr. Advocate appearing for the respondents has frankly conceded that the order of the High Court impugned in these appeals cannot be justified. He has, however, prayed that as the respondents- accused had raised various other contentions for quashing of the proceedings before the Magistrate, this Court may consider desirability of adjudicating such pleas or remand the case back to the High Court for decision on the points raised but not decided.

5. Section 3 of the Act provides the penalty for unlawful possession of railway property. Section 6 authorises a superior officer or member of the Force to arrest any person who has been concerned in an offence punishable under the Act or against whom a reasonable suspicion exists of his having been so concerned without an order from the Magistrate and without a warrant. Section 7 provides that every person arrested under the Act, shall, if the arrest is made by a person other than the officer of the Force, to forward such person, without delay to the nearest officer of the Force, Section 8 of the Act provides:

Inquiry how to be made against arrested persons- (1) When any such person is arrested by an officer of the Force for an offence punishable under this Act or is forwarded to him under Section 7, he shall proceed to inquire into the charge against such persons.

(2) For this purpose the officer of the Force may exercise the same powers and shall be subject to the same provisions as the officer in charge of a police station may exercise and is subject to under the CrPC, 1898, when investigating a cognizable case:

Provided that-

(a) if the officer of the Force is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case, or forward him in custody to such Magistrate;

(b) if it appears to the officer of the Force that there is no sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person on his executing a bond, with or without sureties as the officer of the Force may direct, to appear, if and when so required, before the Magistrate having jurisdiction, and shall make a full report of all the particulars of the case to his official superior.

6. In this case, after seizure of the Railway property and interrogation of the accused, Case Crime No. 14/87 under Section 3 of the Act was registered. As per statement of accused Baleshwar Singh further recovery of 136 bags of cement in addition to the cement already seized, was effected. Shri M.I. Khan, IPF/SPJ inquired the case and submitted the complaint before the Magistrate. Copy of the complaint has been annexed with this appeal as Annexure P- 3. A perusal of Annexure P-3 unambiguously indicates that it was not a report within the meaning of Section 173 of the Code but a complaint filed before the Magistrate, obviously under Section 200 of the Code. The process against the accused appears to have been issued under Section 204 of the Code. By no stretch of imagination, Exhibit P- 3 can be termed to be a report within the meaning of Section 173 of the Code. Merely because the inquiry was held by a member of the Force having some similar powers as are possessed by an investigating officer, would not make the complaint to be a report within the meaning of Section 173 of the Code.

7. Section 2(d) of the Code defines the complaint to mean any allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code, that some person, whether

known or unknown, has committed an offence but does not include a police report. Explanation to Clause (d) to Section 2 of the Code provides:

Explanation- A report made a police officer in a case which discloses, after investigation, the commission of a non- cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant.

Section 2(d) of the Code encompasses a police report also as a deemed complaint if the matter is investigated by a police officer regarding the case involving commission of a non- cognizable offence. In such a case, the report submitted by a police officer cannot be held to be without jurisdiction merely because proceedings were instituted by the police officer after investigation, when he had no power to investigate.

8. For quashing the proceedings, the High Court relied upon the judgment of this Court in Balkishan A. Devidayal, etc. v. State of Maharashtra, etc. MANU/SC/0112/1980 : 1980CriLJ1424 . The reliance appears to be misconceived. In that case the court, while interpreting the provisions of Section 25 of the Evidence Act held, "an officer of the RPF could not, therefore, be deemed to be a 'police officer' within the meaning of Section 25 of the Evidence Act and, therefore, any confessional or incriminating statement recorded by him in the course of an inquiry under Section 8(1) of the 1966 Act cannot be excluded from evidence under the said section". As noted earlier by us, this Court in Balkishan's case also observed that an officer conducting an inquiry under Section 8(1) of the Act has not been invested with all powers of an officer incharge of a police station making an investigation under Chapter XIV of the Code. He has no power to file a charge sheet before the Magistrate concerned under Section 173 of the Code. The main purpose of the Act was to invest powers of investigation and prosecution of an offence relating to Railway property in the RPF in the same manner as in a case relating to the offences under the law dealing with excise and customs. The offences under the Act are non- cognizable which cannot be investigated by a police officer under the Code. The result is that initiation of inquiry for an offence inquired into under this Act can be only on the basis of a complaint by an officer of the Force, as was actually done in this case.

9. To the same effect is the judgment of this Court in Criminal Appeal Nos. 512- 515 of 1997 decided on 2.5.1997 (State of Bihar and Ors. v. Ganesh Chaudhry and Ors.).

10. Mr. Mishra, the learned Senior counsel vehemently argued that the case be remanded back to the High Court for adjudication of other grounds on the basis of which the proceedings were sought to be quashed. He pointedly referred to the averments made in para 27 of the petition filed in the High Court to urge that as the trial of the case was pending against the accused for over a period of 5 years, the proceedings against them are liable to be quashed under a notification allegedly issued by the State Government. Learned Counsel has neither shown us the notification nor the authority of law under which such notification could have been issued by the State Government. He also tried to emphasise that even on admitted facts no case under Section 3 of the Act was made out against the accused and that the proceedings initiated against his clients

were otherwise not sustainable. We are of the opinion that such pleas cannot be raised before us at this stage and the case cannot be remanded back to the High Court in view of the fact that the proceedings against the respondents appear to have been sufficiently prolonged on one pretext or the other for over a period of 13 years. We are, however, of the opinion that the respondents have a statutory right to raise all such pleas as are available to them under the law during the trial before the Magistrate. All such pleas, when raised, can appropriately be considered and disposed of by the trial court.

11. In view of what has been stated hereinabove, these appeals are allowed by setting aside the order of the High Court and upholding the order of the Magistrate refusing to discharge the respondents in the complaint pending before him. The Magistrate is further directed to expedite the trial.

MANU/SC/1119/2015

Neutral Citation: 2015/INSC/737

Back to Section 2wa of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 1315 of 2015 (Arising out of SLP (Crl.) No. 7954 of 2014)

Decided On: 06.10.2015

Back to Section 372 of Code of Criminal Procedure, 1973

Satya Pal Singh Vs. State of M.P. and Ors.

Hon'ble Judges/Coram:

T.S. Thakur and V. Gopala Gowda, JJ.

JUDGMENT

V. Gopala Gowda, J.

1. Leave granted.

2. This criminal appeal by special leave is directed against the impugned judgment and order dated 04.03.2014 passed in Criminal Appeal No. 547 of 2013 by the High Court of M.P. at Gwalior whereby the High Court has upheld the decision of the Sessions Court, Bhind, M.P. (the trial court) in Sessions Case No. 293/2010 by acquitting all the accused i.e. Respondent Nos. 2 to 6 herein.

3. The Appellant herein made a written complaint dated 19.07.2010 regarding the death of his daughter, Ranjana (hereinafter referred to as "the deceased") to the Addl. Superintendent of Police, Bhind, M.P. The FIR was registered on 27.07.2010. The trial court after the examination of evidence on record passed the judgment and order dated 13.06.2013 acquitting all the accused of the charges levelled against them for the offences punishable Under Sections 498A and 304B of Indian Penal Code, 1860 (for short "Indian Penal Code") and Section 4 of the Dowry Prohibition Act, 1961 and alternatively for the offence punishable Under Section 302 of Indian Penal Code. Being aggrieved of the decision of the trial court, the Appellant approached the High Court against the order of acquittal of Respondent Nos. 2 to 6. The High Court vide its judgment and order dated 04.03.2014 has upheld the trial court's decision of acquittal of all the accused persons. The impugned judgment and order of the High Court is challenged in this appeal before this Court questioning its correctness.

4. Being aggrieved of the impugned judgment and order the Appellant being the legal heir of the deceased filed an appeal before the High Court under proviso to Section 372 of the Code of

Criminal Procedure, 1973 (for short "the Code of Criminal Procedure"). The High Court, however, has mechanically disposed of the appeal by passing a cryptic order without examining as to whether the leave to file an appeal filed by the Appellant as provided Under Sub- section (3) to Section 378 of Code of Criminal Procedure can be granted or not. The correctness of the same is questioned by the Appellant in this appeal inter alia urging various grounds.

5. Mr. Prashant Shukla, the learned Counsel on behalf of the Appellant placed strong reliance upon the judgment rendered by Delhi High Court in Ram Phal v. State and Ors. MANU/DE/1687/2015 : 221 (2015) DLT 1 wherein the Full Bench, after interpreting the proviso to Section 372 read with Section 2(wa) of the Code of Criminal Procedure, has held that the father of the victim has locus standi to prefer an appeal, being a private party coming under the definition of victim Under Section 2(wa) of the Code of Criminal Procedure. It was contended by him that in the instant case, the Appellant, being father of the deceased, has locus standi to file an appeal before the High Court against the order of acquittal under proviso to Section 372 without seeking the leave of the High Court as required Under Sub- section (3) of Section 378 of Code of Criminal Procedure. Thus, the appeal filed by the Appellant was maintainable before the High Court of M.P. under the abovesaid provisions of Code of Criminal Procedure. He further urged that undoubtedly, the said legal aspect of the matter has not been dealt with by the High Court and the appeal was decided on merits but without examining as to whether the leave to file an appeal by the Appellant is required to be granted or not under the above provisions of Code of Criminal Procedure.

6. The learned Counsel for the Appellant drew the attention of this Court towards the decision rendered by Delhi High Court in the case referred to supra, wherein it has elaborately adverted to the definition of victim as defined Under Section 2(wa) of Code of Criminal Procedure and proviso to Section 372 of Code of Criminal Procedure and has examined them in the light of their legislative history. It has also adverted to 154th Law Commission Report of 1996 in connection with the said legal provision of Code of Criminal Procedure and has succinctly held that where the victim is unable to prefer an appeal then the appeal can be preferred by persons - such as relatives, foster children, guardians, fiance or live- in partners, etc. of the victim, who are in a position to do so in his/her behalf. He urged that in the instant case, there is no need for the Appellant, being the father of the deceased, to seek leave of the High Court as provided Under Sub- section (3) to Section 378 of Code of Criminal Procedure to maintain the appeal before it as it is his statutory right to prefer an appeal against the order of acquittal of all accused persons in view of proviso to Section 372 of Code of Criminal Procedure.

7. It was further urged by him that the High Court ought to have granted the leave to the Appellant to file an appeal by the Appellant as required Under Sub- section (3) of Section 378 of Code of Criminal Procedure and thereafter it ought to have examined and disposed of the appeal on merits.

8. He further vehemently contended that the appeal before the High Court was filed by the Appellant challenging the acquittal order passed by the trial court but the High Court has concurred with the decision of the trial court mechanically without re- appreciating the evidence on record. He further submitted that the decision of the High Court suffers from error in law as the High Court, being the Appellate Court, was required to re- appreciate the evidence on record to exercise its appellate jurisdiction in the appeal filed by the Appellant with reference to the legal contentions urged in the memorandum of appeal but it has failed to do so. The High Court in a very cursory and casual manner has held that after a perusal of evidence on record it found no reason to interfere with the decision of the trial court as the prosecution has failed to establish beyond reasonable doubt that the charges levelled against all the accused are proved and it has dismissed the appeal by passing a cryptic order, which amounts to non- exercise of appellate jurisdiction properly by the High Court. Thus, the impugned judgment and order of the High Court is vitiated in law and therefore, the same is required to be set aside by this Court. He further requested this Court to remand the matter to the High Court for re- appreciation of the evidence on record and pass appropriate order on merits of the case after hearing both the parties.

9. We have carefully examined the above mentioned provisions of Code of Criminal Procedure and the Full Bench decision of Delhi High Court referred to supra upon which strong reliance is placed by the learned Counsel for the Appellant. There is no doubt that the Appellant, being the father of the deceased, has locus standi to prefer an appeal before the High Court under proviso to Section 372 of Code of Criminal Procedure as he falls within the definition of victim as defined Under Section 2(wa) of Code of Criminal Procedure to question the correctness of the judgment and order of acquittal passed by the trial court in favour of Respondent Nos. 2 to 6 in Sessions Case No. 293/2010.

10. The proviso to Section 372 of Code of Criminal Procedure was amended by Act No. 5 of 2009. The said proviso confers a statutory right upon the victim, as defined Under Section 2(wa) of Code of Criminal Procedure to prefer an appeal against an order passed by the trial court either acquitting the accused or convicting him/her for a lesser offence or imposing inadequate compensation. In this regard, the Full Bench of Delhi High Court in the case referred to supra has elaborately dealt with the legislative history of insertion of the proviso to Section 372 of Code of Criminal Procedure by Act No. 5 of 2009 with effect from 31.12.2009. The relevant provision of Section 372 of Code of Criminal Procedure reads thus:

372. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force:

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.

The said amendment to the provision of Section 372 of Code of Criminal Procedure was prompted by 154th Law Commission Report. The said Law Commission Report has undertaken a comprehensive review of Code of Criminal Procedure and its recommendations were found to be very appropriate in amending the Code of Criminal Procedure particularly in relation to provisions concerning arrest, custody and remand, procedure to be followed in summons and warrant- cases, compounding of offences and special protection in respect of women and inquiry and trial of persons of unsound mind. Further, the Law Commission in its report has noted the relevant aspect of the matter namely that the victims are the worst sufferers in a crime and they do not have much role in the Court proceedings. They need to be given certain rights and compensation so that there is no distortion of the criminal justice system. The said report of the Law Commission has also taken note of the views of the criminologist, penologist and reformers of criminal justice system at length and has focused on victimology, control of victimization and protection of the victims of crimes and the issues of compensation to be awarded in favour of them. Therefore, the Parliament on the basis of the aforesaid Report of the Law Commission, which is victim oriented in approach, has amended certain provisions of the Code of Criminal Procedure and in that amendment the proviso to Section 372 of Code of Criminal Procedure was added to confer the statutory right upon the victim to prefer an appeal before the High Court against acquittal order, or an order convicting the accused for the lesser offence or against the order imposing inadequate compensation.

11. The Full Bench of the High Court of Delhi after examining the relevant provisions Under Section 2(wa) and proviso to Section 372 of Code of Criminal Procedure, in the light of their legislative history has held that the right to prefer an appeal conferred upon the victim or relatives of the victim by virtue of proviso to Section 372 is an independent statutory right. Therefore, it has held that there is no need for the victim in terms of definition Under Section 2(wa) of Code of Criminal Procedure to seek the leave of the High Court as required Under Sub- section (3) of Section 378 of Code of Criminal Procedure to prefer an appeal under proviso to Section 372 of Code of Criminal Procedure. The said view of the High Court is not legally correct for the reason that the substantive provision of Section 372 of Code of Criminal Procedure clearly provides that no appeal shall lie from any judgment and order of a Criminal Court except as provided for by Code of Criminal Procedure. Further, Sub- section (3) to Section 378 of Code of Criminal Procedure provides that for preferring an appeal to the High Court against an order of acquittal it is necessary to obtain its leave.

We have to refer to the rules of interpretation of statutes to find out what is the effect of the proviso to Section 372 of Code of Criminal Procedure, it is well established that the proviso of a statute must be given an interpretation limited to the subject- matter of the enacting provision. Reliance is placed on the decision of this Court rendered by four Judge Bench in Dwarka Prasad v. Dwarka Das Saraf MANU/SC/0505/1975 : (1976) 1 SCC 128, the relevant para 18 of which reads thus:

18. ... A proviso must be limited to the subject- matter of the enacting clause. It is a settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment. "Words are dependent on the principal enacting words to which they are tacked as a proviso. They cannot be

read as divorced from their context" (Thompson v. Dibdin 1912 AC 533). If the rule of construction is that prima facie a proviso should be limited in its operation to the subject- matter of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction.

(Emphasis laid by this Court)

12. Further, a three Judge Bench of this Court by majority of 2:1 in the case of S. Sundaram Pillai v. V.R. Pattabiraman MANU/SC/0387/1985 : (1985) 1 SCC 591 has elaborately examined the scope of proviso to the substantive provision of the Section and rules of its interpretation. The relevant paras are reproduced hereunder:

30. Sarathi in Interpretation of Statutes at pages 294- 295 has collected the following principles in regard to a proviso:

(a) When one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject- matter of the proviso.

(b) A proviso must be construed with reference to the preceding parts of the clause to which it is appended.

(c) Where the proviso is directly repugnant to a section, the proviso shall stand and be held a repeal of the section as the proviso speaks the latter intention of the makers.

(d) Where the section is doubtful, a proviso may be used as a guide to its interpretation: but when it is clear, a proviso cannot imply the existence of words of which there is no trace in the section.

(e) The proviso is subordinate to the main section.

(f) A proviso does not enlarge an enactment except for compelling reasons.

(g) Sometimes an unnecessary proviso is inserted by way of abundant caution.

(h) A construction placed upon a proviso which brings it into general harmony with the terms of section should prevail.

(i) When a proviso is repugnant to the enacting part, the proviso will not prevail over the absolute terms of a later Act directed to be read as supplemental to the earlier one.

(j) A proviso may sometimes contain a substantive provision.

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32. In Ishverlal Thakorelal Almaula v. Motibhai Nagjibhai it was held that the main object of a proviso is merely to qualify the main enactment. In Madras and Southern Mahrata Railway Co. Ltd. v. Bezwada Municipality Lord Macmillan observed thus:

The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case.

33. The above case was approved by this Court in CIT v. Indo Mercantile Bank Ltd. where Kapur, J. held that the proper function of a proviso was merely to qualify the generality of the main enactment by providing an exception and taking out, as it were, from the main enactment a portion which, but for the proviso, would fall within the main enactment. In Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subbash Chandra Yograj Sinha Hidayatullah, J., as he then was, very aptly and succinctly indicated the parameters of a proviso thus:

As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule.

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36. While interpreting a proviso care must be taken that it is used to remove special cases from the general enactment and provide for them separately.

37. In short, generally speaking, a proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes a proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive provision itself.

(Emphasis supplied)

Thus, from a reading of the abovesaid legal position laid down by this Court in the cases referred to supra, it is abundantly clear that the proviso to Section 372 of Code of Criminal Procedure must be read along with its main enactment i.e., Section 372 itself and together with Sub- section (3) to Section 378 of Code of Criminal Procedure otherwise the substantive provision of Section 372 of Code of Criminal Procedure will be rendered nugatory, as it clearly states that no appeal shall lie from any judgment or order of a Criminal Court except as provided by Code of Criminal Procedure.

13. Thus, to conclude on the legal issue:

whether the Appellant herein, being the father of the deceased, has statutory right to prefer an appeal to the High Court against the order of acquittal under proviso to Section 372 of Code of Criminal Procedure without obtaining the leave of the High Court as required Under Sub- section (3) to Section 378 of Code of Criminal Procedure", this Court is of the view that the right of questioning the correctness of the judgment and order of acquittal by preferring an appeal to the High Court is conferred upon the victim including the legal heir and others as defined Under Section 2(wa) of Code of Criminal Procedure, under proviso to Section 372, but only after obtaining the leave of the High Court as required Under Sub- section (3) to Section 378 of Code of Criminal Procedure. The High Court of M.P. has failed to deal with this important legal aspect of the matter while passing the impugned judgment and order.

14. Adverting to another contention of the learned Counsel on behalf of the Appellant regarding the failure on the part of the High Court to re- appreciate the evidence it is clear from a perusal of the impugned judgment and order passed by the High Court that it has dealt with the appeal in a very cursory and casual manner, without adverting to the legal contentions and evidence on record. The High Court in a very mechanical way has stated that after a perusal of the evidence on record it found no reason to interfere with the decision of the trial court as the prosecution has failed to establish the charges levelled against the accused beyond reasonable doubt and it has dismissed the appeal by passing a cryptic order. This Court is of the view that the High Court, being the Appellate Court, has to exercise its appellate jurisdiction keeping in view the serious nature of the charges levelled against the accused. The High Court has failed to exercise its appellate jurisdiction properly in the appeal filed by the Appellant against the judgment and order of acquittal passed by the trial court.

15. Hence, the impugned judgment and order of the High Court is not sustainable in law and the same is liable to be set aside by this Court and the case is required to be remanded to the High Court to consider for grant of leave to file an appeal by the Appellant as required Under Sub-section (3) to Section 378 of Code of Criminal Procedure and thereafter proceed in the matter.

16. For the reasons stated supra, this appeal is allowed by setting aside the impugned judgment and order of the High Court. The case is remanded to the High Court to hear the Appellant with regard to grant of leave to file an appeal as the Appellant is legal heir of the victim as defined Under Section 2(wa) of Code of Criminal Procedure and dispose of the appeal in accordance with law in the light of observations made in this order as expeditiously as possible.

MANU/SC/0336/1996

Back to Section 4 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 281 of 1996.

Decided On: 29.02.1996

Attiq- Ur- Rehman Vs. Municipal Corporation of Delhi and Ors.

Hon'ble Judges/Coram:

Dr. A.S. Anand and Saiyed Saghir Ahmad, JJ.

ORDER

1. Special leave granted.

2. The only question involved in this case is whether in the absence of the appointment of a Municipal Magistrate, a Metropolitan Magistrate can take cognizance and try an accused for commission of an offence punishable under the Delhi Municipal Corporation Act, 1957 ?

3. The circumstances in which this question has arisen need a brief notice at the thresh- hold.

4. On 6.6.1989, a Junior Engineer of the complainant Municipal Corporation of Delhi (respondent No. 1 herein) filed a report against the appellant alleging unauthorised construction of roof and a stair- case on the ground floor of the appellant's property situate at 1535- 1537, Church Road, Kashmere Gate, Delhi. The appellant apprehending demolition of his house, filed Civil suit No. 616 of 1989 in the Court of Sub- Judge, Delhi, contending inter alia - that the replacement of the roof and the alleged repairs/alterations were permissible under the building bye- laws and required no formal order of sanction and, therefore, the appellant could not be said to have carried out any unauthorised construction and sought an injunction against Respondent No. 1 restraining it from demolishing the alleged unauthorised construction. After contest, the suit was decreed. It was found that the notice for demolition had not been properly served. Respondent No. 1 was restrained from demolishing the property of the appellant except "in due process of law." The Junior Engineer of respondent No. 1 filed three more reports on 21.8.1989, 4.9.1989 and 17.11.1989 alleging further unauthorised constructions in the said property by the appellant. On the basis of those reports, Municipal Corporation of Delhi, respondent No. 1, on 17th November, 1989 filed a criminal complaint (Case No. 533 of 1989) under Section 332 read with Section 461 of the Delhi Municipal Corporation Act, 1957 (hereinafter 'the Act') against the appellant in the Court of Sh. R.S. Khanna, Metropolitan Magistrate, Delhi. The appellant moved two applications before the Metropolitan Magistrate, Delhi one for the stay of criminal proceedings during the

pendency of the civil suit and the second seeking return of the complaint on the ground that the Metropolitan Magistrate had no jurisdiction to try him for the offence under Section 332 read with Section 461 of the Act in view of the provisions of Section 469 of the Act and in the absence of any Notification conferring powers of the Municipal Magistrates on the Metropolitan Magistrates. Both the applications were rejected on 26th February, 1991. The learned Metropolitan Magistrate held that the plea of the appellant that the court had no jurisdiction to try the offence was not maintainable and there was no justification for staying the criminal proceedings during the pendency of the civil suit as the scope of the suit and the criminal complaint was different. Aggrieved, the appellant filed a criminal revision petition in the High Court of Delhi which was summarily dismissed on 26th May, 1991. Hence this appeal by special leave.

5. Learned counsel for the appellant submitted that an offence under the Act can only be tried by a Municipal Magistrate appointed under the Act and a Metropolitan Magistrate exercising general jurisdiction has no authority to take cognizance of an offence under the Act and try any person accused of an offence under the Act. It was argued that the learned Metropolitan Magistrate fell in error in rejecting the applications and the High court also failed to appreciate the importance of the question involved and erroneously dismissed the Criminal Revision Petition in limine by a non- speaking order.

6. Learned counsel for the respondent argued with equal vehemence that in the absence of appointment of Municipal Magistrates under the Act, jurisdiction to try "offences under other laws" vested in the Metropolitan Magistrates and the appellant was rightly put on trial before the Metropolitan Magistrate.

7. We do find some substance in the submission of learned Counsel for the appellant that the High Court ought not to have dismissed the criminal revision petition by a non- speaking order in limine, in view of the importance of the question raised in the revision petition but we are of the opinion that instead of remanding the case back to the High Court, we need to decide the question of law ourselves since on facts there is no dispute and the appeal has remained pending in this Court for about five years.

8. With a view to answer the question noted in the opening part of our judgment, it is necessary to notice some of the relevant provisions of the Act and the Code of Criminal Procedure 1973 (hereinafter Cr. P.C.).

9. Section 466(a) of the Act makes Cr. P.C. applicable to the proceedings under the Act and makes an offence under Section 313 of the Act cognizable.

10. Section 467 deals with the prosecution of offences and reads as under: -

467. Prosecutions- - Save, as otherwise provided in this Act, no court shall proceed to the trial of any offence,-

(a) under Sub- section (5) of Section 313 or Section 332 or Sub- section (1) of Section 333 or Sub-section (1) of Section 334 or Section 343 or Section 344 or Section 345 or Section 347 except on the complaint of or upon information received from such officer of the Corporation, not being below the rank of a Deputy Commissioner, as may be appointed by the Administrator;

xxx xxx xxx

11. Section 469 of the Act reads as follows :

469. Municipal Magistrate.

(1) The Central Government may appoint one or more magistrates of the first class for the trial of offences against this Act and against any rule, regulation or bye- law made thereunder and may prescribe the time and place at which such magistrate or magistrates shall sit for the despatch of business.

(2) Such magistrates shall be called municipal magistrate and shall beside the trial of offences as aforesaid, exercise all other powers and discharge all other functions of a magistrate as provided in this Act or any rule, regulation or bye- law made thereunder.

(3) Such magistrates and the members of their staff shall be paid such salary, pension, leave and other allowances as may, from time to time, be fixed by the Central Government.

(4) The Corporation shall, out of the Municipal Fund, pay to the Central Government the amounts of the salary, pension, leave and other allowances as fixed under Sub- section (3) together with all other incidental charges in connection with the establishments of the said magistrates.

(5) Each such magistrate shall have jurisdiction over the whole of Delhi.

(6) For the purposes of the Code of Criminal Procedure, 1898, all municipal magistrates appointed under this Act shall be deemed to be magistrates appointed under Section 12 of the said Code.

(7) Nothing in this shall be deemed to preclude any magistrate appointed hereunder from trying any offence under any other law.

12. Section 470 of the Act provides as follows :

470. All offences against this Act or any rule, regulation or bye- law made thereunder, whether committed within or without the limits of Delhi, shall be cognizable by a municipal magistrate and such magistrate shall not be deemed to be incapable of taking cognizance of any such offence or of any offence under any enactment which is repealed by, or which ceases to have effect under this Act by reason only of his being liable to pay any municipal tax or rate or benefited out of the Municipal Fund.

13. Chapter II of Cr. P.C. deals with the Constitution of Criminal Courts and offices.

14. Section 4 Cr. P.C. reads as follows :

4. Trial of offences under the Indian Penal Code and other laws.-

(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

15. Section 5 Cr. P.C. Provides as follows :

5. Saving- Nothing contained in this Code shall, in the absence of a specific provisions to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

16. Section 6 Cr. P.C. reads as follows :

Classes of Criminal Courts. - Besides the High Courts and the Courts constituted under any law, other than this Code, there shall be, in every State the following classes of Criminal Courts, namely-

(i) Courts of Session ;

(ii) Judicial Magistrates of the first class and, in any metropolitan area, Metropolitan Magistrates;

(iii) Judicial Magistrates of the second class; and

(iv) Executive Magistrates.

17. Sections 8 and 16 of Cr. P.C. deal with the courts of Metropolitan Magistrates and inter alia provide that in every metropolitan area, the State Government may, after consultation with the High Court establish courts of Metropolitan Magistrates at such places and in such number as it may specify. The presiding officers of such courts shall be appointed by the High Court and the jurisdiction and powers of every such Magistrate shall extend throughout the metropolitan area. The High Court shall appoint a Metropolitan Magistrate as Chief Metropolitan Magistrate in every metropolitan area and may also appoint Additional Chief Metropolitan Magistrates and such other Metropolitan Magistrates as it may deem necessary.

18. Section 11 of Cr. P.C. deals with the establishment of the courts of the Judicial Magistrates while Section 13 deals with the appointments of Special Judicial Magistrates.

19. Section 14 Cr. P.C. deals with the local jurisdiction of Judicial Magistrates and inter- alia provides :

14. Local jurisdiction of Judicial Magistrates - (1) Subject to the control of the High Court, the Chief Judicial Magistrate may, from time to time, define the local limits of the areas within which the Magistrates appointed under Section 11 or under Section 13 may exercise all or any of the powers with which they may respectively be invested under this Code :

Provided that the Court of a Special Judicial Magistrate may hold its sitting at any place within the local area for which it is established .

(2) ...

(3) ...

20. It is in the light of the aforesaid provisions that we have to resolve the question formulated above.

21. Facts are not in dispute insofar as the question of jurisdiction is concerned. Admittedly at the relevant time no Municipal Magistrate had been appointed in accordance with the provisions of Section 469 of the Act and the complaint was filed by respondent No. 1 in the Court of Metropolitan Magistrate, Delhi, for trial of an offence punishable under Section 332 of the Act. The learned Metropolitan Magistrate is a Judicial Magistrate of the First Class but there was no notification by which the powers of Municipal Magistrates were conferred on him.

22. From a plain reading of Section 4 Cr. P.C. (supra) it emerges that the provisions of Criminal Procedure Code are applicable where an offence under the Indian Penal Code or under any other law is being investigated, inquired into, tried or otherwise dealt with.

23. Section 469 of the Act empowers the Central Government to appoint one or more Magistrates of the First Class to try offences under the Act. All such Magistrates are called Municipal Magistrates and shall besides the trial of offences under the Act, rules, regulations or bye- laws framed thereunder, exercise all other functions of a Magistrate as provided in the Act and are not precluded from trying offences under any other law as well. Every Municipal Magistrate appointed under Section 469 of the Act by the Central Government is a Judicial Magistrate of the First Class and shall be deemed to be a Magistrate appointed under Section 12 Cr. P.C. Thus, no person who is not a Judicial Magistrate of the First Class can be conferred powers of a Municipal Magistrate to try offences under the Act, rules, regulations or bye- laws made under the Act.

24. The bar of jurisdiction of ordinary criminal courts to try offences under the Act is brought about by Section 470 of the Act which inter alia provides that all offences under the Act, whether committed within or without the limits of Delhi shall be cognizable by a Municipal Magistrate. Vide Section 467 of the Act no court shall proceed to the trial of any offence specified in the section, including an offence under Section 332 of the Act except on a complaint of or information received from an officer, not below the rank of Deputy Commissioner, appointed by the Administrator of the Corporation.

25. Keeping in view the scheme of the Act and the relevant provisions of the Code of Criminal Procedure, it emerges that the Government has an obligation under Section 469 of the Act to appoint Municipal Magistrates for trial of offences under the Act, rules, regulations or bye- laws

made thereunder. The use of the word "may" in Section 469 of the Act only indicates that the Government has the discretion to appoint one or more Municipal Magistrates but it certainly does not relieve the Government of its obligation to appoint Municipal Magistrates and once such Municipal Magistrates are appointed, they alone would have the jurisdiction to try offences under the Act as per the mandate of Section 470 of the Act. The bar under Section 470 of the Act becomes operative only when a Municipal Magistrate has been appointed for trial of offences under the Act. The jurisdiction of the criminal courts under Section 4 Cr. P.C. is comprehensive and exhaustive. To the extent that no valid machinery is set up under any other law for trial of any particular case, the jurisdiction of the ordinary criminal court cannot be said to have been excluded. Exclusion of jurisdiction of a court of general jurisdiction can be brought about only by setting up of a court of limited jurisdiction in respect of the limited field provided that the vesting and the exercise of that limited jurisdiction is clear and operative. Thus, where there is no valid machinery for the exercise of jurisdiction in a specific case, the exercise of jurisdiction by the Judicial Magistrates or the Metropolitan Magistrates, as the case may, is not excluded. The law and procedure for trial of cases under the Indian Penal Code and those under other statutes, according to Section 4 Cr. P.C, is not different except that in the cases of offences under other laws, the procedure laid down by the Cr. P.C. is subject to the provisions of the relevant enactment for the time being in force for regulating the manner of trial of offences under that enactment.

26. A conjoint reading of the provisions of Cr. P.C. and the Act, therefore, unambiguously suggests that in the absence of courts of special jurisdiction i.e. Municipal Magistrates to be appointed under Section 469 of the Act, a Judicial Magistrate of the First Class or a Metropolitan Magistrate, as the case may be, shall have the jurisdiction and powers to try the offences under the Act in accordance with the procedure envisaged by Section 467 of the Act and in accordance with the limitation the time prescribed for initiation of the criminal proceedings under Section 471 of the Act. This interpretation is in accord with the position that every offence committed under the Indian Penal Code or under any other law for the time being in force must be tried and an accused cannot be permitted to raise any objection with regard to the forum for trial of the offence, where the specific forum has not been constituted under the Act because the law does not contemplate an offence, to go untried. Where, no court of a Municipal Magistrate has been constituted under Section 469 of the Act and no Notification has also been issued conferring the powers of a Municipal Magistrate on a particular Judicial Magistrate of the First class or a Metropolitan Magistrate, as the case may be, the jurisdiction of an ordinary criminal court to take cognizance of the offences committed under the Act, rules, regulations or bye- laws made thereunder is exercisable by the courts of general jurisdiction established to try offences under the Indian Penal Code as well as the offences under any other law.

27. We, therefore, unhesitatingly come to the conclusion that in the absence of establishment of the courts of a Municipal Magistrate under Section 469 of the Act, the Magistrates of the First Class including Metropolitan Magistrates are competent to try offences punishable under the Act, rules, regulations or bye- laws made thereunder. Our answer to the question posed in the opening part of the judgment, therefore, is in the affirmative.

28. In view of the aforesaid discussion, we do not find any error to have been committed by the learned Metropolitan Magistrate in taking cognizance of the complaint filed by respondent No. 1 under Section 332 read with Section 461 of the Act against the appellant since it is not disputed that the complaint had been filed in the manner prescribed by the Act. Respondent No. 1 could not have filed the complaint before a Municipal Magistrate, since no such Municipal Magistrate had been appointed. The legal maxim 'lex non cogit ad impossibilia' which means "the law does not compel a man to do that which he cannot possibly do" is squarely attracted to the fact situation in this case. This appeal, therefore, must fail and is hereby dismissed. The trial court is directed to expeditiously conduct the trial of the criminal complaint No. 533 of 1989 for the offence under Sections 332/461 of the Delhi Municipal Corporation Act, 1957. We need not emphasise that if in the meanwhile a court of Municipal Magistrate has been established under Section 469 of the Act, the trial of the complaint shall be conducted by that court and the complaint shall be deemed to have been transferred to that court for its trial in accordance with law from the court of the Metropolitan Magistrate. Nothing said hereinabove shall, however, be construed as any expression of opinion on the merits of the case.

MANU/MH/0010/1931

Back to Section 9 of Code of Criminal Procedure, 1973

IN THE HIGH COURT OF BOMBAY

Criminal Revision No. 48 of 1931

Decided On: 03.03.1931

Emperor Vs. Lakshman Chavji Narangikar

Hon'ble Judges/Coram:

Govind D. Madgavkar, S.S. Patkar and S.J. Murphy, JJ.

JUDGMENT

Authored By: Govind D. Madgavkar, S.S. Patkar, S.J. Murphy

Govind D. Madgavkar, J.

1. This application raises a question of some importance under Section 526 of the Code of Criminal Procedure. On September 25, 1930, a disturbance took place at Chirner, thirteen miles from Panvel, forty- seven accused were sent up before the Magistrate, and on January 31, 1931, were committed by him for trial before the Sessions Court of Thana under Sections 120B(1), 147, 148, 149, 224, 302, 332, 379, and 395 of the Indian Penal Code. The trial would have taken place at Thana with a jury.

2. On February 12, 1931, the following notification, No. 8252- 2 dated February 5, 1931, was published in the Bombay Government Gazette-

Under Section 193(2) of the Code of Criminal Procedure, 1898 (V of 1898), the Governor in Council is pleased to direct that Mr. N.R. Gundil, LL.B., Assistant Judge and Additional Sessions Judge, Thana, shall try the case known as the Chirner Riot Case, which has been committed to the Sessions by Mr. R.R. Sonalkar, a Magistrate of the First Class in the district of Kolaba, and under Section 9(2) of the said Code he is further pleased to direct that Mr. Gundil shall hold his Court for the trial of the said case at Alibag.

3. A trial at Alibag would be with assessors.

4. The accused apply to this Court for a transfer of the case. The original application was dated February 11, and asked that the trial should take place at Thana. But the application as amended is to transfer the case from the Court of Mr. Gundil, Additional Sessions Judge holding his Court for the trial of this case at Alibag, to the Court of Session sitting at Thana.

5. Three points are taken for the petitioners, firstly, that the notification in question, at least in regard to the second part, is ultra vires, secondly, that in any case this Court has jurisdiction under Section 526 of the Criminal Procedure Code, and thirdly, particularly on the ground of convenience and to a certain extent even by reason of the right of trial by jury at Thana, the case should be transferred.

6. The contentions for the Crown, as presented by the learned Advocate General, are shortly as follows:-

Firstly, the order in question is an administrative order, not open to modification by this Court, secondly, the venue and the question of jury or assessors are matters not for this Court but for the Local Government under Section 9(2) and Section 269, thirdly, as in this application the petitioners do not object to Mr. Gundil trying the case, Section 526 has no application, as the case still remains and is asked to be retained in the Sessions Court of Thana, so that we are indirectly asked to order Mr. Gundil to sit at Thana and try the case with a jury and we have no power to do so, and lastly, on the merits there is no greater inconvenience at Alibag than at Thana. It was also suggested that an order of this Court might be rendered infructuous if the Local Government chose now to issue a further notification.

7. As to the preliminary point, particularly of administrative powers and this last ground, it is to be observed that the term 'administrative order' is one, not known to law, British or Indian. Unlike France, with its droit administrate if (administrative law) and its Conseil d' Etat (State Council) to administer it, administrative laws and administrative Courts find no place in the constitution of Great Britain or of India. The powers of the Local Government like the rights of other corporations and bodies can only be derived from the law and extend no further than what the ordinary law permits. The Executive Government, Local or Imperial, is as subject to the law, and their acts and orders are not less open to test in the Courts than those of the humblest citizen. Therefore no special sanctity or legality attaches to the notification as falling within the category of ' administrative orders'.

8. In regard to possible action by Government in the future, treating the matter not as a hint, much less as a threat, but as an argument, for consideration on the merits, pure and simple, it fails, in my opinion, on three grounds. Firstly, every case must be decided on the record as it stands, and not on the record as it might stand by reason of some possible future action by either party. Secondly, the scheme of the Code clearly demarcates the respective powers and functions and is intended to prevent any possible conflict between the action of the Local Government and of this Court, express provision being made, where necessary, to avoid such conflict as in Section 526, Sub- section (7), and in Section 178. Thirdly, though I do not wish to stress this ground, a transfer by us to this Court itself under Section 526, Sub- section. (1)(e)(iii) would not be open to interference by the Local Government,

9. Under the scheme of the Criminal Procedure Code the general framework of the administration of justice, such as the division of the province into sessions divisions and their boundaries and places of sitting, the appointment of Sessions Judges and the classification of offences into those triable with a jury and those triable with assessors, is left under Sections 7- 9 and Section 269 to the Local Government. But within this framework this Court has under the Government of India Act and the Letters Patent the widest possible responsibility and the superintendence of the Courts and powers of transfer under Section 526 for the ends of justice and for the convenience of the parties and the like in any particular case; and such a transfer of any particular case from one Court or Judge to another within this framework as fixed by the Local Government for the general administration of justice is a matter to be decided by this Court and not by the Local Government, If this scheme and this demarcation are correct, an argument from generalities that the greater includes the less or that a class of cases includes any particular case is beside the point, since it "obliterates the division of functions and of powers, creates confusion and might lead to a conflict, which it must be the aim of the Code to avoid. This Court cannot alter the regular place of sitting of any Sessions Court, from the place directed by the Local Government under Section 9. But it can, and repeatedly does, under Section 526, change the venue of trial of any case from any one of these places to another, both notified under Section 9, though it cannot to a third, not so notified and directed by itself. And it was. in fact, very fairly conceded by the learned Advocate General at the close of his argument that this Court had power under Section 526- the present notification notwithstanding- to direct a transfer of the case to another Court of Session such as Surat or Ratnagiri, and that we also had power to transfer a case from the Sessions Judge of Thana who sits at Thana to the Additional Sessions Judge sitting at Thana or Ali- bag, or vice versa. The fact, therefore, that in any particular case the exercise of our power of transfer might result in a change of venue and incidentally from assessors to jury or vice versa is no argument whatever, in my opinion, against the present petition.

10. In this regard, the language of the relevant sections, such as Sections 9(2) and 297 and 298, is conclusive. Under Section 9(2), headed "Courts and Offices outside the Presidency- towns", the Local Government may, by general or special order in the official Gazette, direct at what place or places the Court of Session (not any persona designata) shall hold its sitting. Again in Section 193(2), under the head "Conditions requisite for the Institution of Proceedings", the only condition requisite under (1) for a trial before a Sessions Judge is commitment, and under (2) the further conditions requisite for trials before Additional Sessions Judges and Assistant Sessions Judges are directions by the Local Government by general or special order, or by the Sessions Judge. The word "only" in Section 193(2) would show, along with the heading above, that the clause is intended not so much to extend the power of transfer of the Local Government as to limit the powers of the Additional and the Assistant Sessions Judge to try such cases alone as the Local Government or the Sessions Judge empowers them to do. It is true that by themselves the words "special order" could perhaps, on the strict and literal meaning, be construed in both sections as meaning "in any particular case". But reading the sections in their context this was not, in my opinion, the intention of the Legislature either under Section 9(2) or Section 193(2). These sections, like Section 267 regarding trial by jury or assessors in cases or classes of cases, contemplate general directions for the convenience of the people and the administration of justice and special orders where such general orders have to be modified by reason of circumstances, affecting the population such as plague, flood, disturbances and the like Whatever its powers under Section 178, neither by Section 9 nor by Section 193 did the Legislature, in my opinion, intend that the

Local Government should interfere with the ordinary course of justice in a particular case or transfer a particular case from a particular Judge to another particular Judge, And the notification, therefore, even if it is within the letter of these sections, violates their spirit. And, in any case, it is not, like a direction under Section 197, exempted from our power under Section 526.

11. There is one further flaw in the notification, viz., that it directs not a Court, nor even an officer as such, to hold his sitting at Ali- bag, but Mr. Gundil as a persona designata. I do not propose to express a definite opinion whether such a flaw does or does not necessarily vitiate the whole notification, and cause it to be ultra vires, as, in any case, I propose to consider the petition on the merits. I reserve, therefore, my opinion on the question of the validity of the present notification, but assume for the purpose of this application that it is valid.

12. As to our powers under Section 526, the convenience of parties needs no definition. The "ends of justice", as I have pointed out in the case of Evans, In re MANU/MH/0065/1926 : I.L.R. (1926) Bom. 741 28 Bom L.R. 1043 is a term impossible to define. If I may be permitted to quote from that case (p. 749):-

What then are the 'ends of justice'? To the particular result in any particular case justice is indifferent. The end of justice is no more conviction than acquittal. It is justice, by the ascertainment of the truth as to the facts on a balance of evidence on each side. If so, do the ends of justice require, or do they not, that the accused person from the moment of his arrest should have reasonable access to his legal advisers; or does it suffice that this access should commence under the Prisons Act (IX of 1894) from the time when the exclusive Police custody has ceased? To this question, the answer is, in my opinion, clear. If the end of justice is justice and the spirit of justice is fairness, then each side should have equal opportunity to prepare its own case and to lay its evidence fully, freely, and fairly, before the Court. This necessarily involves preparation. Such preparation is far more effective from the point of view of justice, if it is made with the aid of skilled legal advice- advice so valuable that in the gravest of criminal trials, when life or death hangs in the balance, the very State, which undertakes the prosecution of the prisoner, also provides him, if poor, with such legal assistance.

13. To this I might add two other considerations, second only in importance to this for the ends of justice. Confidence in the Court administering justice on the part of both parties and of the public is also a vital element in the administration of justice, so much so that a reasonable apprehension, tantamount to lack of confidence, has been held by the Courts to render a transfer advisable. A special Judge or a special venue directed by the Local Government is apt or at least is capable of being used to destroy this confidence, and except where the supreme need of justice is clearly such as to override these considerations, the ordinary course of justice is best left untouched.

14. In the present case on the question of convenience, without entering into details as to the comparative salubrity of the jail or lock- up at Thana with the jail or lock- up called the Hirakot at Alibag, it seems to me clear that for the last fifty years the Local Government themselves have always recognised the superior convenience of Thana as against Alibag to parties and witnesses from the Panvel and Karjat talukas in the case of Sessions trials and important civil suits over five thousand rupees. This is clear from the fact that even when in the other talukas of the Kolaba District formerly the District Magistrates of Kolaba, empowered as Additional Sessions Judge in the rains- as now the Sessions Court by any of its Judges in (SIC) months- were directed to hold a sitting at Alibag, the two talukas of Panvel and Karjat have for nearly fifty years been excluded, and the Sessions cases from these two talukas have all along been tried at Thana; and even when for a year or so in 1920 a First Class Subordinate Judge's Court was established at Alibag, suitors from Panvel and Karjat were expressly allowed to retain their right of litigation at Thana,

15. From the particular affidavits in this case it appears that there is a daily motor- service from Chirner to Panvel and another from Panvel to Thana. There is no service between Chirner and Alibag; and though the distance- as the crow flies- is undoubtedly shorter, there is only a track from Chirner to a village called Avre, according to the petitioners a' foot- track, according to the arguments for the Crown possible also to bullock- carts. Then there is a wide creek with a ferry over which passage depends upon stray boats on to Rewas and thence by motor car to Alibag. The affidavits both in quantity and quality for the petitioners are, in my opinion, stronger and fortify the general conclusion I have already stated that the general public convenience of trials civil and criminal from Panvel is at Thana and not at Alibag. It is not alleged by Government that there is any particular inconvenience of the present trial at Thana so as to prejudice them or any particular convenience at Alibag. The utmost contention for the Grown is that Alibag is not less convenient to themselves and to the petitioners than Thana. That contention, for the reasons stated above, in my opinion, fails.

16. The petitioners have already engaged pleaders from Bombay and Thana as well as some from Panvel to defend them before the Magistrate. The witnesses for the Crown number over a hundred and those for the defence over two hundred. The Sessions trial will probably last two or three months. A trial at Alibag would compel advocates from Thana and Bombay to live there throughout while one in Thana makes it possible for the accused to engage counsel to come up daily from Bombay. For the purpose of legal defence, Alibag is practically a taluka head- quarters, while Thana is an important judicial centre with. easy access to Bombay. It is no reflection on the Bar at Alibag to hold that the defence would have far greater facilities by a trial at Thana. How important an element such legal assistance is for the ends of justice I have already stated in my judgment in Evans, In re MANU/MH/0065/1926 : I.L.R. (1926) Bom. 741 28 Bom. L.R. 1043 The Government can easily afford special fees to spend on counsel at Alibag. But not so the accused petitioners who may not be able to afford the prohibitive fees necessary to induce advocates or counsel from Bombay or Thana to leave their work there and remain in Alibag for two or three months. This point, therefore, is in favour of the petitioners.

17. On the second point as to trial by jury, it has always been held by all the Courts, as for instance, by this Court in King- Emperor v. Parbhushankar I.L.R. (1901) Bom. 680 3 Bom, L.R. 278 that "the scheme of the Code shows that in the view of the Legislature it is less advantageous to an accused to be tried with the aid of assessors than by a jury." To this opinion from so high an authority as the late Sir Lawrence Jenkins and the similar remarks of Mr. Justice Chandavarkar to the same effect at page 694, it is needless to add. Particularly, in a case of this gravity involving life or death to the accused, it is impossible, in my opinion, for this Court to ignore the consideration that in the present case the accused rightly or wrongly attach appreciable value to this right of trial, and if so, this element also is in favour of the petition the more that there is no allegation or affidavit for Government against a jury at Thana or in favour of assessors at Alibag.

18. With the general argument that by an order such as the one proposed we should be indirectly defeating the intentions of the Legislature by encroaching on the province of the Local Government if the venue of the trial were changed I have already dealt. The Legislature contemplates general directions by the Local Government in regard to places where the Courts of Session should sit with modifications by special orders for public contingencies. The Local Government have similar powers in cases and classes of cases to decide by notification once for all until modified whether such trials generally shall be with the aid of assessors or of a jury. And the fact that the exercise of our powers of transfer on the merits of a particular case, whether for the convenience of parties and witnesses or for the ends of justice, might result in a change of place of trial or in a change from jury to assessors or vice versa, is in no way repugnant to the intentions of the Legislature, as expressed in Section 9 and Section 193(2), or in regard to the particular notification. The only exception to our powers under Section 526 in a particular case is that laid down in Sub- section (7), viz., where under Section 197(2) the Local Government has specified the officer or the Court or both by whom a Judge may be tried. Such a direction by the Local Government is not open to transfer by this Court. Even where a Local Government has specified a Sessions Division under Section 178 for the trial of cases or classes of cases, which it can only do where there has been no previous order of this Court under Section 526, such a specific direction still remains subject to our powers under Section 526 of subsequent transfer on proper cause shown. A transfer in many cases involves a change of venue. No statute or decision is cited to show that such a consequence or a change from jury to assessors or vice versa is a bar to our powers under Section 526.

19. But even assuming that the petitioners attach greater value to a jury than to the point of convenience, if they satisfy us on the latter point, their table of comparative values, real or professed, should not affect our decision, more particularly if they succeed, as in my opinion, they do, on both points.

20. For these reasons I would hold that even if the notification in question is intra vires, we have power under Section 526 to transfer the trial under Clause (1)(d) and Clause (e) Sub- clause (ii) from Mr. Gundil sitting at Alibag, which is a Court subordinate to our authority, to the Court of the Sessions Judge at Thana, which is also such a criminal Court of equal jurisdiction, and that

the petitioners have shown that such an order will tend to the general convenience of parties and of witnesses.

21. As to the form of the order, the fact that the petitioners while they ask for a trial at Thana are indifferent whether they are tried by Mr. Gundil or any other officer presents, in my opinion, no difficulty. There is a permanent Sessions Court and Judge at Thana.

22. I would accordingly allow the application and transfer the trial of the case from Mr. Gundil sitting as Additional Sessions Judge at Alibag to the Court of the Sessions Judge at Thana.

S.S. Patkar, J.

23. This is an application for transfer made by forty- seven accused who are committed to the Court of Session at Thana by the committing Magistrate for offences under Sections 120 B(1), 147, 148, 149, 224, 302, 332, 379, and 395 of the Indian Penal Code.

24. After the commitment of the case by the Magistrate to the Court of Session at Thana, the Local Government by Government Notification No. 8252/2 dated February 5, 1931, under Section 193(2) of the Code of Criminal Procedure, directed Mr. N. R. Gundil, Assistant Judge and Additional Sessions Judge, Thana, to try the case known as the Chirner Riot Case committed to the Court of Session at Thana, and under Section 9(2) of the same Code directed that Mr. Gundil should hold his Court for the trial of the said case at Alibag.

25. The accused have made this application on the ground that the action of the Local Government is illegal and ultra vires, and, secondly, that the case should not be tried at Alibag on the ground of inconvenience, and on the ground that the transfer is expedient for the ends of justice.

26. The first question arising in this application is whether the order of the Local Government is illegal and ultra vires. Under Section 7 of the Criminal Procedure Code, every province shall be a sessions division, and every sessions division, for the purposes of this Code, shall be a district or consist of districts. The Thana sessions division consists of two districts, the district of Thana and the district of Kolaba. Under Section 9, Sub- section (1), the Local Government shall establish a Court of Session for every sessions division and appoint a Judge for such Court, and under Sub-section (3), the Local Government may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts. Under Section 193, Sub-section (1), of the Criminal Procedure Code, except as otherwise expressly provided, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the accused has been committed to it by a Magistrate duly empowered in that behalf. Under Sub- section (2), the Additional Sessions Judges and Assistant Sessions Judges shall try such cases only as the

Local Government, by general or special order; may direct them to try or as the Sessions Judge of the division, by general or special order, may make over to them for trial. Under 193, Sub- section (2), the Local Government had power by special order to direct the Additional Sessions Judge, Mr. Gundil, to try this particular case. Under Section 9, Sub- section (2), of the Criminal Procedure Code, the Local Government may, by general or special order, in the official Gazette, direct at what place or places the Court of Session shall hold its sittings, but until such order is made, the Court of Session shall hold its sittings as heretofore.

27. It is contended on behalf of the accused that the Local Government has already issued a notification directing the Court of Session to be held at Alibag in certain months commencing on dates to be fixed by the Sessions Judge of Thana, and that the notification dated February 5, 1931, does not direct any new place where the Court of Session should hold its sitting, and further that the notification does not order the Court of Session to hold its sitting at Alibag, but has directed a particular Additional Sessions Judge to hold the sitting of his Court at Alibag. Under Section 193(2) the Local Government had power to direct Mr. Gundil, the Additional Sessions Judge, to try this particular case. The previous orders of the Local Government were general orders under Section 9(2), and there is nothing in Section 9(2) to prevent a special order being passed directing at what place a Court of Session should hold its sitting. If by reason of an outbreak of plague or any other cause it becomes necessary or expedient that a Court of Session should hold its sitting in respect of all the cases at a different place or should try a particular case at a particular place, the words of Section 9(2) are wide enough to cover such an order. An order passed under Section 9(2) is an administrative order passed by the Local Government, and the special order of the Local Government in the present case directing the Additional Sessions Judge to try this particular case at Alibag does not appear to contravene the provisions of Section 9(2). Under Section 20 of the Indian Penal Code a "Court of Justice" denotes a Judge empowered by law to act judicially alone, and Mr. Gundil having been empowered by the Local Government to try this case could by a special order be directed to hold the sitting of his Court at Alibag.

28. I therefore, think that the order of Government passed under Section 193(2) and Section 9(2) is not illegal and ultra vires.

29. It is next contended on behalf of the accused that on the ground of convenience and for the ends of justice the case should be transferred from the Court of Mr. Gundil holding his sitting at Alibag to the Sessions Judge at Thana. It is urged on behalf of the Crown that the High Court has no power to transfer the case from Mr. Gundil holding his Court at Alibag to the Sessions Court at Thana on the ground that the case was committed by the Magistrate to the Court of Session at Thana, and Mr. Gundil was authorised by the Local Government to try this case under

30. Section 193(2), and the Additional Sessions Judge is exercising his jurisdiction as a Sessions Court at Thana, and the case cannot, therefore, be transferred to the same Court, namely, the Sessions Court at Thana. The application as originally drafted, contained a prayer that the case should be transferred from Alibag to Thana, and it is contended on behalf of the Crown that the

High Court has no jurisdiction to fix the place of the sitting of the Court, and that the Local Government alone has the power to fix the place of the sitting of the Court under Section 9(2) of the Criminal Procedure Code.

31. Under Section 526 of the Criminal Procedure Cede, the High Court has power to order a particular case to be transferred from a criminal Court subordinate to its authority to any other criminal Court of equal or superior jurisdiction. Under Section 9 the Court of Session has to be established by the Local Government and it has to appoint a Judge of such Court, and it may appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts. The Additional Sessions Judges and Assistant Sessions Judges exercising jurisdiction in the Sessions Courts would, therefore, be exercising jurisdiction as Courts of Session. The application as now amended contains a prayer for the transfer of the case from the Court of the Additional Sessions Judge holding his Court at Alibag to the Sessions Judge at Thana.

32. The question in the present case is whether the Additional Sessions Judge who has been appointed to try the case is the same Court as the Court of Sessions Judge at Thana. The Additional Sessions Judge can try such cases under Section 193(2) as the Sessions Judge of the division, by general or special order, make over to him for trial, and under Section 438(2) an Additional Session Judge shall have and may exercise all powers of a Sessions Judge under Chapter XXXII in respect of any case which may be transferred to him by or under any general or special order of the Sessions Judge. It is, therefore, clear that the Additional Sessions Judge exercising jurisdiction is a different Court from the Sessions Judge who transfers the case to him for trial. Similarly an Assistant Sessions Judge empowered to pass any sentence authorised by law under Section 31(3) exercises jurisdiction as a Sessions Court, but a person convicted by an Assistant Sessions Judge on whom a sentence of imprisonment not exceeding four years has been passed may appeal to the Court of Session. In such cases the Assistant Sessions Judge though exercising jurisdiction as a Sessions Court is a different Court to that of the Court of Session to which an appeal from his decision lies. I think, therefore, that the Additional Sessions Judge and the Assistant Sessions Judge appointed under Section 9(8), though exercising jurisdiction as a Sessions Court, are, while exercising their functions in respect of particular cases which have been made over to them, different Courts to the Sessions Judge who has been appointed under Section 9(1) of the Code of Criminal Procedure.

33. Apart, however, from the general consideration of the provisions of the Criminal Procedure Code, Mr. Gundil has been specially appointed by name as the person to try this particular case at Alibag. The appointment, therefore, is by name and not in virtue of an office, and it is (SIC) whether in case Mr. Gundil ceases to exercise his powers as Assistant or Additional Sessions Judge, his successor can be determined by the Sessions Judge under Section 559(8) of the Code. Further, if the Sessions Judge after deciding a sessions case by reason of transfer or any other cause ceases to exercise his jurisdiction as a Sessions Judge in any particular sessions sub-division, his successor in office as Sessions Judge alone would be entitled to make a complaint under Section 195 of the Criminal Procedure Code in respect of any offence committed in relation to the proceedings before the Sessions Judge, and it is doubtful whether an Additional Sessions

Judge will have the power to make a complaint with regard to an offence committed in the proceedings conducted before the Sessions Judge who has ceased to exercise his powers in the same sessions division.

34. If the contention of the learned Advocate General in support of the validity of the Government notification that the words "Court of Session" in Section 9(2) signify an individual Judge of such a Court and not necessarily all the Judges of such Court be accepted as correct, the criminal Court in Section 526 of the Code would mean an individual Judge of the Court, and there can be transfer from an individual Judge of a Court to another Judge of the same Court, both being criminal Courts subordinate to the High Court. "Court" under Section 3 of the Indian Evidence Act includes all Judges and Magistrates and all persons except arbitrators legally authorized to take evidence. " Criminal Court", under Section 4 of the old Criminal Procedure Code, Act X of 1872, means and includes every Judge or Magistrate or body of Judges or Magistrates inquiring into or trying any criminal case or engaged in any judicial proceeding. Under Section 17, Sub- section (3), all Assistant Judges are subordinate to the Sessions Judge in whose Court they exercise jurisdiction. An Additional Sessions Judge exercises jurisdiction of a Sessions Court when empowered under Section 193(2) and Section 438(2) of the Criminal Procedure Code. The Assistant Sessions Judge, the Additional Sessions Judge, and the Sessions Judge exercise co-ordinate or equal jurisdiction of a Sessions Court within the limits of the authority conferred on them by the Code, and are nevertheless different Courts each subordinate to the High Court.

35. I think, therefore, that an Additional Sessions Judge exercising jurisdiction as a Sessions Judge under the Criminal Procedure Code is a Court subordinate to the High Court, and is also a Court different from the Sessions Judge of the sessions division, who, when exercising functions as a Sessions Judge, is also a Court subordinate to the High Court. I think, therefore, that the High Court has power to transfer the case from the Court of Additional Sessions Judge, Mr. Gundil, to the Court of the Sessions Judge at Thana.

36. The order passed by the Local Government under Section 9(2) is not a bar to an order of transfer by the High Court under Section 526. Under Section 526(7), an order under Section 197 of the Criminal Procedure Code will not be affected by any order under Section 526. Any order under Section 9(2) is not saved by any of the provisions of Section 526 of the Criminal Procedure Code.

37. The next question is whether there are sufficient grounds for transfer of the case. The application is based on the ground of general convenience of the accused and their witnesses. Several affidavits have been filed in the case in support of the contention that a transfer from the Court of Mr. Gundil at Alibag to the Sessions Court at Thana will tend to the general convenience of the accused and their witnesses. According to the accused, along the road from Chirner to Panvel, which is a distance of thirteen miles, there is motor service, and there is also motor service from Panvel to Thana, a distance of twenty miles. It is further contended that the accused have engaged pleaders from Panvel, Thana and Bombay, and it would be inconvenient for them to

attend at Alibag the Sessions case which is likely to last for nearly three months. 118 witnesses are to be examined on behalf of the prosecution and about 225 for the defence. On the other hand, it is contended on behalf of the Crown that Chirner is about five miles from Avre, and after crossing the creek one can go to Rewas and from Rewas to Alibag. There is a conflict of evidence as to whether there is any cart- road from Chirner to Avre, and as to whether boats are available at Avre to cross the creek and reach Rewas. On behalf of the accused it is stated that the usual practice of going to Alibag from Chirner is first to go to Karanja, a distance of eighteen miles from Chirner by cart- road, and then to cross the creek from Karanja to Re was, and there is difficulty of securing motors which run from Rewas to Alibag between 9 and 10 a.m. It is further contended on behalf of the accused that the accommodation in the jail for the accused is insufficient, and that there would be scant accommodation for the relatives of the accused and their pleaders, and there is want of a good library. Making due allowance for exaggeration in the affidavits filed on behalf of the accused and on consideration of the conflicting affidavits made in the case, it appears to me that the balance of convenience is in favour of the accused, and that it would tend to the general convenience of the accused if the transfer is ordered from the Court of the Additional Sessions Judge holding his sittings at Alibag to the Sessions Judge at Thana. It is not suggested on behalf of the Crown that the trial at Alibag is more convenient to the prosecution.

38. It is further contended on behalf of the accused that if the trial is held at Alibag, they will lose the valuable right of trial by jury, whereas if the trial is held at Thana they will secure the right of trial by jury, as the Sessions trial at Thana will be by jury and the trial at Alibag will be with the aid of assessors, According to the view of Sir Lawrence Jenkins in the Full Bench decision in the case of King- Emperor v. Parbhushankar I.L.R. (1901) Bom. 680 3 Bom. L.R. 278 the scheme of the Code shows that in the view of the Legislature it is less advantageous to an accused to be tried with the aid of assessors than by a jury.

39. It further appears that though a First Class Subordinate Judge was appointed at Alibag for one year by Notification No. 5240 dated June 9, 1920, the talukas of Panvel and Karjat were excluded from his special jurisdiction, and though the District Magistrate of Kolaba was appointed as an Additional Sessions Judge in the Thana Sessions Division in particular months and was directed to try cases committed for trial by the Magistrates in the Kolaba District, by notification No. 2153 dated April 21, 1903, the operation of that notification was withdrawn so far as the talukas of Karjat and Panvel were concerned by a subsequent Notification No. 473, dated January 30, 1905.

40. I think, therefore, that on the ground of convenience and on the ground that an order for transfer is expedient for the ends of justice, I would transfer the case under Section 526 from the Court of the Additional Sessions Judge, Mr. Gundil, holding his sitting at Alibag, to the Court of the Sessions Judge at Thana. Though the High Court may not have the power under Section 526 of the Criminal Procedure Code to order any particular trial to be held at any particular place, the High Court has the power to decide that a particular place of sittings of any Court is inconvenient, and that an order of transfer from a Court sitting at a particular place to another Court sitting at a different place will tend to the general convenience of the accused and their witnesses, and if

the High Court comes to the conclusion that a transfer is necessary, a change of place is inevitable. It is unnecessary in this case to go into the question of the powers of the High Court under Clause 29 of the Letters Patent and Section 107 of the Government of India Act. Under Section 526 of the Criminal Procedure Code the High Court has the power to transfer a case from a criminal Court subordinate to its authority to any other criminal Court of equal or superior jurisdiction.

41. I think, therefore, that the present case pending before Mr. Gundil, Additional Sessions Judge holding his Court at Alibag, should be transferred to the Court of the Sessions Judge at Thana.

S.J. Murphy, J.

42. The applicants have been committed to the Sessions Court of Thana on charges of rioting and murder, and the case has some political significance, as it arose out of the Satyagraha movement in connection with the breaking of forest laws at Chirner, in the Panvel taluka of the Thana District, The trial will be a heavy one, for we are told there are 118 prosecution and 225 defence witnesses, and the Local Government has made an order, directing that it shall be held by Mr. Gundil, Additional Sessions Judge of Thana, and that he should hold it at Alibag. This order was issued on February 5, 1931.

43. The application, which was in the first instance for a direction to Mr. Gundil to hold his trial at Thana, is opposed by the Advocate General for the Crown. At the end of the hearing the terms of the application were amended, and the final request was for a transfer of the case to the Sessions Court of Thana, sitting at Thana. The grounds set out in the application are three- fold, being-

(1) that the order under Section 9(2) of the Code of Criminal Procedure directing Mr. Gundil to hold the trial at Alibag is illegal, and

(2) under Section 526 (1)(d), that a trial at Thana will tend to the general convenience of the parties and witnesses, and finally,

(3) under Section 526 (1)(e) that such an order is expedient for the ends of justice.

44. The points arise cut of the following circumstances-

45. The Sessions Division of Thana includes two revenue districts, those of Thana and Kolaba. The present arrangements under Section 9(2) are, that cases coming from Thana District and the Karjat and Panvel Talukas of the Kolaba District, are tried at Thana, and those from the remaining talukas of the Kolaba District at Alibag.

46. The present orders as to the mode of trial are that the Judges of the sessions division sit with a jury at Thana, and with assessors at Alibag. Chirner is in the Panvel Taluka, and the order directing Mr. Gundil to hold this trial at Alibag is a special one. The only section of the Code prescribing the place of trial within a sessions division is Section 9(2). It provides that the place or places shall be indicated by general or special order by the Local Government. The word "special" must include an order relating to a class of cases for trial, and on the principle that the greater necessarily connotes the lesser, cannot be held to stop short prior to the limit of a single case.

47. I agree with my learned brother in thinking that the order of the 5th February last was one within the competence of the Local Government to make, and that it is valid.

48. The next consideration is whether we have any authority to vary it by directing Mr. Gundil to hold this trial at Thana as requested.

49. This was the prayer made originally in the application which stated in terms that applicants had no objection to the Judge appointed to try them, but only to the place at which he was directed to do so by the Government.

50. I think it is clear that no such order can be made. There is no provision of the Criminal Procedure Code authorising this Court to direct that a trial shall be held at a particular place, and Section 526 covers only cases of transfer from one Court to another, though a transfer from one Court to another may, of course, involve a change of the place of sitting. Sub- section (1) of the section is in terms that the High Court may order- (ii) that any particular case or appeal, or class of cases or appeals, be transferred from a criminal Court subordinate to its authority to any other criminal Court of equal or superior jurisdiction. This view has been placed before us by the learned Advocate General, and on the language of the section, it is clearly correct; and I believe we have no power to direct Mr. Gundil, as Additional Sessions Judge, to sit at Thana to try this case.

51. But the application has been allowed to be amended, and the second and third points really arise on the amendment. The amendment is not, I think, happily worded, and as it stands is really meaningless. It is, that the case should be transferred to " the Sessions Court at Thana sitting at Thana." But the Sessions Court is the sessions division of Thana and the case has already been committed to that Court and is fixed for trial by one of the two Judges who compose it. The

intention really is that it should be transferred to the Court of Mr. Sanjana, the Sessions Judge, he being the only other Court- left after eliminating the Additional Sessions Judge Mr. Gundil - to try it, in that sessions division. Here again, I think, Mr. Coyajee is asking us to do something we are not empowered to do. If we have no power under Section 526 to direct Mr. Gundil to hold this trial at Thana, it follows that I must hold that we could make no such order in the case of Mr. Sanjana; though doubtless, in the absence of a special order to him by the Local Government, under Section 9(2) he would sit at Thana for the trial, while if such an order is made, he would sit in accordance with its terms and if it so directed, at Alibag, despite the transfer suggested to us to his Court, on which I think we cannot put the limitation as to the place of trial prayed for.

52. It will be convenient at this point to discuss the application so far as it is made under Section 526 (1)(e). The reason for a transfer most strenuously urged before us, and the real reason of the application, as is clear from its terms and the affidavits in support, is that applicants will be tried by a Judge and jury at Thana, while at Alibag the trial will be with the aid of assessors. The argument is that a trial by jury will be expedient for the ends of justice under this sub- clause of the section.

53. The Criminal Procedure Code provides for two varieties of trial in the Sessions Court, and the authority to decide which kind shall prevail in a particular Court, that is sessions division, or part of a sessions division, or part of it, is given by Section 269 to the Local Government and is to be declared by notification in the Local Government Gazette with the previous sanction of the Governor General in Council. There are accordingly sessions divisions in which all offences are triable by jury, others in which some classes of offences are so to be tried, and still others, such as the Thana Sessions Divisions, in part of which trial by jury is the rule, and in another part of which trials are with assessors. It has been held in the case reported in Queen- Empress v. Ganapathi Vannianar I.L.R (1900) Mad. 632 that the right of a trial by jury is one attaching to a place, or to class of offences in that place, and not to a person, and that the words "particular class of cases" do not necessarily mean offences as classified in the Indian Penal Code, but would cover many other classifications which might be made. In the Madras case the classification being considered was a special one, and in this one an order might conceivably be made to cover it by the description of the case as "arising out of the movement to break the forest laws in the Panvel Taluka." The relevance of the point and the ruling is that by the Criminal Procedure Code the discretion to direct where a particular Sessions Court shall sit is under Section 9(2) left to the Local Government, and the further question of whether it shall try cases with a jury, or sit with assessors, is also one for the Local Government, with the previous sanction of the Governor General in Council, to determine. This being so plainly the case, I think, the choice is one outside the scope of our discretion, having been left to another authority by the Statute, and that it is not possible for us to hold that the fact that trial is by jury at Thana comes within the terms of Section 526 (1)(e), on the ground that it is expedient for the ends of justice to have such a trial. In fact, I think, the Legislature never intended that this Court should have such a discretion, and that it is not for us to say that one form of trial is more expedient for the ends of justice than another, which is equally legal.

54. The only possible ground remaining for a transfer appears to me to be the one under Section 528 (1)(d), the general convenience of the parties and witnesses.

55. Applicants' case is that the facts fall within this clause, and the Crown's that they do not.

56. The arguments under this clause are again three- fold, being greater ease of access from Chirner to Thana, better accommodation at Thana for accused, witnesses and accused's friends, and greater facilities for legal aid at that place. Better accommodation for accused is a question for Government, and there are jails both at Thana and Alibag. Accommodation for accused's friends we can hardly consider, as they are neither parties nor witnesses. In fact, both Thana and Alibag are towns and the head- quarters of districts, always frequented by people having business in the Courts and otherwise, and though Thana is the larger town, it can hardly be seriously argued that the comparatively small number connected with this case who will require lodgings, cannot be suited in Alibag.

57. Chirner is thirteen miles by cross- country road from Panvel, which is twenty miles by main road from Thana. It is five miles by cart track to Avre, where a creek is crossed in boats, to Rewas from where there is a road fifteen miles long to Alibag. As the crow flies, it is nearer Alibag. The argument is that owing to the need of crossing the creek, it is easier and quicker to go from Chirner to Thana than it is to Alibag. This is denied by the Crown. The affidavits in support of applicants' contention exaggerate the difficulties, for in the fair season there is no difficulty in crossing the creek. Moreover, we are told, the witnesses are to be called in batches and will be allowed to go when examined and they will therefore only have to go to Alibag or Thana once.

58. I think there is no real preponderance of convenience either way.

59. The argument as to greater facilities for legal aid appears to me no stronger. Sessions cases are tried regularly at Alibag, where there is also a Sub- Judge's Court, and there is a local bar and we are told a law library. If outside lawyers are to be detained for the defence, they will have to attend throughout and whether they do so at Thana or at Alibag can make little difference, though if residents of Thana or Bombay that place would of course suit them better, but it is a question of who is retained and we do not know who is. Alibag has a daily steamer service to Bombay, and there is also a road route available. My view of the case is that we can make no order in the terms of the original application and that similarly we cannot properly make one on the grounds stated in Section 526 (1)(e) of the Code; but that we could make an order transferring the case to the Court of Mr. Sanjana by name, or to his Court as Sessions Judge, had a real case of hardship under Section 526 (1)(d) been made out, which, I think, on the merits, it has not been. But to my mind there is a real difficulty even here. There is no objection to a trial by Mr., Gundil, and as shown by the application and the affidavits, the objection is really to his sitting at Alibag with assessors, and the alternative prayer was only made because of the legal difficulty. The intention of the Legislature seems to me, for reasons already given, to have been that the place of trial and

the form it should take, whether it should be by jury or with the aid of assessors, should rest with Government, and not with the High Court; and this appears to me to be shown conclusively by the provisions of the Code, which even after such an order of transfer is made, leave it open to the Local Government to notify the place of sitting of the Sessions Judge, as it did that of the Additional Sessions Judge, or even on the conditions set out in Section 269, to provide that this particular trial shall be held with the aid of assessors at Thana.

60. Though I do so with regret, and much hesitation and diffidence, I feel I cannot concur in the order proposed by my learned brethren. In my opinion, the application should be dismissed.

Back to Section 29 of Code of Criminal Procedure, 1973

MANU/SC/0022/2001

IN THE SUPREME COURT OF INDIA

Appeal (crl.) 66 of 2001

Decided On: 12.01.2001

Pankajbhai Nagjibhai Patel Vs. The State of Gujarat and Ors.

Hon'ble Judges/Coram:

K.T. Thomas and R.P. Sethi, JJ.

JUDGMENT

K.T. Thomas, J.

1. Leave granted.

2. A Judicial Magistrate of first class, after convicting an accused of the offence under Section 138 of the Negotiable Instruments Act (for short `the NI Act') sentenced him to imprisonment for six months and a fine of Rs.83,000/- . The conviction and sentence were confirmed by the Sessions Judge in appeal and the revision filed by the convicted person was dismissed by the High Court. When the special leave petition was moved, learned counsel confined his contention to the question whether a Judicial Magistrate of first class could have imposed a sentence of fine beyond Rs.5,000/- in view of the limitation contained in Section 29(2) of the Code of Criminal Procedure (for short `the Code'). As the decision of this Court in K. Bhaskaran vs. Sankaran Vaidhyan Balan and anr. MANU/SC/0625/1999 : 1999CriLJ4606 is in support of the said contention we issued notice to the respondent mentioning that it is limited to the question of sentence. Learned counsel for the respondent contended that the decision of this Court to the effect that power of the Judicial Magistrate of first class is limited in the matter of imposing a sentence of fine of Rs.5000/- is not correct in view of the non- obstante clause contained in Section 142 of the NI Act. We, therefore, heard both counsel on that aspect.

3. Section 138 of the NI Act provides the punishment as imprisonment for a term which may extend to one year or fine which may extend to "twice the amount of cheque" or with both. Section 29(2) of the Code was referred to in Shaskaran's decision (supra) which contains the limitation for a Magistrate of first class in the matter of imposing fine as a sentence or as part of the sentence. That sub- section says that "the court of a Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding five thousand rupees, or of both." On the strength of the said sub- section it was held in Bhaskaran's case thus:

"The trial in this case was held before a Judicial Magistrate of the first class who could not have imposed a fine exceeding Rs.5000/- besides imprisonment. The High Court while convicting the accused in the same case could not impose a sentence of fine exceeding the said limit."

4. In order to obviate the said hurdle learned counsel for the respondent adopted a twin contention. First is that the non- obstante clause in Section 142 of the Act is enough to bypass the limitation imposed by Section 29(2) of the Code. Second is that even apart from the said non-obstante words in the said provision, Section 5 of the Code itself mandated that nothing in the Code would affect any special jurisdiction or power conferred by any other law.

5. We would first consider the effect of the non- obstante clause in Section 142 of the NI Act. The section reads thus:

"142. Cognizance of offences.- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974); -

(a) no court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138;

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under Section 138."

6. It is clear that the aforesaid non- obstante expression is intended to operate only in respect of three aspects, and nothing more. The first is this: Under the Code Magistrate can take cognizance of an offence either upon receiving a complaint, or upon a police report, or upon receiving information from any person, or upon his own knowledge except in the cases differently indicated in Chapter XIV of the Code. But Section 142 of the NI Act says that in so far as the offence under Section 138 is concerned no court shall take cognizance except upon a complaint made by the payee or the holder in due course of the cheque.

7. The second is this: Under the Code a complaint could be made at any time subject to the provisions of Chapter XXXVI. But so far as the offence under Section 138 of the NI Act is concerned such complaint shall be made within one month of the cause of action. The third is this: Under Article 511 of the First Schedule of the Code, if the offence is punishable with imprisonment for less than 3 years or with fine only under any enactment (other than Indian

Penal Code) such offence can be tried by any Magistrate. Normally Section 138 of the NI Act which is punishable with a maximum sentence of imprisonment for one year would have fallen within the scope of the said Article. But Section 142 of the NI Act says that for the offence under Section 138, no court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of first class shall try the said offence.

8. Thus, the non- obstante limb provided in Section 142 of the NI Act is not intended to expand the powers of a Magistrate of first class beyond what is fixed in Chapter III of the Code. Section 29, which falls within Chapter III of the Code, contains a limit for a Magistrate of first class in the matter of imposing a sentence as noticed above i.e. if the sentence is imprisonment it shall not exceed 3 years and if the sentence is fine (even if it is part of the sentence) it shall not exceed Rs.5000/- .

9. Two decisions holding a contrary view have been brought to our notice. The first is that of a Single Judge of the Madras High Court in A.Y. Prabhakar vs. Naresh Kumar N. Shah MANU/TN/0056/1993. The other is that of a Single Judge of the Kerala High Court which simply followed the aforesaid decision of the Madras High Court [K.P. vs. T.K. Sreedharan, 1996(2) C L J 1223 1996(1) K L T 40. The learned Single Judge of the Kerala High Court (Balanarayana Marar, J) dissented from a contrary view expressed in an earlier judgment of the same High Court and had chosen to agree with the view of the Madras High Court held in Prabhakar vs. Naresh Kumar N. Shah (supra). What Marar, J. had adopted was not a healthy course in the comity of Judges in that he had sidelined the earlier decision of the same High Court even after the same was brought to his notice. If he could not agree with the earlier view of the same High Court he should have referred the question to be decided by a larger bench. Learned Single Judge of the Madras High Court did not advance any reasoning except saying that Section 29(2) of the Code is not applicable in view of the primary clause in Section 142 of the NI Act. As pointed out by us earlier, the scope of the said primary clause cannot be stretched to any area beyond the three facets mentioned therein. Hence the two decision cited above cannot afford any assistance in this appeal.

10. The second contention depends upon the construction of Section 5 of the Code. Before that Section is considered it is advantageous to have a look at the preceding section which is in a way cognate to the provision cited. Section 4(1) of the Code concerns only with offences under the Indian Penal Code but sub- section (2) says that all offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions of the Code unless any other enactment contains provisions regulating the manner or place of such investigation, inquiry or trial or how otherwise such offences should be dealt with. This means, if an other enactment does not regulate the manner or place of trial etc of any particular offence the provisions of the Code will continue to control the investigation or inquiry or trial of such offence. Now Section 5 of the Code has to be seen.

"5.Saving.- Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force."

11. Non- application of the Code on "any special jurisdiction or power conferred by any other law for the time being in force" is thus limited to the area where such special jurisdiction or power is conferred. Section 142 of the NI Act has not conferred any "special jurisdiction or power" on a Judicial Magistrate of first class. That section has only excluded the powers of other magistrates from trying the offence under Section 138 of the NI Act.

12. In this context it is profitable to refer to the method usually adopted by the Parliament for conferring special jurisdiction or powers on magistrates of first class in the matter of awarding sentences obviating the limitation stipulated in Section 29(2) of the Code. The Essential Commodities Act contained a provision as Section 12 which read thus:

"12. Special provision regarding fine- Notwithstanding anything contained in section 29 of the Code of Criminal Procedure, 1973 (2 of 1974), it shall be lawful for any Metropolitan Magistrate, or any Judicial Magistrate of the first class specially empowered by the State Government in this behalf, to pass a sentence of fine exceeding five thousand rupees on any person convicted of contravening any order made under section 3."

(Of course the said provision has since been deleted from the statute book when jurisdiction to try the offences under the Essential Commodities Act has been conferred on Special Court which is deemed to be a Court of Sessions.)

13. Another instance is, Section 36 of the Drugs and Cosmetics Act which says that "Notwithstanding anything contained in the Code it shall be lawful for any Metropolitan Magistrate or Judicial Magistrate of the first class to pass any sentence authorised by this Act in excess of the powers under the Code". A similar provision is incorporated in Section 21 of the Prevention of Food Adulteration Act also.

14. Those instances bear ample illustrations as to how the legislature had exercised when it wanted the limitations specified under Section 29 of the Code to be surmounted under special enactments. (Those instances are only illustrative, and not exhaustive.) In the absence of any such provision in the NI Act we cannot read any special power into it as having conferred on a magistrate of first class in the matter of imposition of sentence.

15. In this context, we may also point out that if a Magistrate of first class thinks that the fact situation in a particular case warrants imposition of a sentence more severe than the limit fixed under Section 29 of the Code, the legislature has taken care of such a situation also. Section 325 of the Code is included for that purpose. Sub- section (1) of that Section reads thus:

"Whenever a Magistrate is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than that which such Magistrate is empowered to inflict, or, being a Magistrate of the second class, is of opinion that the accused ought to be required to execute a bond under section 106, he may record the opinion and submit his proceedings, and forward the accused, to the Chief Judicial Magistrate to whom he is subordinate."

16. If proceedings are so submitted to the Chief Judicial Magistrate under Section 325(1) of the Code it is for the Chief Judicial Magistrate to pass such judgment, sentence or order in the case, as he thinks fit. It is so provided in sub- section (3) thereof.

17. Even that apart, a Magistrate who thinks it fit that the complainant must be compensated with his loss he can resort to the course indicated in Section 357 of the Code. This aspect has been dealt with in Bhaskaran's case (supra) as follows:

"However, the Magistrate in such cases can alleviate the grievance of the complainant by making resort to Section 357(3) of the Code. It is well to remember that this Court has emphasised the need for making liberal use of that provision (Hari Singh v. Sukhbir Singh MANU/SC/0183/1988 : 1989CriLJ116). No limit is mentioned in the sub- section and therefore, a Magistrate can award any sum as compensation. Of course while fixing the quantum of such compensation the Magistrate has to consider what would be the reasonable amount of compensation payable to the complainant. Thus, even if the trial was before a Court of Magistrate of the first class in respect of a cheque which covers an amount exceeding Rs.5000/- the Court has power to award compensation to be paid to the complainant."

18. In our view this question does not now pose any practical difficulty. Whenever a magistrate of the first class feels that the complainant should be compensated he can, after imposing a term of imprisonment, award compensation to the complainant for which no limit is prescribed in Section 357 of the Code.

19. In the result, while retaining the sentence of imprisonment of six months we delete the fine portion from the sentence and direct the appellant to pay compensation of Rs.83,000/ - to the respondent- complainant. The said amount shall be deposited with the trial court within six months failing which the trial court shall resort to the steps permitted by law to realise it from the appellant.

20 .This appeal is disposed of accordingly.

MANU/SC/0070/1960

Back to Section 36 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Petition No. 59 of 1960

Decided On: 28.10.1960

R.P. Kapur and Ors. Vs. Sardar Pratap Singh Kairon and Ors.

Hon'ble Judges/Coram:

J.C. Shah, K.C. Das Gupta, M. Hidayatullah, N. Rajagopala Ayyangar and S.K. Das, JJ.

JUDGMENT

S.K. Das J.

1. This is a writ petition. The three petitioners before us are (1) R. P. Kapur, a member of the Indian Civil Service, who before his suspension was serving as a Commissioner in the State of Punjab, (2) Sheila Kapur, his wife, and (3) Kaushalya Devi, his mother- in- law. They have moved this Court under Art. 32 of the Constitution for the enforcement of their rights under Arts. 14 and 21 of the Constitution, which rights they say have been violated by the respondents who are the State of Punjab, Sardar Pratap Singh Kairon, Chief Minister thereof, and certain officials, police administrative and magisterial who have been conducting, or are connected with, the investigation or inquiry into a number of criminal cases instituted against the petitioners. We shall refer to some of these officials later in this judgment in relation to the part which they have played or area playing in those criminal cases.

2. Briefly stated the case of the petitioners is that petitioner no. 1 had the misfortune to incur the wrath of the Chief Minister of the State. It is alleged that the Chief Minister was annoyed with petitioner no. 1, because the latter did not show his readings to give evidence for the prosecution in a case known as the Karnal Murder Case (later referred to as the Grewal case) in which one D. S. Grewal, then Superintendent of Police, Karnal, and some other police officials were, along with others, accused of some serious offences. That case was transferred by this Court to a Special Judge, at Delhi, who commenced the trial sometime in May/June 1959. Petitioner no. 1 was a the time Commissioner of Ambala, and he alleges that he was told by the Chief Minister that it was proposed to cite the Deputy Commissioner and the Deputy Inspector- General of Police as prosecution witnesses in the said case and it would be in the fitness of things that petitioner no. 1 should also figure as a prosecution witness; to this suggestion petitioner no. 1 gave a somewhat dubious reply to the effect that his appearance as a prosecution witness might or might not help the prosecution. Another reason for the displeasure of the Chief Minister, as alleged in the petition, related to certain orders which petitioner no. 1 had passed as Commissioner, Patiala Division, in a revenue case known as the Sangrur case. We shall presently give more details of that case, but it is enough to state here that the allegation is that in that case petitioner no. 1 passed

certain orders, involving the disposal of properties worth about Rs. 9 lacs, which were adverse to one Surinder Kairon, son of the Chief Minister. It is stated that as a result of the displeasure which petitioner no. 1 had incurred for the two reasons mentioned above, a special procedure was adopted in the investigation of the criminal cases instituted against the petitioners; and some new cases were started through the instrumentality of the C.I.D. Police with a view to subject the petitioners to harassment and persecution. The substantial allegation, to quote the language of the petition, is that "a special procedure or rather a technique has been devised for circumventing the mandatory provisions of the law (meaning the Code of Criminal Procedure) as regards the petitioners, two of whom are ladies and who are being dragged about unnecessarily because they happen to be related to petitioner no. 1". It is stated that there has been a deliberate departure from the normal and legal procedure in the matter of institution and investigation of criminal cases against the petitioners - a departure said to be the result of "an evil eye and unequal hand" which the petitioners allege constitutes a denial of the right of equal protection of the laws guaranteed to them under Art. 14 of the Constitution. The special procedure or technique of which the petitioners complain is said to consist of several items, such as (1) entertainment of a criminal complaint personally by the Chief Minister; (2) institution of complaints by the C.I.D. police; (3) registration of first informations after such complaints; (4) investigations in advance of the complaints; (5) investigation by specially chosen (hand- picked as learned Counsel for the petitioners has suggested) C.I.D. officials, not necessarily of high rank, who have no power to investigate; (6) the arrangement of a special C.I.D. squad to "unearth something" against the petitioners, etc. In the petitioner four criminal cases were referred to as illustrative of the special procedure, said to be unwarranted by law, adopted against the petitioners, and in a supplementary petition filed on June 9, 1960, some more cases were referred to. After we had conveyed to learned Counsel for the petitioners that we could not consider the supplementary petition which the respondent had no opportunity of meeting, the supplementary petition was withdrawn. Therefore, we do not propose to say anything about the cases which are referred to in the supplementary petition. The four cases mentioned in the original petition are :-

(1) F.I.R. no. 304 of 1958, given by one M. L. Sethi, referred to hereinafter for brevity as Sethi's case;

(2) F.I.R. no. 39 of 1959, instituted on the complaint of one M. L. Dhingra, called hereinafter as Dhingra's case;

(3) F.I.R. no. 135 of 1959, instituted on the complaint of the Civil Supply Officer, Karnal, the accused in this case being the State Orphanage Advisory Board of which petitioner no. 1 was Vice- President at the relevant time and Kartar Singh, farm manager of Kaushalya Devi, called the Orphanage case; and

(4) F.I.R. no. 26 of 1960, instituted on the complaint of Daryao Singh, D.S.P., C.I.D., Karnal, (one of the respondent police officials) in which there are three accused persons including petitioner no. 1, called for brevity the Ayurvedic Fund case.

3. We may say at once that we are not concerned with the merits of any of the aforesaid cases : that is a question which will fall for consideration if and when the cases are tried in Court. Therefore, nothing said in this judgment shall be construed as affecting the merits of the cases. Two questions have been posed before us in relation to these cases : one is if in the matter of institution and investigation of these cases a special procedure unknown to law has been adopted; and the other is if the petitioner have been singled out for unequal treatment in administering the law relating to the institution and investigation of criminal cases in the State. The two questions are in one sense connected, for if a special procedure unknown to law has been adopted against the petitioners, that by itself will be a denial of the right of the equal protection of the laws. Learned Counsel for the petitioners has, however, argued the second question somewhat independently of the first question, and he had submitted that even if the procedure adopted against the petitioners is warranted by law, it is a departure from the normal procedure and has been adopted with "an evil eye and unequal hand" so as to put the petitioners to harassment and persecution. We shall consider both these questions in relation to the procedure adopted in the four cases referred to above.

4. It is necessary to state that the petition has been contested by the respondents. The Chief Minister has himself made no affidavit in respect of the allegations made against him; but affidavits in reply have been made by the Chief Secretary and the Home Secretary to the Punjab Government and some of the responded officials. To these affidavits we shall advert later in somewhat greater detail. We shall also have something to say about the failure of the Chief Minister to make an affidavit. It is enough to state here that the respondents have seriously contested both the allegations made on behalf of the petitioners, namely, (1) that a special procedure unknown to law was adopted against them or (2) that the procedure adopted was motivated by "an evil eye and unequal hand" so as to persecute and harass the petitioners. The respondents have said that the procedure adopted was warranted by law and the employment of the C.I.D. officials in the investigation of the cases against the petitioners was due to the special nature of the cases. The respondents have also contested the correctness of the allegation that petitioner no. 1 had incurred the displeasure of the Chief Minister on account of the two reasons stated in the petition. In brief, the claim of the respondents is that there has been no violation of the rights of the petitioners guaranteed under Arts. 14 and 21, and there are no grounds for interference by this Court under Art. 32 of the Constitution. It has been stated on behalf of the respondents that in the two cases called Sethi's case and Dhingra's case, the petitioners had moved the High Court without success for quashing the proceedings and in Sethi's case, an appeal to this Court against the order of the High Court also proved unsuccessful. It is also pointed out that a petition made by petitioner no. 1 in the High Court for proceeding by way of contempt of court against the Chief Minister on some of the allegations now raised or allegations similar in nature, was dismissed in limine and the learned Advocate- General of the Punjab has taken us through the order of the High Court in respect of some of the allegations made.

5. Having stated the respective cases of the parties before us, we shall proceed now to a more detailed examination of the procedure adopted in the four cases instituted against the petitioners. But before we do so, it is necessary to say a few words about Grewal's case and Sangrur case

which are stated to furnish the reasons why petitioner no. 1 incurred the displeasure of the Chief Minister. It is alleged that in Grewal's case petitioner no. 1 was asked to give evidence for the prosecution, but he gave a dubious reply which displeased the Chief Minister. It is worthy of note, however, that the trial in Grewal's case began in May- June, 1959; Sethi's complaint was made in December, 1958 and Dhingra's in February, 1959. Obviously, those two cases could not be the result of any refusal by petitioner no. 1 to give evidence in Grewal's case. On May 28, 1959, petitioner no. 1 wrote to the Chief Secretary about Sethi's case and Dhingra's case, but no allegation was made therein against the Chief Minister. What the petitioner wanted then was that an opportunity should be given to him to explain his position. On June 9, 1959, petitioner no. 1 again wrote to the Chief Secretary about the complaints of Sethi and Dhingra - again there was no allegation against the Chief Minister. On June 29, 1959, petitioner no. 1 filed two petitions in the Punjab High Court for quashing the proceedings in Sethi's case and Dhingra's case; in this petition an allegation was made that powerful influences were operating against the petitioner "to harm him and debar him officially" and Sethi's case and Dhingra's case were the result of such influences, but there was no specific mention of Grewal's case and of any request to the petitioner to give evidence in that case. It was for the first time on July 20, 1959, when the petition for contempt proceedings was filed that a specific allegation against the Chief Minister was made in paragraphs 35 to 37 thereof (this is annexure I to the present petition). This petition was dismissed in limine, the High Court saying that it was not prima facie satisfied that the allegation was made out. We do not think that petitioner no. 1 has been able to advance his case any further in spite of the fact that the Chief Minister has made no affidavit, a matter to which we shall advert later.

6. As to the Sangrur case, that was also referred to in the petition of July 20, 1959, and the High Court did not accept the allegation of petitioner no. 1. What happened in that case was this. The late Sardar Mukan Singh of Sangrur left two widows, Sardarni Pritam Kuar and Sardarni Pavitar Kaur. Sardarni Pavitar Kaur had three daughters one of whom was married to Surinder Singh Kairon, son of the Chief Minister. The Sangrur estate was in charge of the Court of Wards, that is, the Financial Commissioner, Punjab. On June 19, 1958, the Court of Wards decided to release the estate after partitioning the immovable property between the two widows. At one time a question arose as to whether the immovable properties should be partitioned into five equal shares for the two widows and three daughters or into two shares only for the two widows. Sometime before May 6, 1959, it was decided that the partition would be of two shares only and thereafter a detailed mode of partition was agreed to between the parties. This is clear from the note of petitioner no. 1 dated May 6, 1959. Thereafter there was no more dispute left, and the case of petitioner no. 1 that he was arrested on July 18, 1959, because he dictated an adverse order some days previously which had been typed but not yet signed does not prima facie appear to be correct, apart altogether from the question whether petitioner no. 1 was acting merely as the channel between the Deputy Commissioner, and the Financial Commissioner, the latter being the only authority competent to pass final orders in the matter.

7. We have, therefore, come to the conclusion that the petitioners have not established what they have alleged, namely, that R. P. Kapur, one of the petitioners, had incurred the displeasure of the Chief Minister by reason of what happened in the Grewal case and the Sangrur case. Whether there were other reasons, administrative or otherwise, for the displeasure of the Chief Minister is a matter which is not germane to the present case. In the affidavits filed before us some reference

has been made to the past record of R. P. Kapur. We consider it unnecessary to refer to that record; firstly, because it is not relevant to the case before us, and secondly because we think that it is not fair to refer to the confidential record of an officer unless the circumstances in which certain adverse remarks were made are known.

8. We proceed now to consider the four criminal cases pending against the petitioners or some of them, in relation to the two points urged : (1) whether in the institution and investigation of these cases a special procedure unknown to law has been adopted and (2) if the petitioners have been singled out for unequal treatment in administering the law relating to the institution and investigation of criminal cases in the State.

9. The first two cases, namely, Sethi's case and Dhingra's case need be dealt with at some length. Sethi's case started on a complaint which it was said was sent direct to the Chief Minister. Four material allegations about fraudulent misrepresentation were made in that complaint. It was alleged that R. P. Kapur had fraudulently misrepresented to Sethi that a particular piece of land which he had sold to Sethi had been purchased by him at Rs. 10 per square yard; that he had fraudulently concealed from Sethi the pendency of certain proceedings before the Land Acquisition Collector, Delhi, and of the acquisition of the said land under section 17 of the relevant Act; that he had made a fraudulent misrepresentation as regards the scheme of housing with regard to the area in which the land lay. Though the complaint was dated December 10, 1958, it appears to have been made over to the Additional Inspector General of Police on December 23, 1958. The Additional Inspector General of Police then appears to have passed an order to the following effect : "Register a case and investigate personally". This was addressed to Sardar Hardayal Singh, D.S.P. Thereupon Sardar Hardayal Singh, Deputy Superintendent of Police, C.I.D., Amritsar, appears to have drawn up a first information report. The original complaint which Sethi filed has not been produced before us. What was produced before us was a carbon copy and on that carbon copy was the order of the Additional Inspector General of Police to which we have already made a reference. The allegation of the petitioners was that the original complaint had been sent to the Chief Minister and the Chief Minister had passed certain orders thereon. On behalf of the petitioners it was suggested that the original was not produced in order to conceal from the Court the orders which the Chief Minister had passed thereon. We have stated earlier that the Chief Minister had filed no affidavit in respect of these allegations. An affidavit has been filed by A. N. Kashyap, Home Secretary to the Government but obviously he was not in a position to say anything about the allegations made against the Chief Minister. We, therefore, proceed on the basis that so far as Sethi's case is concerned, a complaint was made or sent to the Chief Minister who thereupon sent it to the Additional Inspector General of Police who in his turn sent it to Sardar Hardayal Singh, Deputy Superintendent of Police, C.I.D., at Amritsar. The short question before us is - does this amount to adopting a procedure unknown to law or even to unequal treatment so as to attract Art. 14 of the Constitution ? Learned Counsel for the petitioners has taken us through the relevant provisions in Part V, Chapter XIV, of the Code of Criminal Procedure and has submitted that under section 154 of the Code every information relating to the commission of a cognizable offence should be given to an officer in charge of a police station and under section 156 any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area would have power to inquire into or try under the provisions of Chapter XV relating

to the place of inquiry or trial. He has also referred to section 157 under which the officer in charge of a police station, shall forthwith send a report of the first information to a Magistrate empowered to take cognizance of the offence and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed to the spot to investigate the facts and circumstances of the case, and if necessary to take measures for the discovery and arrest of the offender. It is contended that the provisions of sections 154, 156 and 157 of the Code have been violated in the case against the petitioners; and thus the petitioners have been subjected to a special procedure unknown to law or, at any rate, to unequal treatment, treatment different from that of other persons against whom informations of a cognizable offence are made.

10. We are unable to accept these contentions as correct. First of all, section 154, Code of Criminal Procedure, does not say that an information of a cognizable offence can only be made to an officer in charge of a police station. That section merely lays down, inter alia, that every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information shall be signed by the person giving it and the substance thereof shall be entered in a book to be kept by the such officer in such form as the State Government may prescribe in that behalf. Section 156 gives power to an officer in charge of police station to investigate without the order of a Magistrate any cognizable case which a Court, having jurisdiction in the local area etc. would have power to inquire into or try; sub- section (2) of section 156 lays down that no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate. There has been some argument before us as to the meaning of the expression "any such case" occurring in sub- section (2) of section 156. As we are not resting our decision on sub- section (2) of section 156, Code of Criminal Procedure, we consider it unnecessary to embark upon a discussion as to the true scope and effect of sub- section (2) of section 156. Section 157 of the Criminal Procedure Code lays down the procedure which an officer in charge of a police station must follow where information of a cognizable offence is made. Now, there is another important provision in the Code which is of great relevance in this case and must be read. That provision is contained in section 551 which is in these terms :

"Section 551. Police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station."

11. The Additional Inspector General of Police to whom Sethi's complaint was sent was, without doubt, a police officer superior in rank to an officer in charge of police station. Sardar Hardayal Singh, Deputy Superintendent of Police, C.I.D., Amritsar, was also an officer superior in rank to an officer in charge of a police station. Both these officers could, therefore, exercise the powers, throughout the local area to which they were appointed, as might be exercised by an officer in charge of a police station within the limits of his police station.

It is not disputed that the Jurisdictional area of the Additional Inspector General of Police was the whole of the State. As to the jurisdictional area of the Deputy Superintendent of Police, C.I.D., the contention on behalf of the respondent State is that though he was posted at Amritsar, his jurisdictional area extended over the whole State. The learned Advocate- General for the respondent State has drawn our attention to Police Rule 21.28 in the Punjab Police Rules, 1934, Vol. III, issued by and with the authority of the State Government under sections 7 and 12 of the Police Act (V of 1861). That rule lays down that the Criminal Investigation Department has no separate jurisdiction and the Deputy Inspector General of Police, Criminal Investigation Department, may decide to take over the control of any particular investigation himself or depute one or more of his officers to work directly under the control of the Superintendent of Police of the district. Police Rule 21.32 enumerates some of the cases in which the assistance of the Criminal Investigation Department may be sought. Police Rule 25.14 says that the Criminal Investigation Department is able to obtain expert technical assistance, and in cases where such assistance is required the assistance of the Criminal Investigation Department may be obtained. In the affidavit made by Sardar Hardayal Singh, he has stated that he was entrusted with the investigation of Sethi's case because of its technical nature and also because his share of duty as a Gazetted Officer attached to the Criminal Investigation Department was the whole of the State in view of the memorandum no. 9581- H- 51/7912 dated October 26, 1951. That memorandum shows that the Deputy Inspector General, C.I.D. and all gazetted officers of the Criminal Investigation Department have jurisdiction extending over the whole of the Punjab State. This is also supported by the affidavit made by Shamshere Singh, Additional Inspector General of Police. Learned Counsel for the petitioners has pointed out that Sethi's case involved no technical questions and the ground stated in the affidavits of Shamshere Singh and Sardar Hardayal Singh is not, therefore, correct. The question before us is not whether the reason for which the investigation was made over to Sardar Hardayal Singh is correct or not. The question before us is, whether in making over the investigation to Sardar Hardayal Singh a special procedure unknown to law was adopted or the law as to the investigation of cases was administered with an evil eye or unequal hand. If the police officer concerned thought that the case should be investigated by the C.I.D. - even thought for a reason which does not appeal to us - it cannot be said that the procedure adopted was illegal. We are unable to agree with learned Counsel for the petitioners that any of these two contentions has been made out in the present case. We are satisfied that the Inspector General of Police, C.I.D. had power to deal with Sethi's complaint and had further power to direct investigation of the same by Sardar Hardayal Singh who as a police officer superior in rank to an officer incharge of a police station could exercise powers of an officer in charge of a police station in respect of the same. It cannot, therefore, be said that the procedure adopted was unknown to law. Nor are we satisfied that the procedure adopted was motivated by any evil purpose, though we are not quite impressed by the reason given by Shamshere Singh or Sardar Hardayal Singh that Sethi's case was of a technical nature and, therefore, required the assistance of the C.I.D. Even if it was not of a technical nature, it was open to the Additional Inspector General of Police to make over the investigation to a Deputy Superintendent of Police in view of the status of the petitioners. In paragraph 31 of his affidavit A. N. Kashyap, Home Secretary, has said that the Inspector General of Police on receiving the complaint from Sethi ordered on his own the registration of the case without any order or direction from the Chief Minister. The correctness of this statement has been very seriously commented on. In the absence of any affidavit from the Chief Minister and of the original complaint, we have preferred to proceed in this case on the footing that the Additional Inspector General of Police got the complaint from the Chief Minister and then passed necessary orders thereon. Even on that footing

we are unable to hold that there has been any violation of legal procedure or that an unfair discrimination has been made against the petitioners.

12. Learned Counsel for the petitioners has relied on certain observations made by this Court in H. N. Rishbud and Inder Singh v. The State of Delhi MANU/SC/0049/1954 : 1955CriLJ526 . The observations occur at page 1160 of the report and are to effect that it is of considerable importance to an accused person that the evidence collected against him during investigation is collected under the responsibility of an authorised and competent investigating officer. These observations were made in case where the question that fell for decision was whether the provisions in section 5(4) and the provisos to section 3 of the Prevention of Corruption Act, 1947 (Act II of 1947) and the corresponding section 5A of the prevention of Corruption (Second Amendment) Act, 1952 (Act LIX of 1952), were mandatory or not. It was held that they were mandatory and an investigation conducted in violation thereof was illegal. It was also held that an illegality committed in the course of an investigation did not affect the competence and jurisdiction of the Court for trial; but if any breach of the mandatory provisions relating to investigation were brought to the notice of the Court at an early stage of the trial, the Court would have to consider the nature and extent of the violation and pass appropriate orders for such reinvestigation as might be called for. We do not think that the observations made and the decision are of any assistance to the petitioners. We have held that there has been no violation of any mandatory provisions as to investigation in Sethi's case against the petitioners and the investigation procedure followed is legal. Our attention has been drawn to King Emperor v. Nilkantha I.L.R. 35 Mad. 247 On a certificate by the Advocate- General, the case was considered by a Full Bench of the Madras High Court and one of the questions for decision was - "Is an Inspector of the Criminal Investigation Department an authority legally competent to investigate the facts within the meaning of section 157, Evidence Act ?" The question was answered in the affirmative by the majority of judges, Abdur Rahim, J. and Sundara Ayyar, J., dissenting. In the course of the arguments before their Lordships, one of the questions mooted was whether Inspectors of the Criminal Investigation Department were appointed to any local area within the purview of section 551, Code of Criminal Procedure. Some of the Judges held that the whole Presidency was their local area; some held that that was not so. On the materials before us, we have no hesitation in holding that the Deputy Superintendent of Police entrusted with the investigation of Sethi's case had the necessary authority to hold the investigation. The decision in Pulin Bihari Ghosh v. The King I.L.R. [1950] Cal. 124 on which also some reliance has been placed does not appear to us to be in point : that was a case in which the Magistrate purported to act both under section 202 and section 156(3), Code of Criminal Procedure, and it was held that proceedings under section 202 and investigation under section 156(3) could not proceed simultaneously; it was further held that a direction under section 156(3) could only be made to an officer in charge of a police station. No question arose there of the exercise of powers under section 551, Code of Criminal Procedure, and the decision does not establish what the petitioners are seeking to establish in the present case. More in point is the decision in Textile Traders Syndicate Ltd. v. State of U.P. MANU/UP/0078/1959 : AIR1959All337 where it was held that an Inspector of Police in the Criminal Investigation Department was superior in rank to that of an officer in charge of a police station and under section 551, Code of Criminal Procedure. He could exercise the powers of an officer in charge of a police station throughout the State.

13. Turning now to Dhingra's case, the position is this. Admittedly, a complaint dated February 27, 1959, was sent to the Chief Minister with a covering letter in which it was stated that "R. P. Kapur had already started tampering with the evidence and I, therefore, request that orders be passed that he Police should take in hand investigation immediately and collect all material evidence". The Chief Minister wrote on this : "Inspector General, Police, is sick. Will Addl. Inspector General please take immediate action in taking over papers from Government departments concerned and the papers with Sri Dhingra. Please give a prima facie report." The Additional Inspector General then made the following endorsement : "Please take immediate necessary action. Depute one of your officers to contact Sri Dhingra and get the necessary records from him. Immediate action may be taken to take over the record from the various departments. A case may be registered. I have informed Chief Secretary and he agrees with this". This was addressed to the Deputy Inspector General, C.I.D., and the latter wrote - "Case should be registered and investigated by Bir Singh, D.S.P., under your supervision. Immediate steps should be taken to get the salient records of Sri Dhingra." This was addressed to Ujager Singh, Superintendent of Police, C.I.D. The case was then registered by Sardar Sampuran Singh, Inspector of Police, Police Station Chandigarh, and the investigation was in charge of Sardar Bir Singh, Deputy Superintendent of Police, C.I.D.

14. The legal position as to the institution of Dhingra's case and its investigation is the same as in Sethi's case. The legal sanction for both is section 551 Code of Criminal Procedure, and the reasons which we have given for holding that the procedure followed in instituting and investigating Sethi's case is legally valid apply to Dhingra's case also. On behalf of the petitioners it has been submitted that the hand of the Chief Minister is no longer concealed in respect of Dhingra's case. It is pointed out that in 1959, a complaint is made in respect of offences alleged to have been committed about five years ago in 1954 and the Chief Minister, without any enquiry whatsoever, says "Please give a prima facie report," and the same C.I.D. machinery is again set in rapid motion as in Sethi's case, and this at a time when Sethi's case was kept "hanging as a sword" over the petitioners. It has been further submitted that the direction as to the seizure of papers was not justified in law, as the Chief Minister had no legal power to give such a direction. We do not think that these submissions establish what the petitioners have to establish in order to succeed on their writ petition, namely, that in the institution of Dhingra's case and its investigation, a procedure unknown top law has been followed or that the petitioners have been singled out for an unfair and discriminating treatment. We do not know what reasons led the Chief Minister to make the endorsement on the complaint of Dhingra as he did and why instead of referring the complaint to the officer in charge of the police station concerned, a reference was made to the Additional Inspector General or the Criminal Investigation Department. These are matters within his special knowledge, and he has chosen to throw no light on them. Shamshere Singh has said in his affidavit that he dealt with Dhingra's case in exercise of his powers under section 551, Code of Criminal Procedure. Sardar Bir Singh has said in his affidavit that this case was also of a technical nature and so the investigation was entrusted to him. As we have said in Sethi's case this reason does not appear to us to be a convincing reason, but the Police officers concerned may honestly have thought that the case should be investigated by the Criminal Investigation Department. We are not called upon to express any opinion on the merits of Dhingra's case, and all that we say now is that the petitioners have failed to establish either of their two contentions - (1) that the procedure adopted was illegal, or (2) that the petitioners were unfairly discriminated against.

15. We go now to the remaining two cases, the Orphanage Case and the Ayurvedic Fund case. One was instituted on the complaint of the Civil Supply Officer, Karnal, and the other on the statement of Daryao Singh, Deputy Superintendent of Police, C.I.D., Karnal. The Orphanage case is against the Orphanage Advisory Board of which R. P. Kapur was the Vice President at the relevant time, and Kartar Singh, farm manager of Kaushalya Devi. It related to the alleged violation of certain Contrail Orders in the matter of a brick kiln. The Ayurvedic Fund case is against R. P. Kapur and certain other persons, who are not petitioners before us. It alleged criminal breach of trust etc. in respect of certain funds in the hands of the persons accused therein. As we are not deciding these cases on merits, it is unnecessary to give further details of the allegations made in those cases.

16. No specific illegality has been brought to our notice with regard to the institution of the Orphanage case except some allegations of high- handedness in the matter of seizure of records of Orphanage in spite of the protest of the General Manager of the Orphanage and some allegations against Choudhari Ram Singh, who was then Deputy Inspector General, Ambala Range. These allegations, be they true or not, do not establish any such illegality as would lead us to quash the investigation.

17. As to the Ayurvedic Fund case, Daryao Singh said in his affidavit :

"I say that the Audit Report contained details of meddling with Orphanage funds and of having made payments to one Kartar Singh, an employee of the petitioner no. 1 and the attorney of Shrimati Kaushalya Devi. It appears that there was excess and double payment of funds. There were purchases of timber and wood without calling for any quotations. It disclosed the issue of Orphanage funds to Madhuban Co- operative Society and that the materials like cement, iron and steel which were under control were also used in the construction of private building of Shri Kapur and his family and the use of such materials went up to 20,000 rupees."

18. Here again we do not express any opinion as to the correctness or otherwise of the allegations made. All that need be said at this stage is that the institution of the case is not illegal, nor is its investigation vitiated by discrimination.

19. It is indeed true that the investigation of these case has been entrusted to certain officers of the Criminal Investigation Department, whether for good reason or not we cannot say. But that circumstance does not by itself make the investigation bad in law. The officers can exercise their powers of investigation under section 551, Code of Criminal Procedure. Daryao Singh, it may be stated, was an Inspector of the Criminal Investigation Department at Karnal and became a Deputy Superintendent of Police, C.I.D., in December, 1959. He also could exercise the powers under section 551, Code of Criminal Procedure.

20. For the reasons given above, we have come to the conclusion that the petitioners are not entitled to succeed and the writ petition must be dismissed, in the circumstances of this case there will be no order for costs.

21. Before parting with this case we consider it necessary to make some observations with regard to a matter which has caused us some anxiety and concern. Serious allegations have been made against the Chief Minister in this case. He is a party respondent and had notice of the allegations made. In Sethi's complaint it was alleged that he had passed certain orders on the original complaint, which was sent to the Additional Inspector General of Police with those orders. The original complaint was not made available to us on the ground that it could not be traced. The Additional Inspector General of Police said in his affidavit that on receiving the complaint from Sri M. L. Sethi, he ordered the investigation of the case without any order or direction from the Chief Minister. He did not specifically say if he received the complaint direct from Sethi or through the Chief Minister. In Dhingra's case the Chief Minister passed an order which might mean that he ordered the submission of prima facie report or merely directed that a report should be submitted if a prima facie case was made out. It is not clear why he ordered the seizure of papers before even a prima facie report was given, in respect of an offence said to have been committed, five years ago. These are all matters on which the Chief Minister alone was in a position to enlighten us. In view of the allegations made against him, we consider that the Chief Minister owed a duty to this Court to file an affidavit stating what the correct position was so far as he remembered it. We recognise that it may not be possible for a Chief Minister to remember the circumstances in which a document passes through his hands; there must be many papers which a Chief Minister has to deal with in the day to day business of administration. If the Chief Minister did not remember the circumstances, it would have been easy for him to say so. If he remembered the circumstances, he could have refuted the allegations with equal ease. This is not a case where the refutation should have been left to Secretaries and other officers, who could only speak from the records and were not in a position to say why the Chief Minister passed certain orders. The petitioners are obviously suffering from a sense of grievance that they have not had a fair deal. We have held that there is not legal justification for that grievance; but in an executive as well as judicial administration justice must not only be done but it must appear that justice is being done. An affidavit from the Chief Minister would have cleared much of the doubt which in the absence of such an affidavit arose in this case.

22. Petition dismissed.

MANU/SC/0559/2014

Neutral Citation: 2014/INSC/463

Back to Section 41 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 1277 of 2014 (Arising out of SLP (Crl.) No. 9127 of 2013)

Decided On: 02.07.2014

Arnesh Kumar Vs. State of Bihar

Back to Section 46 of Code of Criminal Procedure, 1973

Hon'ble Judges/Coram:

C.K. Prasad and Pinaki Chandra Ghose, JJ.

JUDGMENT

C.K. Prasad, J.

1. The Petitioner apprehends his arrest in a case Under Section 498- A of the Indian Penal Code, 1860 (hereinafter called as Indian Penal Code) and Section 4 of the Dowry Prohibition Act, 1961. The maximum sentence provided Under Section 498- A Indian Penal Code is imprisonment for a term which may extend to three years and fine whereas the maximum sentence provided Under Section 4 of the Dowry Prohibition Act is two years and with fine.

2. Petitioner happens to be the husband of Respondent No. 2 Sweta Kiran. The marriage between them was solemnized on 1st July, 2007. His attempt to secure anticipatory bail has failed and hence he has knocked the door of this Court by way of this Special Leave Petition.

3. Leave granted.

4. In sum and substance, allegation levelled by the wife against the Appellant is that demand of Rupees eight lacs, a maruti car, an air- conditioner, television set etc. was made by her mother-in- law and father- in- law and when this fact was brought to the Appellant's notice, he supported his mother and threatened to marry another woman. It has been alleged that she was driven out of the matrimonial home due to non- fulfilment of the demand of dowry.

5. Denying these allegations, the Appellant preferred an application for anticipatory bail which was earlier rejected by the learned Sessions Judge and thereafter by the High Court.

6. There is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498- A of the Indian Penal Code was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498- A is a cognizable and non- bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed- ridden grand- fathers and grand- mothers of the husbands, their sisters living abroad for decades are arrested.

"Crime in India 2012 Statistics" published by National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762 persons all over India during the year 2012 for offence Under Section 498- A of the Indian Penal Code, 9.4% more than the year 2011. Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951 which depicts that mothers and sisters of the husbands were liberally included in their arrest net. Its share is 6% out of the total persons arrested under the crimes committed under Indian Penal Code. It accounts for 4.5% of total crimes committed under different sections of penal code, more than any other crimes excepting theft and hurt. The rate of charge- sheeting in cases Under Section 498A, Indian Penal Code is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads. As many as 3,72,706 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal.

7. Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Code of Criminal Procedure. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.

8. Law Commissions, Police Commissions and this Court in a large number of judgments emphasized the need to maintain a balance between individual liberty and societal order while exercising the power of arrest. Police officers make arrest as they believe that they possess the power to do so. As the arrest curtails freedom, brings humiliation and casts scars forever, we feel differently. We believe that no arrest should be made only because the offence is non- bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation. Despite this legal position, the Legislature did not find any improvement. Numbers of arrest have not decreased.

Ultimately, the Parliament had to intervene and on the recommendation of the 177th Report of the Law Commission submitted in the year 2001, Section 41 of the Code of Criminal Procedure (for short 'Code of Criminal Procedure), in the present form came to be enacted. It is interesting to note that such a recommendation was made by the Law Commission in its 152nd and 154th Report submitted as back in the year 1994. The value of the proportionality permeates the amendment relating to arrest. As the offence with which we are concerned in the present appeal, provides for a maximum punishment of imprisonment which may extend to seven years and fine, Section 41(1)(b), Code of Criminal Procedure which is relevant for the purpose reads as follows:

41. When police may arrest without warrant.- (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person -

(a) x x x x x x

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:

(i) x x x x x

(ii) the police officer is satisfied that such arrest is necessary -

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this Sub- section, record the reasons in writing for not making the arrest.

x x x x x x

From a plain reading of the aforesaid provision, it is evident that a person accused of offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on its satisfaction that such person had committed the offence punishable as aforesaid. Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent

the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts. Law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. Law further requires the police officers to record the reasons in writing for not making the arrest. In pith and core, the police office before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by Sub- clauses (a) to (e) of Clause (1) of Section 41 of Code of Criminal Procedure.

9. An accused arrested without warrant by the police has the constitutional right Under Article 22(2) of the Constitution of India and Section 57, Code of Criminal Procedure to be produced before the Magistrate without unnecessary delay and in no circumstances beyond 24 hours excluding the time necessary for the journey. During the course of investigation of a case, an accused can be kept in detention beyond a period of 24 hours only when it is authorised by the Magistrate in exercise of power Under Section 167 Code of Criminal Procedure. The power to authorise detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution. Our experience tells us that it is not exercised with the seriousness it deserves. In many of the cases, detention is authorised in a routine, casual and cavalier manner. Before a Magistrate authorises detention Under Section 167, Code of Criminal Procedure, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested is satisfied. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that condition precedent for arrest Under Section 41 Code of Criminal Procedure has been satisfied and it is only thereafter that he will authorise the detention of an accused. The Magistrate before authorising detention will record its own satisfaction, may be in brief but the said satisfaction must reflect from its order. It shall never be based upon the ipse dixit of the police officer, for example, in case the police officer considers the arrest necessary to prevent such person from committing any further offence or for proper investigation of the case or for preventing an accused from tampering with evidence or making inducement etc., the police officer shall furnish to the Magistrate the facts, the reasons and materials on the basis of which the police officer had reached its conclusion. Those shall be perused by the Magistrate while authorising the detention and only after recording its satisfaction in writing that the Magistrate will authorise the detention of the accused. In fine, when a suspect is arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether specific reasons have been recorded for arrest and if so, prima facie those reasons are relevant

and secondly a reasonable conclusion could at all be reached by the police officer that one or the other conditions stated above are attracted. To this limited extent the Magistrate will make judicial scrutiny.

10. Another provision i.e. Section 41A Code of Criminal Procedure aimed to avoid unnecessary arrest or threat of arrest looming large on accused requires to be vitalised. Section 41A as inserted by Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008 (Act 5 of 2009), which is relevant in the context reads as follows:

41A. Notice of appearance before police officer.- (1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of Sub- section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.

11. Aforesaid provision makes it clear that in all cases where the arrest of a person is not required Under Section 41(1), Code of Criminal Procedure, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police office is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged Under Section 41 Code of Criminal Procedure has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

12. We are of the opinion that if the provisions of Section 41, Code of Criminal Procedure which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of

anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 Code of Criminal Procedure for effecting arrest be discouraged and discontinued.

13. Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:

(1) All the State Governments to instruct its police officers not to automatically arrest when a case Under Section 498- A of the Indian Penal Code is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Code of Criminal Procedure;

(2) All police officers be provided with a check list containing specified sub- clauses Under Section 41(1)(b)(ii);

(3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

(4) The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

(5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;

(6) Notice of appearance in terms of Section 41A of Code of Criminal Procedure be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

(7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.

(8) Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

14. We hasten to add that the directions aforesaid shall not only apply to the cases Under Section 498- A of the Indian Penal Code or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

15. We direct that a copy of this judgment be forwarded to the Chief Secretaries as also the Director Generals of Police of all the State Governments and the Union Territories and the Registrar General of all the High Courts for onward transmission and ensuring its compliance.

16. By order dated 31st of October, 2013, this Court had granted provisional bail to the Appellant on certain conditions. We make this order absolute.

17. In the result, we allow this appeal, making our aforesaid order dated 31st October, 2013 absolute; with the directions aforesaid.

MANU/SC/0157/1997

Back to Section 50 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Writ Petition (Criminal) No. 539 of 1986.

Decided On: 18.12.1996

D.K. Basu Vs. State of West Bengal

Hon'ble Judges/Coram:

Kuldip Singh and Dr. A.S. Anand, JJ.

ORDER

Dr. A.S. Anand, J.

1. The Executive Chairman, Legal Aid Services, West Bengal, a non- political organisation registered under the Societies Registration Act, on 26th August, 1986 addressed a letter to the Chief Justice of India drawing his attention to certain news items published in the Telegraph dated 20, 21 and 22 of July, 1986 and in the Statesman and Indian Express dated 17th August, 1986 regarding deaths in police lock- ups and custody. The Executive Chairman after reproducing the news items submitted that it was imperative to examine the issue in depth and to develop "custody jurisprudence" and formulate modalities for awarding compensation to the victim and/or family members of the victim for atrocities and death caused in police custody and to provide for accountability of the officers concerned. It was also stated in the letter that efforts are often made to hush up the matter of lock- up deaths and thus the crime goes unpunished and "flourishes". It was requested that the letter alongwith the news items be treated as a writ petition under "public interest litigation" category.

2. Considering the importance of the issue raised in the letter and being concerned by frequent complaints regarding custodial violence and deaths in police lock up, the letter was treated as a writ petition and notice was issued on 9.2.1987 to the respondents.

3. In response to the notice, the State of West Bengal filed a counter. It was maintained that the police was not hushing up any matter of lock- up death and that wherever police personnel were found to the responsible for such death, action was being initiated against them. The respondents characterised the writ petition as misconceived, misleading and untenable in law.

4. While the writ petition was under consideration a letter addressed by Shri Ashok Kumar Johri on 29.7.87 to Hon'ble Chief Justice of India drawing the attention of this Court to the death of one

Mahesh Bihari of Pilkhana, Aligarh in police custody was received. That letter was also treated as a writ petition and was directed to be listed alongwith the writ petition filed by Shri D.K. Basu. On 14.8.1987 this Court made the following order:

In almost every states there are allegations and these allegations are now increasing in frequency of deaths in custody described generally by newspapers as lock- up deaths. At present there does not appear to be any machinery to effectively deal with such allegations. Since this is an all India question concerning all States, it is desirable to issue notices to all the State Governments to find out whether they are desire to say anything in the matter. Let notices issue to all the State Governments. Let notice also issue to the Law Commission of India with a request that suitable suggestions may be made in the matter. Notice be made returnable in two months from today.

5. In response to the notice, affidavits have been filed on behalf of the States of West Bengal, Orissa, Assam, Himachal Pradesh, Madhya Pradesh, Haryana, Tamil Nadu, Meghalaya, Maharashtra and Manipur. Affidavits have also been filed on behalf of Union Territory of Chandigarh and the Law Commission of India.

6. During the course of hearing of the writ petitions, the Court felt necessity of having assistance from the Bar and Dr. A.M. Singhvi, senior advocate was requested to assist the Court as amicus curiae.

7. Learned Counsel appearing for different States and Dr. Singhvi, as a friend of the court, presented the case ably and though the effort on the part of the States initially was to show that "everything was well" within their respective States, learned Counsel for the parties, as was expected of them in view of the importance of the issue involved, rose above their respective briefs and rendered useful assistance to this Court in examining various facets of the issue and made certain suggestions for formulation of guidelines by this Court to minimise, if not prevent, custodial violence and for award of compensation to the victims of custodial violence and the kith and kin of those who die in custody on account of torture.

8. The Law Commission of India also in response to the notice issued by this Court forwarded a copy of the 113th Report regarding "Injuries in police custody and suggested incorporation of Section 114- B in the Indian Evidence Act."

9. The importance of affirmed rights of every human being need no emphasis and, therefore, to deter breaches thereof becomes a sacred duty of the Court, as the custodian and protector of the fundamental and the basic human rights of the citizens. Custodial violence, including torture and death in the lock ups, strikes a blow at the Rule of Law, which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by the

persons who are supposed to be the protectors of the citizens. It is committed under the shield of uniform and authority in the four walls of a police station or lock- up, the victim being totally helpless. The protection of an individual from torture and abuse by the police and other law enforcing officers is a matter of deep concern in a free society.

These petitions raise important issues concerning police powers, including whether monetary compensation should be awarded for established infringement of the Fundamental Rights guaranteed by Articles 21 and 22 of the Constitution of India. The issues are fundamental.

10. "Torture" has not been defined in the Constitution or in other penal laws. 'Torture' of a human being by another human being is essentially an instrument to impose the will of the 'strong' over the 'weak' by suffering. The word torture today has become synonymous with the darker side of the human civilisation.

Torture is a wound in the soul so painful that sometimes you can almost touch it, but it is also such intangible that there is no way to heal it. Torture is anguish squeezing in your chest, cold as ice and heavy as a stone paralyzing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself.

Adriana P. Bartow

11. No violation of any one of the human rights has been the subject of so many Conventions and Declarations as 'torture'- all aiming at total banning of it in all forms, but inspite of the commitments made to eliminate torture, the fact remains that torture is more widespread now than ever before. "Custodial torture" is a naked violation of human dignity and degradation which destroys, to a very large extent, the individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilisation takes a step backward- flag of humanity must on each such occasion fly half- mast.

12. In all custodial crimes what is of real concern is not only infliction of body pain but the mental agony which a person undergoes within the four walls of police station or lock- up. Whether it is a physical assault or rape in police custody, the extent of trauma, a person experiences is beyond the purview of law.

13. "Custodial violence" and abuse of police power is not only peculiar to this country but it is widespread. It has been the concern of international community because the problem is universal and the challenge is almost global. The Universal Declaration of Human Rights in 1948, which marked the emergence of a worldwide trend of protection and guarantee of certain basic human rights, stipulates in Article 5 that "No one shall be subjected to torture or to cruel, inhuman or

degrading treatment or punishment." Despite the pious declaration, the crime continues unabated, though every civilised nation shows its concern and takes steps for its eradication.

14. In England, torture was once regarded as a normal practice to get information regarding the crime, the accomplices and the case property or to extract confessions, but with the development of common law and more radical ideas imbibing human thought and approach, such inhuman practices were initially discouraged and eventually almost done away with, certain aberrations here and there notwithstanding. The police powers of arrest, detention and interrogation in England were examined in depth by Sir Cyril Philips Committee- 'Report of a Royal Commission on Criminal Procedure' (Command- Papers 8092 of 1981). The report of the Royal Commission is, instructive. In regard to the power of arrest, the Report recommended that the power to arrest without a warrant must be related to and limited by the object to be served by the arrest, namely, to prevent the suspect from destroying evidence or interfering with witnesses or warning accomplices who have not yet been arrested or where there is a good reason to suspect the repetition of the offence and not to every case irrespective of the object sought to be achieved.

15. The Royal Commission suggested certain restrictions on the power of arrest on the basis of the 'necessity principle'. The Royal Commission said:

...we recommend that detention upon arrest for an offence should continue only on one or more for the following criteria:

(a) the person's unwillingness to identify himself so that a summons may be served upon him;

(b) the need to prevent the continuation or repetition of that offence;

(c) the need to protect the arrested person himself or other persons or property;

(d) the need to secure of preserve evidence of or relating to that offence or to obtain such evidence from the suspect by questioning him; and

(e) the likelihood of the person failing to appear at court to answer any charge made against him.

The Royal Commission also suggested:

To help to reduce the use of arrest we would also propose the introduction here of a scheme that is used in Ontario enabling a police officer to issue what is called an appearance notice. That procedure can be used to obtain attendance at the police station without resorting to arrest provided a power to arrest exists, for example to be finger printed or to participate in an identification parade. It could also be extended to attendance for interview at a time convenient both to the suspect and to the police officer investigating the case....

16. The power of arrest, interrogation and detention has now been streamlined in England on the basis of the suggestions made by the Royal Commission and incorporated in Police and Criminal Evidence Act, 1984 and the incidence of custodial violence has been minimised there to a very great extent.

17. Fundamental rights occupy a place of pride in the Indian Constitution. Article 21 provides "no person shall be deprived of his life or personal liberty except according to procedure established by law". Personal liberty, thus, is a sacred and cherished right under the Constitution. The expression "life or personal liberty" has been held to include the right to live with human dignity and thus it would also include within itself a guarantee against torture and assault by the State or its functionaries. Article 22 guarantees protection against arrest and detention in certain cases and declares that no person who is arrested shall be detained in custody without being informed of the grounds of such arrest and he shall not be denied the right to consult and defend himself by a legal practitioner of his choice. Clause (2) of Article 22 directs that the person arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the Magistrate. Article 20(3) of the Constitution lays down that a person accused of an offence shall not be compelled to be a witness against himself. These are some of the constitutional safeguards provided to a person with a view to protect his personal liberty against any unjustified assault by the State. In tune with the constitutional guarantee a number of statutory provisions also seek to protect personal liberty, dignity and basic human rights of the citizens. Chapter V of Criminal Procedure Code, 1973 deals with the powers of arrest of a person and the safeguards which are required to be followed by the police to protect the interest of the arrested person. Section 41, Cr. P.C. confers powers on any police officer to arrest a person under the circumstances specified therein without any order or a warrant of arrest from a Magistrate. Section 46 provides the method and manner of arrest. Under this Section no formality is necessary while arresting a person. Under Section 49, the police is not permitted to use more restraint than is necessary to prevent the escape of the person. Section 50 enjoins every police officer arresting any person without warrant to communicate to him the full particulars of the offence for which he is arrested and the grounds for such arrest. The police officer is further enjoined to inform the person arrested that he is entitled to be released on bail and he may arrange for sureties in the event of his arrest for a non- bailable offence. Section 56 contains a mandatory provision requiring this police officer making an arrest without warrant to produce the arrested person before a Magistrate without unnecessary delay and Section 57 echoes Clause (2) of Article 22 of the Constitution of India. There are some other provisions also like Sections 53 54 and 167 which are aimed at affording procedural safeguards to a person arrested by the police. Whenever a person dies in custody of the police, Section 176 requires the Magistrate to hold an enquiry into the cause of death.

18. However, inspite of the constitutional and statutory provisions aimed at safeguarding the personal liberty and life of a citizen, growing incidence of torture and deaths in police custody has been a disturbing factor. Experience shows that worst violations of human rights take place during the course of investigation, when the police with a view to secure evidence or confession often resorts to third degree methods including torture and adopts techniques of screening arrest by either not recording the arrest or describing the deprivation of liberty merely as a prolonged

interrogation. A reading of the morning newspapers almost everyday carrying reports of dehumanising torture, assault, rape and death in custody of police or other governmental agencies is indeed depressing. The increasing incidence of torture and death in custody has assumed such alarming proportions that it is affecting the credibility of the Rule of Law and the administration of criminal justice system. The community rightly feels perturbed. Society's cry for justice becomes louder.

19. The Third Report of the National Police Commission in India expressed its deep concern with custodial violence and lock- up deaths. It appreciated the demoralising effect which custodial torture was creating on the society as a whole. It made some very useful suggestions. It suggested:

...An arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances:

(i) The case involves a grave offence like murder, dacoity, robbery, rape etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror stricken victims.

(ii) The accused is likely to abscond and evade and the processes of law.

(iii) The accused is given to violent behavior and is likely to commit further offences unless his movements are brought under restraint.

(iv) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again. It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines....

The recommendations of the Police Commission (supra) reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. These recommendations, however, have not acquired any statutory status so far.

20. This Court in Joginder Kumar v. State MANU/SC/0311/1994 : 1994CriLJ1981 , (to which one of us, namely, Anand, J. was a party) considered the dynamics of misuse of police power of arrest and opined:

No arrest can be made because it is lawful for the police officer to do so. The existence of the power of arrest is one thing. The justification for the exercise of it is quite another.... No arrest should be made without a reasonable satisfaction reached after some investigation about the genuineness and bonafides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person his liberty is a serious matter.

21. Joinder Kumar's case (supra) involved arrest of a practising lawyer who had been called to the police station in connection with a case under inquiry on 7.1.94. On not receiving any satisfactory account of his whereabouts the family members of the detained lawyer preferred a petitioner in the nature of habeas corpus before this Court on 11.1.94 and in compliance with the notice the lawyer was produced on 14.1.94 before this Court. The police version was that during 7.1.94 and 14.1.94 the lawyer was not in detention at all but was only assisting the police to detect some cases. The detenue asserted otherwise. This Court was not satisfied with the police version. It was noticed that though as that day the relief in habeas corpus petition could not be granted but the questions whether there had been any need to detain the lawyer for 5 days and if at all he was not in detention then why was this Court not informed, were important questions which required an answer. Besides if there was detention for 5 days, for what reason was he detained. The Court, therefore, directed the District Judge, Ghaziabad to make a detailed enquiry and submit his report within 4 weeks. The Court voiced its concern regarding complaints of violations of human rights during and after arrest. It said:

The horizon of human rights is expanding. At the same time, the crime rate is also increasing. Of late, this Court has been receiving complaints about violations of human rights because of indiscriminate arrests. How are we to strike a balance between the two?

....

A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges. On the one hand, and individual duties, obligations and responsibilities on the others of weighing and balancing the rights, liberties, and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis of deciding which comes first- the criminal or society, the law violator or the abider.

This Court then set down certain procedural "requirements" in cases of arrest.

22. Custodial death is perhaps one of the worst crimes in a civilised society governed by the Rule of Law. The rights inherent in Articles 21 and 22(1) of the Constitution require to be jealously and scrupulously protected. We cannot wish away the problem. Any form of torture or cruel,

inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become law breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchism. No civilised nation can permit that to happen. Does a citizen shed off his fundamental right to life, the moment a policeman arrests him? Can the right to life of a citizen be put in abeyance on his arrest? These questions touch the spinal cord of human rights jurisprudence. The answer, indeed, has to be an emphatic 'No'. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, under trials , detenues and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law.

23. In Neelabati Bahera v. State of Orissa MANU/SC/0307/1993 : 1993CriLJ2899 , (to which Anand, J. was a party) this Court pointed out that prisoners and detenues are not denuded of their fundamental rights under Article 21 and it is only such restrictions as are permitted by law, which can be imposed on the enjoyment of the fundamental rights of the arrestees and detenues. It was observed:

It is axiomatic that convicts, prisoners or under trials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of the State to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law, while the citizen is in its custody. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, under trials or other prisoners in custody, except according to procedure established by law. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions. The wrongdoer is accountable and the State is responsible if the person in custody of the police is deprived of his life except according to the procedure established by law.

24. Instances have come to our notice where the police has arrested a person without warrant in connection with the investigation of an offence, without recording the arrest, and the arrested person has been subjected to torture to extract information from him for the purpose of further investigation or for recovery of case property or for extracting confession etc. The torture and injury caused on the body of the arrestee has sometimes resulted into his death. Death in custody is not generally shown in the records of the lock- up and every effort is made by the police to dispose of the body or to make out a case that the arrested person died after he was released from custody. Any complaint against such torture or death is generally not given any attention by the police officers because of ties of brotherhood. No first information report at the instance of the victim or his kith and kin is generally entertained and even the higher police officers turn a blind eye to such complaints. Even where a formal prosecution is launched by the victim or his kith

and kin, no direct evidence is available to substantiate the charge of torture or causing hurt resulting into death, as the police lock- up where generally torture or injury is caused is away from the public gaze and the witnesses are either police men or co- prisoners who are highly reluctant to appear as prosecution witnesses due to fear of retaliation by the superior officers of the police. It is often seen that when a complaint is made against torture, death or injury, in police custody, it is difficult to secure evidence against the policemen responsible for resorting to third degree methods since they are incharge of police station records which they do not find difficult to manipulate. Consequently, prosecution against the delinquent officers generally results in acquittal. State of Madhya Pradesh v. Shyamsunder Trivedi and Ors. MANU/SC/0722/1995 : (1995)4SCC262 is an apt case illustrative of the observations made by us above. In that case, Nathu Banjara was tortured at police station, Rampura during the interrogation. As a result of extensive injuries caused to him he died in police custody at the police station. The defence set up by the respondent police officials at the trial was that Nathu had been released from police custody at about 10.30 p.m. after interrogation on 13.10.1986 itself vide entry Ex. P/22A in the Roznamcha and that at about 7.00 a.m. on 14.10.1981, a death report Ex. P/9 was recorded at the police station. Rampura, at the instance of Ramesh respondent No. 6, to the effect that he had found "one unknown person" near a tree by the side of the tank rigging with pain in his chest and that as soon as respondent No. 6 reached near him, the said person died. The further case set up by SI Trivedi, respondent No. 1, incharge of the police station was that after making a Roznamcha entry at 7.00 a.m. about his departure from the police station he (respondent No. 1- Shyamsunder Trivedi) and Constable Rajaram respondent proceeded to the spot where the dead body was stated to be lying for conducting investigation under Section 174 Cr. P.C. He summoned Ramesh Chandra and Goverdhan respondents to the spot and in their presence prepared a panchnama Ex. P/27 of the dead body recording the opinion therein to the effect that no definite cause of death was known.

25. The First Additional Sessions Judge acquitted all the respondents of all the charges holding that there was no direct evidence to connect the respondents with the crime. The State of Madhya Pradesh went up in appeal against the order of acquittal and the High Court maintained the acquittal of respondents 2 to 7 but set aside the acquittal of respondent No. 1, Shyamsunder Trivedi for offences under Section 218 201 and 342 IPC. His acquittal for the offences under Section 302/149 and 147 IPC was, however, maintained. The State filed an appeal in this Court by special leave. This Court found that the following circumstances had been established by the prosecution beyond every reasonable doubt and coupled with the direct evidence of PWs 1, 3, 4, 8 and 18 those circumstances were consistent only with the hypotheses of the guilt of the respondents and were inconsistent with their innocence:

(a) that the deceased had been brought alive to the police station and was last seen alive there on 13.1081;

(b) that the dead body of the deceased was taken out of the police station on 14.10.81 at about 2 p.m. for being removed to the hospital;

(c) that SI Trivedi respondent No. 1, Ram Naresh Shukla, Respondent No. 3, Rajaram, respondent No. 4 and Ganiuddin respondent No. 5 were present at the police station and had all joined hands to dispose of the dead body of Nathu- Banjara;

(d) that SI Trivedi, respondent No. 1 created false evidence and fabricated false clues in the shape of documentary evidence with a view to screen the offence and for that matter, the offender;

(e) SI Trivedi respondent in connivance with some of his subordinates, respondents herein had taken steps to cremate the dead body in hot haste describing the deceased as a 'lavaris' though the identity of the deceased, when they had interrogated for a sufficient long time was well known to them.

and opined that:

The observations of the High Court that the presence and participation of these respondents in the crime is doubtful are not borne out from the evidence on the record and appear to be an unrealistic over simplification of the tell tale circumstances established by the prosecution.

26. One of us (namely, Anand. J.) speaking for the Court went on to observe:

The trial court and the High Court, if we may say so with respect, exhibited a total lack of sensitivity and a 'could not careless' attitude in appreciating the evidence on the record and thereby condoning the barbarous third degree methods which are still being used, at some police stations, despite being illegal. The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt, by the prosecution, ignoring the ground realities, the fact situations and the peculiar circumstances of a given case, as in the present case, often results in miscarriage of justice and makes the justice delivery system a suspect. In the ultimate analysis the society suffers and a criminal gets encouraged. Tortures in police custody, which of late are on the increase, receive encouragement by this type of an unrealistic approach of the Courts because it reinforces the belief in the mind of the police that no harm would come to them, if an old prisoner dies in the lock- up, because there would hardly be any evidence available to the prosecution to directly implicate them with the torture. The Courts, must not loose sight of the fact that death in police custody is perhaps one of the worst kind of crime in a civilised society, governed by the rule of law and poses a serious threat to an orderly civilised society.

This Court then suggested:

The Courts are also required to have a change in their outlook and attitude, particularly in cases involving custodial crimes and they should exhibit more sensitivity and adopt a realistic rather than a narrow technical approach, while dealing with the cases of custodial crime so that as far as possible within their powers, the guilty should not escape so that the victim of the crime has the satisfaction that ultimately the Majesty of Law has prevailed.

27. The State appeal was allowed and the acquittal of respondents 1, 3, 4 and 5 was set aside. The respondents were convicted for various offences including the offence under Section 304 Part 11/34 IPC and sentenced to various terms of imprisonment and fine ranging from Rs. 20,000 to Rs. 50,000. The fine was directed to be paid to the heirs of Nathu Banjara by way- of compensation. It was further directed:

The Trial Court shall ensure, in case the fine is deposited by the accused respondents, that the payment of the same is made to the heirs of deceased Nathu Banjara, and the Court shall take all such precautions as are necessary to see that the money is not allowed to fall into wrong hands and is utilised for the benefit of the members of the family of the deceased Nathu Banjara, and if found practical by deposit in Nationalised Bank or post office on such terms as the Trial. Court may in consultation with the heirs for the deceased consider fit and proper.

28. It needs no emphasis to say that when the crime goes unpunished, the criminals are encouraged and the society suffers. The victim of crime or his kith and kin become frustrated and contempt for law develops. It was considering these aspects that the Law Commission in its 113th Report recommended the insertion of Section 114B in the Indian Evidence Act. The Law Commission recommend in its 113th Report that in prosecution of a police officer for an alleged offence of having caused bodily injury to a person, if there was evidence that the injury was caused during the period when the person was in the custody of the police, the Court may presume that the injury was caused by the police officer having the custody of that person during that period. The Commission further recommended that the Court, while considering the question of presumption, should have regard to all relevant circumstances including the period of custody, statement made by the victim, medical evidence and the evidence which the Magistrate may have recorded. Change of burden of proof was, thus, advocated. In Shyam Sunder Trivedi's case (supra) this Court also expressed the hope that the Government and the legislature would give serious thought to the recommendation of the law Commission. Unfortunately, the suggested amendment, has not been incorporated in the statute so far. The need of amendment requires no emphasis - sharp rise in custodial violence, torture and death in custody, justifies the urgency for the amendment and we invite Parliament's attention to it.

29. Police is, no doubt, under a legal duty and has legitimate right to arrest a criminals and to interrogate him during the investigation of an offence but it must be remembered that the law does nor permit use of third degree methods or torture of accused in custody during interrogation and investigation with a view to solve the crime. End cannot justify the means. The interrogation and investigation into a crime should be in true sense purposeful to make the investigation

effective. By torturing a person and using third degree methods, the police would be accomplishing behind the closed doors what the demands of our legal order forbid. No society can permit it.

30. How do we check the abuse of police power? Transparency of action and accountability perhaps are two possible safeguards which this Court must insist upon. Attention is also required to be paid to properly develop work culture, training and orientation of the police force consistent with basic human values. Training methodology of the police needs restructuring. The force needs to be infused with basic human values and made sensitive to the constitutional ethos. Efforts must be made to change the attitude and approach of the police personnel handling investigations so that they do not sacrifice basic human values during interrogation and do not resort to questionable forms of interrogation. With a view to bring in transparency, the presence of the counsel of the arrestee at some point of time during the interrogation may deter the police from using third degree methods during interrogation.

31. Apart from the police, there are several other governmental authorities also like Directorate of Revenue Intelligence, Directorate of Enforcement, Coastal Guard, Central Reserve Police Force (CRPF), Border Security Force (BSF), The Central Industrial Security Force (CISF), the State Armed Police, Intelligence Agencies like the Intelligence Bureau, R.A.W., Central Bureau of Investigation (CBI), CID, Traffic Police, Mounted Police and ITBP, which have the power to detain a person and to interrogate him in connection with the investigation of economic offences, offences under the Essential Commodities Act, Excise and Customs Act, Foreign Exchange Regulation Act etc. There are instances of torture and death in custody of these authorities as well. In Re Death of Sawinder Singh Grover , (to which Kuldip Singh, J.) was a party) this Court took suo moto notice of the death of Sawinder Singh Grover during his custody with the Directorate of Enforcement. After getting an enquiry conducted by the Additional District Judge, which disclosed a prima facie case for investigation and prosecution, this Court directed the CBI to lodge a FIR and initiate criminal proceedings against all persons named in the report of the Additional District Judge and proceed against them. The Union of India/Directorate of Enforcement was also directed to pay a sum of Rs. 2 lacs to the widow of the deceased by way of ex gratia payment at the interim stage. Amendment of the relevant provisions of law to protect the interest of arrested person in such cases too is a genuine need.

32. There is one other aspect also which needs our consideration. We are conscious of the fact that the police in India have to perform a difficult and delicate task, particularly in view of the deteriorating law and order situation, communal riots, political turmoil, student unrest, terrorist activities, and among others the increasing number of underworld and armed gangs and criminals. Many hard core criminals like extremists, the terrorists, drug peddlers, smugglers who have organised gangs, have taken strong roots in the society. It is being said in certain quarters that with more and more liberalisation and enforcement of fundamental rights, it would lead to difficulties in the detection of crimes committed by such categories of hardened criminals by soft peddling interrogation. It is felt in those quarters that if we lay too much of emphasis on protection of their fundamental rights and human rights, such criminals may go scot- free without

exposing any element or iota of criminality with the result, the crime would go unpunished and in the ultimate analysis the society would suffer. The concern is genuine and the problem is real. To deal with such a situation, balanced approach is needed to meet the ends of justice. This is all the more so, in view of the expectation of the society that police must deal with the criminals in an efficient and effective manner and bring to book those who are involved in the crime. The cure cannot, however, be worse than the disease itself.

33. The response of the American Supreme Court to such an issue in Miranda v. Arizona, 384 US 436, is instructive. The Court said:

A recurrent argument, made in these cases is that society's need for interrogation out- weights the privilege. This argument is not unfamiliar to this Court. See e.g., Chambers v. Florida, 309 US 227 : 84 1 ed 716,: 60 S.Ct. 472 (1940). The whole thrust of our foregoing discussion demonstrates that the Constitution has prescribed the rights of the individual when confronted with the power of Government when it provided in the Fifth Amendment that an individual cannot be compelled to be a witness against himself. That right cannot be abridged.

(Emphasis ours)

34. There can be no gain saying that freedom of an individual must yield to the security of the State. The right of preventive detention of individuals in the interest of security of the State in various situations prescribed under different statues has been upheld by the Courts. The right to interrogate the detenues, culprits or arrestees in the interest of the nation, must take precedence over an individual's right to personal liberty. The latin maxim salus populi est suprema lex (the safety of the people is the supreme law) and salus republican est suprema. lex)(safety of the State is the supreme law) co- exist and are not only important and relevant but lie at the heart of the doctrine that the welfare of an individual must yield to that of the community. The action of the State, however, must be "right, just and fair". Using any form of torture for extracting any kind of information would neither be 'right nor just nor fair' and, therefore, would be impermissible, being offensive to Article 21. Such a crime- suspect must be interrogated- indeed subjected to sustained and scientific interrogation - determined in accordance with provisions of law. He cannot, however, be tortured or subjected to third degree methods or eliminated with a view to elicit information, extract confession or derive knowledge about his accomplices, weapons etc. His Constitutional right cannot be abridged except in the manner permitted by law, though in the very nature of things there would be qualitative difference in the method of interrogation of such a person as compared to an ordinary criminal. Challenge of terrorism must be met with innovative ideas and approach. State terrorism is no answer to combat terrorism. State terrorism would only provide legitimacy to 'terrorism'. That would be bad for the State, the community and above all for the Rule of law. The State must, therefore, ensure that various agencies deployed by it for combating terrorism act within the bounds of law and not become law unto themselves. That the terrorist has violated human rights of innocent citizens may render him liable for punishment but it cannot justify the violation of his human rights except in the manner permitted

by law. Need, therefore, is to develop scientific methods of investigation and train the investigators properly to interrogate to meet the challenge.

35. In addition to the statutory and constitutional requirements to which we have made a reference, we are of the view that it would be useful and effective to structure appropriate machinery for contemporaneous recording and notification of all cases of arrest and detention to bring in. transparency and accountability. It is desirable that the officer arresting a person should prepare a memo of his arrest at the time of arrest in the presence of at least one witness who may be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. The date and time of arrest shall be recorded in the memo which must also be counter signed by the arrestee.

36. We, therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by atleast one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation center or other lock- up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a penal for all Tehsils and Districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and state headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

37. Failure to comply with the requirements hereinabove mentioned shall apart from rendering the concerned official liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.

38. The requirements, referred to above flow from Articles 21 and 22(1) of the Constitution and need to be strictly followed. These would apply with equal force to the other governmental agencies also to which a reference has been made earlier.

39. These requirements are in addition to the constitutional and statutory safeguards and do not detract from various other directions given by the courts from time to time in connection with the safeguarding of the rights and dignity of the arrestee.

40. The requirements mentioned above shall be forwarded to the Director General of Police and the Home Secretary of every State/Union Territory and it shall be their obligation to circulate the same to every police station under their charge and get the same notified at every police station at a conspicuous place. It would also be useful and serve larger interest to broadcast the requirements on the All India Radio besides being shown on the National network of Doordarshan and by publishing and distributing pamphlets in the local language containing these requirements for information of the general public. Creating awareness about the rights of the arrestee would in our opinion be a step in the right direction to combat the evil of custodial crime and bring in transparency and accountability. It is hoped that these requirements would help to curb, if not totally eliminate, the use of questionable methods during interrogation and investigation leading to custodial commission of crimes.

PUNITIVE MEASURES

UBI JUS IBI REMEDIUM- There is no wrong without a remedy. The law wills that in every case where a man is wronged and undamaged he must have a remedy. A mere declaration of invalidity of an action or finding of custodial violence or death in lock- up, does not by itself provide any meaningful remedy to a person whose fundamental right to life has been infringed. Much more needs to be done.

41. Some punitive provisions are contained in the Indian Penal Code which seek to punish violation of right to life. Section 220 provides for punishment to an officer or authority who detains or keeps a person in confinement with a corrupt or malicious motive. Sections 330 and 331 provide for punishment of those who inflict injury or grievous hurt or a person to extort confession or information in regard to commission of an offence. Illustrations (a) and (b) to Section 330 make a police officer guilty of torturing a person in order to induce him to confess the commission of a crime or to induce him to point out places where stolen property is deposited. Section 330, therefore, directly makes torture during interrogation and investigation punishable under the Indian Penal Code. These statutory provisions, are however, inadequate to repair the wrong done to the citizens. Prosecution of the offender is an obligation of the State in case of every crime but the victim of crime needs to be compensated monetarily also. The Court, where the infringement of the fundamental right is established, therefore, cannot stop by giving a mere declaration. It must proceed further and give compensatory relief, not by way of damages as in a civil action but by way of compensation under the public law jurisdiction for the wrong done, due to breach of public duty by the State of not protecting the fundamental right to life of the citizen. To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience.

42. Article 9(5) of the International Covenant on Civil and Political Rights, 1966 (ICCPR) provides that "anyone who has been the victim of unlawful arrest or detention shall have enforceable right to compensation". Of course, the Government of India at the time of its ratification (of ICCPR) in 1979 had made a specific reservation to the effect that the Indian Legal system does not recognise a right to compensation for victims of unlawful arrest or detention and thus did not become a party to the Covenant. That reservation, however, has now lost its relevance in view of the law laid down by this Court in a number of cases awarding compensation for the infringement of the fundamental right to life of a citizen. See with advantage Rudal Shah v. State of Bihar MANU/SC/0380/1983 : 1983CriLJ1644 ; Sebastian M. Hongrey v. Union of India MANU/SC/0163/1984 : [1984]3SCR22 ; Bhim Singh v. State of J and K MANU/SC/0064/1985 : 1986CriLJ192 and Saheli v. Commissioner of Police, Delhi MANU/SC/0478/1989 : AIR1990SC513 . There is indeed no express provision in the Constitution of India for grant of compensation for violation of a fundamental right to life, nonetheless, this Court has judicially evolved a right to compensation in cases of established unconstitutional deprivation of personal liberty or life.

43. Till about two decades ago the liability of the Government for tortious act of its public servants was generally limited and the person affected could enforce his right in tort by filing a civil suit and there again the defence of sovereign immunity was allowed to have its play. For the violation of the fundamental right to life or the basic human rights, however, this Court has taken the view that the defence of sovereign immunity is not available to the State for the tortious acts of the public servants and for the established violation of the rights guaranteed by Article 21 of the Constitution of India. In Neelabati Behera v. State, (supra) the decision of this Court in Kasturi Lal Ralia Ram Jain v. State of U.P. MANU/SC/0086/1964 : (1966)IILLJ583SC , wherein the plea of sovereign immunity had been upheld in a case of vicarious liability of the State for the tort committed by its employees was explained thus:

In this context, it is sufficient to say that the decision of this Court in Kasturilal upholding the State's plea of sovereign immunity for tortious acts of its servants is confined to the sphere of liability in tort, which is distinct from the State's liability for contravention of fundamental rights to which the doctrine of sovereign immunity has no application in the constitutional scheme, and is no defence to the constitutional remedy under Articles 32 and 226 of the Constitution which enables award of compensation for contravention of fundamental rights, when the only practicable mode of enforcement of the fundamental rights can be the award of compensation. The decisions of this Court in Rudul Sah and others in that line relate to award of compensation for contravention of fundamental rights, in the constitutional remedy under Articles 32 and 226 of the Constitution. On the other hand, Kasturilal related to the value of goods seized and not returned to the owner due to the fault of Government Servants, the claim being of damages for the tort of conversion under the ordinary process, and not a claim for compensation for violation of fundamental rights. Kasturilal is, therefore, inapplicable in this context and distinguishable.

44. The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the

private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 21 and 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the Courts under the public law jurisdiction for penalising the wrong doer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

45. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A Court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim- civil action for damages is a long drawn and cumbersome judicial process. Monetary compensation for redressal by the Court finding the infringement of the indefeasible right to life of the citizen is, therefore, a useful and at times perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the bread winner of the family.

46. In Nilabati Bahera's case (supra), it was held:

Adverting to the grant of relief to the heirs of a victim of custodial death for the infraction or invasion of his rights guaranteed under Article 21 of Constitution of India, it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortious act of the State as that remedy in private law indeed is available to the aggrieved party. The citizen complaining of the infringement of the indefeasible right under Article 21 of the Constitution cannot be told that for the established violation of the fundamental right to life, he cannot get any relief under the public law by the courts exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writs and the courts have, therefore, to evolve new tools to give relief in public law by moulding it according to the situation with a view to preserve and protect the Rule of Law, while concluding his first Hamlyn Lecture in 1949 under the title "Freedom under the Law" Lord Denning in his own style warned:

No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do: and will not do things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power is not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up- to

date machinery, by declarations, injunctions and actions for negligence... This is not the task of parliament.... The courts must do this. Of all the great tasks that lie ahead this is the greatest. Properly exercised the new powers of the executive lead to the welfare state; but abused they lead to a totalitarian state. None such must ever be allowed in this country.

47. A similar approach of redressing the wrong by award of monetary compensation against the State for its failure to protect the fundamental rights of the citizen has been adopted by the Courts of Ireland, which has a written constitution, guaranteeing fundamental rights, but which also like the Indian Constitution contains no provision of remedy for the infringement of those rights. That has, however, not prevented the Courts in Ireland from developing remedies, including the award of damages, not only against individuals guilty of infringement, but against the State itself.

48. The informative and educative observations of O'Dalaigh CJ in The State (At the Prosecution of Quinn) v. Ryan (1965) IR 70 122, deserve special notice. The Learned Chief Justice said:

It was not the intention of the Constitution in guaranteeing the fundamental rights of the citizen that these rights should be set at nought or circumvented. The intention was that rights of substance were being assured to the individual and that the Courts were the custodians of those rights. As a necessary corollary, it follows that no one can with impunity set these rights at bought or circumvent them, and that the Court's powers in this regard are as ample as the defence of the Constitution requires.

49. In Byrne v. Ireland (1972) IR 241, Walsh, J. opined at p 264:

In several parts in the Constitution duties to make certain provisions for the benefit of the citizens are imposed on the State in terms which bestow rights upon the citizens and, unless some contrary provision appears in the Constitution, the Constitution must be deemed to have created a remedy for the enforcement of these rights. It follows that, where the right is one guaranteed by the State, it is against the State that the remedy must be sought if there has been a failure to discharge the constitutional obligation imposed.

50. In Maharaj v. Attorney General of Trinidad and Tobago (1978) 2 All E.R. 670, The Privy Council while interpreting Section 6 of the Constitution of Trinidad and Tobago held that though not expressly provided therein, it permitted an order for monetary compensation, by way of 'redress' for contravention of the basic human rights and fundamental freedoms. Lord Diplock speaking for the majority said:

It was argued on behalf of the Attorney General that Section 6(2) does not permit of an order for monetary compensation despite the fact that this kind of redress was ordered in Jaundou v.

Attorney General of Guvana. Reliance was placed on the reference in the sub- section to 'enforcing, or securing the enforcement of, any of the provisions of the said foregoing sections' as the purpose for which orders etc. could be made. An order for payment of compensation, it was submitted, did not amount to the enforcement of the rights that had been contravened. In their Lordships' view an order for payment of compensation when a right protected under Section 1 'has been' contravened is clearly a form of 'redress' which a person is entitled to claim under Section 6(1) and may well be the only practicable form of redress, as by now it is in the instant case. The jurisdiction to make such an order is conferred on the High Court by para (a) of Section 6(2), viz. jurisdiction 'to hear and determine any application made by any person in pursuance of Sub- section (1) of this section'. The very wise powers to make orders, issue writs and give directions are ancillary to this.

51. Lord Diplock then went on to observe (at page 680):

Finally, their Lordships would say something about the measure of monetary compensation recoverable under Section 16 where the contravention of the claimant's constitutional rights consists of deprivation of liberty otherwise than by due process of law. The claim is not a claim in private law for damages for the tort of false imprisonment, under which the damages recoverable are at large and would include damages for loss of reputation. It is a claim in public law for compensation for deprivation of liberty alone.

52. In Simpson v. Attorney General [Baigent's case] (1994) NZLR. 667 the Court of Appeal in New Zealand dealt with the issue in a very elaborate manner by reference to a catena of authorities from different jurisdictions. It considered the applicability of the doctrine of vicarious liability for torts, like unlawful search, committed by the police officials which violate the New Zealand Bill of Rights Act, 1990. While dealing with the enforcement of rights and freedoms as guaranteed by the Bill of Rights for which no specific remedy was provided. Hardie Boys, J. observed:

The New Zealand Bill of Rights Act, unless it is to be no more than an empty statement, is a commitment by the Crown that those who in the three branches of the government exercise its functions, powers and duties will observe the rights that the Bill affirms. It is I consider implicit in that commitment indeed essential to its worth, that the Courts are not only to observe the Bill in the discharge of their own duties but are able to grant appropriate and effective remedies where rights have been infringed. I see no reason to think that this should depend on the terms of a written constitution. Enjoyment of the basic human rights are the entitlement of every citizen, and their protection the obligation of every civilised state. They are inherent in and essential to the structure of society. They do not depend on the legal or constitutional form in which they are declared. The reasoning that has led the Privy Council and the Courts of Ireland and India to the conclusions reached in the cases to which I have referred (and they are but a sample) is in my opinion equally valid to the New Zealand Bill of Rights Act if it is to have life and meaning.

53. The Court of Appeal relied upon the judgments of the Irish Courts the Privy Council and referred to the law laid down in Nilabati Behera v. State, (supra) thus:

Another valuable authority comes from India, where the Constitution empowers the Supreme Court to enforce rights guaranteed under it. In Nilabati Bahera v. State of Orissa (1993) Crl. LJ 2899, the Supreme Court awarded damages against the State to the mother of a young man beaten to death in police custody. The Court held that its power of enforcement imposed a duty to "forge new tools", of which compensation was an appropriate one where that was the only mode of redress available. This was not a remedy in tort, but one in public law based on strict liability for the contravention of fundamental rights to which the principle of sovereign immunity does not apply. These observations of Anand, J. at p. 2912 may be noted.

The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much as protector and guarantor of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights.

54. Each of the five members of the Court of Appeal in Simpson's case (supra) delivered a separate judgment but there was unanimity of opinion regarding the grant of pecuniary compensation to the victim, for the contravention of his rights guaranteed under the Bill of Right Act, notwithstanding the absence of an express provision in that behalf in the Bill of Rights Act.

55. Thus, to sum up, it is now a well accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrong doer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of

them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit.

56. Before parting with this judgment we wish to place on record our appreciation for the learned Counsel appearing for the States in general and Dr. A.M. Singhvi, learned senior counsel who assisted the Court amicus curiae in particular for the valuable assistance rendered by them.

MANU/SC/0382/1983

Back to Section 46 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Writ Petition (Criminal) Nos. 1053- 1054 of 1982

Decided On: 15.02.1983

Sheela Barse Vs. State of Maharashtra

Hon'ble Judges/Coram:

A.N. Sen, P.N. Bhagwati and R.S. Pathak, JJ.

JUDGMENT

1. This writ petition is based on a letter addressed by Sheela Barse, a journalist, complaining of custodial violence to women prisoners whilst confined in the police lock up in the city of Bombay. The petitioner stated in her letter that she interviewed fifteen women prisoners in the Bombay Central Jail with the permission of the Inspector General of Prisons between 11 and 17th May, 1982 and five out of them told her that they had been assaulted by the police in the police lock up. Of these five who complained of having been assaulted by the police, the petitioner particularly mentioned the cases of two, namely, Devamma and Pushpa Paeen who were allegedly assaulted and tortured whilst they were in the police lock up. It is not necessary for the purpose of this writ petition to go into the various allegations in regard to the ill- treatment meted out to the women prisoners in the police lock up and particularly the torture and beating to which Devamma and Pushpa Paeen were said to have been subjected because we do not propose to investigate into the correctness of these allegations which have been disputed on behalf of the State of Maharashtra. But, since these allegations were made by the women prisoners interviewed by the petitioner and particularly by Devamma and Pushpa Paeen and there was no reason to believe that a journalist like the petitioner would invent or fabricate such allegations if they were not made to her by the women prisoners, this Court treated the letter of the petitioner as a writ petition and issued notice to the State of Maharashtra, Inspector General of Prisons, Maharashtra, Superintendent, Bombay Central Jail and the Inspector General of Police, Maharashtra calling upon them to show cause why the writ petition should not be allowed. It appears that on the returnable date of the show cause notice no affidavit was filed on behalf of any of the parties to whom show cause notice was issued and this Court therefore adjourned the hearing of the writ petition to enable the State of Maharashtra and other parties to file an affidavit in reply to the averments made in the letter of the petitioner. this Court also directed that in the meanwhile Dr. (Miss) A.R. Desai, Director of College of Social Work, Nirmala Niketan, Bombay will visit the Bombay Central Jail and interview women prisoners lodged there including Devamma and Pushpa Paeen without any one else being present at the time of interview and ascertain whether they had been subjected to any torture or ill- treatment and submit a report to this Court on or before 30th August, 1982. The State Government and the Inspector General of Prisons were directed to provide all facilities to Dr. Miss A.R. Desai to carry out this assignment entrusted to her. The object of assigning this commission to Dr. Miss A.R. Desai was to ascertain whether

allegations of torture and ill- treatment as set out in the letter of the petitioner were, in fact, made by the women prisoners including Devamma and Pushpa Paeen to the petitioner and what was the truth in regard to such allegations. Pursuant to the order made by this Court, Dr. Miss A.R. Desai visited Bombay Central prison and after interviewing women prisoners lodged there, made a detailed report to this Court. The Report is a highly interesting and instructive socio- legal document which provides an insight into the problems and difficulties facing women prisoners and we must express our sense of gratitude to Dr. Miss A.R. Desai for the trouble taken by her in submitting such a wonderfully thorough and perceptive report. We are not concerned here directly with the conditions prevailing in the Bombay Central Jail or other jails in the State of Maharashtra because the primary question which is raised in the letter of the petitioner relates to the safety and security of women prisoners in police lock up and their protection against torture and ill- treatment. But even so we would strongly recommend to the Inspector General of Prisons, Maharashtra that he may have a look at this Report made by Dr. Miss A.R. Deasai and consider what further steps are necessary to be taken in order to improve the conditions in the Bombay Central Jail and other jails in the State of Maharashtra and to make life for the women prisoners more easily bearable by them. There is only one matter about which we would like to give directions in this writ petition and that is in regard to the need to provide legal assistance not only to women prisoners but to all prisoners lodged in the jails in the State of Maharashtra. We have already had occasion to point out in several decisions given by this Court that legal assistance to a poor or indigent accused who is arrested and put in jeopardy of his life or personal liberty is a constitutional imperative mandated not only by Article 39 but also by Articles 14 and 21 of the Constitution. It is a necessary sine qua non of justice and where it is not provided, injustice is likely to result and undeniably every act of injustice corrodes the foundations of democracy and Rule of Law, because nothing rankles more in the human heart than a feeling of injustice and those who suffer and cannot get justice because they are priced out of the legal system, lose faith in the legal process and a feeling begins to overtake them that democracy and Rule of Law are merely slogans or myths intended to perpetuate the domination of the rich and the powerful and to protect the establishment and the vested interests. Imagine the helpless condition of a prisoner who is lodged in a jail who does not know to whom he can turn for help in order to vindicate his innocence or defend his constitutional or legal rights or to protect himself against torture and ill- treatment or oppression and harassment at the hands of his custodians. It is also possible that he or the members of his family may have other problems where legal assistance is required but by reason of his being incarcerated, it may be difficult if not impossible for him or the members of his family to obtain proper legal advice or aid. It is therefore absolutely essential that legal assistance must be made available to prisoners in jails whether they be under-trial or convicted prisoners.

2. The Report of Dr. Miss A.R. Desai shows that there is no adequate arrangement for providing legal assistance to women prisoners, and we dare say the situation which prevails in the matter of providing legal assistance in the case of women prisoners must also be the same in regard to male prisoners. It is pointed out in the Report of Dr. Miss A.R. Desai that two prisoners in the Bombay Central Jail, one a German national and the other a That national were duped and defrauded by a lawyer, named Mohan Ajwani who misappropriated almost half the belongings of the German national and the jewellery of the That national on the plea that he was retaining such belongings and jewellery for payment of his fees. We do not know whether this allegation made by these two German and That women prisoners is true or not but, if true, it is a matter of

great shame for the legal profession and it needs to be thoroughly investigated. The profession of law is a noble profession which has always regarded itself as a branch of social service and a lawyer owes a duty to the society to help people in distress and more so when those in distress are women and in jail. Lawyers must realise that law is not a pleasant retreat where we are concerned merely with mechanical interpretation of rules made by the legislature but it is a teeming open ended avenue through which most of the traffic of human existence passes. There are many casualties of this traffic and it is the function of the legal profession to help these casualties in a spirit of dedication and service. It is for the lawyers to minimise the numbers of those casualties who still go without legal assistance. The lawyers must positively reach out to those sections of humanity who are poor, illiterate and ignorant and who, when they are placed in a crisis such as an accusation of crime or arrest or imprisonment, do not know what to do or where to go or to whom to turn. If lawyers, instead of coming to the rescue of persons in distress, exploit and prey upon them, the legal profession will come into disrepute and large masses of people in the country would lose faith in lawyers and that would be destructive of democracy and Rule of Law. If it is true- that these two German and That women prisoners were treated by Mohan Ajwani in the manner alleged by them- and this is a question on which we do not wish to express any opinion ex parte it deserves the strongest condemnation. We would therefore direct that the allegations made by the two German and That women prisoners as set out in paragraph 9.2 of the Report of Dr. Miss A.R. Desai be referred to the Maharashtra State Bar Council for taking such action as may be deemed fit.

3. But, this incident highlights the need for setting up a machinery for providing legal assistance to prisoners in jails. There is fortunately a legal aid organisation in the State of Maharashtra beaded by the Maharashtra State Board of Legal Aid and Advice which has set up committees at the High Court and district levels. We would therefore direct the Inspector General of Prisons in Maharashtra t issue a circular to all Superintendents of Police in Maharashtra requiring them-

(1) to send a list of all under- trial prisoners to the Legal Aid Committee of the district in which the jail is situate giving particulars of the date of entry of the under- trial prisoners in the jail and to the extent possible, of the offences with which they are charged and showing separately male prisoners and female prisoners.

(2) to furnish to the concerned District Legal Aid Committee a list giving particulars of the persons arrested on suspicion under Section 41 of the CrPC who have been in jail beyond a period of 15 days.

(3) to provide facilities to the lawyers nominated by the concerned District Legal Aid Committee to enter the jail and to interview the prisoners who have expressed their desire to have their assistance.

(4) to furnish to the lawyers nominated by the concerned District Legal Aid Committee whatever information is required by them in regard to the prisoners in jail.

(5) to put up notices at prominent places in the jail that lawyers nominated by the concerned District Legal Aid Committee would be visiting the jail on particular days and that any prisoner who desires to have their assistance can meet them and avail of their counselling services; and

(6) to allow any prisoner who desires to meet the lawyers nominated by the concerned District Legal Aid Committee to interview and meet such lawyers regarding any matter for which he requires legal assistance and such interview should be within sight but out of hearing of any jail official.

4. We would also direct that in order to effectively carry out these directions which are being given by us to the Inspector General of Prisons, the Maharashtra State Board of Legal Aid and Advice will instruct the District Legal Aid Committees of the districts in which jails are situate to nominate a couple of selected lawyers practising in the district Court to visit the jail or jails in the district atleast once in a fortnight with a view to ascertaining whether the law laid down by the Supreme Court and the High Court of Maharashtra in regard to the rights of prisoners including the right to apply for bail and the right to legal aid is being properly and effectively implemented and to interview the prisoners who have expressed their desire to obtain legal assistance and to provide them such legal assistance as may be necessary for the purpose of applying for release on bail or parole and ensuring them adequate legal representation in Courts, including filing or preparation of appeals or revision applications against convictions and legal aid and advice in regard to any other problems which may be facing them or the members of their families. The Maharashtra State Board of Legal Aid & Advice will call for periodic reports from the district legal aid committees with a view to ensuring that these directions given by us are being properly carried out. We would also direct the Maharashtra State Board of Legal Aid and Advice to pay an honorarium of Rs. 25/- per lawyer for every visit to the jail together with reasonable travelling expenses from the court house to jail and back. These directions in so far as the city of Bombay is concerned, shall be carried out by substituting the High Court Legal Aid Committee for the District Legal Aid Committee, since there is no District Legal aid committee in the city of Bombay but the Legal Aid Programme is carried out by the High Court Legal Aid Committee. We may point out that this procedure is being followed with immense benefit to the prisoners in jails by the Tamil Nadu State Legal Aid & Advice Board.

5. We may now take up the question as to how protection can be accorded to the women prisoners in police lock ups. We put forward several suggestions to the learned Advocate appearing on behalf of the petitioner and the State of Maharashtra in the course of the hearing and there was a meaningful and constructive debate in Court. The State of Maharashtra offered its full co-operation to the Court in laying down the guidelines which should be followed so far as women prisoners in police lock ups are concerned and most of the as suggestions made by us were readily accepted by the State of Maharashtra. We propose to give the following directions as a result of

meaningful and constructive debate in Court in regard to various aspects of the question argued before us.

(i) We would direct that four or five police lock ups should be selected in reasonably good localities where only female suspects should be kept and they should be guarded by female constables. Female suspects should not be kept in police lock up in which male suspects are detained. The State of Maharashtra has intimated to us that there are already three cells where female suspects are kept, and are guarded by female constables and has assured the Court that two more cells with similar arrangements will be provided exclusively for female suspects.

(ii) We would further direct that interrogation of females should be carried out only in the presence of female police officers/constables.

(iii) Whenever a person is arrested by the police without warrant, he must be immediately informed of the grounds of his arrest and in case of every arrest it must immediately be made known to the arrested person that he is entitled to apply for bail. The Maharashtra State Board of Legal Aid & Advice will forthwith get a pamphlet prepared setting out the legal rights of an arrested person and the State of Maharashtra will bring oat sufficient number of printed copies of the pamphlet in Marathi which is the languages of the people in the State of Maharashtra as also in Hindi and English and printed copies of the pamphlet in all the three languages shall be affixed in each cell in every police lock up and shall be read out to the arrested person in any of the three languages which he understands as soon as he is brought to the police station.

(iv) We would also direct that whenever a person is arrested by the police and taken to the police lock up, the police will immediately give an intimation of the fact of such arrest to the nearest Legal Aid Committee and such Legal Aid Committee will take immediate steps for the purpose of providing legal assistance to the arrested person at State cost provided he is willing to accept such legal assistance. The State Government will provide necessary funds to the concerned Legal Aid Committee for carrying out this direction.

(v) We would direct that in the city of Bombay, a City Sessions Judge, to be nominated by the principal Judge of the City Civil Court, preferably a lady Judge, if there is one, shall make surprise visits to police lock ups in the city periodically with a view to providing the arrested persons an opportunity to air their grievances and ascertaining what are the conditions in the police lock ups and whether the requisite facilities are being provided and the provisions of law are being observed and the directions given by us are being carried out. If it is found as a result of inspection that there are any lapses on the part of the police authorities, the City Sessions Judge shall bring them to the notice of the Commissioner of Police and if necessary to the notice of the Home Department and if even this approach fails, the City Sessions Judge may draw the attention of the Chief Justice of the High Court of Maharashtra to such lapses. This direction in regard to police

lock ups at the districts head quarters, shall be carried out by the Sessions Judge of the district concerned.

(vi) We would direct that as soon as a person is arrested, the police must immediately obtain from him the name of any relative or friend whom he would like to be informed about his arrest and the police should get in touch with such relative or friend and inform him about the arrest; and lastly.

(vii) We would direct that the magistrate before whom an arrested person is produced shall enquire from the arrested person whether he has any complaint of torture or mal- treatment in police custody and inform him that he has right under Section 54 of the CrPC 1973 to be medically examined. We are aware that Section 54 of the CrPC 1973 undoubtedly provides for examination of an arrested person by a medical practitioner at the request of the arrested person and it is a right conferred on the arrested person. But very often the arrested person is not aware of this right and on account of, his ignorance, he is unable to exercise this right even though he may have been tortured or maltreated by the police in police lock up. It is for this reason that we are giving a specific direction requiring the magistrate to inform the arrested person about this right of medical examination in case he has any complaint of torture or mal- treatment in police custody.

6. We have no doubt that if these directions which are being given by us are carried out both in letter and spirit, they will afford considerable protection to prisoners in police lock ups and save them from possible torture or ill- treatment. The writ petition will stand disposed of in terms of this order.

MANU/SC/0311/1994

IN THE SUPREME COURT OF INDIA

Writ Petition (Criminal) No. 9 of 1994

Decided On: 25.04.1994

Joginder Kumar Vs. State of U.P. and Ors.

Back to Section 50 of Code of Criminal Procedure, 1973

Back to Section 56 of Code of Criminal Procedure, 1973

Hon'ble Judges/Coram:

M.N. Venkatachaliah, C.J., S. Mohan and Dr. A.S. Anand, JJ.

ORDER

1. This is a petition under Article 32 of the Constitution of India. The Petitioner is a young man of 28 years of age who has completed his L.L.B. and has enrolled himself as an advocate. The Senior Superintendent of police, Ghaziabad, Respondent No. 4 called the Petitioner in his office for making enquiries in some case. The Petitioner on 7- 1- 1994 at about 10 O'clock appeared personally along with his brothers Sri. Mangeran Choudhary, Nahar Singh Yadav, Harinder Singh Tewatia, Amar Singh and Ors. before the Respondent No. 4. Respondent No. 4 kept the Petitioner in his custody. When the brother of the Petitioner made enquiries about the Petitioner, he was told that the Petitioner will be set free in the evening after making some enquiries in connection with a case. On 7- 1- 1994 at about 12.55 p.m. the brother of the Petitioner being apprehensive of the intentions of Respondent No. 4, sent a telegram to the Chief Minister of U.P. apprehending his brother's implication in some criminal case and also further apprehending the Petitioner being shot dead in fake encounter.

2. In spite of the frequent enquiries, the whereabouts of the Petitioner could not be located. On the evening of 7- 1- 1994, it came to be known that Petitioner is detained in illegal custody of 5th Respondent SHO, P.S. Mussoria.

3. On 8- 1- 1994, it was informed that the 5th Respondent was keeping the Petitioner in detention to make further enquiries in some case. So far as Petitioner has not been. produced before the concerned Magistrate. instead the 5th Respondent directed the relative of the Petitioner to approach the 4th Respondent S.S.P. Ghaziabad for release of the Petitioner.

4. On 9- 1- 1994, in the evening when the brother of Petitioner along with relatives went to P.S. Mussorie to enquire about the well- being of his brother, it was found that the Petitioner had been taken to some undisclosed destination. Under these circumstances, the present petition has been preferred for the release of Joginder Kumar, the Petitioner, herein.

5. This Court on 11- 1- 1994 ordered notice to State of U.P. as well as S.S.P. Ghaziabad.

6. The said Senior Superintendent of Police along with Petitioner appeared before this Court on 14- 1- 1994. According to him, the Petitioner has been released. To question as to why the Petitioner was detained for a period of five days, he would submit that the Petitioner was not in detention at all. His help was taken for detecting some cases relating to abduction and the Petitioner was helpful in co- operating with the police. Therefore, there is no question of detaining him. Though, as on today the relief in habeas corpus petition cannot be granted yet this Court cannot put an end to the writ petition on this score. Where was the need to detain the Petitioner for five days, if really the Petitioner "was not in detention, why was not this Court informed are some questions which remain unanswered, If really, there was a detention for five days, for what reason was he detained? These matters require to be enquired into. Therefore, we direct the learned District Judge. Ghaziabad to make a detailed enquiry and submit his report within four weeks from the date of receipt of this order.

7. The horizon of human rights is expending. At the same time, the Crime rate is also increasing! of late, this Court has been receiving complaints about violation of human rights because of indiscriminate arrests. How are we to strike a balance between the two?

8. A realistic approach should be made in this direction, The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively: of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first- the criminal or society, the law violator or the law abider;

of meeting the challenge which Mr. Justice Cardozo so forth rightly met when he wrestled with a similar task of balancing individual rights against society's rights and wisely held that the exclusion rule was bad law, that society come first, and that the criminal should not go free because the constable blundered. In People v. Defore 242 N Y. 13, 24: 150 N.E. 585, 589 (1926), Justice Cardozo observed:

The question is whether protection for the individual would not be gained at a disproportionate loss of a protection for society. On the one side is the social need that crime shall be repressed, on the other, the social need that law shall not be flouted by the insolence of, office. There are dangers in any choice. The rule of the Adams case (People v. Adams 176 N.Y. 351: 68 N.E. 636 (1903) strikes a balance between opposing interests. We must hold it to be the law until those - organs of Government by which a change of public policy is normally effected shall give notice to the courts that change has come to pass.

To the same effect is the statement by Judge Learned Hand. In Re Fried 161 F. 2d 453, 465 (2d Cir. 1947):

The protection of the individual from oppression and abuse by the police and other enforcing officers is indeed a major interest in a free society; but so is the effective prosecution of Crime, an interest which at times seems to be forgotten. Perfection is impossible; like other human institutions criminal proceedings must be a compromise.

9. The quality of a nation's civilisation can. be largely measured by the methods it uses in the enforcement of criminal law.

This Court in Smt. Nandini Satpathy v. P.L. Dani MANU/SC/0139/1978 : AIR 1978 SC 1025 at page 1032 quoting Lewis Mayers stated:

The paradox has been put sharply by Lewis Mayers:

To strike the balance between the needs of law enforcement on the one hand and the protection of the citizen from oppression and injustice at the hands of the law- enforcement machinery on the other is perennial a problem of statecraft. The pendulum over the years has swung to the right.

Again in paragraph 21 at page 1033 it was observed:

We have earlier spoken of the conflicting claims requiring reconciliation. Speaking pragmatically, there exists a rivalry between' societal interest in effecting crime detection and constitutional rights which accused individuals possess. Emphasis may shift, depending on circumstances, in balancing these interests as has been happening in America. Since Miranda (1966) 384 U.S. 436) there has been retreat from stress on protection of the accused and gravitation towards society's interest in convicting law- brakers. Currently, the trend in the Americal jurisdiction according to legal journals, is that 'respect for (constitutional) principles is eroded when they leap their proper bounds to interfere with the legitimate interests of society in enforcement of its laws..... (Couch v. United States MANU/USSC/0164/1973 : (1972) 409 U.S. 322, 336. Our constitutional perspective has, therefore, to be relative and cannot afford to be absolutist, especially when torture technology, crime escalation and other social variables affect the application of principles in producing humane justice.

10. The National Police Commission in its Third Report referring to the quality of arrests by the Police in India mentioned power of arrest as one of the Chief sources of corruption in the police. The report suggested that, by and large, nearly 60% of the arrests were either unnecessary or unjustified and that such unjustified police action accounted for 43.2% of the expenditure of the jails. The said Commission in its Third Report at page 31 observed thus:

It is obvious that a major portion of the arrests were connected with very minor prosecutions and cannot, therefore, be regarded as quite necessary from the point of view of crime prevention. Continued detention in jail of the persons so arrested has also meant avoidable expenditure on their maintenance. In the above period it was estimated that 43.2% of the expenditure in the connected jails was over such prisoners only who in the ultimate analysis need not have been arrested at all.

11. As on today, arrest with or without warrant depending upon the circumstances of a particular case is governed by the Code of Criminal Procedure.

12. Whenever a public servant is arrested that matter should be intimated to the superior officers, if possible, before the arrest and in any case, immediately after the arrest. In cases of members of Armed Forces, Army, Navy or Air Force, intimation should be sent to the Officer commanding the unit to which the member belongs. It should be done immediately after the arrest is effected.

13. Under Rule 229 of the Procedure and Conduct of Business in Lok Sobha, when a Member is arrested on a criminal charge or is detained under an executive order of the Magistrate, the executive authority must inform without delay such fact to the Speaker. As soon as any arrest, detention, conviction or release is effected intimation should invariably be sent to the Government concerned concurrently with the intimation sent to the Speaker/Chairman of the Legislative Assembly/Council/Lok Sabha Rajya Sabha. This should be sent through telegrams and also by post and the intimation should not be on the ground of holiday.

14. With regard to the apprehension of juvenile offenders Section 58 of the Criminal Procedure lays down as under:

Officers in charge of police Stations shall report to the District Magistrate or, if he so directs, to the Sub- Divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations whether such persons have been admitted to bail or otherwise.

Section 19(a) of the Children Act makes the following provision:

the parent or guardian of the child, if he can be found, of such arrest and direct him to be present at the children's court before which the child will appear;

15. In England, the police powers of Arrest Detention and interrogation have been streamlined by the Police and Criminal Evidence Act, 1984 based on the report of Sir Cyril Philips Committee ("Report of a Royal Commission on Criminal Procedure. Command - papers 8092 19811).

16. It is worth quoting the following passage from Police Powers and Accountability by John L. Lambert, page 93:

More recently, the Royal Commission on Criminal Procedure recognised that "there is a critically important relationship between the police and the public in the detection and investigation of crime" and suggested that public confidence in police powers required that these conform to three principal standards: fairness, openness and workability.

(Emphasis supplied)

17. The Royal Commission suggested restrictions on the power of arrest on the basis of the 'necessity of principle'. The two main objectives of this principle are that police can exercise powers only in those cases in which it was genuinely necessary to enable them to execute their duty to prevent the Commission of offences, to investigate crime. The Royal Commission was of the view that such restrictions would diminish the use of arrest and produce more uniform use of powers. The Royal Commission Report on Criminal Procedure - Sir Cyril Philips at page 45 said:

...We recommend that detention upon arrest for an offence should continue only on one or more of the following criteria:

(a) the person's unwillingness to identify himself so that a summons may be served upon him;

(b) the need to prevent the continuation or repetition of that offence;

(c) the need to protect the arrested person himself or other persons or property;

(d) the need to secure or preserve evidence of or relating to that offence or to obtain such evidence from the suspect by questioning him; and

(e) the likelihood of the person failing to appear at court to answer any charge made against him.

The Royal Commission in the above said Report at page 46 also suggested:

To help to reduce the use of arrest we would also propose the introduction here of a scheme that is used in Ontario enabling a police officer to issue what is called an appearance notice. That procedure can be used to obtain attendance at the police station without resorting to arrest

provided a power to arrest exists, for example to be fingerprinted or to participate in an identification parade. It could also be extended to attendance for interview at a time convenient both to the suspect and to the police officer investigating the case....

In India, Third Report of the National Police Commission at page 32 also suggested:

....An arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances:

(i) The case involves a grave offence like murder; dacoity, robbery, rape, etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror stricken victims.

(ii) The accused is likely to abscond and evade the processes of law

(iii) The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint.

(iv) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.

It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines....

18. The above guidelines are merely incidents of personal liberty guaranteed under the Constitution of India. No arrest can be made because it is lawful for the Police Officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another.

The Police Officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock- up of a person can cause incalculable harm to the reputation and self esteem of a person.

No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a Police Officer in the interest of protection of the constitutional rights of a citizen" and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bonafides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest.

Denying a person of his liberty is a serious matter,

The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the

opinion of the Officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a Police Officer issues notice to person to attend the Station House and not to leave Station without permission would do.

19. Then, there is the right to have someone informed. That right of the arrested person, upon request, to have someone informed and to consult privately with a lawyer was recognised by Section 56(1) of the Police and Criminal Evidence Act, 1984 in England. (Civil Actions Against the Police - Richard Clayton and Hugh Tomlinson; page 313). That Section provides:

Where a person has been arrested and is being held in custody in a police station or other premises, he shall be entitled, if he so requests, to have one friend or relative or other person who is known to him or who is likely to take an interest in his welfare told, as soon as is practicable except to the extent that delay is permitted by this section, that he has been arrested and is being detained there.

These rights are inherent in Articles 21 and 22(1) of the Constitution and require to be recognised and scrupulously protected. For effective enforcement of these fundamental rights, we issue the following requirements:

1. An arrested person being held in custody is entitled, if he so requests to have one friend, relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where is being detained.

2. The Police Officer shall inform the arrested person when he is brought to the police station of this right.

3. An entry shall be required to be made in the Diary as to who was informed of the arrest. These protections from power must be held to flow from Articles 21 and 22(1) and enforced strictly.

It shall be the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that these requirements have been complied with.

20. The above requirements shall be followed in all cases of arrest till legal provisions are made in this behalf. These requirements shall be in addition to the right of the' arrested persons found in the various Police Manuals. These requirements are not exhaustive. The Directors General of Police of all the Suites in India shall issue necessary instructions requiring due observance of these requirements. In addition, departmental instruction shall also be issued that a police officer making an arrest should also record in the case diary, the reasons for making the arrest.

MANU/SC/0307/1993

Back to Section 57 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Writ Petn. No. 488 of 1988

Decided On: 24.03.1993

Nilabati Behera Vs. State of Orissa and Ors.

Hon'ble Judges/Coram:

J.S. Verma, Dr. A.S. Anand and N.G. Venkatachala, JJ.

ORDER

Authored By : J.S. Verma, A.S. Anand

J.S. Verma, J.

1. A letter dated 14.9.1988 sent to this Court by Smt. Nilabati Behera alias Lalita Behera, was treated as a Writ Petition under Article 32 of the Constitution for determining the claim of compensation made therein consequent upon the death of petitioner's son Suman Behera, aged about 22 years, in police custody. The said Suman Behera was taken from his home in police custody at about 8 a.m. on 1.12.1987 by respondent No. 6, Sarat Chandra Barik, Assistant Sub-Inspector of Police of Jaraikela Police Outpost under Police Station Bisra, Distt. Sundergarh in Orissa, in connection with the investigation of an offence of theft and detained at the Police Outpost. At about 2 p.m. the next day on 2.12.1987, the petitioner came to know that the dead body of her son Suman Behera was found on the railway track near a bridge at some distance from the Jaraikela railway station. There were multiple injuries on the body of Suman Behera when it was found and obviously his death was unnatural, caused by those injuries. The allegation made is that it is a case of custodial death since Suman Behera died as a result of the multiple injuries inflicted to him while he was in police custody; and thereafter his dead body was thrown on the railway track. The prayer made in the petition is for award of compensation to the petitioner, the mother of Suman Behera, for contravention of the fundamental right to life guaranteed under Article 21 of the Constitution.

2. The State of Orissa and its police officers, including Sarat Chandra Barik, Assistant Sub-Inspector of Police and Constable No. 127, Chhabil Kujur of Police Outpost Jeraikela, Police Station Bisra, are impleaded as respondents in this petition. The defence of the respondents is that Suman Behera managed to escape from police custody at about 3 a.m. on the night between the 1st and 2nd December, 1987 from the Police Outpost Jeraikela, where he was detained and guarded by Police Constable Chhabil Kujur; he could not be apprehended thereafter in spite of a search; and the dead body of Suman Behera was found on the railway track the next day with multiple injuries which indicated that he was run over by a passing train after he had escaped

from police custody. In short, on this basis the allegation of custodial death was denied and consequently the respondents' responsibility for the unnatural death of Suman Behera.

3. In view of the controversy relating to the cause of death of Suman Behera, a direction was given by this Court on 4.3.1991 to the District Judge, Sundergarh in Orissa, to hold an inquiry into the matter and submit a report. The parties were directed to appear before the District Judge and lead the evidence on which they rely. Accordingly, evidence was led by the parties and the District Judge has submitted the Inquiry Report dated 4.9.1991 containing his finding based on that evidence that Suman Behera had died on account of multiple injuries inflicted to him while he was in police custody at the Police Outpost Jeraikela. The correctness of this finding and Report of the District Judge, being disputed by the respondents, the matter was examined afresh by us in the light of the objections raised to the Inquiry Report.

4. The admitted facts are, that Suman Behera was taken in police custody on 1.12.1987 at 8 a.m. and he was found dead the next day on the railway track near the Police Outpost Jeraikela, without being released from custody, and his death was unnatural, caused by multiple injuries sustained by him. The burden is, therefore, clearly on the respondents to explain how Suman Behera sustained those injuries which caused his death. Unless a plausible explanation is given by the respondents which is consistent with their innocence, the obvious inference is that the fatal injuries were inflicted to Suman Behera in police custody resulting in his death, for which the respondents are responsible and liable.

5. To avoid this obvious and logical inference of custodial death, the learned Additional Solicitor General relied on the respondent's defence that Suman Behera had managed to escape from police custody at about 3 a.m. on the night between the 1st and 2nd December, 1987 and it was likely that he was run over by a passing train when he sustained the fatal injuries. The evidence adduced by the respondents is relied on by the learned Additional Solicitor General to support this defence and to contend that the responsibility of the respondents for the safety of Suman Behera came to an end the moment Suman Behera escaped from police custody. The learned Additional Solicitor General, however, rightly does not dispute the liability of the State for payment of compensation in this proceeding for violation of the fundamental right to life under Article 21, in case it is found to be a custodial death. The argument is that the factual foundation for such a liability of the State is absent. Shri M.S. Ganesh, who appeared as amicus curiae for the petitioner, however, contended that the evidence adduced during the inquiry does not support the defence of respondents and there is no reason to reject the finding of the learned District Judge that Suman Behera died in police custody as a result of injuries inflicted to him.

6. The first question is: Whether it is a case of custodial death as alleged by the petitioner? The admitted facts are: Suman Behera was taken in police custody at about 8 a.m. on 1.12.1987 by Sarat Chandra Barik, Asstt. Sub- Inspector of Police, during investigation of an offence of theft in the village and was detained at Police Outpost Jeraikela; Suman Behera and Mahi Sethi, another accused, were handcuffed, tied together and kept in custody at the police station; Suman Behera's

mother, the petitioner, and grand- mother went to the Police Outpost at about 8 p.m. with food for Suman Behera which he ate and thereafter these women came away while Suman Behera continued to remain in police custody, Police Constable Chhabil Kujur and some other persons were present at the Police Outpost that night; and the dead body of Suman Behera with a handcuff and multiple injuries was found lying on the railway track at Kilometer No. 385/29 between Jeraikela and Bhalulata railway stations on the morning of 2.12.1987. It is significant that there is no cogent independent evidence of any search made by the police to apprehend Suman Behera, if the defence of his escape from police custody be true. On the contrary, after discovery of the dead body on the railway track in the morning by some railwaymen, 'it was much later in the day that the police reached the spot to take charge of the dead body. This conduct of the concerned police officers is also a significant circumstance to assess credibility of the defence version.

7. Before discussing the other evidence adduced by the parties during the inquiry, reference may be made to the injuries found on the dead body of Suman Behera during post- mortem. These injuries were the following: -

External injuries

(1) Laceration over with margin of damaged face.

(2) Laceration of size - 3" x 2" over the left temporal region upto bone.

(3) Laceration 2" above mastoid process on the right- side of size 1 1/2" x 1/4" bone exposed.

(4) Laceration on the forehead left side of size 1 1/2" x 1/4" upto bone in the mid- line on the forehead 1/2" x 1/4" bone deep on the left lateral to it 1" x 1/4" bone exposed.

(5) Laceration 1" x 1/2" on the anterior aspect of middle of left arm, fractured bone protruding.

(6) Laceration 1" x 1/2" x 1/2" on medial aspect of left thigh 4" above the knee joint.

(7) Laceration 1/2" x 1/2" x 1/2" over left knee joint.

(8) Laceration 1" x 1/2" x 1/2" on the medial aspect of right knee joint.

(9) Laceration 1" x 1/2" x 1/2" on the posterior aspect of left leg 4" below knee joint.

(10) Laceration 1" x 1/4" x 1/2" on the plantar aspect of 3rd and 4th toe of right side.

(11) Laceration of 1" x 1/4" x 1/2" on the dorsum of left foot.

Injury on the neck

(1) Bruises of size 3" x 1" obliquely alongwith sternocleidomastoid muscle 1" above the clavicle left side (2) lateral to this 2" x 1" bruise (3) and 1" x 1" above the clavicle left side (4) postural aspect of the neck 1" x 1" obliquely placed right to mid line.

Right shoulder

(a) Bruise 2" x 2", 1" above the right scapula.

(b) Bruise 1" x 1" on the tip of right shoulder.

(c) Bruise on the dorsum of right, palm 2" x 1".

(d) Bruise extensors surface of forearm left side 4" x 1".

(e) Bruise on right elbow 4" x 1"

(f) Bruise on the dorsum of left palm 2" x 1".

(g) Bruise over left patella 2" x 1".

(h) Bruise 1" above left patel 1" x 1".

(i) Bruise on the right iliac spine 1" x 1/2".

(j) Bruise over left scapula 4" x 1".

(k) Bruise 1" below right scapula 5" x 1".

(1) Bruise 3" medial to inferior angle of right scapula 2" x 1".

(m) Bruise 2" below left scapula of size 4" x 2".

(n) Bruise 2" x 6" below 12th rib left side.

(o) Bruise 4" x 2" on the left lumber region.

(p) Bruise on the buttock of left side 3" x 2".

(q) On dissection found -

(1) Fracture of skull on right side parietal and occipital bone 6" length.

(2) Fracture of frontal bone below laceration 2" depressed fracture.

(3) Fracture of left temporal bone 2" in length below external injury No. 2 i.e. laceration 2" above left mastoid process.

(4) Membrane ruptured below depressed fracture, brain matter protruding through the membrane.

(5) Intracraneal haemorrhage present.

(6) Brain lacerated below external injury No. 3, 1" x 1/2" x 1/2".

(7) Bone chips present on temporal surface of both sides.

(8) Fracture of left humorous 3" above elbow.

(9) Fracture of left femur 3" above knee joint.

(10) Fracture of mandible at the angle mendible both sides.

(11) Fracture of maxillary.

8. The face was completely damaged, eye ball present, nose lips, cheeks absent. Maxilla and a portion of mendible absent.

9. No injury was present on the front side of body trunk. There is rupture and laceration of brain."

10. The doctor deposed that all the, injuries were caused by hard and blunt object; the injuries on the face and left temporal region were postmortem while the rest were ante- mortem. The doctor excluded the possibility of the injuries resulting from dragging of the body by a running train and stated that all the ante- mortem injuries could be caused by lathi blows. It was further stated by the doctor that while all the injuries could not be caused in a train accident, it was possible to cause all the injuries by lathi blows. Thus, the medical evidence comprising the testimony of the doctor, who conducted the post- mortem, excludes the possibility of all the injuries to Suman Behera being caused in a train accident while indicating that all of them could result form the merciless beating given to him. The learned Additional Solicitor General placed strong reliance on. the written opinion of Dr. K.K. Mishra, Professor & Head of the Department of Forensic Medicine, Medical College, Cuttack, given on 15.2.1988 on a reference made to him wherein he stated on the basis of the documents that the injuries found on the dead body of Suman Behera could have been caused by rolling on the railway track in- between the rail and by coming into forceful contact with projecting part of the moving train/engine. While adding that it did not appear to be a case of suicide, he indicated that there was more likelihood of accidental fall on the railway track followed by the running engine/train. In our view, the opinion of Dr. K.K. Mishra, not examined as a witness, is not of much assistance and does not reduce the weight of the testimony of the doctor who conducted the post- mortem and deposed as a witness during the inquiry. The opinion of Dr. K.K. Mishra is cryptic, based on conjectures for which there is no basis, and says nothing about the injuries being both anti- mortem and post- mortem. We have no hesitation in reaching this conclusion and preferring the testimony of the doctor who conducted the post- mortem.

11. We may also refer to the Report dated 19.12.1988 containing the findings in a joint inquiry conducted by the Executive Magistrate and the Circle Inspector of Police. This Report is stated to have been made under Section 176 Cr.P.C. and was strongly relied on by the learned Additional Solicitor General as a statutory report relating to the cause of death. In the first place, an inquiry under Section 176 Cr.P.C. is contemplated independently by a Magistrate and not jointly with a police officer when the role of the police officers itself is a matter of inquiry. The joint finding recorded is that Suman Behera escaped from police custody at about 3 a.m. on 2.12.1987 and died in a train accident as a result of injuries sustained therein. There was hand- cuff on the hands of the deceased when his body was found on the railway track with rope around it. It is significant that the Report dated 11.3.1988 of the Regional Forensic Science Laboratory (Annexure 'R- 8', at p.108 of the paper book) mentions that the two cut ends of the two pieces of rope which were sent for examination do not match with each other in respect of physical appearance. This finding

about the rope negatives the respondents' suggestion that Suman Behera managed to escape from police custody by chewing off the rope with which he was tied. It is no necessary for us to refer to the other evidence including the oral evidence adduced during the inquiry, from which the learned District Judge reached the conclusion that it is a case of custodial death and Suman Behera died as a result of the injuries inflicted to him voluntarily while he was in police custody at the Police Outpost Jeraikela. We have reached the same conclusion on a reappraisal of the evidence adduced at the inquiry taking into account the circumstances, which also support that conclusion. This was done in view of the vehemence with which the learned Additional Solicitor General urged that it is not a case of custodial death but of death of Suman Behera caused by injuries sustained by him in a train accident, after he had managed to escape from police custody by chewing off the rope with which he had been tied for being detained at the Police Outpost. On this conclusion, the question now is of the liability of the respondents for compensation to Suman Behera's mother, the petitioner, for Suman Behera's custodial death.

12. In view of the decisions of this Court in Rudul Sah v. State of Bihar and Anr. MANU/SC/0380/1983 : 1983CriLJ1644 , Sebastian M. Hongray v. Union of India and Ors. MANU/SC/0381/1983 : [1984]1SCR904 , Bhim Singh v. State of J&K MANU/SC/0064/1985 : 1986CriLJ192 , Saheli, A Women's Resources center and Ors. v. Commissioner of Police, Delhi Police Headquarters and Ors. MANU/SC/0478/1989 : AIR1990SC513 and State of Maharashtra and Ors. v. Ravikant S.Patil MANU/SC/0561/1991 : (1991)2SCC373 , the liability of the State of Orissa in the present case to pay the compensation cannot be doubted and was rightly not disputed by the learned Additional Solicitor General. It would, however, be appropriate to spell out clearly the principle on which the liability of the State arises in such cases for payment of compensation and the distinction between this liability and the liability in private law for payment of compensation in an action on tort. It may be mentioned straightway that award of compensation in a proceeding under Article 32 by this court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort.

This is a distinction between the two remedies to be borne in mind which also indicates the basis on which compensation is awarded in such proceedings. We shall now refer to the earlier decisions of this Court as well as some other decisions before further discussion of this principle.

13. In Rudul Sah (supra), it was held that in a petition under Article 32 of the Constitution, this Court can grant compensation for deprivation of a fundamental right. That was a case of violation of the petitioner's right to personal liberty under Article 21 of the Constitution. Chandrachud, C.J., dealing with this aspect, stated as under:

It is true that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of Courts, Civil and Criminal. A money claim has therefore to be agitated in and adjudicated upon in a suit instituted in a court of lowest grade competent to try it. But the important question for our consideration is whether in the exercise of its jurisdiction under Article 32, this Court can pass an order for the payment of

money if such an order is in the nature of compensation consequential upon the deprivation of a fundamental right. The instant case is illustrative of such cases....

...The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip- service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders to release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the state as shield. If Civilisation is not to perish in this country as it has perished in some others too well- known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers

(emphasis supplied)

14. It does appear from the above extract that even though it was held that compensation could be awarded under Article 32 for contravention of a fundamental right, yet it was also stated that 'the petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial' and 'Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes'. These observation may tend to raise a doubt that the remedy under Article 32 could be denied 'if the claim to compensation was factually controversial' and, therefore, optional, not being a distinct remedy available to the petitioner in addition to the ordinary processes. The later decisions of this Court proceed on the assumption that monetary compensation can be awarded for violation of constitutional rights under Article 32 or Article 226 of the Constitution, but this aspect has not been adverted to. It is, therefore, necessary to clear this doubt and to indicate the precise nature of this remedy which is distinct and in addition to the available ordinary processes, in case of violation of the fundamental rights.

15. Reference may also be made to the other decisions of this Court after Rudul Sah. In Sebastian M. Hongray v. Union of India and Ors. (I) MANU/SC/0381/1983 : [1984]1SCR904 , it was

indicated that in a petition for writ of habeas corpus, the burden was obviously on the respondents to make good the positive stand of the respondents in response to the notice issued by the court by offering proof of the stand taken, when it is shown that the person detained was last seen alive under the surveillance, control, and command of the detaining authority. In Sebastian M. Hongray v. Union of India and Ors. (II) MANU/SC/0080/1984 : 1984CriLJ830 , in such a writ petition, exemplary costs were awarded on failure of the detaining authority to produce the missing persons, on the conclusion that they were not alive and had met an unnatural death. The award was made in Sebastian M. Hongray- II apparently following Rudul Sah, but without indicating anything more. In Bhim Singh v. State of J&K and Ors. MANU/SC/0064/1985 : 1986CriLJ192 , illegal detention in police custody of the petitioner Bhim Singh was held to constitute violation of his rights under Articles 21 and 22(2) and this Court exercising its power to award compensation under Article 32 directed the State to pay monetary compensation to the petitioner for violation of his constitutional right by way of exemplary costs or otherwise, taking this power to be settled by the decisions in Rudul San and Sebastian M. Hongray. In Saheli MANU/SC/0478/1989 : AIR1990SC513 , the State was held liable to pay compensation payable to the mother of the deceased who died as a result of beating and assault by the police. However, the principle indicated therein was that the State is responsible for the tortious acts of its employees. In State of Maharashtra and Ors. v. Ravikant S. Patil MANU/SC/0561/1991 : (1991)2SCC373 , the award of compensation by the High Court for violation of the fundamental right under Article 21 of an undertrial prisoner, who was handcuffed and taken through the streets in a procession by the police during investigation, was upheld. However, in none of these cases, except Rudul San, anything more was said. In Saheli, reference was made to the State's liability for tortious acts of its servants without any reference being made to the decision of this Court in Kasturilal Ralia Ram Jain v. The State of Uttar Pradesh MANU/SC/0086/1964 : (1966)IILLJ583SC , wherein sovereign immunity was upheld in the case of vicarious liability of the State for the tort of its employees. The decision in Saheli is, therefore, more in accord with the principle indicated in Rudul Sah.

16. In this context, it is sufficient to say that the decision of this Court in Kasturilal upholding the State's plea of sovereign immunity for tortious acts of its servants is confined to the sphere of liability in tort, which is distinct from the State's liability for contravention of fundamental rights to which the doctrine of sovereign immunity has no application in the constitutional scheme, and is no defence to the constitutional remedy under Articles 32 and 226 of the Constitution which enables award of compensation for contravention of fundamental rights, when the only practicable mode of enforcement of the fundamental rights can be the award of compensation. The decisions of this Court in Rudul Sah and others in that line relate to award of compensation for contravention of fundamental rights, in the constitutional remedy under Articles 32 and 226 of the Constitution. On the other hand, Kasturilal related to value of goods seized and not returned to the owner due to the fault of Government servants, the claim being of damages for the tort of conversion under the ordinary process, and not a claim for compensation for violation of fundamental rights. Kasturilal is, therefore, inapplicable in this context and distinguishable.

17. The decision of Privy Council in Maharaj v. Attorney- General of Trinidad and Tobago (No. 2) [1978] 3 All ER 670, is useful in this context. That case related to Section 6 of the Constitution of Trinidad and Tobago 1962, in the chapter pertaining to human rights and fundamental

freedoms, wherein Section 6 provided for an application to the High Court for redress. The question was, whether the provision permitted an order for monetary compensation. The contention of the Attorney- General therein, that an order for payment of compensation did not amount to the enforcement of the rights that had been contravened, was expressly rejected. It was held, that an order for payment of compensation, when a right protected had been contravened, is clearly a form of 'redress' which a person is entitled to claim under Section 6, and may well be the 'only practicable form of redress'. Lord Diplock who delivered the majority opinion, at page 679, stated.:

It was argued on behalf of the Attorney- General that Section 6(2) does not permit of an order for monetary compensation despite the fact that this kind of redress was ordered in Jaundoo v. Attorney- General of Guyana [1971] SC 972. Reliance was placed on the reference in the Sub-section to 'enforcing, or securing the enforcement of, any of the provisions of the said foregoing sections' as the purpose for which orders etc. could be made. An order for payment of compensation, it was submitted, did not amount to the enforcement of the rights that had been contravened. In their Lordships' view an order for payment of compensation when a right protected under Section 1 'has been' contravened is clearly a form of 'redress' which a person is entitled to claim under Section 6(1) and may well be the only practicable form of redress, as by now it is in the instant case. The jurisdiction to make such an order is conferred on the High Court by para (a) of Section 6(2), viz. jurisdiction 'to hear and determine any application made by any person in pursuance of Sub- section (1) of this section'. The very wide powers to make orders, issue writs and give directions are ancillary to this.

Lord Diplock further stated at page 680, as under:

Finally, their Lordships would say something about the measure of monetary compensation recoverable under Section 6 where the contravention of the claimant's constitutional rights consists of deprivation of liberty otherwise than by due process of law. The claim is not a claim in private law for damages for the tort of false imprisonment, under which the damages recoverable are at large and would include damages for loss of reputation. It is a claim in public law for compensation for deprivation of liberty alone....

(emphasis supplied)

18. Lord Hailsham while dissenting from the majority regarding the liability for compensation in that case, concurred with the majority opinion on this principle and stated at page 687, thus:

...I am simply saying that, on the view I take, the expression 'redress' in Sub- section (1) of Section 6 and the expression 'enforcement' in Sub- section (2), although capable of embracing damages where damages are available as part of the legal consequences of contravention, do not confer and are not in the context capable of being construed so as to confer a right of damages where

they have not hitherto been available, in this case against the state for the judicial errors of a judge....

Thus, on this principle, the view was unanimous, that enforcement of the constitutional right and grant of redress embraces award of compensation as part of the legal consequences of its contravention.

19. It follows that 'a claim in public law for compensation' for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution, This is what was indicated in Rudul Sah and is the basis of the subsequent decisions in which compensation was awarded Under Articles 32 and 226 of the Constitution, for contravention of fundamental rights.

20. A useful discussion on this topic which brings out the distinction between the remedy in public law based on strict liability for violation of a fundamental right enabling award of compensation, to which the defence of sovereign immunity is inapplicable, and the private law remedy, wherein vicarious liability of the State in tort may arise, is to be found in Ratanlal & Dhirajlal's Law of Torts, 22nd Edition, 1992, by Justice G.P. Singh, at pages 44 to 48.

21. This view finds support from the decisions of this Court in the Bhagalpur blinding cases: Khatri and Ors. (II) v. State of Bihar and Ors. MANU/SC/0518/1981 : 1981CriLJ597 and Khatri and Ors. (IV) v. State of Bihar and Ors. MANU/SC/0163/1981 : [1981]3SCR145 , wherein it was said that the court is not helpless to grant relief in a case of violation of the right to life and personal liberty, and it should be prepared to forge new tools and devise new remedies' for the purpose of vindicating these precious fundamental rights. It was also indicated that the procedure suitable in the facts of the case must be adopted for conducting the inquiry, needed to ascertain the necessary facts, for granting the relief, as the available mode of redress, for enforcement of the guaranteed fundamental rights. More recently in Union Carbide Corporation and Ors. v. Union of India and Ors. MANU/SC/0058/1992 : AIR1992SC248 , Misra, C.J. stated that 'we have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future...there is no reason why we should hesitate to evolve such principle of liability....To the same effect are the observations of Venkatachaliah, J. (as he then was), who rendered the leading judgment in the Bhopal gas case, with regard to the court's power to grant relief.

22. We respectfully concur with the view that the court is not helpless and the wide powers given to this Court by Article 32, which itself is a fundamental right, imposes a constitutional obligation on this Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to this Court under Article 142 is also an enabling provision in this behalf. The contrary view would not merely render the court powerless and the constitutional guarantee a mirage, but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. It the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate.

23. We may also refer to Article 9(5) of the International Covenant on Civil and Political Rights, 1966 which indicates that an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right. Article 9(5) reads as under:

Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

24. The above discussion indicates the principles on which the Court's power under Articles 32 and 226 of the Constitution is exercised to award monetary compensation for contravention of a fundamental right. This was indicated in Rudul Sah and certain further observations therein adverted to earlier, which may tend to minimise the effect of the principle indicated therein, do not really detract from that principle. This is how the decisions of this Court in Rudul Sah and others in that line have to be understood and Kasturilal distinguished therefrom. We have considered this question at some length in view of the doubt raised, at times, about the propriety of awarding compensation in such proceedings, instead of directing the claimant to resort to the ordinary process of recovery of damages by recourse to an action in tort. In the present case, on the finding reached, it is a clear case for award of compensation to the petitioner for the custodial death of her son.

25. The question now, is of the quantum of compensation. The deceased Suman Behera was aged about 22 years and had a monthly income between Rs. 1200 to Rs. 1500. This is the finding based on evidence recorded by the District Judge, and there is no reason to doubt its correctness. In our opinion, a total amount of Rs. 1,50,000 would be appropriate as compensation, to be awarded to the petitioner in the present case. We may, however, observe that the award of compensation in

this proceeding would be taken into account for adjustment, in the event of any other proceeding taken by the petitioner for recovery of compensation on the same ground, so that the amount to this extent is not recovered by the petitioner twice over. Apart from the fact that such an order is just, it is also in consonance with the statutory recognition of this principle of adjustment provided in Section 357(5) Cr.P.C. and Section 141(3) of the Motor Vehicles Act, 1988.

26. Accordingly, we direct the respondent- State of Orissa to pay the sum of Rs. 1,50,000 to the petitioner and a further sum of Rs. 10,000 as costs to be paid to the Supreme Court Legal Aid Committee. The mode of payment of Rs. 1,50,000 to the petitioner would be, by making a term deposit of that amount in a scheduled bank in the petitioner's name for a period of three years, during which she would receive only the interest payable thereon, the principal amount being payable to her on expiry of the term. The Collector of the District will take the necessary steps in this behalf, and report compliance to the Registrar (Judicial) of this Court within three months.

27. We clarify that the award of this compensation, apart from the direction for adjustment of the amount as indicated, will not affect any other liability of the respondents or any other person flowing from the custodial death of petitioner's son Suman Behera. We also expect that the State of Orissa would take the necessary further action in this behalf, to ascertain and fix the responsibility of the individuals responsible for the custodial death of Suman Behera, and also take all available appropriate actions against each of them, including their prosecution for the offence committed thereby.

28. The writ petition is allowed in these terms.

A.S. Anand, J. (CONCURRING)

29. The lucid and elaborate judgment recorded by my learned brother Verma J. obviates the necessity of noticing facts or reviewing the case law referred to by him. I would, however, like to record a few observations of my own while concurring with his Lordship's judgment.

30. This Court was bestirred by the unfortunate mother of deceased Suman Behera through a letter dated 14.9.1988, bringing to the notice of the Court the death of her son while in police custody. The letter was treated as a Writ- Petition under Article 32 of the Constitution. As noticed by Brother Verma J., an inquiry was got conducted by this Court through the District Judge Sundergarh who, after recording the evidence, submitted his inquiry report containing the finding that the deceased Suman Behera had died on account of multiple injuries inflicted on him while in police custody. Considering, that it was alleged to be a case of custodial death, at the hands of those who are supposed to protect the life and liberty of the citizen, and which if established was enough to lower the flag of civilization to fly half- mast, the report of the District Judge was scrutinized and analysed by us with the assistance of Mr. M.S. Ganesh, appearing

amicus curiae for the Supreme Court Legal Aid Committee and Mr. Altaf Ahmad, the learned Additional Solicitor General carefully. :

31. Verma J., while dealing with the first question i.e. whether it was a case of custodial death, has referred to the evidence and the circumstances of the case as also the stand taken by the State about the manner in which injuries were caused and has come to the conclusion that the case put up by the police of the alleged escape of Suman Behera from police custody and his sustaining the injuries in a train accident was not acceptable. I respectfully agree. A strenuous effort was made by the learned Additional Solicitor General by reference to the injuries on the head and the face of the deceased to urge that those injuries could not be possible by the alleged police torture and the finding recorded by the District Judge in his report to the contrary was erroneous. It was urged on behalf of the State that the medical evidence did establish that the injuries had been caused to the deceased by lathi blows but it was asserted that the nature of injuries on the face and left temporal region could not have been caused by the lathis and, therefore, the death had occurred in the manner suggested by the police in a train accident and that it was not caused by the police while the deceased was in their custody. In this connection, it would suffice to notice that the Doctor, who conducted the post- mortem examination, excluded the possibility of the injuries to Suman Behera being caused in a train accident. The injuries on the face and the left temporal region were found to be post- mortem injuries while the rest were ante- mortem. This aspect of the medical evidence would go to show that after inflicting other injuries, which resulted in the death of Suman Behera, the police with a view to cover up their crime threw the body on the rail- track and the injuries on the face and left temporal region were received by the deceased after he had died. This aspect further exposes not only the barbaric attitude of the police but also its crude attempt to fabricate false clues and create false evidence with a view to screen its offence. The falsity of the claim of escape stands also exposed by the report from the Regional Forensic Science Laboratory dated 11.3.1988 (Annexure R- 8) which mentions that the two pieces of rope sent for examination to it, did not tally in respect of physical appearance, thereby belying the police case that the deceased escaped from the police custody by chewing the rope. The theory of escape has, thus, been rightly disbelieved and I agree with the view of Brother Verma J. that the death of Suman Behera was caused while he was in custody of the police by police torture. A custodial death is perhaps one of the worst crimes in a civilised society governed by the Rule of Law. It is not our concern at this stage, however, to determine as to which police officer or officers were responsible for the torture and ultimately the death of Suman Behera. That is a matter which shall have to be decided by the competent court. I respectfully agree with the directions given to the State by Brother Verma, J. in this behalf.

32. On basis of the above conclusion, we have now to examine whether to seek the right of redressal under Article 32 of the Constitution, which is without prejudice to any other action with respect to the same matter which way be lawfully available, extends merely to a declaration that there has been contravention and infringement of the guaranteed fundamental rights and rest content at that by relegating the party to seek relief through civil and criminal proceedings or can it go further and grant redress also by the only practicable form of redress by awarding monetary damages for the infraction of the right to life.

33. It is axiomatic that convicts, prisoners or under- trials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of the State, to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law while the citizen is in its custody. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, under trials or other prisoners in custody, except according to procedure established by law. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions. The wrongdoer is accountable and the State is responsible if the person in custody of the police is deprived of his life except according to the procedure established by law. I agree with Brother Verma, J. that the defence of "sovereign immunity" in such cases is not available to the State and in fairness to Mr. Altaf Ahmed it may be recorded that he raised no such defence either.

34. Adverting to the grant of relief to the heirs of a victim of custodial death for the infraction or invasion of his rights guaranteed under Article 21 of the Constitution of India, it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortious act of the State as that remedy in private law indeed is available to the aggrieved party. The citizen complaining of the infringement of the indefeasible right under Article 21 of the Constitution cannot be told that for the established violation of the fundamental right to life, he cannot get any relief under the public law by the courts exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writs and the courts have, therefore, to evolve 'new tools' to give relief in public law by moulding it according to the situation with a view to preserve and protect the Rule of Law. While concluding his first Hamlyn Lecture in 1949 under the title "Freedom under the Law" Lord Denning in his own style warned:

No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do: and will not do things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power is not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up to date machinery, by declarations, injunctions and actions for negligence.... This is not the task for Parliament...the courts must do this. Of all the great tasks that lie ahead this is the greatest. Properly exercised the new powers of the executive lead to the welfare state; but abused they lead to a totalitarian state. None such must ever be allowed in this Country.

35. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much as protector and guarantor of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations.

36. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights.

Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exempellary damages' awarded against the wrong doer for the breach of its public law duty

and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.

37. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings.

The State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law - through appropriate proceedings. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case, is possible. The decisions of this Court in the line of cases starting with Rudul Sah v. State of Bihar and Anr. MANU/SC/0380/1983 : 1983CriLJ1644 granted monetary relief to the victims for deprivation of their fundamental rights in proceedings through petitions filed under Article 32 or 226 of the Constitution of India, notwithstanding the rights available under the civil law to the aggrieved party where the courts found that grant of such relief was warranted. It is a sound policy to punish the wrongdoer and it is in that spirit that the Courts have moulded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the courts take into account not only the interest of the applicant and the respondent but also the interests of the

public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental rights of a citizen under Article 21 is concerned. Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles. It may be necessary to identify the situations to which separate proceedings and principles apply and the courts have to act firmly but with certain amount of circumspection and self restraint, lest proceedings under Article 32 or 226 are misused as a disguised substitute for civil action in private law. Some of those situations have been identified by this Court in the cases referred to by Brother Verma, J.

38. In the facts of the present case on the findings already recorded, the mode of redress which commends appropriate is to make an order of monetary amend in favour of the petitioner for the custodial death of her son by ordering payment of compensation by way of exemplary damages. For the reasons recorded by Brother Verma, J., I agree that the State of Orissa should pay a sum of Rs. 1,50,000 to the petitioner and a sum of Rs. 10,000 by way of costs to the Supreme Court Legal Aid Committee Board. I concur with the view expressed by Brother Verma, J. and the directions given by him in the judgment in all respects.

MANU/SC/0643/1997

Back to Section 73 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal Nos. 157 - 159 of 1997

Decided On: 07.05.1997

State through C.B.I. Vs. Dawood Ibrahim Kaskar and Ors.

Hon'ble Judges/Coram:

M.K. Mukherjee, G.T. Nanavati and B.N. Kirpal, JJ.

ORDER

M.K. Mukherjee, J.

1. The principal question that is required to be answered in these appeals is when and under what circumstances a Court can invoke the provisions of Section 73 of the CrPC, 1973 ('Code' for short). The question arises in this way.

2. On March 12, 1993 a series of bomb explosions took place in and around the city of Bombay which resulted in the death of 237 persons, injuries to 713 persons and damage to properties worth Rs, 27 crores (approximately). Over the explosions 27 criminal cases were registered and on completion of investigation a composite charge- sheet was forwarded to the Designated Court, Greater Bombay on November 4, 1993 against 198 accused persons, showing 45 of them absconders, for commission of various offences punishable under the Indian Penal Code, the Terrorist and Disruptive Activities (Prevention) Act, 1987 ('TADA' for short), Arms Act, 1959, Explosives Substances Act, 1908 and other Acts. On that charge- sheet the Designated Court took cognizance and the case registered thereon was numbered as B.B.C. (Bomb Blast Case) No. 1 of 1993.

3. A few days thereafter - on November 11, 1993 to be precise - the Government of India, with the consent of the Government of Maharashtra, issued a notification entrusting further investigation in the above cases to Delhi Special Police Establishment (CBI) under the provisions of Section 5 of the Delhi Special Police Establishment Act, 1946. Pursuant thereto CBI registered a case being No. R.C. 1 (5)/93/S.T.F. Bombay on November 19, 1993 and took up further investigation with permission of the Designated Court.

4. In course of such investigation CBI apprehended Mohd. Salim Mira Moiuddin Shaikh @ Salim Kutta, one of the absconders mentioned in the charge- sheet, on July 24, 1995. He made a

confessional statement before Shri S.K. Saikia, Deputy Inspector General of Police, CID, Ahmedabad, which was recorded by him on August 18 and 19, 1995 under Section 15 of TADA. In that confession he disclosed that the respondent Nos. 2 to 7 herein (hereinafter referred to as the 'respondents') had taken active part in the criminal conspiracy which was the subject matter of B.B.C. No. 1 of 1993. Thereafter on May 22, 1996, the CBI moved an application before the Designated Court (Misc. Application No. 201 of 1996) wherein it stated that following the disclosure of the involvement of the respondents in the offences in question, raids had been conducted at their known hideouts to arrest them but none could be apprehended in spite of best efforts as they were deliberately evading their arrest to escape the clutches of law and, accordingly, prayed for issuance of non- bailable warrants of arrest against them to initiate further proceedings in the matter to apprehend them and/or to take further action to declare them as proclaimed offenders. Two other applications (Misc. Application Nos. 210 and 211 of 1996) were thereafter moved on June 3, 1996 for publication of written proclamations under Section 8(3)(a) of TADA as also for issuance of open dated non- bailable warrants of arrest so that 'Red Corner Notices' might be issued against them. According to CBI such notices are required to be got issued by INTERPOL to seek police assistance in a foreign country to locate and apprehend fugitives.

5. When the three applications came up for hearing a learned Advocate who was appearing for some of the persons arraigned in B.B.C. No. 1 of 1993 submitted before the Designated Court that they were entitled to copies of the applications and a right of hearing on their merits, in the matter. The Designated Court accepted his submissions; and on receipt of the copies of the application the learned Advocate filed a rejoinder thereto. After hearing the parties the Designated Court, by its order dated August 1, 1996, rejected the applications. The above order is under challenge in these appeals preferred at the instance of CBI.

6. From the impugned order we find that before the Designated Court it was submitted on behalf of CBI that since it was making further investigation into the offences in respect of which chargesheet had earlier been submitted and since the presence of the respondents, who were absconding, was absolutely necessary for ascertainment of their roles, if any, in commission of the offences, it was felt necessary to file the applications. It was further submitted that only after warrants and/or proclamations as prayed for were issued, that it (CBI) would be able to take further coercive measures to compel them to appear before the Investigating Agency for the purpose of intended further investigation. According to CBI under Section 73 of the Code and Section 8(3)(a) of TADA the Designated Court was fully empowered to issue warrants of arrest and proclamations. In rejecting the above contentions the Designated Court held that after cognizance was taken in respect of an offence process could be issued to the persons accused thereof only to compel them to face the trial but no such process could be issued by the Court in aid of investigation under Section 73 of the Code. According to the Designated Court, though under the Code further investigation was not barred there was no provision therein which entitled the Investigating Agency to seek for and obtain aid from the Court for the same. Since the above findings were recorded by the Designated Court relying solely upon the judgment of the Bombay High Court in Mohammad Yasin Mansuri v. State of Maharashtra MANU/MH/0130/1994, it will be necessary to refer to the same in some details. In that case investigation into an offence of murder and other related offences was taken up initially by the Officer- in- Charge of Byculla Police Station and thereafter by a Deputy Commissioner of Police

(DCP) of C.I.D. During the investigation the Designated Court, on the prayer of the DCP, issued non- bailable warrants for apprehension of some of the accused involved in those offences. Thereafter a charge- sheet came to be filed against several accused, some of whom were before the Court and some others including Mansuri (the petitioner before the High Court) were shown as absconding. On the very day the charge- sheet was filed Designated Court took cognizance of the offences mentioned therein. Few months later Mansuri came to be arrested by the CBI, Delhi in connection with some other offence. On receipt of that information the DCP filed an application before the Designated Court for warrants of arrest and production of Mansuri before it. The prayer was allowed and in due course Mansuri was brought to Bombay and handed over to DCP. On the following day Mansuri was produced before the Designated Court; and on such production the prosecution prayed for remand of Mansuri to police custody. The prayer was allowed and the Designated Court remanded him to police custody, but kept the order in abeyance for a few days to enable Mansuri to challenge the same in a superior court. Assailing the above order of the Designated Court, Mansuri moved the Bombay High Court. Before the High Court it was submitted on behalf of Mansuri that once investigation into an offence was complete and a charge- sheet was filed, the provisions of Section 309 of the Code came into operation and sub- section (2) of the said Section left no discretion to a Court. The only course open to the Court then was to remand the accused to judicial custody. It was further submitted that whereas Section 167 conferred a discretion upon the Court of authorising detention of an accused either in judicial custody or police custody such a discretion was completely absent in Section 309 of the Code. Accordingly, it was submitted that the order passed by the Designated Court granting Mansuri to Police custody was without jurisdiction and liable to be set aside. In accepting the above contention and quashing the impugned order the High Court firstly observed :

It would, therefore, follow that the warrants which were issued by the Designated Court for production of the petitioner could not have been in aid of investigation but could only have been by way of a process issued under Section 204 of the CrPC, Issue of warrants after cognizance of an offence is taken would be a process contemplated under Section 204(1)(b) of the Code, i.e. it would be a process to face trial. Indeed, we do not find any provision contained in the code for issue of warrants of arrest and custody of accused for the purpose of, or in aid of, investigation. The process contemplated is a process to face trial.

(emphasis supplied)

7. The High Court further observed :

We are conscious that the view we are taking is likely, in certain cases such as the present one, to hamper investigation. However, this is not a matter for us. We have construed the provisions of the Code and have found that no power is conferred for providing for police custody after cognizance of an offence is taken.

(emphasis supplied)

8. In view of the provisions of Chapter XII and those of Section 309(2) of the Code we are constrained to say that the above quoted observations have been made too sweepingly. Chapter XII relates to information to the police and their powers to investigate. Under Section 154 thereof whenever an Officer- in- Charge of a police station receives an information relating to the commission of a cognizable offence he is required to reduce the same in writing and enter the substance thereof in a prescribed book. Section 156 Invests the Officer- in- charge of a police station with the power to investigate into cognizable offences without the order of a Magistrate and Section 157 lays down the procedure for such investigation. In respect of an information given of the commission of a non- cognizable offence, the Officer- in- Charge is required under Section 155(1) to enter the substance thereof in the book so prescribed but he has no power to investigate into the same without an order of the competent Magistrate. Armed with such an order the Officer- in- Charge can however exercise all the powers of investigation he has in respect of a cognizable offence except that he cannot arrest without a warrant. The manner in which a person arrested during investigation has to be dealt with by the Investigating Agency, and by the Magistrate on his production before him, is provided is Section 167 of the Code. The said Section contemplates that when the investigation cannot be completed within 24 hours fixed by Section 57 and there are grounds to believe that the charge leveled against the person arrested is well founded it is obligatory on the part of the Investigation Officer to produce the accused before the nearest Magistrate. On such production the Magistrate may authorise the detention of the accused initially for a term not exceeding 15 days either in police custody, or in judicial custody. On expiry of the said period of 15 days the Magistrate may also authorise his further detention otherwise than in police custody if he is satisfied that adequate grounds exist for such detention. However, the total period of detention during investigation cannot be more than 90 days or 60 days, depending upon the nature of offences mentioned in the said Section. Under Sub- section (i) of Section 173 the Officer- in- Charge is to complete the investigation without unnecessary delay and as soon as it is completed to forward, under Sub- section (2) thereof, to the competent Magistrate a report in the form prescribed setting forth the names of the parties, the nature of the information and the names of the persons who appears to be acquainted with the circumstances of the case. Sub- Section (8) entitles the Officer- in- Charge to make further investigation and it reads as under :

Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub- section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed, and the provisions of sub- section (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub- section (2).

9. In H.N Rishbud v. State of Delhi MANU/SC/0049/1954 : 1955CriLJ526 , this Court dealt with the definition of 'investigation' under the CrPC, 1898 (hereinafter referred to as the 'old Code'), which is same under the new Code and after analysing the provisions of Chapter XIV of that Code (which corresponds to Chapter XII of the Code) stated :

Thus under the Code investigation consists generally of the following steps : (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge- sheet under Section 173.

10. Though under the old Code there was no express provision - like sub- section (8) of Section 173 of the Code - statutorily empowering the police to further investigate into an offence in respect of which a charge- sheet has already been filed and cognizance taken under Section 190(1)(b), such a power was recognised by this Court in Ram Lal Narang v. State MANU/SC/0216/1979 : 1979CriLJ1346 . In exemplifying the situations which may prevail upon the police to take up further investigation and the procedure the Court may have to follow on receipt of the supplemental report of such investigation, this Court observed :

It is easy to visualise a case where fresh material may come to light which would implicate persons not previously accused or absolve persons already accused. When it comes to the notice of the investigating agency that a person already accused of an offence has a good alibi, is it not the duty of that agency to investigate the genuineness of the plea of alibi and submit a report to the Magistrate? After all the investigating agency has greater resources at its command than a private individual. Similarly, where the involvement of persons who are not already accused comes to the notice of the investigating agency, the investigating agency cannot keep quite and refuse to investigate the fresh information. It is their duty to investigate and submit a report to the Magistrate upon the involvement of the other persons. In either case, it is for the Magistrate to decide upon his future course of action depending upon the stage at which the case is before him. If he has already taken cognizance of the offence, but has not proceeded with the enquiry of trial, he may direct the issue of process to persons freshly discovered to be involved and deal with all the accused, in a single enquiry or trial. If the case of which he has previously taken cognizance has already proceeded to some extent, he may take fresh cognizance of the offence disclosed against the newly involved accused and proceed with the case as a separate case. What action a Magistrate is to take in accordance with the provisions of the CrPC in such situations is a matter best left to the discretion of the Magistrate.

11. In keeping with the provisions of Section 173(8) and the above quoted observations, it has now to be seen whether Section 309(2) of the Code stands in the way of a Court, which has taken cognizance of an offence, to authorise detention of a person, who is subsequently brought before it by the police under arrest during further investigation, in police custody in exercise of its power under Section 167 of the Code. Section 309 relates to the power of the Court to postpone the commencement of or adjournment of any inquiry or trial and sub- section (2) thereof reads as follows :

If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it considers reasonable, and may be a warrant remand the accused if in custody.

Provided that no Magistrate shall remand an accused person to custody under this Section for a term exceeding fifteen days at a time;

x x x

12. There cannot be any manner of doubt that the remand and the custody referred to in the first proviso to the above sub- section are different from detention in custody under Section 167. While remand under the former relates to a stage after cognizance and can only be to judicial custody, detention under the latter relates to the stage of investigation and can initially be either in police custody or judicial custody. Since, however, even after cognizance is taken of an offence the police has a power to investigate into it further, which can be exercised only in accordance with Chapter XII, we see no reason whatsoever why the provisions of Section 167 thereof would not apply to a person who comes to be later arrested by the police in course of such investigation. If Section 309(2) is to be interpreted - as has been interpreted by the Bombay High Court in Mansuri (supra) - to mean that after the Court takes cognizance of an offence it cannot exercise its power of detention in police custody under Section 167 of the Code, the Investigating Agency would be deprived of an opportunity to interrogate a person arrested during further investigation, even if it can on production of sufficient materials, convince the Court that his detention in its (police) custody was essential for that purpose. We are therefore of the opinion that the words "accused if in custody" appearing in Section 309(2) refer and relate to an accused who was before the Court when cognizance was taken or when enquiry or trial was being held in respect of him and not to an accused who is subsequently arrested in course of further investigation. So far as the accused in the first category is concerned he can be remanded to judicial custody only in view of Section 309(2), but he who comes under the second category will be governed by Section 167 so long as further investigation continues. That necessarily means that in respect of the latter the Court which had taken cognizance of the offence may exercise its power to detain him in police custody, subject to the fulfilment of the requirements and the limitation of Section 167.

13. The moot question that now requires to be answered is whether a Court can issue a warrant to apprehend a person during investigation for his production before police in aid of the Investigating Agency. While Mr. Ashok Desai, the learned Attorney General who appeared on behalf of CBI, submitted that Section 73 coupled with Section 167 of the Code bestowed upon the Court such power, Mr. Kapil Sibal, who appeared as amicus curie (the respondents did not appear inspite of publication of notice in newspaper) submitted that Court had no such power. To appreciate the steps of reasoning of the learned counsel for their respective stands it will be necessary to refer to the relevant provisions of the Code and TADA relating to issuance of processes.

14. Chapter VI of the Code, which is captioned as 'processes to compel appearance' consists of four parts : part A relates to Summons; part B to warrant of arrest; part C to proclamation and attachment and part D to other rules regarding processes. Part B, with which we are primarily concerned in these appeals, has in its fold Section 70 to 81. Section 70 speaks of the form in which the warrant to arrest a person is to be issued by the Court and of its durational validity. Sections 71 empowers the Court issuing the warrant to direct the officer who is to execute the warrant, to release that person on terms and conditions as provided therein. Section 72 provides that a warrant shall ordinarily be directed to one or more police officers but if its immediate execution is necessary and no police officer is immediately available it may be directed to any other person for execution. Section 73, which is required to be interpreted in these appeals, reads as under :

73(1) The Chief Judicial Magistrate or a Magistrate of the first class may direct a warrant to any person within his local jurisdiction for the arrest of any escaped convict, proclaimed offender or of any person who is accused of a non- bailable offence and is evading arrest.

(2) Such person shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is in, or enters on, any land on other property under his charge.

15. Section 76 requires the police officer or other person, who executes the warrant to bring the person arrested before the Court (unless he is released in terms of Section 71), within twenty four hours.

16. Section 82, appearing in part C empowers the Court to issue proclamation; and so far as it is relevant for our present purposes, reads as under :

82(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(emphasis supplied)

x x x

(2) x x x

(3) x x x

After issuing a proclamation in terms of the above provision, the Court may also order attachment of the property of the proclaimed person under Section 83; and even deprive him of such property if he does not appear within the time prescribed under Section 85.

17. Chapter XVI relates to commencement of proceedings before Magistrates and Section 204 appearing therein enables a Magistrate, who takes cognizance of an offence, to issue process (summons/warrant) against the accused if he finds sufficient grounds to proceed against him.

18. Coming now to the relevant provisions of TADA we may first refer to sub- section (3) of Section 8 relating to proclamation for the attachment of the property of a person accused of an offence punishable under TADA. Clause (a) of the above sub- section lays down that if upon a report in writing made by a police officer or an officer referred to in sub- section (1) of Section 7, any Designated Court has reason to believe that any person, who has committed an offence punishable under the Act or any rule made thereunder, has absconded or is concealing himself so that he may not be apprehended, such Court may, notwithstanding anything contained in Section 82 of the Code, publish a written proclamation requiring him to appear at a specified place and at a specified time not less than fifteen days but not more than thirty days from the date of publication of such proclamation; and sub- section (3)(b) thereof entitles the Court issuing the proclamation to order attachment of property belonging to the proclaimed offender and then proceed in accordance with Section 83 to 85 of the Code. For all intents and purposes, therefore, Sub- section 8(3) of TADA seeks to achieve the same object as part C of Chapter VI does, namely to compel appearance of the accused. The other Section to which reference need be made is Section 20 which makes the provisions of the Code applicable to the proceedings under TADA, subject to the modification envisaged therein.

19. The contention of Mr. Desai was that though in exercise of its power under Section 41 of the Code a police officer may without an order from a Magistrate and without a warrant arrest a person who is concerned in any cognizable offence or against whom a reasonable complaint has been made, or a credible information has been received or a reasonable suspicion exists, of his having been so concerned, under the Code the police has no power of its own to compel his appearance if he evades the arrest. It is in that context, Mr. Desai argued, that the Court has been given the power under Section 73 to issue warrant of arrest for apprehension of such a person; and, thereafter, if need be, to issue proclamation and pass order for attachment of his properties. In joining issue, Mr. Sibal urged that the scheme of the Code is that the police has complete control of the investigation and is not aided by any judicial authority. Once the investigation culminates in the police report under Section 173(2) that the Court steps in by taking cognizance thereupon and issuing summons or warrant under Section 204 against the person arraigned. According to

Mr. Sibal, in the scheme of the Code it is unthinkable that the police, while investigating under Chapter XII is entitled to seek the help of a Magistrate for the purposes of issuance of a warrant of arrest in aid of investigation. As regards Section 73, Mr. Sibal's argument was that in the scheme of part B of Chapter VI that section only lays down a procedure to enable a Court to execute a warrant already issued under Section 204 but does not confer any right to issue a warrant, much less during investigation.

20. At this stage it is pertinent to mention that under the old Code the corresponding provision was Section 78; and while recommending its amendment the Law Commission in its 41st report stated, inter alia :

6.8 Section 78 at present confers a power on the District Magistrate or Sub- Divisional Magistrate to issue a special type of "warrant to a land- holder, farmer or manager of land within the district of sub- division for the arrest of an escaped convict, proclaimed offender or person who has been accused of a non- bailable offence and who has eluded pursuit". Although the power is infrequently exercised, there appears to be no objection to conferring it on all Magistrates of the first class and all....

(emphasis supplied)

21. Apart from the above observations of the Law Commission, from a bare perusal of the Section (quoted earlier) it is manifest that it confers a power upon the class of Magistrates mentioned therein to issue warrant for arrest of three classes of person, namely, (i) escaped convict, (ii) a proclaimed offender and (iii) a person who is accused of a non- bailable offence and is evading arrest. If the contention of Mr. Sibal that Section 204 of the Code is the sole repository of the Magistrate's power to issue warrant and the various Section of part 'B' of Chapter VI including Section 73 only lay down the mode and manner of execution of such warrant a Magistrate referred to under Section 73 could not - and would not - have been empowered to issue warrant of arrest for apprehension of an escaped convict, for such a person can not come within the purview of Section 204 as it relates to the initiation of the proceeding and not to a stage after a person has been convicted on conclusion thereof.

22. That Section 73 confers a power upon a Magistrate to issue a warrant and that it can be exercised by him during investigation also, can be best understood with reference to Section 155 of the Code. As already noticed under this Section a police officer can investigate into a non cognizable case with the order of a Magistrate and may exercise the same powers in respect of the investigation which he may exercise in a cognizable case, except that he cannot arrest without warrant. If with the order of a Magistrate the police starts investigation into a non- cognizable and non- bailable offence, (like Sections 466 or 467 (Part I) of the Indian Penal Code) and if during investigation the Investigating Officer intends to arrest the person accused of the offence he has to seek for and obtain a warrant of arrest from the Magistrate. If the accused evade the arrest, the

only course left open to the Investigating Officer to ensure his presence would be to ask the Magistrate to invoke his powers under Section 73 and thereafter those relating to proclamation and attachment. In such an eventuality, the Magistrate can legitimately exercise his powers under Section 73, for the person to be apprehended is 'accused of a non- bailable offence and is evading arrest.'

23. Another factor which clearly indicates that Section 73 of the Code gives a power to the Magistrate to issue warrant of arrest and that too during investigation is evident from the provisions of part 'C of Chapter VI of the Code, which we have earlier adverted to. Needless to say the provisions of proclamation and attachment as envisaged therein is to compel the appearance of a person who is evading arrest. Now, the power of issuing a proclamation under Section 82 (quoted earlier) can be exercised by a Court only in respect of a person 'against whom a warrant has been issued by it'. In other words, unless the Court issues a warrant the provisions of Section 82, and the other Sections that follow in that part, cannot be invoked in a situation where inspite of its best efforts the police cannot arrest a person under Section 41. Resultantly, if it has to take the coercive measures for the apprehension of such a person it has to approach the Court to issue warrant of arrest under Section 73; and if need be to invoke the provisions of part 'C' of Chapter VI. [(Section 8(3) in case the person is accused of an offence under TADA)].

24. Lastly, we may refer to Section 90, which appears in part 'D' of Chapter VI of the Code and expressly states that the provisions contained in the Chapter relating to a summon and warrant, and their issue, service and execution shall, so far as may be, apply to every summons and every warrants of arrest issued under the Code. Therefore, when a Court issues a warrant of arrest, say under Section 155 of the Code, any steps that it may have to subsequently take relating to that warrant of arrest can only be under Chapter VI.

25. Now that we have found that Section 73 of the Code is of general application and that in course of the investigation a Court can issue a warrant in exercise of power thereunder to apprehend, inter alia, a person who is accused of a non- bailable offence and is evading arrest, we need answer the related question as to whether such issuance of warrant can be for his production before the police in aid of investigation. It cannot be gainsaid that a Magistrate plays, not infrequently, a role during investigation, in that, on the prayer of the Investigating Agency he holds a test identification parade, records the confession of an accused or the statement of a witness, or takes or witnesses the taking of specimen handwritings etc. However, in performing such or similar functions the Magistrate does not exercise judicial discretion like while dealing with an accused of a non- bailable offence who is produced before him pursuant to a warrant of arrest issued under Section 73. On such production, the Court may either release him on bail under Section 439 or authorise his detention in custody (either police or judicial) under Section 167 of the Code. Whether the Magistrate, on being moved by the Investigating Agency, will entertain its prayer for police custody will be at his sole discretion which has to be judicially exercised in accordance with Section 167(3) of the Code. Since warrant is and can be issued for appearance before the Court only and not before the police and since authorisation for detention in police custody is neither to be given as a matter of course nor on the mere asking of the police,

but only after exercise of judicial discretion based on materials placed before him, Mr. Desai was not absolutely right in his submission that warrant of arrest under Section 73 of the Code could be issued by the Courts solely for the production of the accused before the police in aid of investigation.

26. On the conclusions as above we allow these appeals, set aside the impugned order and direct the Designated Court to dispose of the three miscellaneous applications filed by C.B.I. in accordance with law and in the light of the observations made herein before.

27. Before parting with this judgment we place on record our deep appreciation for the valuable assistance rendered by Mr. Desai and Mr. Sibal in deciding the issues involved in these appeals.

MANU/SC/0114/1973

IN THE SUPREME COURT OF INDIA

Writ Petition No. 557 of 1972

Decided On: 13.02.1973

Indradeo Mahato Vs. The State of West Bengal

Back to Section 87 of Code of Criminal Procedure, 1973

Back to Section 88 of Code of Criminal Procedure, 1973

Hon'ble Judges/Coram:

A. Alagiriswami, C.A. Vaidialingam and I.D. Dua, JJ.

JUDGMENT

I.D. Dua, J.

1. The petitioner in this case is being detained in Dum Dum Central Jail, pursuant to an order of detention dated August 18, 1971 made by the District Magistrate, Howrah in exercise of the powers conferred on him by Section 3(1) and (2) of the Maintenance of Internal Security ACT, 26 of 1971 (hereinafter called the Act). The District Magistrate duly reported to the State Government the fact of having made the order together with the grounds of detention and all other particulars having a bearing on the matter. The State Government considered this report and approved the detention order on August 26, 1971 when it also submitted to the Central Government the necessary report as required by Section 3(4) of the Act. The petitioner could, however, be arrested only on June 16, 1972 as, according to the return "soon after the said order the detenu- petitioner was found to be absconding". The grounds on which the detention was ordered read:

1. On 20- 4- 71 at 02.00 hrs. you and your associates being armed with daggers, iron rods, bombs etc., trespassed into Shalimar Yard by scaling over the boundary wall and started looting railway materials stacked in front of D. S. P. Store, Shalimar. When resisted by the on duty R.P.F. Rakshak, you and your associates attacked him by throwing ballasts and hurling bombs at him with a view to scare him away and thus escaped with the looted railway property by terrorising him. Thus you acted in a manner prejudicial to the maintenance of public order.

2. On 21- 6- 71 at 03.30 hrs. you and your associates being armed with daggers, bombs etc., trespassed into Shalimar yard and committed theft of 7 bundles of Tarpauline valued Rupees 700/- from delivery shed. When resisted by the on duty R.P.F. Rakshaks, you and your associates attacked them and hurled bombs at them with a view to scare them away and escaped with the stolen property by terrorising them. As a result of your action panic prevailed in the area which was prejudicial to the maintenance of public order.

3. On 22- 7- 71 at 02.30 hrs. you and your associates being armed with iron rods, daggers, bombs etc., and rushed towards the loaded wagons stabled on Shalimar- Ramkrishnapore side line with a view to loot commodities by breaking open wagons. When resisted by the on duty R. "P. F. Rakshaks, you and your associates attacked them by throwing ballasts and hurling bombs with a view to scare them away by terrorising them. As a result of your action panic prevailed in the area which was prejudicial to the maintenance of public order.

The order of detention as also the grounds of detention with a translation thereof in Indian language, were duly served on the petitioner on the day of his arrest. On June 29, 1972 the State Government received a representation from the petitioner which was considered and rejected on July 3, 1972. On July 5, 1972 the State Government placed the petitioner's case before the Advisory Board as required by Section 10 of the Act. The Board submitted its report on August 17, 1972 expressing its opinion that there was sufficient cause for the petitioner's detention. On August 26, 1972 the State Government confirmed the detention order as required by Section 12(1) of the Act and duly communicated its decision to the petitioner.

2. Shri V. C. Parashar, learned Counsel appearing as amicus curiae to assist this Court, submitted in the first instance that the gap of about 10 months between the order of detention and the arrest suggests that there was no real and genuine apprehension that the petitioner was likely to act in a manner prejudicial to the maintenance of public order. According to the submission, had the matter been grave and serious enough, the State would have taken adequate steps under Sections 87 and 88, Cr.P.C. for the purpose of securing the petitioner's early arrest. On this reasoning it was contended that the District Magistrate was in reality not satisfied that it was necessary to detain the petitioner with a view to preventing him from acting in any manner prejudicial to the maintenance of public order and the case, therefore, does not fall within the purview of Section 3 of the Act. The petitioner's detention must accordingly be held to be contrary to law. We are unable to accept this contention.

3. Section 87, Cr.P.C. which occurs in Part C of Chapter VI of that Code merely empowers a court issuing a warrant of arrest to publish a written proclamation requiring the person concerned to appear at a specified place and time as required by that section, if the court has reason to believe that the said person has absconded or is concealing himself to evade execution of the warrant. Section 88 empowers the said court to attach the property belonging to the proclaimed person. In the case in hand no warrant was issued by any court as indeed Section 3 of the Act does not contemplate the authorities empowered to make orders of detention to function as courts. In terms, therefore, these sections may not be attracted. But even assuming it is permissible to have resort to such procedure the mere omission to do so could not, in our opinion, render the order of detention either illegal or mala fide as the suggestion connoted. The petitioner's detention cannot, therefore, be considered illegal on this ground.

4. The next point raised by Shri Parashar questioned the relevance of ground No. 1. According to the counsel this ground only suggests commission of an ordinary offence of theft, which could

legitimately form the subject of a regular criminal trial in the ordinary criminal courts. He contended that it does not raise a problem of public order but only an ordinary law and order problem. Reliance for this submission was placed on the decision of this Court in Kishori Mohan Bera v. State of W.B. MANU/SC/0408/1972 : AIR1972SC1749 . This submission is equally unacceptable. It may be recalled that according to the first ground at 2 O'clock in the midnight of April 20, 1971 the petitioner, along with his associates being armed with daggers, iron rods, bombs etc., had trespassed into Shalimar Yard by scaling over the boundary wall and had started looting railway materials stacked in front of D. S. K. Store, Shalimar. When they were resisted by the Railway Protection Force Rakshak on duty the petitioner and his associates attacked him by throwing ballast and hurling bombs at him with a view to scare him away and terrorise him and thus escaped with the plundered or looted railway property This ground, even though when taken in isolation, would clearly bring the petitioner's case within the ambit of Section 3 of the Act, has, in our opinion, to be read and considered along with the other two grounds, because all of them clearly appear to us to be founded on acts committed in the course of an organised plan to plunder or loot public property by terrorising and scaring away the Rakshaks of the Railway Protection Force. Acts of this nature which partake of the character of robbery by using deadly weapons like bombs against the R.P. Force discharging the duty of protecting the railway property have a far deeper impact on the peaceful pursuit of the normal avocations of life of the community than a simple case of stealing private or even public property. It is, in our opinion, misleading to equate such acts of robbery with the common cases of ordinary theft for the purpose of determining the applicability of Section 3 of the Act. Difference between an ordinary law and order problem and that of public order has been explained by this Court on several occasions and the legal position is by now fairly crystallised. In Dr. Ram Manohar Lohia v. State of Bihar MANU/SC/0054/1965 : 1966CriLJ608 this Court dealt with the question at length and illustrated the difference by fictionally drawing three concentric circles, the largest representing law and order, the next representing public order and the innermost representing security of State. Every violation or breach of law would no doubt necessarily affect order and the frequency of such infraction may pose a problem of law and order, but it need not necessarily affect public order just as every act affecting public order may ,not automatically affect security of the State. In Pushkar v. State of W.B. MANU/SC/0027/1968 : 1970CriLJ852 the difference between the concept of "public order" and "law and order" was stated to be similar to the distinction between "public" and "private" crimes in the realm of jurisprudence. The real test seems to us to depend on the degree and extent of the disturbance an act causes to the normal balanced peaceful tempo of civil life of the community and not on the mere definition of crime given to such acts in the law of crimes. Similar acts in different situations may give rise to different problems: in one set of circumstances an act may pose only a law and order problem whereas in another it may generate deep and widespread vibrations having serious enough impact on the civilised peace- abiding society so as to affect public order. One has to weigh the degree and sweep of the harm the act in question is capable of in its context Every case has, therefore, to be considered on its own facts and circumstances. In the present case the acts cannot but shake the public confidence in the efficacy of the Railway Protection Force in effectively safeguarding and protecting the railway property. This may also tend to dissuade people from transporting their goods through the railway carrier which in an orderly civilised society is as a rule considered quite safe. In addition, such acts may also create a feeling of panic amongst the people resorting to the railway yards for loading and unloading wagons. It is futile to contend that the acts in question in their context are not grave and serious enough in their potentiality for disturbing the even tempo of the life of the community. In somewhat similar cases this Court has regarded similar acts as justifying the

orders of detention. See Sk. Kader v. State of W. B. MANU/SC/0221/1972 : [1973]1SCR488 , Netaipada Saha v. State of W.B. MANU/SC/0192/1972 : 1972CriLJ1000 and Kishori Mohan Bera MANU/SC/0408/1972 : AIR1972SC1749 (supra)).

5. The fact that the petitioner could be tried for the commission of offences disclosed in these grounds is also immaterial because his liability to be tried in a court of law cannot debar the authority concerned from detaining him if his acts bring his case within the purview of Section 3 of the Act. In Borjaban Gorey v. State of W.B. MANU/SC/0096/1972 : [1973]1SCR751 it was ruled that the liability of the detenu to be tried in courts of law for being punished for the commission of an offence does not impinge upon the operation of the Act. The respective fields of operation of the law providing for trial and punishment for the commission of offences and of the Act are not co- extensive. One is meant to punish for past offences while the other is designed to prevent the person concerned from future mischief irrespective of his liability to be punished in a court of law on the basis of the same acts. Their operation is not alternative, the detenu's liability to be tried not invalidating his detention. This challenge is thus equally devoid of merit.

6. The petition accordingly fails and is dismissed.

MANU/SC/0249/1979

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 42 of 1973

Decided On: 24.04.1979

Somappa Vamanappa Madar and Ors. Vs. State of Mysore

Back to Section 87 of Code of Criminal Procedure, 1973

Back to Section 88 of Code of Criminal Procedure, 1973

Hon'ble Judges/Coram:

P.S. Kailasam and R.S. Sarkaria, JJ.

JUDGMENT

P.S. Kailasam, J.

1. This appeal is preferred by accused Nos. 1 and 2 in the trial court by certificate granted by the Mysore High Court against its judgment reversing the order of acquittal passed by the Sessions Judge, Bijapur and convicting them of an offence under Section 302 read with Section 34 of the Indian Penal Code and sentencing them to imprisonment for life.

2. The two appellants and Ningappa Hanmantappa Polici, the third accused, were charged for the offence of murder of one Basangouda Gurappagouda Biradar alias Patil said to have been committed by them at about 7- 45 p.m. on 29th May, 1970 at Bijapur town by cutting him with axe and sickle.

3. The trial court found that the prosecution had failed to establish the guilt of the accused beyond reasonable doubt and acquitted all the three accused of the offences with which they were charged. The State of Mysore preferred an appeal against the judgment of acquittal passed by the Sessions Judge to the High Court of Mysore. By its judgment dated 20th October, 1972 in Criminal Appeal No. 219 of 1971 the High Court allowed the appeal of the State so far as the appellants are concerned, found them guilty of an offence under Section 302 read with Section 34 of Indian Penal Code and sentenced each of them to rigorous imprisonment for life. It dismissed the appeal of the State so far as the third accused is concerned. Leave to appeal having been granted to the appellants by the High Court this appeal is before us.

4. The case for the prosecution may be briefly stated. One Shivappa, a resident of Ingalgeri had two daughters and extensive landed property, about 72 acres in extent. He transferred the lands to his son- in- law P.W. 17, Siddappa Dhari, who had married his first daughter Somawa, P.W. 17 undertook to transfer half the extent of land to the person who would marry the younger

daughter Sangavva, P.W. 16. Shivappa wanted to give his younger daughter in marriage to Shivappa Irappa Gureddi of Ingalgeri. Irappa Gureddi refused to marry her but he suggested that the girl may be given in marriage to his friend, the deceased Basangouda Gurappagouda Biradar alias Patil. Accordingly, P.W. 16 was married to the deceased and P.W. 17 Siddappa Dhari transferred half of the lands gifted to him by his father- in- law Shivappa. It is the case of the prosecution that Shivappa Gureddi demanded transfer of one of the lands to him by the deceased on the ground that he brought about the marriage. The deceased refused to oblige and on that account there was enmity between the deceased Basangouda Patil and Shivappa Irappa Gureddi. Shivappa Gureddi became a leader of a party to which A- 1 to A- 3 and others belonged and started threatening the deceased. Basangouda Patil left, the village afraid of the threat and started living with his wife P.W. 16 at Bijapur for about 6 years. While at Bijapur he joined the party of one Basavantaraya Nadagouda of Ingalgeri who was inimically disposed towards Shivappa Gureddi for 20 years. The father- in- law of Baswanataraya Nadagouda was murdered in 1956-57 and Shivappa Gureddi and the third accused Ningappa Polici's father Hanmanthappa Polici and others were tried for the murder and were convicted and sentenced to 4 years' rigorous imprisonment. After the conviction the deceased Basangouda Patil went back to his village Ingalgeri and started living there. After serving their term Shivappa Gareddi and others came back to the village and the trouble again started. The deceased leased his lands and again left the village and came to Bijapur with his wife and children. About 2 years prior to the incident on 12th December, 1968, Shivappa Gureddi was murdered and the deceased' Basangouda Patil and 8 others were charged for the murder. They were acquitted but the trouble did not end. The three accused and another started giving trouble to the deceased by looting his crop and burning the hay- stack. Police started proceedings against the two parties for keep- tog peace. The existence of faction and bitter enmity between the deceased on one side and A- 1 to A- 3 on the other is not seriously challenged. In fact, the trial court which acquitted the accused accepted the prosecution case and found that there was bitter enmity between the parties. The High Court has also agreed with the finding of the trial court regarding the existence of enmity.

5. Regarding the occurrence the case for the prosecution is that on the morn- tog of the day of the occurrence i.e. 29th May, 1970, when the deceased Basangouda Patil went into the Bazar at Bijapur he met A- 3 Ningappa Polici and one another person from Jammaladinni village in a tea shop. The latter went out of the tea shop looking at the deceased. A- 3 noticed the presence of the deceased. The deceased got suspicious and when he returned to his house he informed his wife P.W. 16 about the presence of the third accused. In spite of protestations by his wife in the afternoon he went out of his house towards the bus stand saying that his Mama Mallangouda of Yakkundi was expected to come from his village. When the deceased was returning back to his house at about 7- 45 p.m. by the road passing from the side of the court of the Judicial Magistrate II, the three accused started chasing him armed with axe and sickle in their hands. The deceased ran and was finally caught hold of by Somya Madar A- 1 and Shankarappa Kaddi A- 2 in front of the house of Lalseb Ukkali P.W. 15. The accused started cutting him with the axe and sickle in their hands. The third accused Ningappa (sic) was standing on the road side with a sickle in. his hand. The deceased again escaped from their (sic) and ran into the house of P.W. 15 but the first two accused chased him inside the house. Brought him out and started cutting him with weapons in their hands. The incident is claimed to have been witnessed by eye- witnesses, P.Ws. 4 to 7 and 11 to 14. The witnesses rushed towards the accused, surrounded A- 1 and A- 2 and caught hold of them with weapons in their hands. P.W. 7 Nazeer Ahmed Maniyar snatched the sickle from

the hands of A- 2 Shankarappa. P.W. 5 Sahablal snatched the axe from the hands of A- 1 Somya. A- 2 who was being held by P.W. 7 and P.W. 14 managed to escape from their grip and ran away. A- 3 also escaped Thereafter P.W. 5 Sahablal went (sic) the deceased who was lying in front of the house of P.W. 15 and questioned him in the presence of other witnesses. The deceased gave out his name and told him the names of the two assailants and stated that all of them be- longed to Ingalgeri village. Thereafter P.W. - 5 went to Khadi Gramodyoga building which is at a distance of one furlong and telephoned to the police station Gandhi Chowk about the incident. While under their custody witnesses also questioned the first accused and he told the witnesses that the person who was standing on the road was Ningappa Polici A- 3 and also gave particulars about himself and the second accused. On receipt of the telephonic message P.W. 38 the P.S.I. came to the site, found the deceased Basangouda Patil lying there with bleeding injuries on his person and had him sent to the Civil Hospital, Bijapur, in a jeep. P.W. 38 thereafter took charge of A- 1 in his custody and took him along with P.W. 5 to the police station. The weapons the axe and the sickle which had been seized from the accused by the witnesses were taken by P.W. 5 to the police station. At the police station P.W. 38 seized the two weapons from P.W. 5. The weapons were found to be stained with blood and on examination by the Chemical Examiner they were found to have been stained with human blood. P.W. 38 made a personal search of the first accused and seized his clothing which be found to be stained with blood. The seizure memo is Ex. P- 4 but due to some inept handling by the police constable the clothing seized from the accused were not sent to the Chemical Examiner. P.W. 38 immediately thereafter went to the scene at about 10.30 p.m. and recorded statements from all the eye- witnesses. In the meanwhile, the deceased who was taken in the jeep to the hospital was produced before Dr. Vasudeviah P.W. 32 at about 8 p.m. The doctor examined the deceased and found on him as many as 15 injuries. The deceased was not in a position to talk and at about 2.35 a.m. the next morning on 30th May, 1970 the deceased died.

6. The police officer proceeded with the investigation. A- 2 and A- 3 were absconding and proceedings were taken against them under Section 87 and Section 88, Criminal Procedure Code. Ultimately they surrendered before the Magistrate on 26th October, 1970. An identification parade was held in respect of A- 2 and A- 3 on 10th November, 1970. Due to the absconding of A- 2 and A- 3 the case against them was filed later and two sessions cases at the request of the prosecution were tried together. Before the trial court the accused pleaded not guilty and submitted that they were falsely implicated due to enmity and the witnesses were falsely deposing at the instance of Mallanagouda Patil, the brother- in- law of the deceased.

7. The prosecution relies on the evidence of the eye- witnesses and their speaking to the dying declaration alleged to have been made by the deceased implicating the appellants in the crime, the apprehension of the two appellants red- handed at the spot, the prompt information to the police, the production of the first accused by the witnesses before the police officer and his arrest, the recovery of the two bloodstained weapons MOs. 1 and 2 which were found to be stained with human blood, and the evidence of the Taluka Magistrate who conducted the identification parade in which the two appellants were identified by the witnesses.

8. The trial court on a scrutiny of the evidence of eye- witnesses found that the witnesses who spoke of the incident were strangers to the accused and they neither knew the deceased Basangouda Patil nor the accused before the incident. It also found that the place where the incident took place is surrounded by residential houses and that the witnesses who spoke of the occurrence had their houses in the vicinity. The trial court found that the eye- witnesses were independent witnesses and as they were living in the close proximity of the place where the incident took place they are natural witnesses to the occurrence. Having found so much in favour of the prosecution regarding the eye- witnesses, the trial court observed that the circumstances by themselves would not he sufficient to hold that the story of the incident as told by them is true. The High Court on a consideration of the evidence of the eye- witnesses came to a different conclusion and found their evidence as acceptable. It is therefore necessary for us to consider at some length the various factors taken note of by the trial Judge and the High Court and determine whether the evidence of the eye- witnesses could be accepted.

9. The trial court rejected the evidence of the eye- witnesses on several grounds. Firstly, it found there is material discrepancy about the time of the occurrence. It found that according to the evidence of P.W. 38 P.S.I. at the police station he got the telephonic message at 8- 10 p.m. from P.W. 8 that A- 1 and A- 2 had caused injuries to the deceased and that immediately he made entry in the station diary about the information received and thereafter proceeded to the scene and reached there at 8.15 p.m. After reaching the scene he sent a Yadi Ex. P- 20. at 8 p.m. along Basangouda Patil who reached the Civil Hospital and was examined by P.W. 32 Dr. Vasudeviah' at 8 p.m. The trial court noting that the doctor examined Basangouda Patil at the hospital at 8 p.m. came to the conclusion that the prosecution case that the information would have been received much earlier than 8 p.m. and that the prosecution version that the telephone message was received at 8- 10 p.m. and the police officer reached the scene a 8- 15 p.m. is not acceptable. The High Court dealing with the discrepancy in the time given regarding the receipt of the message at the police station, the visit of the police officer to the scene and the production of the injured at the hospital came to the conclusion that the time element should not be taken literally. The High Court observed that it is idle to expect that the two watches worn by P.Ws. 32 and 38 would have shown identical time and that a variation of about 10 or 15 minutes between the time of the receipt of the information at the police station and the production of the injured person before the doctor is not a sufficient ground for rejecting the testimony of the eye- witnesses. Regarding the discrepancy about the time we are inclined to agree with the view taken by the High Court. Though the report is said to have been received at the police station at 8- 10 p.m. in the Yadi Ex. P- 20 which was sent in the jeep along with the injured person the time is noted as 8 p.m. and according to the doctor the injured was received at the hospital at 8 p.m. There is certainly some discrepancy but even on the internal evidence it is obvious that the time noted at different places cannot be said to be accurate. Obviously, if the injured was sent from the place of occurrence at 8 p.m. as noted in Ex. P- 20 he would not have been at the hospital at 8 p.m. itself. Taking all the circumstances into account we agree with the High Court that the evidence of the eye- witnesses cannot be rejected on the sole ground of discrepancy in the timings noted at various places. The trial court was in error in [holding that the discrepancy in the timings has rendered false or shaky and doubtful the evidence of the witnesses and that the very foundation is removed and as the very foundation is removed, the superstructure built on such shaky foundation must also collapse. Equally unacceptable is the conclusion of the trial court that it is

easy to secure witnesses who speak about the incident and repeat it like a parrot as they have done in this case.

10. The trial court also found that though the two appellants were caught hold of red- handed by the witnesses no trace of blood was found either on the person or on the clothing of the witnesses especially on those of the 3 witnesses who have claimed to have snatched the weapons or held them. The trial court proceeded to observe that the two weapons were fully stained with blood and one could expect blood from the weapons staining the hands of at least those 3 witnesses who either snatched the weapons or held them even though no blood fell on their clothes. We do not feel that the trial judge was justified in rejecting the evidence of the eye- witnesses because of the absence of blood stains in their clothing or in their hands. It is no doubt true that several cuts with sharp- edged weapons were inflicted on the deceased and the deceased has profusely bled but there is hardly any material to come to the conclusion that during the incident the accused also were stained with blood. The weapons were no doubt bloodstained but from the circumstances it can not be stated that the clothing of the witnesses should also have been bloodstained. It may be that when the weapons were seized the hands of the witnesses might have got stained but the absence of proof of such bloodstains cannot disprove the prosecution case.

11. Before we leave this aspect of the case we must take note of the fact that the investigation in the case has been most unsatisfactory. The case for the prosecution is that a telephone book is kept at the police station. There was some attempt on the part of the prosecution to make out that only local messages were recorded in the telephone book. It was further stated that the telephone book message was entered in the general diary. When this Appeal was taken up on an earlier occasion this Court directed the State to produce the records of the police station relating to the entry made at the police station on receipt of the telephone message. When this appeal again came up before us we asked the State to produce the documents. Though sufficient time was given the Public Prosecutor informed us that the records could not be produced. One other disturbing feature in the case is that even according to the prosecution the bloodstained clothing that were seized from the first accused and which were sent through the police constable never reached the Chemical Examiner. According to the prosecution this laps- was due to the negligence of the police constable and departmental action is being taken against him. The failure of the production of the station records, and the story of the loss of bloodstained clothes make us feel that all is not well with the investigation and the affairs of the police station. It is up to the authorities to probe the matter further.

12. Added to these infirmities the learned Counsel appearing for the appellant Mr. Jhavali, pointed out that the (sic) cannot rely on Ex. P9 25 F.I.R. as the statement of P.W. 5 was recorded at the police station at shout 9 p.m. long after the investigation commenced. It is common ground that on receipt of information regarding the occurrence at about 8 p.m. P.W. 33 the Police Officer went to the scene, saw the injured, sent him to the hospital and also arrested the accused and seized his clothes long before the statement was recorded from P.W. S. The statement recorded from P W. 5 will therefore be statement recorded during investigation and no reliance can be

placed on it except as a statement recorded by the police during investigation. The learned Counsel also read to us the extracts from Ex. P- 9 and pointed out the meticulous manner in which the particulars of the accused and the deceased are given with their names, surnames, fathers' names and the names of the villages and submitted that the entire document is suspicious leading to the conclusion that the document was prepared after considerable deliberation. We agree with the learned Counsel that the statement recorded from P.W. 5 cannot be used as F.I.R. So far as his comment on the particulars given regarding the deceased and the accused is concerned we feel that as they were recorded during investigation, it is probable that the particulars were obtained when the accused who was in custody was questioned. The rejection of Ex. P- 9 as F.I.R. would not detract the testimony of the eye- witnesses which will have to be assessed on its own merits. The learned Counsel submitted that it is evident that the eye- witnesses were too anxious to exaggerate. When they speak of the dying declaration as having been given by the injured person when they saw him after the attack by the accused. According to the learned Counsel the deceased was so badly injured that he could not have been in a position to speak. He further relied on the circumstances that the police officer did not question the injured and when the injured was produced before the doctor the, doctor is very clear that he (the injured) was not in a position to speak. He also relied on the conclusion arrived at by the trial court on this aspect. The trial court observed that P.W. 32 stated that when he was brought to the dispensary his power of speech was affected. The doctor also stated that his sensory area of the brain which is at the parietal region was affected. We have gone through the testimony of the doctor and we are not satisfied that his evidence is sufficient to come to the conclusion that the deceased would not have been in a position to talk immediately after the occurrence. No doubt, the doctor would state that there would have been instantaneous shock but that would not rule out the possibility of the deceased speaking for a while. P.W. 18 Madanappa, the doctor, who conducted the post- mortem was of the view that the deceased might have been conscious and might have been able to speak for some time even though he was not able to say how long he would have been conscious. According to P.W. 18 the center of speech was not affected. In the cross- examination of P.W. 32, questions of general nature were put to the doctor and the doctor expressed his view generally in the following manner:

The speech depends upon the coordinate activities of the sensory and cystic motor area.

Apart from the statement that power of speech of the deceased was affected, he stated that the patient was under shock and looking at the injuries it must have been instantaneous shock. The evidence of P.W. 32 which is at variance with the evidence of P.W. 18 who conducted the post-mortem is not sufficient to rule out the possibility of the deceased having made the dying declaration to the eye- witnesses. The High Court rightly commented on the evidence of the experts and expressed its view that whether the shock had actually set in on Basangouda Patil when he sustained injuries could be narrated by the persons who had seen him at that point of time and the doctor who examines an injured later would not be in a position to provide a satisfactory answer to such a question. The opinion of the doctor that looking to the injuries he was of the view that the shock would have been instantaneous cannot be conclusive on a question of the ability of the deceased to talk. We agree with the conclusion arrived at by the High Court.

13. The learned Counsel challenged the identification parade held by P.W. 31, Taluka Magistrate, as being unreliable. The trial court was of the view that it cannot be said from the evidence on record that the witnesses had no opportunity to see the accused till they identified them in the identification parade held in the jail. There is no evidence worth the name adduced by the prosecution to show that precautions were taken and if at all any precaution was taken to see that the witnesses either did not see the accused or they had no opportunity to see them before the identification parade. The learned Counsel was justified in his comment that the second accused was arrested a few days earlier and that he was in police custody and that he was produced before the Magistrate for remand and that there is nothing in the Panchnama prepared by the Taluka Magistrate to show that either he questioned the accused if he was shown to the witnesses or he himself questioned the witnesses if they had seen the accused. The High Court rejected the evidence regarding identification of A- 3. Considering all the circumstances we think much reliance cannot be placed on the identification parade regarding the establishment of the identity of the third accused. As far as A- 1 and A- 2 are concerned it is clear that both of them were apprehended and the witnesses had ample opportunity to note their features at that time and identify them. The proceeding in the identification parade discloses that A- 2 was identified by most of the eye- witnesses. Because of some defects in proceedings relating to the identification parade, we will not be justified in rejecting the evidence of the witnesses regarding the participation of A- 2.

14. Having in mind the various aspects of the case which we have discussed we now proceed to assess the evidence of the eye- witnesses. It is not in dispute that the eye- witnesses are living in the close vicinity to the scene where the incident took place and as such are natural witnesses. It is also admitted that both the deceased and the accused belonged to a different village and are total strangers to them. It was not suggested that the witnesses had any enmity or ill- feeling against the accused or the deceased. The trial court rejected their testimony on the ground that the brother- in- law of the deceased i.e. Mallanagouda is the mastermind behind the prosecution case. The trial court found that Malanagouda Patil and two retired police Sub- Inspectors were watching the proceedings and were present in the court when P.W. 1 Sangayya was examined and they continued to be present and watched the proceedings till all the eye- witnesses were examined and the moment the examination of the eyewitnesses was over they disappeared. From this circumstance the trial court came to the conclusion that there is nothing improbable in Mallanagouda having had a hand in the preparation of the detailed complaint Ex. P- 9. The High Court disagreed with this view and found that the time available was hardly sufficient to maneuver and manipulate and get ready with the material and found that there is no evidence to show that Mallanagouda had come to Bijapur by that time. The High Court observed that if Mallanagouda had a hand in the framing of the F.I.R. he would have utilised the opportunity to project himself as an eye- witness. The High Court also found that in the cross- examination of P.W. 38 the P.S.I., there is no suggestion that he was approached by any retired police officer on Mallanagouda's behalf for help to manipulate Ex. P- 9. We agree with the High Court that the trial Judge was not justified in coming to the conclusion that Mallanagouda and his two friends, the two retired police officers, were instrumental in framing the F.I.R. Ex. P- 9.

15. Apart from the fact that eyewitnesses are independent and natural witnesses their evidence is reinforced by the fact of recovery of the two bloodstained weapons MOs. 1 and 2, the axe and the

sickle, which are found to be stained with human blood. The High Court rightly placed considerable reliance on the presence of bloodstains on the weapons. The evidence of the prosecution witnesses is that they surrounded the accused and caught hold of them and snatched their weapons. The first accused was caught red- handed and was kept by the witnesses and handed over to the police. The second accused managed to escape. It was submitted that evidence as to recovery of weapons cannot be acted upon as the police officer did not seize the weapons immediately but allowed P.W. 5 to have them till they were seized at the police station. We do not think that this circumstance would affect the prosecution case in any way. It is not disputed that the two weapons were carried by P.W. 5 and handed over to the police officer. The fact of the seizure or the time and the place of the seizure is not questioned. In fact, the trial Court has not made any adverse comment on this aspect of the case. Apart from these facts, the panchnama relating to seizure of the clothes of the first accused clearly shows that the accused was at the station soon after the incident and the case of the witnesses that he was apprehended at the scene and produced before the police officer stands amply corroborated. We have been taken through the relevant portion of the evidence of the eye- witnesses and see no reason for rejecting their evidence. As observed by the High Court the recovery of the bloodstained weapons corroborates the evidence of the eye- witnesses. We might add that the production of the first accused at the police station immediately after the occurrence is an equally strong circumstance which proves the truth of the prosecution case.

16. On a consideration of the entire evidence and appreciation of the testimony of the witnesses we have no hesitation in "accepting the testimony of the eye- witnesses. The dying declaration of the deceased immediately after the occurrence in the presence of the eyewitnesses in which he mentioned the two accused as assailants, the recovery of the bloodstained weapons, MOs. 1 and 2, and the production of the first accused at the police station prove beyond all doubt the complicity of the two appellants. We have no hesitation in agreeing with the reasoning and conclusion arrived at by the High Court and confirm the conviction and sentence imposed on them. In the result we dismiss the appeal.

MANU/SC/0285/1979

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 178 of 1979

Decided On: 18.09.1979

V.S. Kuttan Pillai Vs. Ramakrishnan and Ors.

Back to Section 91 of Code of Criminal Procedure, 1973

Back to Section 92 of Code of Criminal Procedure, 1973

Back to Section 93 of Code of Criminal Procedure, 1973

Hon'ble Judges/Coram:

D.A. Desai and O. Chinnappa Reddy, JJ.

JUDGMENT

D.A. Desai, J.

1. Nemo tenetu prodere- no man is bound to accuse himself- which finds constitutional recognition in Article 20(3) of the Constitution, conferring immunity from compelling an accused person to be a witness against himself by giving self- incriminating evidence, has been put into forefront to support a prayer for quashing the search warrant issued by the Sub- Divisional Magistrate, Alwaye, on 4th January 1977 directing the Deputy Superintendent of Police, Alwaye, to search the premises styled as the Office of H.M.D.P. Sabha ('Sabha' for short), Moothakunam, and to seize the books, documents and papers as set out in the application for issuance of search warrant. The Magistrate had before him a complaint filed by the first respondent Ramakrishnan against the petitioner and 5 others for having committed offences under Sections 403, 409, 420 and 477A read with Section 34, Indian Penal Code. Original accused 1, and accused 2 the present petitioner, were respectively President and Secretary of the Sabha and original accused 3 to 6 were described as Managers of the Institution. The complainant made an application on 4th January 1977 requesting the learned Magistrate to issue a search warrant to search the office premises of the Sabha and seize the- books, documents, etc. described in the application, if found therein. On the very day the Magistrate issued a search warrant and in fact it was executed and certain books, vouchers and papers were produced before the Court. The present petitioner (original accused 2) requested the learned Magistrate to recall the warrant and to return the books and documents seized under the authority of the search warrant. The learned Magistrate was of the opinion that in view of the decision of this Court in Shyamlal Mohanlal v. State of Gujarat MANU/SC/0092/1964 : 1965CriLJ256 , and an earlier decision of V. Khalid, J. of Kerala High Court, no search warrant could be issued under Section 91 of the CrPC, 1973 ('new Code' for short), and accordingly directed that anything recovered pursuant to the search warrant issued by him be returned to the person from whom the same were recovered. The order was, however, to take effect after the decision on the requisition which was by then received from the Income-Tax Officer under Section 132A of the Income Tax Act. First respondent (original complainant) preferred a revision application to the High Court of Kerala questioning the correctness of the decision of the learned Magistrate and the claim to constitutional immunity of the accused from search and seizure of books, documents, etc. directed with a view to collecting evidence against

him, being violative of Article 20(3) of the Constitution was canvassed before the Court. The High Court after an exhaustive review of the decisions of this Court as well as those bearing on the Fifth Amendment to the American Constitution held that the provisions relating to search contained in Section 93(1) of the Criminal Procedure Code, 1973, are not hit by Article 20(3) of the Constitution.

2. Section 91 confers power on the Court or an officer in charge of a police station to issue a summons or written order as the case may be, to any person in whose possession or power a document, the production of which the Court or the officer considers necessary or desirable for the purposes of any investigation , inquiry, trial or other proceeding under the Code, Section 93 confers power on the Court to issue search warrant under three different situations.

3. Sections 91 and 93, so for as they are relevant, read as under :

91. (1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in Whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order."

93. (1) (a) Where any Court has reason to believe that a person to whom a summons or order under Section 91 or a requisition under Sub- section (1) of Section 92 has been, or might, be, addressed, will not or would not produce the document or thing as required by such summons or requisition, or

(b)where such document or thing is not known to the Court to be in the possession of any person, or

(c) where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection, it may issue a search- warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained.

4. In exercise of the power conferred by Section 91 a summons can be issued by the Court to a person in whose possession or power any document or other thing considered necessary or desirable for the purpose of any investigation, inquiry, trial or other proceeding under the Code calling upon him to produce the document or thing at the time and place to be mentioned in the summons. On the advent of the Constitution, and especially in view of the provision contained in Article 20(3), Courts were faced with a problem whether the person referred to in Section 91(1) of the Code (Section 94 of old Code) would include an accused. In other words, the question was whether a summons can be addressed to the accused calling upon him to produce any document

which may be in his possession or power and which is necessary or desirable for the purpose of an investigation, inquiry, trial, etc. in which such person was an accused person. The wider question that was raised soon after the enforcement of the Constitution was whether search of the premises occupied or in possession of a person accused of an offence or seizure of anything therefrom would violate the immunity from self- incrimination enacted in Article 20(3). In M.P. Sharma and Ors. v. Statish Chandra, District Magistrate, Delhi and Ors. MANU/SC/0018/1954 : 1978(2)ELT287(SC) the contention put forth was that a search to obtain document for investigation into an offence is a compulsory procuring of incriminatory evidence from the accused himself and is, therefore, hit by Article 20(3) as unconstitutional and illegal. A specific reference was made to Section 94 and 96 of the Criminal Procedure Code, 1898 ('old Code' (for short), both of which are re- enacted in almost identical language as Sections 91 and 93 in the new Code, in support of the submission that a seizure of documents on search is in the contemplation of law a compelled production of documents. A Constitution Bench of 8 judges of this Court unanimously negatived this contention observing :

A power of search and seizure is in any system of jurisprudence an overriding power of the State for the protection of social security and that power is necessarily regulated by law. When the Constitution makers have thought fit not to subject such regulation to constitutional limitations by recognition of a fundamental right to privacy, analogous to the American Fourth Amendment, we have no justification to import it, into a totally different fundamental right, by some process of strained construction. Nor is it legitimate to assume that the constitutional protection under Article 20(3) would be defeated by the statutory provisions for searches.

It was concluded that a search under the enabling provisions of the Criminal Procedure Code cannot be challenged as illegal on the ground of violation of Article 20(3). It must be made clear that the question whether there is any demerit of compulsion in issuing a summons to a person accused of an offence under Section 94 (old) Section 91 (new) to produce a document or thing in his possession Or power considered necessary or desirable for any inquiry, investigation or trial under the CrPC was kept open. In other words, the question whether the expression 'person' in Section 94 (old) Section 91 (new) would comprehend a person accused of an offence was left open.

5. Following the decision in M.P. Sharma's case, a Division Bench of the Madras High Court in Swarnalingam Chettiar v. Assistant Labour Inspector, Karaikudi MANU/TN/0506/1954 : A.I.R. 1956 Mad 165, held that a summons could not be issued under Section 94 of the old Code to the accused for production of certain documents in his possession irrespective of the fact whether those documents contained some statement of the accused made of his personal knowledge and accordingly the summons issued to the accused to produce certain documents was quashed. After the matter went back to the trial court, on an application of the Sub- Inspector investigating the case, for a search warrant to be issued to obtain documents mentioned in the list attached to the petition and likely to be found upon a search of the premises of Karaikudi Railway Out Agency, the Magistrate issued a notice to the accused to show cause why a general search warrant as asked for should not be issued. Again the accused moved the High Court in revision and in Swarnalingam Chettiar v. Assistant Inspector of Labour, Karaikudi MANU/TN/0287/1955 : AIR1955Mad716 the High Court quashed the notice holding that such notice practically amounts to stating that either he produces the document or else the premises will be searched and this will

amount to testimonial compulsion held impermissible by the decision of the Supreme Court in M. P. Sharma's case (supra). This view of the Madras High Court is no more good law in view of the later decisions of this Court.

6. In The State of Bombay v. Kathi Kalu Oghad and Ors. MANU/SC/0134/1961 : 1961CriLJ856 a question arose whether obtaining specimen hand writing or thumb impression of the accused would contravene the constitutional guarantee in Article 20(3). In this case there was some controversy about certain observations in M.P. Sharma's case (supra) and, therefore, the matter was heard by a Bench of 11 Judges. Two opinions were handed down, one by Chief Justice Sinha for himself and 7 brother judges, and another by Das Gupta, J. for himself and 2 other colleague. In Sinha, CJ's opinion, the observation in M.P. Sharma's case (supra) that Section 139 of the Evidence Act has no bearing on the connotation of the word 'witness' is not entirely well- founded in law. Immunity from self- incrimination as re- enacted in Article 20(3) was held to mean conveying information based upon the personal knowledge of the person giving the information and could not include merely the mechanical process of producing documents in court which may throw a light on any of the points in controversy, but which do not contain any statement of the accused based on his personal knowledge. It was concluded that to be a witness is not equivalent to furnishing evidence in its widest significance; that is to say, as including not merely making of oral or written statement but also production of document or giving materials which may be relevant at trial to determine the innocence or guilt of the accused.

7. What was kept open in Sharma's case (supra) whether a person accused of an offence could be served with a summons to produce documents' was decided when it was observed that immunity from self- incrimination would not comprehend the mechanical process of producing documents in court which may throw a light on any of the points in controversy but which do not contain a statement of the accused based on his personal knowledge.

8. The matter again came up before a Constitution Bench of this Court in Shyamlal Mohanlal v. State of Gujarat MANU/SC/0092/1964 : 1965CriLJ256 .In that case appellant Shyamlal Mohanlal was a licensed money- lender and according to the provisions of the relevant Money Lending Act and Rules he was under an obligation to maintain books. He was prosecuted for failing to maintain books in accordance with the provisions of the Act and the Rules. The police prosecutor incharge of the case on behalf of the prosecution presented an application requesting the Court to order the appellant Shyamlal Mohanlal to produce daily book and ledger for a certain year. Presumably it was a request to issue summons as contemplated by Section 94 of the old Code. The learned Magistrate rejected the request on the ground that in so doing the guarantee of immunity from self- incrimination would be violated. The matter ultimately came to this Court and the question that was pat in forefront before the Court was whether the expression 'person' in Section 94(1) which is the same as Section 91(1) of the new Code, comprehends within its sweep a person accused of an offence and if it does, whether an issue of summons to produce a document in his possession or power would violate the immunity against self- incrimination guaranteed by Article 20(3). The majority opinion handed down by Sikri, J. ruled that Section 94(1) upon its true construction does not apply to an accused person. While recording this opinion there is no

reference to the decision of the larger Bench in Kathi Kalu Oghad's case (supra). Shah, J. in his dissenting judgment referred to the observation that the accused may have documentary evidence in his possession which may throw Some light on the controversy and if it is a document which is not his statement conveying his personal knowledge relating to the charge against him, he may be called upon to produce it. Proceeding further it was observed that Article 20(3) would be no bar to the summons being issued to a person accused of an offence to produce a thing or document except in the circumstances herein above mentioned. Whatever that may be, it is indisputable that according to the majority opinion the expression 'person' in Section 91(1) (new Code) does not take within its sweep a person accused of an offence which would mean that a summons issued to an accused person to produce a thing or document considered necessary or desirable for the purpose of an investigation, inquiry or trial would imply compulsion and the document or thing so produced would be compelled testimony and would be violative of the constitutional immunity against self- incrimination.

9. There appears to be some conflict between the observations in M. P. Sharma's case (supra) as reconsidered in Kothi Kala Oghad's case (supra) and the one in the case of Shyamlal Mohanlal (supra). However, as this case is not directly relatable to a summons issued under Section 91(1), we do not consider it necessary to refer the matter to a larger Bench to resolve the conflict.

10. In view of the decision in Shyamlal Mohanlal's case (supra) one must proceed on the basis that a summons to produce a thing or document as contemplated by Section 91(1) cannot be issued to a person accused of an offence calling upon him to produce document of thing considered necessary or desirable for the purpose of an investigation, inquiry, trial or other proceeding under the CrPC'

11. If summons as hereinbefore discussed cannot be issued to an accused person under Section 91(1), ipso facto a search warrant contemplated by Section 93(1)(a) cannot be issued by the Court for the obvious reason that it can only be issued where the Court could have issued a summons but would not issue the same under the apprehension that the person to whom Such summons is issued Will not or would not produce the thing as required by such summons or requisition. A search warrant under Section 93(1)(a) could only be issued where a Summons could have been issued under Section 91(1) but the same would not be issued oh an apprehension that the person) to whom the summons is directed would not comply with the same and, therefore, in order to obtain the document or thing to produce which the summons was to be issued, a search warrant may be issued under Section 93(1)(a).

12. Section 93, however, also envisages situations other than one contemplated by Section 93(1)(a) for issuance of a search warrant It must be made distinctly clear that the present search warrant is not issued under Section 93(1)(a).

13. Section 93(1)(b) comprehends a situation where a search warrant may be issued to procure a document or thing not known to the Court to be in the possession of any person. In other words, a general search warrant may be issued to procure the document or thing and it can be recovered from any person who may be ultimately found in possession of it and it was not known to the Court that the person from whose possession it was found was in possession of it. In the present case the search warrant was to be executed at the office of the Sabha and it can be said that office bearers of the Sabha were the persons who were in possession of the documents in respect of which the search warrant was issued. Therefore, Clause (b) of Section 93(1) would not be attracted.

14. Section 93(1)(c) of the new Code comprehends a situation where the Court may issue a search warrant when it considers that the purpose of an inquiry, trial or other proceeding under the Code will be served by a general search or inspection to search, seize and produce the documents mentioned in the list. When such a general search warrant is issued, in execution of it the premises even in possession of the accused can be searched and documents found therein can be seized irrespective of the fact that the documents may contain some statement made by the accused upon his personal knowledge and which when proved may have the tendency to incriminate the accused. However, such a search and seizure pursuant to a search warrant issued under Section 93(1)(c) will not have even the remotest tendency to compel the accused to incriminate himself. He is expected to do nothing. He is not required to participate in the search. He may remain a passive spectator. He may even remain absent Search can be conducted under the authority of such warrant in the presence of the accused. Merely because he is occupying the premises which is to be searched under the authority of the search warrant it cannot even remotely be said that by such search and consequent seizure of documents including the documents which may contain statements attributable to the personal knowledge of the accused and which may have tendency to incriminate him, would violate the constitutional guarantee against self-incrimination because he is not compelled to do anything. A passive submission to search cannot be styled as a compulsion on the accuses to submit to search and if anything is recovered during search which may provide incriminating evidence against the accused it cannot be styled as compelled testimony, This is too obvious to need any precedent in support. The immunity against self- crimination extends to any incriminating evidence which the accused may be compelled to give. It does not extend to cover I such situation as where evidence which may have tendency to incriminate the accused is being collected without in any manner compelling him or asking him to be a party to the collection of the evidence. Search of the premises occupied by the accused without the accused being compelled to be a party to such search would not be violative of the constitutional guarantee enshrined in Article 20(3).

15. It was, however, urged that Section 93(1)(c) must be read in the context of Section 93(1)(b) and it would mean that where documents are known to be at 4 certain, place; and in possession, of a certain person any general search warrant as contemplated by Section 93(1)(c) will have to be ruled out because in such a situation Section 93(1)(a) alone would be attracted. Section 93(1)(b) comprehends a situation where the Court issues a search warrant in respect of a document or a thing to be recovered from a certain place but it is not known to the Court whether that document or thing is, in possession of any particular; person. Under Clause (b) there is a definite allegation to recover certain document or thing from a certain specific place but the Court is unaware of the

fact whether that document or thing or the place is in possession of a particular person. Section 93(1)(c) comprehends a situation where a search warrant can be issued as the Court is unaware of not only the person but even the place where the documents may be found and that a general search is necessary. One cannot, therefore, cut down the power of the Court under Section 93(1)(c) by importing into it some of the requirements of Section 93(1)(b). No canon of construction would permit such an erosion of power of the Court to issue a general search warrant. It also comprehends not merely a general search but even an inspection meaning thereby inspection of a place and a general search thereof and seizure of documents or things which the Court considers necessary Or desirable for the purpose of an investigation, inquiry, trial or other proceeding under the Code. The High Court accordingly sustained the general search warrant in, this case under Section 93(1)(c).

16. Turning to the facts of this case it was contended that the order of the Magistrate clearly disclosed an utter non- application of mind and a mere mechanical disposal of the application before the Court. Undoubtedly the order is of a laconic nature. But then there are certain aspects of the case which cannot be overlooked before this Court would interfere in such an interlocutory order.

17. The appellant and his co- accused are office bearers of a public institution styled as H.M.D.P. Sabha. We were informed at the hearing of this petition that this Sabha is a public institution engaged in the activity of running educational institutions and supporting objects or activities of a general charitable nature. When the first complaint was filed, the allegation therein was that criminal breach of trust in respect of funds of the public institution has been committed by the office bearers thereof. A search warrant was issued but it was quashed by the Kerala High Court. Thereafter another complaint was filed making sortie more serious allegations and a search warrant was sought. Now, this search warrant was being issued to conduct search of the premises used as office of an institution. The place will be in possession of the institution. The office bearers of the Sabha are accused of an offence. Documents and books of accounts of the institution are required for the purpose of the trial against the office bearers of the institution. The office premises could not be said to be in possession of any individual accused but stricto sensu it would be in possession of the institution. Books of accounts and other documents of the institution could not be said to be in personal custody or possession of the office bearers of the institution but they are in possession of the institution and are lying in the office of the institution. A search of such a public place under the authority of a general search warrant can easily be sustained under Section 93(1)(c). If the order of the learned Magistrate is construed to mean this, there is no illegality committed in issuing a search warrant. Of course, issuance of a search warrant is a serious matter and it would be advisable not to dispose of an application for search warrant in a mechanical way by a laconic order. Issue of search warrant being in the discretion of the Magistrate it would be reasonable to expect of the Magistrate to give reasons which swayed his discretion in favour of granting the request. A clear application of mind by the learned Magistrate must be discernible in the order granting the search warrant. Having said this, we see no justification for interfering with the order of the High Court in this case.

MANU/SC/0092/1964

Back to Section 94 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 135- 139 of 1963

Decided On: 14.12.1964

Shyamlal Mohanlal Vs. State of Gujarat

Hon'ble Judges/Coram:

P.B. Gajendragadkar, C.J., J.C. Shah, M. Hidayatullah, R.S. Bachawat and S.M. Sikri, JJ.

JUDGMENT

Authored By : S.M. Sikri, J.C. Shah

S.M. Sikri, J.

1. These are appeals by the State of Gujarat against the judgment of the High Court of Gujarat in Criminal References Nos. 106 - 110 of 1961 (in Criminal Appeals Nos. 135 - 139 of 1963) and Criminal References Nos. 111 - 113 of 1961 (in Criminal Appeals Nos. 140 - 142 of 1963) on a certificate granted by the High Court under Art. 134(1)(c) of the Constitution of India. These raise a common question of law, namely, whether section 94 of the Criminal Procedure Code applies to an accused person. Facts in one appeal need only be set out to appreciate how the question arose.

2. The respondent in Criminal Appeal No. 135 of 1963, Shyamlal Mohanlal, is a registered moneylender doing business as moneylender at Umreth. He is required to maintain books according to the provisions of the Moneylenders' Act and the Rules made thereunder. He was prosecuted for failing to maintain the books in accordance with the provisions of the Act and the Rules, in the Court of the Judicial First Class Magistrate, Umreth. The Police Prosecutor in charge of the prosecution presented an application on July 20, 1961, praying that the Court be pleased to order the respondent to produce daily account book and ledger for the Samvat year 2013- 2014. It was alleged in the application that the prosecution had already taken inspection of the said books and made copies from them, and that the original books were returned to the accused, and they were in his possession. The learned Magistrate, relying on Art. 20(3) of the Constitution, refused to accede to the prayer on the ground that the accused could not be compelled to produce any document. He followed the decision in Ranchhoddas Khimji Ashere v. Tempton Jehangir 2 Guj. L.R. 415..

3. The State filed a revision before the learned Sessions Judge of Kaira at Nadiad. Basing himself on the decision of this Court in State of Bombay v. Kathi Kalu Oghad MANU/SC/0134/1961 :

1961CriLJ856 he held "that the documents which are sought to be got produced by the prosecution in the case under my consideration can be allowed to be produced by compulsion if they do not contain any personal knowledge of the accused concerned." He felt that it was first necessary to ascertain whether the documents contained any personal statement of the accused person. He concluded that the matter will have to be referred back to the learned Magistrate to ascertain this first and then to decide the matter in the light of the observations made by the majority in Kalu Oghad's case MANU/SC/0134/1961 : 1961CriLJ856. Accordingly, a reference was made to the High Court with the recommendation that the matter be referred back to the learned Magistrate with suitable directions. The High Court, agreeing with the Sessions Judge, held that it was clear from the decision of this Court in Kalu Oghad's case MANU/SC/0134/1961 : 1961CriLJ856 "that if an accused produces a document that would not offend Art. 20(3) of the Constitution unless the document contains statements based on the personal knowledge of the accused." But the High Court went on to consider another question, that being whether the Court had power to compel an accused person to produce a document. The High Court, after reviewing the authorities bearing on this point, came to the conclusion that section 94 of the Criminal Procedure Code did not apply to an accused person. It accordingly agreed with the Magistrate that the application of the Police Prosecutor be rejected.

4. Sections 94 and 96 of the Code of Criminal Procedure read as follows :

"94(1). Whenever any Court, or, in any place beyond the limits of the towns of Calcutta and Bombay, any officer in charge of a police- station, considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition, if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872, sections 123 and 124, or to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the Postal or Telegraph authorities.

96. (1) Where any Court has reason to believe that a person to whom a summons or order under section 94 or a requisition under section 95, sub- section (1), has been or might be addressed, will not or would not produce the document or thing as required by such summons or requisition,

or where such document or thing is not known to the Court to be in the possession of any person, or where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection,

it may issue a search- warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained.

(2) Nothing herein contained shall authorise any Magistrate other than a District Magistrate or Chief Presidency Magistrate to grant a warrant to search for a document, parcel or other thing in the custody of the Postal or Telegraph authorities."

5. Before construing section 94, it is necessary to recall the back- ground of Art. 20(3) of the Constitution. One of the fundamental canons of the British system of Criminal Jurisprudence and the American Jurisprudence has been that the accused should not be compelled to incriminate himself. This principle "resulted from a feeling of revulsion against the inquisitorial methods adopted and the barbarous sentences imposed, by the Court of Star Chamber, in the exercise of its criminal jurisdiction. This came to a head in the case of John Lilburn (3 State Trials 1315.) which brought about the abolition of the Star Chamber and the firm recognition of the principle that the accused should not be put on oath and that no evidence should be taken from him. This principle, in course of time, developed into its logical extensions, by way of privilege of witnesses against self- incrimination, when called for giving oral testimony or for production of documents." (M. P. Sharma v. Satish Chandra, District Magistrate, Delhi) MANU/SC/0018/1954 : 1978(2)ELT287(SC) .

6. One of the early extensions of the doctrine was with regard to the production of documents or chattel by an accused in response to a subpoena or other form of legal process. In 1749, Lee, C.J., observed in R. v. Purnell (1 W.Bl. 37.) : "We know of no instance wherein this Court has granted a rule to inspect books in a criminal prosecution nakedly considered." In Roe v. Harvey (4 Burr. 2484.), Lord Mansfield observed "that in civil causes the Court will force parties to produce evidence which may prove against themselves or leave the refusal to do it (after proper notice) as a strong presumption to the jury.... But in a criminal or penal cause the defendant is never forced to produce any evidence though he should hold it in his hands in Court." In Redfern v. Redfern [1891] p. 139.) Bowen, L.J., state : "It is one of the inveterate principles of English Law that a party cannot be compelled to discover that which, if answered, would tend to subject him to any punishment, penalty, forfeiture or ecclesiastical censure."

7. The Indian Legislature was aware of the above fundamental canon of criminal jurisprudence because in various sections of the Criminal Procedure Code it gives effect to it. For example, in section 175 it is provided that every person summoned by a Police Officer in a proceeding under section 174 shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or

forfeiture. Section 343 provides that except as provided in sections 337 and 338, no influence by means of any promise or threat or otherwise shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge. Again, when the accused is examined under section 342, the accused does not render himself liable to punishment if he refuses to answer any questions put to him. Further, now although the accused is a competent witness, he cannot be called as a witness except on his own request in writing. It is further provided in section 342A that his failure to give evidence shall not be made the subject of any comment by any parties or the court or give rise to any presumption against himself or any person charged together with him at the same trial.

8. It seems to us that in view of this background the Legislature, if it were minded to make section 94 applicable to an accused person, would have said so in specific words. It is true that the words of section 94 are wide enough to include an accused person but it is well- recognised that in some cases a limitation may be put on the construction of the wide terms of a statute (vide Craies on Statute Law, p. 177). Again it is a rule as to the limitation of the meaning of general words used in a statute that they are to be, if possible, construed as not to alter the common law (vide Craies on Statute Law, p. 187).

9. There is one other consideration which is important. Art. 20(3) has been construed by this Court in Kalu Oghad's [1969] 3 S.C.R. 10. case to mean that an accused person cannot be compelled to disclose documents which are incriminatory and based on his knowledge. Section 94, Criminal Procedure Code, permits the production of all documents including the above- mentioned class of documents. If section 94 is construed to include an accused person, some unfortunate consequences follow. Suppose a police officer - and here it is necessary to emphasize that the police officer has the same powers as a Court - directs an accused to attend and produce or produce a document. According to the accused, he cannot be compelled to produce this document under Art. 20(3) of the Constitution. What is he to do ? If he refuses to produce it before the Police Officer, he would be faced with a prosecution under section 175, Indian Penal Code, and in this prosecution he could not contend that he was not legally bound to produce it because the order to produce is valid order if section 94 applies to an accused person. This becomes clearer if the language of section 175 is compared with the language employed in section 485, Cr.P.C. Under the latter section a reasonable excuse for refusing to produce is a good defence. If he takes the document and objects to its production, there is no machinery provided for the police officer to hold a preliminary enquiry. The Police Officer could well say that on the terms of the section he was not bound to listen to the accused or his counsel. Even if he were minded to listen, would he take evidence and hear arguments to determine whether the production of the document is prohibited by Art. 20(3). At any rate, his decision would be final under the Code for no appeal or revision would be against his order. Thus it seems to us that if we construe section 94 to include an accused person, this construction is likely to lead to grave hardship for the accused and make investigation unfair to him.

10. We may mention that the question about the constitutionality of section 94(1), Cr.P.C., was not argued before us, because at the end of the hearing on the construction of section 94(1), we

indicated to the counsel that we were inclined to put a narrow construction on the said section, and so the question about its constitutionality did not arise. In the course of arguments, however, it was suggested by Mr. Bindra that even if section 94(1) received a broad construction, it would be open to the Court to take the view that the document or thing required to be produced by the accused would not be admitted in evidence if it was found to incriminate him, and in that sense section 94(1) would not contravene Art. 20(3). Even so, since we thought that section 94(1) should receive a narrow construction, we did not require the advocates to pursue the constitutional point any further.

11. Keeping the above considerations in mind, let us look at the terms of the section. It will be noticed that the language is general, and prima facie apt to include an accused person. But there are indications that the Legislature did not intend to include an accused person. The words "attend and produce" are rather inept to cover the case of an accused person. It would be an odd procedure for a court to issue a summons to an accused person present in court "to attend and produce" a document. It would be still more odd for a police officer to issue a written order to an accused person in his custody to "attend and produce" a document.

12. The argument pressed on us that the "person" referred to in the latter part of section 94(1) is broad enough to include an accused person does not take into account the fact that the person in the latter part must be identical with the person who can be directed to produce the thing or document, and if the production of the thing or document cannot be ordered against an accused person having regard to the general scheme of the Code and the basic concept of Criminal Law, the generality of the word "the person" is of no significance.

13. Mr. Bindra invited our intention to section 139 of the Evidence Act, which provides that a person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross- examined unless and until he is called as a witness. But this section has no application to the police officer and it will be noticed that section 94 provides for two alternative directions; the first is 'attend and produce' and the second 'produce' a document. If a police officer directs him to attend and produce he cannot comply with the direction by causing a document to be produced.

14. If, after a thing or a document is produced, its admissibility is going to be examined and the document or thing in question is not going to be admitted in evidence if it incriminates the accused person, the order to produce the thing or document would seem to serve no purpose; it cannot be overlooked that it is because the document or thing is likely to be relevant and material in supporting the prosecution case that on most occasions the power under section 94(1) would be resorted to, so that on the alternative view which seeks to exclude incriminating documents or things, the working of section 94(1) would yield no useful result.

15. It is urged by Mr. Bindra that this construction of section 94 would render section 96 useless for no search warrant could be issued to search for documents known to be in the possession of the accused. This may be so, but a general search or inspection can still be ordered. As far as the police officer is concerned, he can use section 165, Criminal Procedure Code.

16. It is not necessary to review all the cases cited before us. It will be sufficient if we deal with the Full Bench decision of the Calcutta High Court in Satya Kinkar Ray v. Nikhil Chandra Jyotishopadhya MANU/WB/0018/1951 : [1952] I.L.R. 2 Cal. 106., for the earlier cases are reviewed in it. Three main considerations prevailed with the High Court : First, that giving section 94 its ordinary grammatical construction it must be held that it applies to accused persons as well as to others; secondly, that there is no inconsistency between section 94 and other provisions of the Code, and thirdly, that this construction would not make the section ultra vires because calling upon an accused person to produce a document is not compelling the accused to give evidence against himself. Regarding the first two reasons, we may point out that these reasons do not conclude the matter. The High Court did not advert to the importance of the words "attend and produce" in section 94, or the background of Art. 20(3). The third reason is inconsistent with the decision of this Court in M. P. Sharma v. Satish Chandra MANU/SC/0018/1954 : 1978(2)ELT287(SC) , and the learned Chief Justice might well have arrived at a different result if he had come to the conclusion that to call an accused person to produce a document does amount to compelling him to give evidence against himself.

17. We may mention that the construction which we have put on section 94 was also placed in Ishwar Chandra Ghoshal v. The Emperor (12 C.W.N. 1016.), Bajrangi Gope v. Emperor I.L.R. 38 Cal. 304., and Raj Chandra Chakravati v. Hare Kishore Chakravarti.

18. Therefore, agreeing with the High Court, we hold that section 94, on its true construction, does not apply to an accused person. The result is that the appeal is dismissed.

19. It is not necessary to give facts in the other appeals because nothing turns on them. As stated above, the same question arises in them. The other appeals also fail and are dismissed.

20. We would like to express our appreciation of the assistance which Mr. Tatachari gave us in this case as amicus curiae.

J.C. Shah, J.

21. The question which falls to be determined in these appeals is whether in exercise of the power under section 94(1) of the Code of Criminal Procedure a Court has authority to summon a person accused of an offence before it to produce a document or a thing in his possession. The words of

the clause are general : they contain no express limitation, nor do they imply any restriction excluding the person accused of an offence from its operation. In terms the section authorises any Court, or any officer in charge of a police- station, to issue a summons or written order to the person in whose possession or power such document or thing is believed to be, requiring such person to attend and produce it, at the time and place indicated in the summons or order. The scheme of the Code also appears to be consistent with that interpretation. Chapter VI of the Code deals with process to compel appearance. A Court may under section 68 issue a summons for the attendance of any person, whether a witness or accused of an offence (vide Forms Nos. 1 and 3 : Sch. V). Section 75 and the succeeding sections deal with the issue of warrants of arrest of witnesses and persons accused of offences. Chapter VII of the Code deals with process to compel the production of documents and other movable property and to compel appearance of the persons wrongfully confined, and general provisions relating to searches. Section 94 confers on a Court power to issue summons and on a police officer to make an order to any person demanding production of a document or thing believed to be in the possession of that person. Indisputably the person referred to in sub- section (2) of section 94 is the same person who is summoned or ordered to produce a document or thing. Sections 96 to 99 deal with warrants to search for documents or things. The first paragraph of section 96 authorises the issue of a search warrant in respect of a place belonging to any person whether he be a witness or an accused person. The inter- relation between section 94 and the first paragraph of section 96(1) strongly indicates that the power to issue a search warrant under paragraph one of section 96(1) is conditional upon the person, who it is apprehended will not or would not produce a thing or document, being compellable to produce it in pursuance of a summons under section 94(1). If under section 94(1) a summons cannot be issued against a person accused of an offence, a search warrant under section 96(1) paragraph 1 can evidently not be issued in respect of a document or thing in his possession. The second and the third paragraphs of section 96(1) confer power to issue general warrants. The generality of the terms of section 98 which enable specified Magistrates to issue warrants to search places used for certain purposes also indicates that the power may be exercised in respect of any place whether it is occupied by an accused person or not. The terms of section 103 which provide for the procedure for search of any place apply to the search of the house of a person accused of an offence or any other person.

Raju, J.,

22. against whose judgment these appeals are filed, opined that section 94(1) confers no power to issue a summons against an accused person to produce a document or thing in his possession principally on two grounds : (i) that Chapters XX to XXIII of the Code do not authorise the issue of a summons or a warrant against a person accused of an offence, and (ii) that a direction to attend and produce a document or thing cannot appropriately be made against the person accused. The first ground has no validity and has not been relied upon before us for good reasons.

23. The scheme of the Code clearly discloses that the provisions of Chapters VI and VII which fall in Part III entitled "General provisions" are applicable to the trial of cases under Chapters XX to XXIII. Specific provisions with regard to the issue of a summons or warrant to secure attendance

of witnesses and accused and production of documents and things are not found in Chapters XX to XXIII because they are already made in Chapters VI & VII. Again the use of the words "requiring him to attend and produce it" indicates the nature of the command to be contained in the summons and does not imply that the person to whom the summons is directed must necessarily be possessed of unrestricted freedom to physically attend and produce the document or thing demanded.

24. In cases decided by the High Courts of Calcutta and Madras, it appears to have been uniformly held that the word "person" in section 94(1) includes a person accused of an offence : vide S. Kondareddi and another v. Emperor I.L.R. 37 Mad. 112.; Bissar Misser v. Emperor I.L.R. 41 Cal. 261.; and Satya Kinkar Ray v. Nikhil Chandra Jyotishopadhaya MANU/WB/0018/1951 : I.L.R. [1951] 2 Cal. 106.. The observations in Ishwar Chandra Ghoshal v. The Emperor MANU/WB/0345/1908 : 12 C.W.N. 1016. to the contrary in dealing with a conviction for an offence under section 175 Indian Penal Code for failing to comply with an order under section 94(1) suffer from the infirmity that the Court had not the assistance of counsel for the State. This Court also has expressed the same view in The State of Bombay v. Kathi Kulu Oghad and others MANU/SC/0134/1961 : 1961CriLJ856 . Sinha, C.J., delivering the judgment of the majority of the Court observed :

"The accused may have documentary evidence in his possession which may throw some light on the controversy. If it is a document which is not his statement conveying his personal knowledge relating to the charge against him, he may be called upon by the Court to produce that document in accordance with the provisions of section 139 of the Evidence Act."

25. The learned Chief Justice did not expressly refer to the source of the power, but apart from section 94(1) of the Code of Criminal Procedure there is no other provision which enables a Magistrate to summon a person to produce a document or thing in his possession. The observations made by the Court therefore only relate to the power exercisable under section 94(1).

26. Mr. Tatachari says that since it is a fundamental principle of the common law of England which has been adopted in our Criminal jurisprudence, that a person accused of an offence shall not be compelled to discover documents or objects which incriminate himself, a reservation that the expression "person" does not include a person charged with the commission i.e., of an offence though not expressed is implicit in section 94(1). But the hypothesis that our Legislature has accepted wholly or even partially the rule of protection against self- incrimination is based on no solid foundation.

27. In 'Phipson on Evidence', 10th Edn. p. 264 Paragraph 611, the limit of the principle of protection against self- incrimination as applicable in the United Kingdom and the policy thereof are set out thus :

"No witness, whether party or stranger is, except in the cases hereinafter mentioned, compellable to answer any question or to produce any document the tendency of which is to expose the witness (or the wife or husband of the witness), to any criminal charge, penalty or forfeiture."

28. In Paragraph 612 it is stated :

"The privilege is based on the policy of encouraging persons to come forward with evidence in courts of justice, by protecting them, as far as possible, from injury, or needless annoyance, in consequence of so doing."

29. At common law a person accused of an offence enjoyed in general no immunity from answering upon oath as to charges made against him, on the contrary such answers formed an essential feature of all the older modes of trial, from the Saxon ordeal, Norman combat, compurgation or wager of law. Later on, a reaction against the tyranny of the Star Chamber and High Commission Courts set in and the rule became general that no one shall be bound to criminate himself in any court or at any stage of any trial. The privilege was initially claimed only by the defendants, but was later conceded to witnesses also. The witness was thereby protected both from answering questions, and producing documents. In the case of crimes, protection was accorded to questions as to the witness's presence at a duel, or his commission of bigamy, libel, or maintenance; in the case of penalties, as to pound- breach, or fraudulent removal of goods by a tenant : and in the case of forfeiture, as to breach of covenant to take beer from a particular brewery or to insure against fire or not to sub- let without licence. (See Phipson Paragraph 613).

30. In the United States of America where the immunity against self- incrimination is constitutional, the Fifth Amendment provides :

"No person.... shall be compelled in any criminal case, to be a witness against himself."

31. By judicial interpretation the rule has received a much wider application. The privilege is held to apply to witnesses as well as parties in proceedings civil and criminal : it covers documentary evidence and oral evidence, and extends to all disclosures including answers which by themselves support a criminal conviction, or furnish a link in the chain of evidence, and to production of chattel sought by legal process.

32. The rule of protection against self- incrimination prevailing in the United Kingdom, or as interpreted by Courts in the United States of America has never been accepted in India. Scattered through the main body of the statute law of India are provisions which establish beyond doubt that the rule has received no countenance in India. Section 132 of the Evidence Act enacts in no uncertain terms that a witness shall not be excused from answering any questions as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend or indirectly to expose, such witness to a penalty or

forfeiture of any kind. This provision runs directly contrary to the protection against self-incrimination as understood in the common law in the United Kingdom.

33. Statutory provisions have also been made which compel a person to produce information or evidence in proceedings which may involve imposition of penalties against him, e.g., under section 45- G & section 45- L of the Banking Companies Act, 1949 as amended by Act 52 of 1953 provision has been made for public examination of persons against whom an inquiry is made. Provisions are also made under section 140 of the Indian Companies Act, 1913, section 240 of the Companies Act, 1956, section 19(2) of the Foreign Exchange Regulations, section 171- A of the Sea Customs Act 8 of 1878, section 54- A of the Calcutta Police Act, section 10 of the Medicinal & Toilet Preparation Act 11 of the 1955, section 8 of the Official Secrets Act 19 of 1923, section 27 of the Petroleum Act 30 of 1934, section 7 of the Public Gambling Act 3 of 1867, section 95(1) of the Representation of the People Act 43 of 1951 - to mention only a few - compelling persons to furnish information which may be incriminatory or expose them to penalties. Provision have also been made under diverse statutes compelling a person including an accused to supply evidence against himself. For instance, by section 73 of the Evidence Act, the Court is authorised in order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, to direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person. It has been held that this power extends to calling upon an accused person to give his writing in Court and make it available for comparison by an expert : King Emperor v. Tun Hlaing [1923] 1 Ran. 759, F.B. and Zahuri Sahu v. King Emperor ([1927] 6 Pat. 623.).

34. Section 4 of the Identification of Prisoners Act, 1920, obliges a person arrested in connection with an offence punishable with rigorous imprisonment, if so required by a police officer to give his measurements. Section 5 of the Act authorises a Magistrate for the purposes of any investigation or proceeding under the Code of Criminal Procedure, 1898, to order any person to be produced or to attend at any time for his measurements or photograph to be taken, by a police officer. Similarly under section 129- A of the Bombay Prohibition Act, 1949, the Prohibition Officer is authorised to have a person suspected to be intoxicated, medically examined and have his blood tested for determining the percentage of alcohol therein. Offer of resistance to production of his body or the collection of blood may be overcome by all means reasonably necessary to secure the production of such person or the examination of his body or the collection of blood necessary for the test. Section 16 of the Arms Act 11 of 1878 requires a person possessing arms, ammunition or military stores, when such possession has become unlawful to deposit the same at the nearest police station, and section 32 of that Act requires all person possessing arms of which a census is directed by the Central Government to furnish to the person empowered such information as he requires. There are also provisions in the Motor Vehicles Act 4 of 1939 like sections 87(1) & (2), 88 and 89 which require a person to furnish information even about his own complicity in the commission of an offence. It is unnecessary to multiply instances of statutory provisions which impose a duty to give information even if the giving of information may involve the person giving information to incriminate himself. These provisions are, prima facie, inconsistent with the protection against self- incrimination as recognised under the common law

of the United Kingdom or in the constitutional protection conferred by the Fifth Amendment of the American Constitution.

35. The Evidence Act and the Code of Criminal Procedure were enacted at a time when the primary aim of the Government was to maintain law and order. The Legislature was merely a branch of the executive government, and was not in the very nature of things concerned with the liberty of the individual. It would therefore be difficult to assume that the rulers of the time incorporated in the Indian system of law every principle of the English common law concerning individual liberties which was developed after a grim fight in the United Kingdom. In the matter of incorporation of the rule of protection against self- incrimination, both authority and legislative practice appear to be against such incorporation.

36. In this connection it is pertinent to point out that the provisions relating to the production of documents were for the first time introduced in the Code of Criminal Procedure by Act 10 of 1872. These special provisions were presumably thought necessary to be introduced because of the severe criticism made by the Calcutta High Court of the Collector and Magistrate of a District in Bengal in Queen v. Syud Hossain Ali Chowdry I.L.R. 15 Cal. 110.. It was intended thereby to state in words which were clear the extent of powers which were conferred upon criminal courts and police officers in respect of search of documents or other things. The history of the provisions relating to orders for production and searches is set out in In re Ahmed Mahomed [1927] 6 Pat. 623. by Ghose, J., at pp. 137- 138. After observing that the "party referred to in section 365 (which invested a Magistrate with power to issue a summons to produce documents) "might be, as it is obvious, either the accused himself, or a third party and the Legislature in 1872, thought it right to lay it down in clear terms that any party may be compelled to produce documents for the purpose of any investigation or Judicial proceeding", the learned Judge quoted from the record of the speech of the Lieutenant Governor a passage, of which the following is material :

"The prevailing ideas on the subject of criminal law had been somewhat affected by the English law; and the departures from the rules of the English law which the Committee recommended were founded on this ground, that many of the prominent parts of the English law were based on political considerations, the object of those familiar rules of criminal law being not to bring the criminal to justice, but to protect the people from a tyrannical Government. Not only were those provisions now unnecessary in England, but they were especially out of place in a country where it was not pretended that the subject enjoyed liberty, and it was not intended to introduce rules into the criminal law which were designed with the object of securing the liberties of the people. That being so they might fairly get rid of some of the rules, the "object of which was to secure for the people that jealous protection which the English law gave to the accused. It seemed that they were not bound to protect the criminal according to any Code of fair play, but that their object should be to get at the truth, and anything which would tend to elicit the truth was regarded by the Committee to be desirable for the interests of the accused if he was innocent, for those of the public if he was guilty. for instance, did not see why they should not get a man to criminate himself if they could; why they should not do all which they could to get the truth from him; why they should not cross- question him, and adopt every other means, short of absolute torture to get at the truth."

37. In construing the words used by the Legislature, speeches on the floor of the Legislature are inadmissible. I do not refer to the speech for the purpose of interpreting the words used by the Legislature, but to ascertain the historical setting in which the statute which is parent to section 94(1) came to be enacted. The judgment of the High Court of Calcutta, was followed by the somewhat violent reaction of the executive expressed through the head of the Government, and enactment of the statute which prima facie reflected the sentiments expressed. It appears that the Legislature of the time, which was nothing but the executive sitting in a solemn chamber - set its face against the rule against self - incrimination being introduced in the law of India.

38. Opinion has for a long time been divided on the question whether the principle of self-incrimination which prevailed in the United Kingdom the reason of the original source of the rule having disappeared tends of defeat justice. On the one hand it is claimed that the protection of an accused against self- incrimination promotes active investigation from external sources to find out the truth and proof of alleged or suspected crime. It is claimed that the privilege in its application to witnesses as regards oral testimony and production of documents affords to them in general a freedom to come forward to furnish evidence in courts and be of help in elucidating the truth in a case, with materials known to them or in their possession. On the one hand, there are strong advocates of the view that this rule has an undesirable effect on the larger social interest of detection of crime, and a doctrinaire adherence thereto confronts the State with overwhelming difficulties. It is said that it is a protector only of the criminal. I am not concerned to enter upon a discussion of the relative merits of these competing theories. The Court's function is strictly to ascertain the law and to administer it. A rule continuing to remain on the statute book whatever the reason, which induced the Legislature to introduce it at the inception, may not be discarded by the Courts, even if it be inconsistent with notions of a later date : the remedy lies with the Legislature to modify it and not with the Courts.

39. There is one more ground which must be taken into consideration. The interpretation suggested by Mr. Tatachari interferes with the smooth working of the scheme of the related provisions of the Code of Criminal Procedure. Section 94, prima facie, authorises a Magistrate or a police officer for the purposes of any investigation, inquiry, trial or other proceeding to call upon any person in whose possession or power a document or thing is believed to be, to direct him to attend and produce it at the time and place stated in the summons or order. Paragraph 1 of section 96(1) provides that where any Court has reason to believe that a person to whom a summons or order under section 94 has been or might be addressed, will not produce the document or thing as required by such summons or requisition, the Court may issue a search Warrant. It section 94(1) does not authorise a Magistrate to issue a summons to a person accused of an offence for the production of document or thing in his possession, evidently in exercise of the powers under section 96(1) no warrant may be issued to search for a document or thing in his possession. Paragraphs 2 and 3 are undoubtedly not related to section 94(1). But under paragraph 2 a Court may issue a search warrant where the document or thing is not known to the Court to be in the possession of any person; if it is known to be in the possession of any person paragraph 2 cannot be resorted to. Again, if the interpretation of the first paragraph that a search warrant cannot issue for a thing or document in the possession of a person accused be correct, issue of a general warrant under the third paragraph which may authorise the search of a place occupied

by the accused or to which be had access would in substance amount to circumventing the restriction implicit in paragraph one.

40. Nature of the power reserved to investigating officers by section 165 of the Code of Criminal Procedure must also be considered. That section authorises a police officer in charge of an investigation having reasonable grounds for believing that anything necessary for purposes of an investigation into any offence which he is authorised to investigate may be found in any place within the a limits of the police station, and that such thing cannot be otherwise obtained without undue delay, to record in writing the grounds of his belief and specify in such writing, the thing for which search is to be made, and to search, or cause search to be made, for such thing in any place within the limits of such station. Section 94(1) authorises a police officer to pass a written order for the production of any document or thing from any person in whose possession or power the document or thing is believed to be. It section 94(1) does not extend to the issue of an order against an accused person by a police officer, would the police officer in charge of the investigation, be entitled to search for a thing or document in any place occupied by the accused or to which he has access for such document or thing ? To assume that the police officer in charge of the investigation may in the course of investigation exercise power which cannot be exercised when the Court issues a search warrant would be wholly illogical. To deny to the investigating officer the power to search for a document or thing in the possession of a person accused is to make the investigation in many cases a farce. Again, if it be held that a Court has under the third paragraph of section 96(1) power to issue a general search warrant, exercise of the power would make a violent infringement of the protection against self- incrimination, as understood in the United Kingdom, because the Courts in that country frowned upon the issue of a general warrant for search of a document or thing : Entick v. Carrington 19 Howell, St. Tr. 1029..

41. On a review of these considerations, in my view the rule of protection against self-incrimination as understood in the United Kingdom has not been accepted in India. It does not apply to civil proceedings or to proceedings which involve imposition of penalties or forfeitures. By express enactments witnesses at trials are not to be excused from answering question as to any relevant matter in issue on the ground that the answer may incriminate such witness of expose him to a penalty. It is open to the State to call for information which may incriminate the person giving information and under certain statutes an obligation is imposed upon a person even if he stands in danger of being subsequently arraigned as accused, to give information in respect of a transaction with which he is concerned. Provision has been made requiring a person accused of an offence to give his handwriting, thumb marks, finger impressions, to allow measurements and photographs to be taken, and to be compelled to submit himself to examination by experts in medical science. To hold, notwithstanding the apparently wide power conferred, that a person accused of an offence may not in exercise of the power under section 94(1) be called upon to produce documents or things in his possession, on the assumption that the rule of protection against self- incrimination has been introduced in our country, is to ignore the history of legislation and judicial interpretation for upwards of eighty years.

42. It was for the first time by the Constitution under Art. 20(3), that a limited protection has been conferred upon a person charged with the commission of an offence against self- incrimination by affording him protection against testimonial compulsion. The fact that in certain provisions

like sections 161, 175, 342 and 343 of the Code of Criminal Procedure limited protection in the matter of answering questions which might tend to incriminate or expose him to a criminal charge or to penalty or forfeiture has been granted. May indicate that in the interpretation of other provisions of the Code, an assumption that the protection against self- incrimination was implicit has no place.

43. Failure to comply with an order under section 94 of the Code of Criminal Procedure may undoubtedly expose a person to penal action under section 485 of the Code, and he may be prosecuted under section 175 of the Indian Penal Code. In my judgment, refusal to produce a document or thing on the ground that the protection guaranteed by Art. 20(3) would since the enactment of the Constitution be infringed thereby would be a reasonable excuse for non-production within the meaning of section 485 of the Code of Criminal Procedure, and an order which is in violation of Art. 20(3) requiring the person to produce a document would not be regarded as lawful within the meaning of section 175 of the Indian Penal Code. But, apart from the protection conferred by Art. 20(3), there is no reservation which has to be implied in the application of section 94(1).

44. I must mention that in this case, we are not invited to decide whether section 94(1) infringes the guarantee of Art. 20(3) of the Constitution. That question has not been argued before us, and I express no opinion thereon. Whether in a given case the guarantee of protection against testimonial compulsion under Art. 20(3) is infringed by an order of a Court acting in exercise of power conferred by section 94(1) must depend upon the nature of the document ordered to be produced. If by summoning a person who is accused before the Court to produce documents or things he is compelled to be a witness against himself, the summons and all proceedings taken thereon by order of the Court will be void. This protection must undoubtedly be made effective, but within the sphere delimited by the judgment of this Court in Kathi Kalu Oghad's case MANU/SC/0134/1961 : 1961CriLJ856 . It needs however to be affirmed that the protection against what is called testimonial compulsion under Art. 20(3) is against proceedings in Court : it does not apply to orders which may be made by a police officer in the course of investigation. The Court cannot therefore be called upon to consider whether the action of a police officer calling upon a person charged with the commission of an offence to produce a document or thing in his possession infringes the guarantee under Art. 20(3) of the Constitution.

45. In my view the appeals should be allowed and the reference made by the Sessions Judge should be accepted.

ORDER

46. In accordance with the Opinion of the Majority these Appeals are dismissed.

MANU/SC/0575/2017

Neutral Citation: 2017/INSC/448

Back to Section 100 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal Nos. 607- 608 of 2017 (Arising out of SLP (Crl.) Nos. 3119- 3120 of 2014) and Criminal Appeal Nos. 609- 610 of 2017 (Arising out of SLP (Crl.) Nos. 5027- 5028 of 2014)

Decided On: 05.05.2017

Back to Section 354 of Code of Criminal Procedure, 1973

Mukesh and Ors. Vs. State for NCT of Delhi and Ors.

Hon'ble Judges/Coram:

Dipak Misra, Ashok Bhushan and R. Banumathi, JJ.

JUDGMENT

Authored By : Dipak Misra, R. Banumathi

Dipak Misra, J.

1. The cold evening of Delhi on 16th December, 2012 could not have even remotely planted the feeling in the twenty- three year old lady, a para- medical student, who had gone with her friend to watch a film at PVR Select City Walk Mall, Saket, that in the next few hours, the shattering cold night that was gradually stepping in would bring with it the devastating hour of darkness when she, alongwith her friend, would get into a bus at Munirka bus stand to be dropped at a particular place; and possibly could not have imagined that she would be a prey to the savage lust of a gang of six, face brutal assault and become a playful thing that could be tossed around at their wild whim and her private parts would be ruptured to give vent to their pervert sexual appetite, unthinkable and sadistic pleasure. What the victims had not conceived of, it all happened, as the chronology of events would unroll. The attitude, perception, the beastial proclivity, inconceivable self- obsession and individual centralism of the six made the young lady to suffer immense trauma and, in the ultimate eventuate, the life- spark that moves the bodily frame got extinguished in spite of availing of all the possible treatment that the medical world could provide. The death took place at a hospital in Singapore where she had been taken to with the hope that her life could be saved.

2. The friend of the girl survived in spite of being thrown outside the bus along with the girl and the attempt of the accused- Appellants to run over them became futile as they, by their slight movement, could escape from being crushed under the bus, and the Appellants left them thinking that they were no more alive. Lying naked, as the clothes were removed from their bodies, they shouted for help and as good fortune would have it, the night patrolling vehicle, a motor cycle,

arrived and the said man, Raj Kumar, P.W. 72, gave the shirt to the boy and contacted the control room from which a Bolero patrol van came and they brought a bed sheet and tore it into two parts and gave a piece to each of the victims so that they could cover themselves and feel civil. The PCR van took the victims to the Safdarjung Hospital where treatment commenced.

3. The present case is one where there can be no denial that the narrative is long, the investigation has been cautious and to bring home the charge, modern and progressive scientific methods have been adopted. Mr. Siddharth Luthra, learned Senior Counsel for the Respondent- State, has made indefatigable endeavour to project that the investigation is flawless and exemplary; and Mr. M.L. Sharma and Mr. A.P. Singh, learned Counsel for the Appellants, have severely criticized it as faulty on many a score and that it is completely biased; and Mr. Sanjay R. Hegde, learned Senior Counsel, the friend of the Court, in his own way, has highlighted that the investigation is not only flawed but also unreliable which deserves chastisement and warrants rejection. Many facets of the investigation that pertain to recording of dying declaration, recording of statements of witnesses Under Section 161 of the Code of Criminal Procedure, the medical examination, holding of the test identification parade, the manner and method of search and seizure and the procedure of arrest have been seriously commented upon. That apart, criticism is advanced from many a spectrum to strengthen the stance that it does not meet the standard and test determined by law. Needless to say, the factual score and the investigation have to withstand the test of reliability and acceptability. The appreciation of evidence brought on record requires to be appositely scrutinized to adjudge the fact whether the Appellants are guilty of their culpability or there has been public pressure, as alleged, to falsely implicate the Appellants or to treat them as guinea pigs to save others and accept the hypothesis that the prosecution has booked them at the instance of some political executives or to save a situation which a disturbed society perceives as a collective catastrophe on the paradigm of social stability and to sustain its faith in the investigation to keep the precept of rule of law alive. In essence, the submission is that the whole exercise, namely, investigation and trial, has been carried out with the sole purpose for the survival of the prosecuting agency. We have stated in the beginning that Mr. Sharma and Mr. Singh appearing for the Appellants commenced their submission with all the vehemence and sensitivity at their command to strike at the root of the prosecution branding it as suspicious, absolutely unreliable, apathetic to the concept of individual dignity and engaged in maladroit effort to book the vulnerable and the innocent so as to disguise and cover their inefficiency to catch the real culprits. In the course of our deliberation, we shall dwell upon the same and keenly scrutinize the justifiability of the aforesaid criticism.

The Prosecution Narrative

4. Presently, we shall advert to the exposition of facts. The prosecution case, as projected, is that on 16.12.2012, the deceased, 'Nirbhaya' (not her real name), had gone with her friend, the informant, P.W. 1, to the PVR situated in Select City Walk Mall, Saket to watch a movie. After the show was over, about 8:30 p.m., they took an auto and reached Munirka bus stand wherefrom they boarded a white coloured chartered bus [DL- 1P- C- 0149, Ext. P1] which was bound to Dwarka/Palam Road, as a boy in the bus was calling for commuters for the said destination. As

per the version of the informant, P.W. 1, the friend of the prosecutrix, the bus had yellow and green lines/stripes and the word "Yadav" was written on it. After both of them had entered the bus, they noticed that six persons were already inside the bus, four in the cabin of the driver and two behind the driver's cabin. The deceased and the informant sat on the left side in the row of two- seaters and paid the fare of twenty rupees as demanded. Before they could get the feeling of a safe journey (though not a time- consuming journey), a feeling of lonely suffocation and a sense of danger barged in, for the accused persons did not allow anyone else to board and the bus moved and the lights inside the bus were put off. With the lights being put off, the darkness and the fear of the unexpected darkness ruled. A few minutes later, three persons (who have been identified as accused Ram Singh, Akshay and a young boy, who has been treated as a juvenile in conflict with law) came out of the driver's cabin and started to abuse P.W. 1. The young companion of the deceased raised opposition to the abuse that led to an altercation which invited the other two who were sitting outside the driver's cabin to join. The spirit to oppose and the duty to save the prosecutrix had to die down and perilously succumb to the assault by the accused persons with the iron rods that caused injuries to his head, both the legs and other parts of the body and the consequence was that he fell on the floor of the bus to hear the painful cries of the lady who, he knew, was being treated as an object, an article for experimentation and prey to the pervert proclivity of the six but could do nothing except to hear unbearable cries made in agony and pain. His spirit was dead, and bound to.

5. As the prosecution story further unfurls, the two accused persons, namely, Pawan and Vinay, pinned the young man down and robbed the victims of their mobiles besides robbing the informant of his purse carrying a Citi Bank credit card, ICICI Bank Debit Card, his identity card issued by his employer- company, metro card, a sum of rupees one thousand, his Titan Watch, a golden ring studded with jewels and a silver ring studded with pearl, black colour Hush Puppies shoes, black colour Numero Uno jeans, a grey colour pullover and a brown colour blazer. As per the version of the prosecution, P.W. 1 was carrying two mobiles and the prosecutrix was carrying only one, and the accused snatched away all the three mobiles.

6. The overpowering was not meant to satisfy the avarice. As the accusations proceed, after the informant was overpowered, as it could only have a singular result, the accused persons, namely, Ram Singh, Akshay and the Juvenile in Conflict with Law (JCL) took the prosecutrix to the rear side of the bus and she was raped by them, one after the other.

7. After committing rape, the accused Ram Singh (since deceased), accused Akshay and the JCL came towards the informant, P.W. 1, and nailed him down; then the accused Vinay and accused Pawan went to the rear side of the bus and committed rape on the prosecutrix, one by one. P.W. 1 noticed that earlier the bus was moving at fast speed but after sometime, he felt that the speed of the bus was reduced and he saw that the accused Mukesh, who was driving the bus, came near him and hit him with the rod and he also went to the rear side of the bus and raped the prosecutrix. The prosecutrix was brutally gang raped by the accused one after the other and she was also subjected to unnatural sex. Her private parts and her internal organs were seriously injured by inserting iron rod and hand in the rectal and vaginal region. As per P.W. 1, he had

heard the cries of the prosecutrix like "chod do, bachao". P.W. 1 could hear the prosecutrix shouting in a loud oscillating voice. The prosecutrix was carrying a grey colour purse having an Axis Bank ATM card and other belongings. The accused persons robbed her of her belongings and stripped her. They also took away the clothes of the informant while beating him with iron rods. The accused were exhorting that both the victims be not left alive. The accused then tried to throw both the informant and the prosecutrix out of the moving bus from its rear door but could not open it and so, they brought them to the front door and threw them out of the moving bus at National Highway No. 8, Hotel Delhi 37, Mahipalpur flyover by the side of the road.

8. As indicated earlier, the prosecutrix and P.W. 1 were noticed by P.W. 72, Raj Kumar, who heard the voice of 'bachao, bachao' from the left side of the road near a milestone opposite to Hotel Delhi 37. P.W. 72 saw P.W. 1 and the prosecutrix sitting naked having blood all around. Immediately thereafter, P.W. 72, Raj Kumar, informed P.W. 70, Ram Pal, who was in the Control Room, requesting him to call PCR. P.W. 70, Ram Pal, of EGIS Infra Management India (P) Limited, dialed 100 No. and even asked his other patrolling staff to reach the spot.

9. About 10:24 p.m., P.W. 73, H.C. Ram Chander, who was in charge of PCR van Zebra 54, received information about the incident and the lying of victims in a naked condition near the foot of Mahipalpur fly over towards Dhaula Kuan opposite GMR Gate. P.W. 73 reached the spot and found the victims. He got the crowd dispersed and brought a bottle of water and a bedsheet from the nearby hotel and tore the same into two parts and gave it to both the victims to cover themselves.

Travel to the Safdarjung Hospital

10. About 11:00 p.m., P.W. 73 took the victims to Safdarjung Hospital, New Delhi. On the way to the hospital, the victims gave their names to him and informed that they had boarded a bus from Munirka and that after some time the occupants had started misbehaving and had beaten the boy and taken the girl (prosecutrix) to the rear side of the bus and committed rape on her. Thereafter, they had taken off the clothes of the victims and thrown them naked on the road. While leaving the informant, P.W. 1, in the casualty where he was examined by P.W. 51, Dr. Sachin Bajaj, and his MLC, Ext. P.W. 51/A, was drawn up, P.W. 73 took the prosecutrix to the Gynae ward and got her admitted there. The MLC of the prosecutrix, P.W. 49/B, was prepared by P.W. 49, Dr. Rashmi Ahuja.

11. P.W. 49, Dr. Rashmi Ahuja, recorded the history of the incident as told to her by the prosecutrix and noted the same in Exhibit P.W. 49/A. As per the version narrated by the prosecutrix to her, it was a case of gang rape in a moving bus by 4- 5 persons when the prosecutrix was returning after watching a movie with the informant. She was slapped on her face, kicked on her abdomen and bitten over lips, cheek, breast and vulval region. The prosecutrix remembered intercourse two times and rectal penetration also. She was also forced to have unnatural oral sex

but she refused. All this continued for half an hour and then she was thrown off from the moving bus along with her friend.

12. The following external injuries were noted by Dr. Rashmi Ahuja in Ex. P.W. 49/A:

a) Bruise over left eye covering whole of the eye

b) Injury mark (abrasion) at right angle of eye

c) Bruise over left nostril involving upper lip

d) Both lips edematous

e) Bleeding from upper lip present

f) Bite mark over right cheek

g) Left angle of mouth injured (small laceration)

h) Bite mark over left cheek

i) Right breast bite marks below areola present

j) Left breast bruise over right lower quadrant, bite mark in inferior left quadrant

Per abdomen:

i) Guarding & rigidity present

Local examination:

a) Cut mark (sharp) over right labia present

b) A tag of vagina (6 cm in length) hanging outside the introitus

c) There was profuse bleeding from vagina

Per vaginal examination:

i) A posterior vaginal wall tear of about 7 to 8 cm

Per rectal examination:

i) Rectal tear of about 4 to 5 cm., communicating with the vaginal tear.

13. As the evidence brought on record would show, 20 samples of the prosecutrix were taken and sealed with the seal of the hospital and handed over to P.W. 59, Inspector Raj Kumari.

Registration of FIR and the progress thereon

14. At this juncture, it is necessary to state that after the victims were rescued, the informant, P.W. 1, Awninder Pratap, gave his first statement to the police at 3:45 a.m. on 17.12.2012 which culminated into the recording of the FIR at 5:40 a.m. being FIR No. 413/2012 dated 17.12.2012, PS Vasant Vihar Under Section 120B Indian Penal Code and Sections 365/366/376(2)(g)/377/307/302 Indian Penal Code and/or Sections 396/395 Indian Penal Code read with Sections 397/201/412 Indian Penal Code. It was thereafter handed over to S.I. Pratibha Sharma, P.W. 80, for investigation.

15. On the same night, i.e., 16/17.12.2012, the prosecutrix underwent first surgery around 4:00 a.m. The prosecutrix was operated by P.W. 50, Dr. Raj Kumar Chejara, Safdarjung Hospital, New Delhi and his surgery team comprised of Dr. Gaurav and Dr. Piyush. OT notes have been exhibited as Ex. P.W. 50/A and Ex. P.W. 50/B. The second and third surgeries were performed on 19.12.2012 and 23.12.2012 respectively.

16. During the period the prosecutrix was undergoing surgeries one after the other, and when all were concerned about her progress of recovery, the prosecution was carrying out its investigation in a manner that it thought systematic. The first and foremost responsibility of the prosecution was to find out, on the basis of the information given, about the accused persons. That is how the prosecution story un- curtains.

17. On 17.12.2012, supplementary statements of P.W. 1 were recorded by P.W. 80, SI Pratibha Sharma. Based on the description of the bus given by P.W. 1, the offending bus bearing No. DL-1PC- 0149 was found parked in Ravi Das Jhuggi Camp, R.K. Puram, New Delhi. P.W. 80 along with P.W. 74, SI Subhash Chand, and P.W. 65, Ct. Kripal Singh, went to the spot and found accused Ram Singh sitting in the bus. On seeing the police, Ram Singh got down from the bus and started running. The police intercepted Ram Singh and he was arrested and interrogated.

18. Personal search was conducted on Ram Singh and his disclosure statement, Ex. P- 74/F, was recorded by P.W. 74 and his team. Based on his disclosure statement, P.W. 74, Investigating Officer, SI Subhash Chand, seized the bus, Ex. P1, vide Seizure Memo Ex. P.W. 74/K. P.W. 74

seized the seat cover of the bus of red colour and its curtains of yellow colour. On the bus, 'Yadav' was found written on its body with green and yellow stripes on it. The Investigating Officer also seized the key of the bus, Ex. P- 74/2, vide Seizure Memo Ex. P.W. 74/J. The documents of the bus were also seized. The disclosure statement of Ram Singh, Ex. P.W. 74/F, led to the recovery of his bloodstained clothes, iron rods and debit card of Asha Devi, the mother of the prosecutrix. P.W. 74, Investigating Officer, also recovered ashes and the partly unburnt clothes lying near the bus which was seized vide Memo Exhibit No. P.W. 74/M and Unix Mobile Phone with MTNL Sim, Ex. P- 74/5, vide Memo Ex. P/74E. The Investigating Officer prepared the site plan of the place where the bus was parked and from where the ashes were found.

The arrest of the accused persons and seizure of articles

19. The arrest of accused, Ram Singh, also led to the arrest of two other accused persons, namely, accused Vinay Sharma and accused Pawan @ Kaalu. On 18.12.2012, accused Mukesh was apprehended from village Karoli by P.W. 58, SI Arvind Kumar, and was produced before P.W. 80, SI Pratibha Sharma. At the instance of accused Mukesh Singh, a Samsung Galaxy Trend DUOS Blue Black mobile belonging to the informant was recovered. On 23.12.2012, at his instance, P.W. 80 prepared the route chart of the route where Mukesh drove the bus at the time of the incident, Ex. P.W. 80/H. Besides that, he got recovered his bloodstained clothes from the garage of his brother at Anupam Apartment, Saidulajab, Saket, New Delhi. He opted to undergo Test Identification Parade. In the Test Identification Parade conducted by P.W. 17, Sandeep Garg, Metropolitan Magistrate, P.W. 1, identified accused- Mukesh.

20. Accused Pawan was apprehended and arrested about 1:15 p.m. on 18.12.2012 vide memo Ex. P.W. 60/A; his disclosure, Ex. P.W. 60/G, was recorded and his personal search was conducted vide memo Ex. P.W. 60/C. In his disclosure statement, Pawan pointed out Munirka bus stand where the prosecutrix and P.W. 1 boarded the bus and memo Ex. P.W. 68/I was prepared. He also pointed at the spot where P.W. 1 and the prosecutrix were thrown out of the bus and memo Ex. P.W. 68/J was prepared in this regard.

21. Accused Vinay Sharma got recovered his bloodstained clothes, P.W. 1's Hush Puppies leather shoes and the prosecutrix's mobile phone, Nokia Model 3110 of black grey colour. Further recoveries were made pursuant to his supplementary disclosure. Similarly, accused Pawan Kumar got recovered from his jhuggi his bloodstained clothes, shoes and also a wrist watch make Sonata and Rs. 1000/- robbed from P.W. 1.

22. On 21.12.2012, accused Akshay was also arrested from Village Karmalahang, P.S. Tandwa, Aurangabad, Bihar. His disclosure statement was recorded. He led to his brother's house in village Naharpur, Gurgaon, Haryana and got recovered his bloodstained clothes. A ring belonging to P.W. 1, two metro cards and a Nokia phone with SIM of Vodafone Company was also recovered from Akshay. Akshay also opted to undergo TIP and was positively identified by

P.W. 1. The mobile phones of the accused persons were seized and call details records with requisite certificates Under Section 65- B of Indian Evidence Act were obtained by the police.

23. After getting arrested, all the accused were medically examined. The MLCs of all the accused persons show various injuries on their person; viz., in the MLC, Ex. P.W. 2/A, of accused Ram Singh, P.W. 2, Dr. Akhilesh Raj, has opined that the injuries mentioned at point Q to P- 1 could possibly be struggle marks. Similar opinions were received in respect of other accused persons. P.W. 7, Dr. Shashank Pooniya, has opined that the injuries present on the body of accused Akshay were a week old and were suggestive of struggle as per MLC, Ex. P.W. 7/A. MLC, Ex. P.W. 7/B, pertaining to accused Pawan shows that he had suffered injuries on his body which were simple in nature. The MLC, Ex. P.W. 7/C, of accused Vinay Sharma proved that he too suffered injuries, simple in nature, 2 to 3 days old, though injury No. 8 was claimed to be self inflicted by the accused himself.

Further treatment of the victim and filing of chargesheet

24. While the arrest took place, as indicated earlier, the victim underwent second and third surgeries on 19.12.2012 and 23.12.2012 respectively. The second surgery was performed on the prosecutrix on 19.12.2012 by P.W. 50, Dr. Raj Kumar Chejara, along with his operating team consisting of Prof. Sunil Kumar, Dr. Pintu and Dr. Siddharth. Dr. Aruna Batra and Dr. Rekha Bharti were present along with the anaesthetic team. The clinical notes, Ex. P.W. 50/C, and notes prepared by the Gynaecology team, Ex. P.W. 50/D, can be referred to in this regard. The prosecutrix was re- operated on 23.12.2012 for peritoneal lavage and placement of drain under general anaesthesia and the notes are exhibited as Ex. P.W. 50/E.

25. As the condition of the prosecutrix did not improve much, the prosecution thought it appropriate to record the statements of the prosecutrix. The said statements have been conferred the status of dying declaration. As is noticeable from the evidence, P.W. 49 also deposed that certain exhibits were collected for examination such as outer clothes, i.e., sweater, sheet covering the patient; inner clothes, i.e., Sameej torned; dust; grass present in hairs, dust in clothes; debris from in between fingers; debris from nails; nail clippings; nail scrapings; breast swab; body fluid collection (swab from saliva); combing of pubic hair; matted pubic hair, clipping of pubic hair; cervical mucus collection; vaginal secretions; vaginal culture; washing from vaginal; rectal swab; oral swab; urine and oxalate blood vial; blood samples, etc.

26. On 21.12.2012, on being declared fit, the second dying declaration was recorded by P.W. 27, Smt. Usha Chaturvedi, Sub- Divisional Magistrate. This dying declaration is an elaborate one where the prosecutrix has described the incident in detail including the insertion of rods in her private parts. She also stated that the accused were addressing each other with names like, "Ram Singh, Thakur, Raju, Mukesh, Pawan and Vinay".

27. On 25th December, 2012, at 1:00 p.m., P.W. 30, Shri Pawan Kumar, Metropolitan Magistrate, went to the hospital to record the dying declaration of the prosecutrix. The attending doctors opined that the prosecutrix was not in a position to speak but she was otherwise conscious and responded by way of gestures. Accordingly, P.W. 30 put questions in such a manner as to enable her to narrate the incident by way of gestures or writing. Her statement, Ex. P.W. 30/D, was recorded by P.W. 30 in the form of dying declaration by putting her questions in the nature of multiple choice questions. The prosecutrix gave her statement/dying declaration through gestures and writings, Exhibit P.W. 30/D, the contents of which will be discussed later.

28. At this juncture, the cure looked quite distant. The health condition was examined on 26th December 2012 by a team of doctors comprising of Dr. Sandeep Bansal, Cardiologist, Dr. Raj Kumar Chejara, Dr. Sunil Kumar, Dr. Arun Batra and Dr. P.K. Verma and since the condition of the prosecutrix was critical, it was decided that she be shifted abroad for further treatment and fostering oasis of hope on 27th December, 2012, she was shifted to Mt. Elizabeth Hospital, Singapore, for her further treatment. The hope and expiration became a visible mirage as the prosecutrix died on 29th December, 2012 at Mt. Elizabeth Hospital, Singapore. Dr. Paul Chui, P.W. 34, Forensic Pathologist, Health Sciences Authority, Singapore, deposed that her exact time of death was 4:45 a.m. on 29th December, 2012. The death occurred at Mt. Elizabeth Hospital and the cause of her death was sepsis with multiple organ failure following multiple injuries. The original post mortem report is Ex. P.W. 34/A and its scanned copy is Ex. P.W. 34/B; the Toxicology Report dated 4th January, 2013 is Exhibit P.W. 34/C. In the post- mortem report, Ex. P.W. 34/A, besides other serious injuries, various bite marks have been observed on her face, lips, jaw, rear ear, on the right and left breasts, left upper arm, right lower limb, right upper inner thigh (groin), right lower thigh, left thigh lateral and left leg lower anterior.

29. It is apt to note here that during the course of investigation (keeping in mind that the vehicle was identified), the investigating agency went around to collect the electronic evidence. A CCTV footage produced by P.W. 25, Rajender Singh Bisht, in a CD, Ex. P.W. 25/C- 1 and P.W. 25/C- 2, and the photographs, Ex. P.W. 25/B- 1 to Ex. P.W. 25/B- 7, were collected from the Mall, Select City Walk, Saket to ascertain the presence of P.W. 1 and the prosecutrix at the Mall. The certificate Under Section 65- B of the Indian Evidence Act, 1872 (for short, "Evidence Act") with respect to the said footage is proved by P.W. 26, Shri Sandeep Singh, vide Ex. P.W. 26/A. Another important evidence is the CCTV footage of Hotel Delhi 37 situated near the dumping spot. The said footage showed a bus matching the description given by the informant at 9:34 p.m. and again at 9:53 p.m. The said bus had the word "Yadav" written on one side. Its exterior was of white colour having yellow and green stripes and its front tyre on the left side did not have a wheel cap. The description of the bus was affirmed by P.W. 1's statement. The CCTV footage stored in the pen drive, Ex. P- 67/1, and the CD, Ex. P- 67/2, were seized by the I.O. vide seizure memo Ex. P.W. 67/A from P.W. 67, Pramod Kumar Jha, the owner of Hotel Delhi 37. The same were identified by P.W. 67, Pramod Jha, P.W. 74, SI Subhash, and P.W. 76, Gautam Roy, from CFSL during their examination in Court. P.W. 78, SHO, Inspector Anil Sharma, had testified that the said CCTV footage seized vide seizure memo Ex. P.W. 67/A was sent to the CFSL through S.I. Sushil Sawaria and P.W. 77, the MHC(M). Thereafter, on 01.01.2013, the report of the CFSL was received.

30. As the prosecution story would further undrape, in the course of investigation, the test identification parade was carried out. We shall advert to the same at a later stage.

31. We had indicated in the beginning that the investigating team had taken aid of modern methods to strengthen its case. The process undertaken, the method adopted and the results are severely criticized by the learned Counsel for the Appellants to which we shall later on revert to but presently to the steps taken by the investigating agency during investigation. With the intention to cover the case from all possible spheres and to establish the allegations with the proof of conclusivity and not to give any chance of doubt, the prosecution thought that it was its primary duty to ascertain the identity of the accused persons; and for the said purpose, it carried out DNA analysis and fingerprint and bite mark analysis.

Collection of samples and identity of accused persons

32. The blood sample of the informant was collected by Dr. Kamran Faisal, P.W. 15, Safdarjung Hospital, on 25.12.2012 and was handed over to SI Pratibha Sharma, P.W. 80, vide seizure memo Ex. P.W. 15/A by Constable Suresh Kumar, P.W. 42. Similarly, as mentioned earlier, P.W. 49, Dr. Rashmi Ahuja, had collected certain samples from the person of the prosecutrix which are reflected in Ex. P.W. 49/A from point B to B. All the samples were collected by Inspector Raj Kumari, P.W. 59, vide seizure memo Ex. P.W. 59/A and were handed over to P.W. 80, SI Pratibha Sharma, at Safdarjung Hospital in the morning of 17.12.2012. Also the samples of gangrenous bowels of the prosecutrix were taken on 24.12.2012 and were handed over to SI Gajender Singh, P.W. 55, who seized the same vide seizure memo Ex. P.W. 11/A. All the samples were deposited with the MHC(M) and were not tampered with in any manner. A specimen of scalp hair of the prosecutrix was also taken on 24.12.2012 by Dr. Ranju Gandhi, P.W. 29, and was handed over to P.W. 80, SI Pratibha Sharma, vide seizure memo Ex. P.W. 29/A.

33. The accused were also subjected to medical examination and samples were taken from their person which were sent for DNA analysis.

34. DNA analysis was done at the behest of P.W. 45, Dr. B.K. Mohapatra, Sr. Scientific Officer, Biology, CFSL, CBI, and Biological Examination and DNA profiling reports were prepared which are exhibited as Ex. P.W. 45/A- C. The report, after analysing the DNA profiles generated from the known samples of the prosecutrix, the informant, and each of the accused, concluded that:

An analysis of the above shows that the samples were authentic and established the identities of the persons mentioned above beyond reasonable doubt.

35. On 17.12.2012 and 18.12.2012, a team of experts from the CFSL went to Thyagraj Stadium and lifted chance prints from the bus in question, Ex. P- 1. On 28.12.2012, P.W. 78, Inspector Anil Sharma of P.S. Vasant Vihar, the then S.H.O. of Police Station Vasant Vihar, requested the Director, CFSL, for taking digital palm prints and foot prints of all the accused persons vide his letter Ex. P.W. 46/C. Pursuant to the said request made by P.W. 78, Inspector Anil Sharma, the CFSL, on 31.12.2012, took the finger/palm prints and foot prints of the accused persons at Tihar Jail. After comparing the chance prints lifted from the bus with the finger prints/palm prints and foot prints of all the accused persons, P.W. 46, Shri A.D. Shah, Senior Scientific Officer (Finger Prints), CFSL, CBI submitted his report Ex. P.W. 46/D. In the report, the chance prints of accused Vinay Sharma were found to have matched with those on the bus in question.

36. Bite mark analysis was also undertaken by the investigative team to establish the identity and involvement of the accused persons. P.W. 66, Asghar Hussain, on the instructions of the I.O., S.I. Pratibha Sharma, had taken 10 photographs of different parts of the body of the prosecutrix at SJ Hospital on 20.12.2012 between 4:30 p.m. and 5:00 p.m. which were marked as Ex. P.W. 66/B (Colly.) [10 photographs of 5" x 7" each] and Ex. P.W. 66/C (Colly.) [10 photographs of 8" x 12" each]. P.W. 66 also proved in Court the certificate provided by him in terms of Section 65- B of the Evidence Act in respect of the photographs, Ex. P.W. 66/A. Thereafter, P.W. 18, SI Vishal Choudhary, collected the photographs and the dental models from Safdarjung Hospital on 01.01.2013 and duly deposited the same in the malkhana after he, P.W. 18, had handed them over to the S.H.O. Anil Sharma, P.W. 78. The same were later entrusted to S.I. Vishal Choudhary, P.W. 18 on 02.01.2013, which is proved vide RC No. 183/21/12 and exhibited as Ex. P.W. 77/V. P.W. 71, Dr. Ashith B. Acharya, submitted the final report in this regard which is exhibited as Ex. P.W. 71/C. In the said report, he has concluded that at least three bite marks were caused by accused Ram Singh whereas one bite mark has been identified to have been most likely caused by accused Akshay.

37. It is seemly to note here that on completion of the investigation, the chargesheet came to be filed on 03.01.2013 Under Section 365/376(2)(g)/377/307/395/397/302/396/412/201/120/34 Indian Penal Code and supplementary chargesheet was filed on 04.02.2013.

Charge and examination of witnesses, conviction and awarding of sentence by the trial court

38. After the case was committed to the Court of Session, all the accused were charged for the following offences:

1. Under Section 120B Indian Penal Code;

2. Under Sections 365/366/307/376(2)(g) Indian Penal Code/377 Indian Penal Code read with Section 120- B Indian Penal Code;

3. Under Section 396 Indian Penal Code read with Section 120- B Indian Penal Code and/or;

4. Under Section 302 Indian Penal Code read with Section 120- B Indian Penal Code;

5. Under Section 395 Indian Penal Code read with Section 397 Indian Penal Code read with 120-B Indian Penal Code;

6. Under Section 201 Indian Penal Code read with Section 120- B Indian Penal Code and;

7. Under Section 412 Indian Penal Code.

During the course of trial, accused Ram Singh committed suicide and the proceedings qua him stood abated vide order dated 12.10.2013.

39. It is worthy to mention here that in order to bring home the charge, the prosecution initially examined 82 witnesses and thereafter, the statements of the accused persons were recorded and they abjured their guilt. Accused Pawan Gupta @ Kaalu examined Lal Chand, DW- 1, Heera Lal, DW- 2, Ram Charan, DW- 3, Gyan Chand, DW- 4, and Hari Kishan Sharma, DW- 16, in support of his plea. Accused Vinay Sharma examined Smt. Champa Devi, DW- 5, Hari Ram Sharma, DW- 6, Kishore Kumar Bhat, DW- 7, Sri Kant, DW- 8, Manu Sharma, DW- 9, Ram Babu, DW- 10, and Dinesh, DW- 17, to establish his stand. Accused Akshay Kumar Singh @ Thakur examined Chavinder, DW- 11, Sarju Singh, DW- 12, Raj Mohan Singh, DW- 13, Punita Devi, DW- 14, and Sarita Devi, DW- 15. As the factual matrix would reveal, subsequently three more prosecution witnesses were examined and on behalf of the defence, two witnesses were examined.

40. Learned Sessions Judge, vide judgment dated 10.09.2013, convicted all the accused persons, namely, Akshay Kumar Singh @ Thakur, Vinay Sharma, Mukesh and Pawan Gupta @ Kaalu Under Section 120B Indian Penal Code for the offence of criminal conspiracy; Under Section 365/366 Indian Penal Code read with Section 120B Indian Penal Code for abducting the victims with an intention to force the prosecutrix to illicit intercourse; Under Section 307 Indian Penal Code read with Section 120B Indian Penal Code for attempting to kill P.W. 1, the informant; Under Section 376(2)(g) Indian Penal Code for committing gang rape with the prosecutrix in pursuance of their conspiracy; Under Section 377 Indian Penal Code read with Section 120B Indian Penal Code for committing unnatural offence with the prosecutrix; Under Section 302 Indian Penal Code read with Section 120B Indian Penal Code for committing murder of the helpless prosecutrix; Under Section 395 Indian Penal Code for conjointly committing dacoity in pursuance of the aforesaid conspiracy; Under Section 397 Indian Penal Code read with Section

120B Indian Penal Code for the use of iron rods and for attempting to kill P.W. 1 at the time of committing robbery; Under Section 201 Indian Penal Code read with Section 120B Indian Penal Code for destroying of evidence and Under Section 412 Indian Penal Code for the offence of being individually found in possession of the stolen property which they all knew was a stolen booty of dacoity committed by them.

41. After recording the conviction, as aforesaid, the learned trial Judge imposed the sentence, which we reproduce:

(a) The convicts, namely, convict Akshay Kumar Singh @ Thakur, convict Mukesh, convict Vinay Sharma and convict Pawan Gupta @ Kaalu are sentenced to death for offence punishable Under Section 302 Indian Penal Code. Accordingly, the convicts to be hanged by neck till they are dead. Fine of Rs. 10,000/- to each of the convict is also imposed and in default of payment of fine such convict shall undergo simple imprisonment for a period of one month.

(b) for the offence Under Section 120- B Indian Penal Code I award the punishment of life imprisonment to each of the convict and fine of Rs. 5000/- to each of them. In default of payment of fine simple imprisonment for one month to such convict;

(c) for the offence Under Section 365 Indian Penal Code I award the punishment of seven years to each of the convict and fine of Rs. 5000/- to each of them. In default of payment of fine simple imprisonment for one month to such convict;

(d) for the offence Under Section 366 Indian Penal Code I award the punishment of seven years to each of the convict person and fine of Rs. 5000/- to each of them. In default of payment of fine simple imprisonment for one month to such convict;

(e) for the offence Under Section 376(2)(g) Indian Penal Code I award the punishment of life imprisonment to each of the convict person with fine of Rs. 5000/- to each of them. In default of payment of fine simple imprisonment for one month to such convict;

(f) for the offence Under Section 377 Indian Penal Code I award the punishment of ten years to each of the convict person and fine of Rs. 5000/- to each of them. In default of payment of fine simple imprisonment for one month to such convict;

(g) for the offence Under Section 307 Indian Penal Code I award the punishment of seven years to each of the convict person and fine of Rs. 5000/- to each of them. In default of payment of fine simple imprisonment for one month to such convict;

(h) for the offence Under Section 201 Indian Penal Code I award the punishment of seven years to each of the convict person and fine of Rs. 5000/- to each of them. In default of payment of fine simple imprisonment for one month to such convict;

(i) for the offence Under Section 395 read with Section 397 Indian Penal Code I award the punishment of ten years to each of the convict person and fine of Rs. 5000/- to each of them. In default of payment of fine simple imprisonment for one month to such convict;

(j) for the offence Under Section 412 Indian Penal Code I award the punishment of ten years to each of the convict person and fine of Rs. 5000/- to each of them. In default of payment of fine simple imprisonment for one month to such convict;

42. Be it noted, the learned trial Judge directed the sentences Under Sections 120B/365/366/376(2)(g)/377/201/395/397/412 Indian Penal Code to run concurrently and that the benefit Under Section 428 Code of Criminal Procedure would be given wherever applicable. He further recommended that appropriate compensation Under Section 357A Code of Criminal Procedure be awarded to the legal heirs of the prosecutrix and, accordingly, sent a copy of the order to the Secretary, Delhi Legal Services Authority, New Delhi, for deciding the quantum of compensation to be awarded under the scheme referred to in Sub- section (1) of Section 357A Code of Criminal Procedure. That apart, as death penalty was imposed, he referred the matter to the High Court for confirmation Under Section 366 Code of Criminal Procedure.

The view of the High court

43. The High Court, vide judgment dated 13.03.2014, affirmed the conviction and confirmed the death penalty imposed upon the accused by expressing the opinion that under the facts and circumstances of the case, imposition of death penalty awarded by the trial court deserved to be confirmed in respect of all the four convicts. As the death penalty was confirmed, the appeals preferred by the accused faced the inevitable result, that is, dismissal.

Commencement of hearing and delineation of contentions

44. As we had stated earlier, the grievance relating to the lodging of FIR and the manner in which it has been registered has been seriously commented upon and criticized by the learned Counsel for the Appellants. Mr. Sharma, learned Counsel for the Appellants - Mukesh and Pawan Kumar Gupta, and Mr. Singh, learned Counsel for the Appellants - Vinay Sharma and Akshay Kumar Singh, have stressed with all the conviction at their command that when a matter of confirmation

of death penalty is assailed before this Court, it is the duty of this Court to see every aspect in detail and not to treat it as an ordinary appeal.

45. As the argument commenced with the said note, we thought it appropriate to grant liberty to the learned Counsel for the Appellants to challenge the conviction and the imposition of death sentence from all aspects and counts and to dissect the evidence and project the irregularities in arrest and investigation. Learned Counsel for the parties argued the matter for considerable length of time and hence, we shall deal with every aspect in detail.

Delayed registration of FIR

46. The attack commences with the registration of FIR and, therefore, we shall delve into the same in detail. P.W. 57, ASI Kapil Singh, the Duty Officer at P.S. Vasant Vihar, New Delhi, on the intervening night of 16/17.12.2012, received information about the incident. He lodged DD No. 6- A, Ex. P.W. 57/A, and passed on the said DD to P.W. 74, SI Subhash Chand, who was on emergency duty that night at P.S. Vasant Vihar. Immediately thereafter, P.W. 57, ASI Kapil Singh, received yet another information qua admission of the prosecutrix and of the informant in Safdarjung Hospital and he lodged DD No. 7- A, Ex. P.W. 57/B, and also passed on the said DD to SI Subhash Chand.

47. P.W. 74, SI Subhash Chand, then left for Safdarjung Hospital where he met P.W. 59, Inspector Raj Kumari, and P.W. 62, SI Mahesh Bhargava. P.W. 59, Inspector Raj Kumari, handed over to him the MLC and the exhibits concerning the prosecutrix as given to her by the treating doctor and P.W. 62, SI Mahesh Bhargava, handed over to him the MLC of the informant. P.W. 74, SI Subhash Chand, then recorded the statement, Ex. P.W. 1/A, of the informant at 1:30 a.m. on 17.12.2012 and made his endorsement, Ex. P.W. 74/A, on it and he gave the rukka to P.W. 65, Ct. Kripal Singh, for being taken to P.S. Vasant Vihar, New Delhi and to get the FIR registered. P.W. 65, Ct. Kripal Singh, then went to P.S. Vasant Vihar, New Delhi and at 5:40 a.m. and gave the rukka to P.W. 57, ASI Kapil Singh, the Duty Officer, who, in turn, recorded the FIR, Ex. P.W. 57/D, made endorsement, Ex. P.W. 57/E, on the rukka and returned it to P.W. 65, Ct. Kripal Singh, who then handed it to P.W. 80, SI Pratibha Sharma, at P.S. Vasant Vihar to whom the investigation was entrusted.

48. SI Subhash Chand, P.W. 74, deposed that the statement of the informant might have been recorded around 3:45 a.m. although P.W. 1 deposed that his statement was recorded at 5:30 a.m. It was submitted that the original statement was recorded by HC Ram Chander, P.W. 73, and the investigation process had already begun around 1:15 a.m. and the subsequent information from the informant which is stated to be the first information was, in fact, crafted after the investigating agency decided on a course of action. It is submitted by the learned Counsel for the Appellants that the delay in the FIR raises serious doubts.

49. Delay in setting the law into motion by lodging of complaint in court or FIR at police station is normally viewed by courts with suspicion because there is possibility of concoction of evidence against an accused. Therefore, it becomes necessary for the prosecution to satisfactorily explain the delay. Whether the delay is so long as to throw a cloud of suspicion on the case of the prosecution would depend upon a variety of factors. Even a long delay can be condoned if the informant has no motive for implicating the accused.

50. In the present case, after the occurrence, the prosecutrix and P.W. 1 were admitted to the hospital at 11:05 p.m.; the victim was admitted in the Gynaecology Ward and P.W. 1, the informant, in the casualty ward. P.W. 74, SI Subhash Chand, recorded the statement of P.W. 1 at 3:45 a.m. After P.W. 1 and the prosecutrix were taken to the hospital for treatment, the statement of P.W. 1 was recorded by P.W. 74, SI Subhash Chand, at 1:37 a.m. and the same was handed over to P.W. 65, Constable Kripal Singh, to P.W. 57, Kapil Singh. In the initial stages, the intention of all concerned must have been to save the victim by giving her proper medical treatment. Even assuming for the sake of argument that there is delay, the same is in consonance with natural human conduct.

51. In this case, there is no delay in the registration of FIR. The sequence of events are natural and in the present case, after the occurrence, the victim and P.W. 1 were thrown out of the bus at Mahipalpur in semi- naked condition and were rescued by P.W. 72, Raj Kumar, and P.W. 70, Ram Pal, both EGIS Infra Management India (P) Limited employees. The victim was seriously injured and was in a critical condition and it has to be treated as a natural conduct that giving medical treatment to her was of prime importance. The admission of P.W. 1 and the victim in the hospital and the completion of procedure must have taken some time. P.W. 1 himself was injured and was admitted to the hospital at 11:05 p.m. No delay can be said to have been caused in examining P.W. 1, the informant.

52. In the context of belated FIR, we may usefully refer to certain authorities in the field. In Ram Jag and Ors. v. State of U.P. MANU/SC/0150/1973 : (1974) 4 SCC 201 : AIR 1974 SC 606, it was held as that witnesses cannot be called upon to explain every hour's delay and a commonsense view has to be taken in ascertaining whether the first information report was lodged after an undue delay so as to afford enough scope for manipulating evidence. Whether the delay is so long as to throw a cloud of suspicion on the seeds of the prosecution case must depend upon a variety of factors which would vary from case to case. Even a long delay in filing report of an occurrence can be condoned if the witnesses on whose evidence the prosecution relies have no motive for implicating the accused. On the other hand, prompt filing of the report is not an unmistakable guarantee of the truthfulness of the version of the prosecution.

53. In State of Himachal Pradesh v. Rakesh Kumar MANU/SC/0901/2009 : (2009) 6 SCC 308, the Court repelled the submission pertaining to delay in lodging of the FIR on the ground that the first endeavour is always to take the person to the hospital immediately so as to provide him

medical treatment and only thereafter report the incident to the police. The Court in the said case further held that every minute was precious and, therefore, it is natural that the witnesses accompanying the deceased first tried to take him to the hospital so as to enable him to get immediate medical treatment. Such action was definitely in accordance with normal human conduct and psychology. When their efforts failed and the deceased died they immediately reported the incident to the police. The Court, under the said circumstances ruled that in fact, it was a case of quick reporting to the police.

Judged on the anvil of the aforesaid decisions, we have no hesitation in arriving at the conclusion that there was no delay in lodging of the FIR.

Non- mentioning of assailants in the FIR

54. An argument was advanced assailing the FIR to the effect that the FIR does not contain: (i) the names of the assailants either in the MLC, Ex. P.W. 51/A, or in the complaint, Ex. P.W. 1/A, (ii) the description of the bus and (iii) the use of iron rods.

55. As far as the argument that the FIR does not contain the names of all the accused persons is concerned, it has to be kept in mind that it is settled law that FIR is not an encyclopedia of facts and it is not expected from a victim to give details of the incident either in the FIR or in the brief history given to the doctors. FIR is not an encyclopedia which is expected to contain all the details of the prosecution case; it may be sufficient if the broad facts of the prosecution case alone appear. If any overt act is attributed to a particular accused among the assailants, it must be given greater assurance. In this context, reference to certain authorities would be fruitful.

56. In Rattan Singh v. State of H.P. MANU/SC/0177/1997 : (1997) 4 SCC 161, the Court, while repelling the submission for accepting the view of the trial court took note of the fact that there had been omission of the details and observed that the criminal courts should not be fastidious with mere omissions in the first information statement since such statements can neither be expected to be a chronicle of every detail of what happened nor expected to contain an exhaustive catalogue of the events which took place. The person who furnishes the first information to the authorities might be fresh with the facts but he need not necessarily have the skill or ability to reproduce details of the entire story without anything missing therefrom. Some may miss even important details in a narration. Quite often, the police officer, who takes down the first information, would record what the informant conveys to him without resorting to any elicitatory exercise. It is voluntary narrative of the informant without interrogation which usually goes into such statement and hence, any omission therein has to be considered along with the other evidence to determine whether the fact so omitted never happened at all. The Court also referred to the principles stated in Pedda Narayana v. State of A.P. MANU/SC/0182/1975 : (1975) 4 SCC 153; Sone Lal v. State of U.P. MANU/SC/0170/1978 : (1978) 4 SCC 302; Gurnam Kaur v. Bakshish Singh MANU/SC/0125/1980 : 1980 Supp SCC 567.

57. In State of Uttar Pradesh v. Naresh and Ors. MANU/SC/0228/2011 : (2011) 4 SCC 324, reiterating the principle, the Court opined that it is settled legal proposition that FIR is not an encyclopedia of the entire case. It may not and need not contain all the details. Naming of the accused therein may be important but not naming of the accused in FIR may not be a ground to doubt the contents thereof in case the statement of the witness is found to be trustworthy. The court has to determine after examining the entire factual scenario whether a person has participated in the crime or has been falsely implicated. The informant fully acquainted with the facts may lack necessary skill or ability to reproduce details of the entire incident without anything missing from the same. Some people may miss even the most important details in narration. Therefore, in case the informant fails to name a particular accused in the FIR, this ground alone cannot tilt the balance of the case in favour of the accused. For the aforesaid purpose reliance was placed upon Rotash v. State of Rajasthan MANU/SC/8747/2006 : (2006) 12 SCC 64 and Ranjit Singh v. State of M.P. MANU/SC/0924/2010 : (2011) 4 SCC 336.

58. In Rotash (supra) this Court while dealing with the omission of naming an accused in the FIR opined that:

14. ...We, however, although did not intend to ignore the importance of naming of an accused in the first information report, but herein we have seen that he had been named in the earliest possible opportunity. Even assuming that PW 1 did not name him in the first information report, we do not find any reason to disbelieve the statement of Mooli Devi, PW 6. The question is as to whether a person was implicated by way of an afterthought or not must be judged having regard to the entire factual scenario obtaining in the case. PW 6 received as many as four injuries.

59. While dealing with a similar issue in Animireddy Venkata Ramana v. Public Prosecutor MANU/SC/7294/2008 : (2008) 5 SCC 368, the Court held as under:

13. ...While considering the effect of some omissions in the first information report on the part of the informant, a court cannot fail to take into consideration the probable physical and mental condition of the first informant. One of the important factors which may weigh with the court is as to whether there was a possibility of false implication of the Appellants. Only with a view to test the veracity of the correctness of the contents of the report, the court applies certain well-known principles of caution.

Thus, apart from other aspects what is required to be scrutinized is that there is no attempt for false implication, application of principle of caution and evaluation of the testimonies of the witnesses as regards their trustworthiness.

60. In view of the aforesaid settled position of law, we are not disposed to accept the contention that omission in the first statement of the informant is fatal to the case. We are disposed to think so, for the omission has to be considered in the backdrop of the entire factual scenario, the

materials brought on record and objective weighing of the circumstances. The impact of the omission, as is discernible from the authorities, has to be adjudged in the totality of the circumstances and the veracity of the evidence. The involvement of the accused persons cannot be determined solely on the basis of what has been mentioned in the FIR.

61. In his statement recorded in the early hours of 17.12.2012, P.W. 1 stated about going to the Select City Walk Mall, Saket alongwith the prosecutrix and boarding the bus. He has also stated about the presence of four persons sitting in the cabin of the bus and two boys sitting behind the cabin and clearly stated about the overt act. He has broadly made reference to the accused persons and also to the overt acts. There are no indications of fabrication in Ex. P.W. 1/A.

62. The victim and P.W. 1 were thrown out of the bus and after some time they were admitted to the hospital. Both the injuries on P.W. 1's person and the gruesome acts against the victim must have put him in a traumatic condition and it would not have been possible for him to recall and narrate the entire incident to the police at one instance. It cannot be said that merely because the names of the accused persons are not mentioned in the FIR, it raises serious doubts about the prosecution case.

Appreciation of the evidence of P.W. 1

63. Having dealt with the contention of delay in lodging of the FIR and omission of names in the FIR on the basis of the first statement of P.W. 1, we may now proceed to appreciate the evidentiary value to be attached to the testimony of P.W. 1 and the contentions advanced in this regard.

64. As per the evidence of P.W. 1, he alongwith the prosecutrix, on the fateful day about 3:30 p.m., took an auto from Dwarka, New Delhi to Select City Walk Mall, Saket, New Delhi, where they watched a movie till about 8:30 p.m. and, thereafter, left the Mall. As they could not get an auto for Dwarka, they hired an auto for Munirka intending to take a bus (route No. 764) thereon. About 9:00 p.m. when they reached Munirka bus stand they boarded a white colour chartered bus and JCL was calling for commuters to Dwarka/Palam Mod. While boarding the bus, P.W. 1 noted that the bus had "Yadav" written on its side; had yellow and green lines/stripes; the entry gate was ahead of its front left tyre; and its front tyre was without a wheel cover. After boarding, he saw that besides the boy (JCL) who was calling for passengers and the driver, two other persons were sitting in the driver's cabin and two persons were seated inside the bus on either side of the aisle. After the bus left the Munirka bus stand, the lights inside the bus were turned off. Then accused Ram Singh, accused Akshay Thakur and the JCL (all three identified later) came towards P.W. 1 and verbally and physically assaulted him. When P.W. 1 resisted them, accused Vinay and accused Pawan were called along with iron rods and all the accused persons started hitting P.W. 1 with the iron rods. When the prosecutrix attempted to call for help, P.W. 1 and the prosecutrix were robbed of their possessions.

65. P.W. 1 was immobilized by accused Vinay and accused Pawan Kumar; while others, viz., accused Ram Singh, Akshay and the JCL took the prosecutrix to the rear side of the bus whereafter P.W. 1 heard the prosecutrix shout out "chod do, bachao" and her cry. After the above, three accused committed the heinous act of raping the prosecutrix, accused Vinay and Pawan then went to the rear side of the bus while the other three pinned down P.W. 1. Thereafter, accused Mukesh (originally driving the bus) hit P.W. 1 with the rod and went to the rear side of the bus. P.W. 1 also heard one of the accused saying "mar gayee, mar gayee". After the incident, P.W. 1 and the prosecutrix were dragged to the front door (because the rear door was jammed) and were pushed out of the moving bus opposite Hotel Delhi 37. After being thrown outside, the bus was turned in such a manner as to crush both of them but P.W. 1 pulled the prosecutrix and himself out of the reach of the wheels of the bus and saved their lives.

66. The statement of the informant, P.W. 1, was recorded by P.W. 74 in the early hours of 17.12.12 and Ex. P.W. 1/A is the complaint. In his chief examination, P.W. 74 deposes that he had given the complaint (rukka) to Ct. Kripal Singh and sent him to the police station at 5:10 a.m. which thereby leaves the time of recording the informant's statement inconclusive. Even if the version of P.W. 74 was to be relied upon and the informant's statement had been recorded by 5:10 a.m., DD entry which forms Ex. P.W. 57/C records that till 5:30 a.m., no punishable offence has been reported to have occurred and information of well- being had been recorded despite the fact that previous DD entries had been recorded on the basis of telephonic conversations between police officers at the hospital, the scene of crime and the control room (both DD entries 6A and 7A had been recorded on the basis of phone conversations). The first supplementary statement was recorded around 7:30 a.m., on 17.12.2012 specifically with respect to the bus in question. In this statement, Ex. P.W. 80/D1, P.W. 1 merely gives a generic description of the bus. However, unlike in Ex. P.W. 1/A, in his supplementary statement, the informant states that the bus was white in colour with stripes of yellow and green, that there were 3 x 2 seats and that if he remembered anything else, he would reveal the same. At this time, the investigating agency had neither seized the bus nor arrested the accused; the statement of the informant is, therefore, silent on specific details about the same. PW's second supplementary statement, Ex. P.W. 80/D3, was recorded around noon on 17.12.2012 in which the informant, for the first time since the time of the incident, revealed details about the bus in which the crime allegedly occurred (that there was the word "Yadav" written on the side, that the front wheel cover was missing), and also revealed the names of the accused (Ram Singh, one Thakur, one Mukesh/Ramesh, Vinay and Pawan).

67. The learned amicus curiae, Mr. Hegde, submitted that at every stage, P.W. 1 made improvement in his statements. It was submitted that when P.W. 1 was confronted with the omissions Ex. P.W. 1/A, Ex. P.W. 8/D1 and Ex. P.W. 80/D3, he stated that he was unable to talk at the time of recording of his statement due to injury to the tongue. It was submitted that as per Ex. P.W. 51/A, he sustained only simple injury and it does not state that P.W. 1 suffered injury to his tongue. It was further contended that the process of improving and embellishing the informant's statement did not end with recording his statement Under Section 161 Code of Criminal Procedure. On 19.12.2012, the informant made a statement Under Section 164 Code of Criminal Procedure before the Metropolitan Magistrate, Saket Courts. This statement is the most

comprehensive and contains details which had been discovered by the prosecution by then such as the names of all the accused (including the name of the JCL for the first time) and details from inside the bus (colour of the seats and curtains). It was contended that the improved version of P.W. 1 renders his evidence unreliable and merely because he is an injured witness, his evidence cannot be accepted.

68. It is urged by Mr. Hegde, learned amicus curiae, that inconsistencies and omissions amounting to contradiction in the testimony of P.W. 1 make him an untrustworthy and unreliable witness. The inconsistencies pointed out by the learned amicus curiae pertain to the number of assailants, the description of the bus and the identity of the accused. As regards the omission, it is contended by him that the said witness had not mentioned about the alleged use of rod in the FIR. He has further submitted that though he has stated that he had been assaulted by the iron rods as per his subsequent statement, yet the said statement is wholly unacceptable since he had sustained only simple injuries.

69. Mr. Hegde, in his further criticism of the evidence of P.W. 1, has put forth that the effort of the prosecution had been to highlight the consistencies instead of explaining the inconsistencies. That apart, submits Mr. Hegde, that the witness has revealed the story step by step including the gradual recognition of the identity of the accused in tandem with the process of investigation and in such a situation, his testimony has to be looked with suspicion.

70. Mr. Sharma, learned Counsel for the Appellants- Mukesh and Pawan Kumar Gupta, and Mr. Singh, learned Counsel for the Appellants - Vinay Sharma and Akshay Kumar Singh, submit that the omissions in the statement of P.W. 1 amount to contradictions in material particulars and such contradictions go to the root of the case and, in fact, materially affect the trial or the very case of the prosecution. Therefore, they submit that the testimony of P.W. 1, who is treated as a star witness, is liable to be discredited. Reliance has been placed on the authorities in State Represented by Inspector of Police v. Saravanan and Anr. MANU/SC/8113/2008 : (2008) 17 SCC 587 : AIR 2009 SC 152, Arumugam v. State Represented by Inspector of Police, Tamil Nadu MANU/SC/8108/2008 : (2008) 15 SCC 590 : AIR 2009 SC 331, Mahendra Pratap Singh v. State of Uttar Pradesh MANU/SC/0279/2009 : (2009) 11 SCC 334 and Sunil Kumar Sambhudayal Gupta (Dr.) and Ors. v. State of Maharashtra MANU/SC/0947/2010 : (2010) 13 SCC 657 : JT 2010 (12) SC 287.

71. The authorities that have been commended by Mr. Sharma need to be appositely understood. In Arumugam (supra), the Court was dealing with the issue of acceptance of the version of interested witnesses. It has referred to Dalip Singh v. State of Punjab MANU/SC/0031/1953 : AIR 1953 SC 364, State of Punjab v. Jagir Singh, Baljit Singh and Karam Singh MANU/SC/0193/1973 : (1974) 3 SCC 277, Lehna v. State of Haryana MANU/SC/0075/2002 : (2002) 3 SCC 76, Gangadhar Behera and Ors. v. State of Orissa MANU/SC/0875/2002 : (2002) 8 SCC 381 and State of Rajasthan v. Kalki and Anr. MANU/SC/0254/1981 : (1981) 2 SCC 752 and

opined that while normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so.

72. In Saravanan (supra), reiterating the principle, the Court held:

18. ...it has been said time and again by this Court that while appreciating the evidence of a witness, minor discrepancies on trivial matters without affecting the core of the prosecution case, ought not to prompt the court to reject evidence in its entirety. Further, on the general tenor of the evidence given by the witness, the trial court upon appreciation of evidence forms an opinion about the credibility thereof, in the normal circumstances the appellate court would not be justified to review it once again without justifiable reasons. It is the totality of the situation, which has to be taken note of. Difference in some minor detail, which does not otherwise affect the core of the prosecution case, even if present, that itself would not prompt the court to reject the evidence on minor variations and discrepancies.

73. In Mahendra Pratap Singh (supra), the Court referred to the authority in Inder Singh and Anr. v. State (Delhi Administration) MANU/SC/0093/1978 : (1978) 4 SCC 161 wherein it has been held thus:

2. Credibility of testimony, oral and circumstantial, depends considerably on a judicial evaluation of the totality, not isolated scrutiny. While it is necessary that proof beyond reasonable doubt should be adduced in all criminal cases, it is not necessary that it should be perfect.

In the circumstance of the case, the Court, analyzing the evidence, opined:

62. From the above discussion of the evidence of the eyewitnesses including injured witnesses, their evidence does not at all inspire confidence and their evidence is running in conflict and contradiction with the medical evidence and ballistic expert's report in regard to the weapon of offence, which was different from the one sealed in the police station. The High Court has, in our opinion, disregarded the rule of judicial prudence in converting the order of acquittal to conviction.

74. In Sunil Kumar Sambhudayal Gupta (supra), while dealing with the issue of material contradictions, the Court held:

30. While appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially after the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The trial court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate court in normal course would not be justified in reviewing the same again without justifiable reasons. (Vide State v. Saravanan)

31. Where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a witness and the other witness also makes material improvements before the court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence. (Vide State of Rajasthan v. Rajendra Singh MANU/SC/0446/1998 : (2009) 11 SCC 106.)

32. The discrepancies in the evidence of eyewitnesses, if found to be not minor in nature, may be a ground for disbelieving and discrediting their evidence. In such circumstances, witnesses may not inspire confidence and if their evidence is found to be in conflict and contradiction with other evidence or with the statement already recorded, in such a case it cannot be held that the prosecution proved its case beyond reasonable doubt." (Vide Mahendra Pratap Singh v. State of U.P.)

And again:

35. The courts have to label the category to which a discrepancy belongs. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so." (See Syed Ibrahim v. State of A.P. MANU/SC/8237/2006 : (2006) 10 SCC 601 and Arumugam v. State)

75. Mr. Luthra, learned Senior Counsel appearing for the Respondent- State, on the other hand, has disputed the stand of the Appellants as regards the discrepancies in the statement of P.W. 1. According to him, the evidence of P.W. 1 cannot be discarded on grounds which are quite specious. The circumstances in entirety are to be appreciated. He has placed reliance on the appreciation of the trial court and contended that the appreciation and analysis are absolutely impeccable. The relied upon paragraph is as follows:

The complainant P.W. 1 in his deposition had corroborated his complaint Ex. P.W. 1/A; his statement Ex. P.W. 80/D- 1 recorded Under Section 161 Code of Criminal Procedure; his supplementary statement Ex. P.W. 80/D- 3 and his statement Ex. P.W. 1/B recorded Under Section 164 Code of Criminal Procedure; qua his visit to Select City Mall, Saket; then moving to Munirka in an auto; boarding the bus Ex. P1; the incident; throwing them out of the moving bus and attempt of accused to overrun the victims by their bus.

It was argued by the Ld. Defence Counsel that during his cross examination P.W. 1 was confronted with his statement Ex. P.W. 1/A qua the factum of not disclosing in it the user of iron rods; the description of bus, the name of the assailants either in MLC Ex. P.W. 51/A or in his complaint Ex. P.W. 1/A. However, I do not consider such omissions as fatal as it is a settled law that FIR is not an encyclopedia of facts. The victim is not precluded from explaining the facts in his subsequent statements. It is not expected of a victim to disclose all the finer aspects of the incident in the FIR or in the brief history given to the doctor; as doctor(s) are more concerned with treatment of the victims. More so the victim who suffers from an incident, obviously, is in a state

of shock and it is only when we moves in his comfort zone, he starts recollecting the events one by one and thus to stop the victim from elaborating the facts to describe the finer details, if left out earlier, would be too much.

Thus if P.W. 1 had failed to give the description of the bus or of iron rods to the doctor in his MLC Ex. P.W. 51/A or in his complaint Ex. P.W. 1/A it shall not have any fatal effect on the prosecution case. What is fatal is the material omissions, if any.

76. The evidence of P.W. 1 is assailed contending that he is not a reliable witness. During the cross- examination, his evidence was assailed contending that Ex. P.W. 1/A is replete with contradictions and inconsistencies. Taking us through the evidence, Mr. Singh has submitted that in his first statement, Ex. P.W. 1/A, there were lot of omissions and contradictions and the improvements in his subsequent statements render the evidence wholly untrustworthy. The Appellants, in an attempt to assail the credibility of the testimony of P.W. 1, inter alia, raised the contentions: (i) Non- disclosure of the use of iron rod and (ii) the names of the assailants in the MLC in Ex. P.W. 51/A or in Ex. P.W. 1/A. However, the trial court held these assertions as non-fatal to P.W. 1's testimony:

... It is not expected of a victim to disclose all the finer aspects of the incident in the FIR or in the brief history given to the doctor; as doctor(s) are more concerned with treatment of the victims. More so the victim who suffers from an incident, obviously, is in a state of shock and it is only when we move in his comfort zone, he starts recollecting the events one by one and thus to stop the victim from elaborating the facts to describe the finer details, if left out earlier, would be too much.

77. The contentions assailing the evidence of P.W. 1 does not merit acceptance, for at the time when he was first examined his friend (the prosecutrix) was critically injured and he was in a shocked mental condition. The evidence of a witness is not to be disbelieved simply because he is a partisan witness or related to the prosecution. It is to be weighed whether he was present or not and whether he is telling the truth or not.

78. The informant, P.W. 1, in his deposition, has clearly spoken about the occurrence and also corroborated his complaint, Ex. P.W. 1/A. The evidence of P.W. 1 is unimpeachable in character and the roving cross- examination has not eroded his credibility. It is necessary to mention here that P.W. 1 was admitted in the casualty ward of Safdarjung Hospital. As he was injured, he was medically examined by Dr. Sachin Bajaj, P.W. 51, and as per the evidence, Ext. P.W. 51/A, the following injuries were found on his body:

(a) 1 c.m. X 1 c.m. size clean lacerated wound over the vertex of scalp (head injury);

(b) 0.5 X 1 cm size clean lacerated wound over left upper leg;

(c) 1 X 0.2 cm size abrasion over right knee.

79. The injuries found on the person of P.W. 1 and the fact that P.W. 1 was injured in the same occurrence lends assurance to his testimony that he was present at the time of the occurrence along with the prosecutrix. The evidence of an injured witness is entitled to a greater weight and the testimony of such a witness is considered to be beyond reproach and reliable. Firm, cogent and convincing ground is required to discard the evidence of an injured witness. It is to be kept in mind that the evidentiary value of an injured witness carries great weight. In Mano Dutt and Anr. v. State of Uttar Pradesh MANU/SC/0159/2012 : (2012) 4 SCC 79, it was held as under:

31. We may merely refer to Abdul Sayeed v. State of M.P. MANU/SC/0702/2010 : (2010) 10 SCC 259 where this Court held as under:

28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built- in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. 'Convincing evidence is required to discredit an injured witness.' [Vide Ramlagan Singh v. State of Bihar MANU/SC/0216/1972 : (1973) 3 SCC 881, Malkhan Singh v. State of U.P. MANU/SC/0164/1974 : (1975) 3 SCC 311, Machhi Singh v. State of Punjab MANU/SC/0211/1983 : (1983) 3 SCC 470, Appabhai v. State of Gujarat 1988 Supp SCC 241, Bonkya v. State of Maharashtra MANU/SC/0066/1996 : (1995) 6 SCC 447, Bhag Singh v. State of Punjab MANU/SC/1308/1997 : (1997) 7 SCC 712, Mohar v. State of U.P. MANU/SC/0808/2002 : (2002) 7 SCC 606, Dinesh Kumar v. State of Rajasthan MANU/SC/7910/2008 : (2008) 8 SCC 270, Vishnu v. State of Rajasthan (2009) 10 SCC 477, Annareddy Sambasiva Reddy v. State of A.P. MANU/SC/0640/2009 : (2009) 12 SCC 546 and Balraje v. State of Maharashtra MANU/SC/0352/2010 : (2010) 6 SCC 673.]

29. While deciding this issue, a similar view was taken in Jarnail Singh v. State of Punjab MANU/SC/1584/2009 : (2009) 9 SCC 719 where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under:

'28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In Shivalingappa Kallayanappa v. State of Karnataka MANU/SC/0053/1995 : 1994 Supp (3) SCC 235 this Court has held that the

deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. In State of U.P. v. Kishan Chand MANU/SC/0652/2004 : (2004) 7 SCC 629 a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross- examination and nothing can be elicited to discard his testimony, it should be relied upon (vide Krishan v. State of Haryana (2006) 12 SCC 459. Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below.'

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.

To the similar effect is the judgment of this Court in Balraje (supra).

80. As is manifest from the evidence, S.I. Pratibha Sharma, P.W. 80, recorded the First Supplementary Statement Under Section 161 Code of Criminal Procedure of the informant, P.W. 1, Awninder Pratap Singh about 7:30 a.m. on 17.12.2012. Thereafter, P.W. 1, the informant, took P.W. 80, S.I. Pratibha Sharma, to the spot from where he and the prosecutrix had boarded the bus.

81. Apart from the injuries sustained, the presence of P.W. 1 is further confirmed by the DNA analysis of:

1. the bloodstained mulberry leaves and grass that were collected from the spot in Mahipalpur where they were thrown off the bus; (Ex. 74/C)

2. the blood stains on Vinay's jacket (Ex. 68/2) (as per Seizure Memo Ex. 68/3), Pawan's sweater (Ex. P.68/6) (as per Ex. P.W. 68/F) and Akshay's jeans (Ex P.68/6) tying them to the incident; (from the trial court judgment); and

3. the unburnt cloth pieces belonging to P.W. 1 that were recovered alongwith the ashes of the prosecutrix's clothing (Ex. PW 74/M).

82. The trial court judgment was fortified by the decisions of this Court in Pudhu Raja and Anr. v. State Represented by Inspector of Police MANU/SC/0761/2012 : (2012) 11 SCC 196, Jaswant Singh v. State of Haryana MANU/SC/0236/2000 : (2000) 4 SCC 484 and Akhtar and Ors. v. State of Uttaranchal MANU/SC/0556/2009 : (2009) 13 SCC 722 on the law of material omissions and contradictions. Concurringly, the High Court too observed that the defence had failed to demonstrate from the informant's testimony such discrepancies, omissions and improvements that would have caused the High Court to reject such testimony after testing it on the anvil of the law laid down by this Court:

325. ...Their throbbing injuries and the rigors of the weather coupled with the state of their minds must have at that point of time brought forth their instinct of survival and self preservation. The desire to have apprehended their assailants and to mete out just desserts to them could not have been their priority. ...

83. In this context, we may fruitfully reproduce a passage from State of U.P. v. M.K. Anthony MANU/SC/0123/1984 : (1985) 1 SCC 505:

10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper- technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. ...

84. In Harijana Thirupala v. Public Prosecutor, High Court of A.P. MANU/SC/0629/2002 : (2002) 6 SCC 470, it has been ruled that:

11. ...In appreciating the evidence the approach of the court must be integrated not truncated or isolated. In other words, the impact of the evidence in totality on the prosecution case or innocence of the accused has to be kept in mind in coming to the conclusion as to the guilt or otherwise of the accused. In reaching a conclusion about the guilt of the accused, the court has to appreciate, analyse and assess the evidence placed before it by the yardstick of probabilities, its intrinsic value and the animus of witnesses.

85. In Ugar Ahir v. State of Bihar MANU/SC/0333/1964 : AIR 1965 SC 277, a three- Judge Bench held:

7. The maxim falsus in uno, falsu in omnibus (false in one thing, false in everything) is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. It is, therefore, the duty of the court to scrutinise the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff. But, it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest.

86. In Krishna Mochi v. State of Bihar MANU/SC/0327/2002 : (2002) 6 SCC 81, the Court ruled that:

32. ...The court while appreciating the evidence should not lose sight of these realities of life and cannot afford to take an unrealistic approach by sitting in an ivory tower. I find that in recent times the tendency to acquit an accused easily is galloping fast. It is very easy to pass an order of acquittal on the basis of minor points raised in the case by a short judgment so as to achieve the yardstick of disposal. Some discrepancy is bound to be there in each and every case which should not weigh with the court so long it does not materially affect the prosecution case. In case discrepancies pointed out are in the realm of pebbles, the court should tread upon it, but if the same are boulders, the court should not make an attempt to jump over the same. These days when crime is looming large and humanity is suffering and the society is so much affected thereby, duties and responsibilities of the courts have become much more. Now the maxim "let hundred guilty persons be acquitted, but not a single innocent be convicted" is, in practice, changing the world over and courts have been compelled to accept that "society suffers by wrong convictions and it equally suffers by wrong acquittals". I find that this Court in recent times has conscientiously taken notice of these facts from time to time".

87. In Inder Singh (supra), Krishna Iyer, J. laid down that:

Proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot get away with it because truth suffers some infirmity when projected through human processes.

88. In the case of State of U.P. v. Anil Singh MANU/SC/0503/1988 : 1988 (Supp.) SCC 686, it was held that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform.

89. In Mohan Singh and Anr. v. State of M.P. MANU/SC/0035/1999 : (1999) 2 SCC 428, this Court has held:

11. The question is how to test the veracity of the prosecution story especially when it is with some variance with the medical evidence. Mere variance of the prosecution story with the medical evidence, in all cases, should not lead to the conclusion, inevitably to reject the prosecution story. Efforts should be made to find the truth, this is the very object for which courts are created. To search it out, the courts have been removing the chaff from the grain. It has to disperse the suspicious cloud and dust out the smear of dust as all these things clog the very truth. So long as chaff, cloud and dust remain, the criminals are clothed with this protective layer to receive the benefit of doubt. So it is a solemn duty of the courts, not to merely conclude and leave the case the moment suspicions are created. It is the onerous duty of the court, within permissible limit, to find out the truth. It means on one hand, no innocent man should be punished but on the other hand, to see no person committing an offence should get scot- free. If in spite of such effort, suspicion is not dissolved, it remains writ at large, benefit of doubt has to be credited to the accused. For this, one has to comprehend the totality of the facts and the circumstances as spelled out through the evidence, depending on the facts of each case by testing the credibility of eyewitnesses including the medical evidence, of course, after excluding those parts of the evidence which are vague and uncertain. There is no mathematical formula through which the truthfulness of a prosecution or a defence case could be concretised. It would depend on the evidence of each case including the manner of deposition and his demeans (sic), clarity, corroboration of witnesses and overall, the conscience of a judge evoked by the evidence on record. So courts have to proceed further and make genuine efforts within the judicial sphere to search out the truth and not stop at the threshold of creation of doubt to confer benefit of doubt.

90. Keeping the aforesaid aspects in view, we shall now proceed to test the submission of the learned Counsel for the Appellants and the learned amicus curiae on the issue whether the testimony of P.W. 1 deserves acceptance being reliable or not. It is no doubt true that in the earlier statement of P.W. 1, that is, Ex. P.W. 1/A, there are certain omissions; but the main thing to be seen is whether the omissions go to the root of the matter or pertain to insignificant aspects. The evidence of P.W. 1 is not to be disbelieved simply because there were certain omissions. The trial Court as well as the High Court found his evidence credible and trustworthy and we find no reason to take a different view.

91. The case of the prosecution is attacked contending that P.W. 1 is a planted witness and that he keeps on improving his version. It is submitted that P.W. 1 is not reliable as had he been present at the time of occurrence, he would have endeavoured to save the victim and the nature of injuries as mentioned in Ex. P.W. 51/A on the person of P.W. 1 raises serious doubt about his presence at the time of occurrence.

92. The prosecutrix and P.W. 1 were surrounded and attacked by at least six accused persons. As narrated by P.W. 1, he was pinned down by two of the assailants while the others committed rape on the prosecutrix on the rear side of the bus. The accused persons were in a group and were also armed with iron rods. P.W. 1 was held by them. It would not have been possible for P.W. 1 to resist the number of accused persons and save the prosecutrix. The evidence of P.W. 1 cannot be doubted on the ground that he had not interfered with the occurrence. The improvements made

in the supplementary statement need not necessarily render P.W. 1's evidence untrustworthy more so when P.W. 1 has no reason to falsely implicate the accused.

93. Learned Counsel for the State has highlighted that the version of P.W. 1 is absolutely consistent and the trial court as well as the High Court has correctly relied upon his testimony. He has drawn our attention to the version of P.W. 1 in the FIR, the statement recorded Under Section 164 Code of Criminal Procedure and his testimony before the trial court. We have given anxious consideration and perused the FIR, supplementary statements recorded Under Section 164 Code of Criminal Procedure and appreciated the evidence in court and we find that there is no justification or warrant to treat the version of the witness as inconsistent. The consistency is writ large and the witness, as we perceive, is credible.

94. Mr. Luthra, learned Senior Counsel, further contested the argument advanced on behalf of the Appellants as regards the discrepancies so far as P.W. 1 is concerned. As regards the items stolen, it is recorded in the FIR that the accused persons stole the informant's Samsung Galaxy Mobile phone bearing 7827917720 and 9540034561 and his wallet containing Rs. 1000, ICICI debit card, Citi Bank Credit Card, ID Card, one silver ring, one gold ring and took off all his clothes, i.e., khakhi coloured blazer, grey sweater, black jeans, black Hush Puppies shoes and they also stole the prosecutrix's mobile phone with number 9818358144. His statement recorded Under Section 164 Code of Criminal Procedure states that the accused snatched the Samsung Galaxy S- Duos Mobile, one more mobile phone of Samsung, one purse with Rs. 1000, one Citibank credit card, ICICI Debit Card, Company I- Card, Delhi Metro Card and also snatched black jeans, one silver ring, one gold ring, Hush Puppies shoes. They also snatched the prosecutrix's Nokia mobile phone and grey colour purse and both the wrist watches. Before the trial court, he deposed that they snatched both the rings, shoes, purse containing cards and cash, socks and belt; they took off all his clothes and left him in an underwear; the accused had also taken off all the prosecutrix's clothes and snatched all her belongings including grey purse containing Axis bank card. P.W. 1 also identified Hush Puppies shoes, Ex. P- 2, Sonata watch, Ex. P- 3, metro card, Ex. P- 5, Samsung Galaxy Duos, Ex. P- 6, and currency notes, Ex. P- 7. As regards the weapon of assault, in the FIR and in the Section 164 statement, "rod" was recorded as weapon of assault and in his testimony before the trial court, P.W. 1 deposed that the weapon of assault was "iron rods". So far as throwing from the bus is concerned, it is recorded in the FIR that the other accused persons told the driver to drive the bus at a fast speed and then tried to throw the informant from the back door of the bus, however, the back door of the bus did not open. Then they threw both the informant and the prosecutrix from the moving bus near NH 8 Mahipalpur on the side of the road. His statement recorded Under Section 164 Code of Criminal Procedure states that the bus driver was driving the bus at a fast speed on being told by the other accused and he heard them saying that the girl had died and to throw her off the bus. They then took the informant and the prosecutrix to the rear door of the bus but could not open the door and, therefore, dragged them to the front door of the bus and threw them out. The bus driver turned the bus in such a manner after throwing them, that if the informant had not pulled the prosecutrix, then the bus would have run over her. P.W. 1 has deposed before the trial court that he heard one of the accused saying "mar gayee, mar gayee"; the accused were exhorting that the informant and the prosecutrix should not be left alive; the accused persons pulled the informant near the rear door and put the prosecutrix on him. The rear door was closed, so they dragged both the informant and the

prosecutrix to the front door; they were thrown off opposite Hotel Delhi 37; after they were thrown, the accused persons turned the bus and tried to crush them under the wheels. As regards the naming/description of the accused, the FIR recorded that the accused were aged between 25-30 years; one of them had a flat nose and was the youngest; one of them wore a red banian and they were wearing pant and shirt; and the accused were named as Ram Singh, Thakur, Mukesh, Vinay and Pawan. In the statement, it was recorded that he saw a dark coloured man who was being called "Mukesh, Mukesh"; he over- heard them calling each other as Ram Singh, Thakur; and the other three were addressing each other Pawan and Vinay and taking the name of JCL. In his testimony, it is recorded that he identified A- 2, Mukesh, as Driver, A- 1, Ram Singh, and A- 3, Akshay, as persons sitting in the driver's cabin and identified A- 4, Vinay, and A- 5, Pawan, as persons sitting in the bus.

95. As regards the minor contradictions/omissions, the trial court has placed reliance upon Pudhu Raja (supra) and Jaswant Singh (supra) and treated the version of P.W. 1 as reliable. The testimony of P.W. 1 has been placed reliance upon by both the Courts and on an anxious and careful scrutiny of the same, we do not perceive any reason to differ with the said view.

96. As we find, the trial court has come to the conclusion that the incident has been aptly described by P.W. 1, the injured. The injuries on his person do show that he was present in the bus at the time of the incident. His presence is further confirmed by the DNA analysis. Suffice it to say for the present, the contradictions in the statement, Ex. P.W. 1/A, are not material enough to destroy the substratum of the prosecution case. From the studied analysis of the evidence of P.W. 1, it is the only inevitable conclusion because the appreciation is founded on yardstick of consideration of totality of evidence and its intrinsic value on proper assessment.

Recovery of the bus and the CCTV footage

97. The endeavour of the prosecution was to first check the route and get a clue of the bus. For the aforesaid purpose, the CCTV footage becomes quite relevant. The story starts from the Select City Walk Mall, Saket and hence, we have to start from there. As per the case of the prosecution, the informant and the prosecutrix had gone to Select City Walk Mall, Saket to see a film. The CCTV footage produced by P.W. 25, Rajender Singh Bisht, in a CD, Ex. P.W. 25/C- 1 and P.W. 25/C- 2, and the photographs, Ex. P.W. 25/B- 1 to Ex. P.W. 25/B- 7, are evident of the fact that the informant and the prosecutrix were present at Saket till 8:57 p.m. The certificate Under Section 65B of the Evidence Act with respect to the said footage is proved by P.W. 26, Shri Sandeep Singh, vide Ex. P.W. 26/A. The informant as well as the prosecutrix gave brief description of the entire incident in their MLCs which led the investigating team to the Hotel near Delhi Airport where the prosecutrix and the informant were dumped after the incident. P.W. 67, Pramod Kumar Jha, the owner of the Hotel at Delhi Airport, was examined by the investigating officers regarding the present incident. He handed over the pen drive containing the CCTV footage, Ex. P- 67/1, and the CD, Ex. P- 67/2 to the I.O. which were seized vide seizure memo Ex. P.W. 67/A. The CCTV footage and the photographs were identified by P.W. 67, Pramod Jha, P.W. 74. SI Subhash Chand,

and Gautam Roy, P.W. 76, from CFSL during their examination in Court. The CCTV footage twice showed a white coloured bus having yellow and green stripes at 9:34 p.m. and again at 9:53 p.m. The bus exactly matched the description of the offending bus given by the informant. It had the word "Yadav" written on one of its sides and its front tyre on the left side did not have a wheel cap. P.W. 78, the S.H.O., Inspector Anil Sharma, has further deposed that the said CCTV footage seized vide seizure memo Ex. P.W. 67/A was sent to the CFSL through SI Sushil Sawariya, P.W. 54, on 02.01.2013, and this part of the testimony of P.W. 78 is corroborated by the testimony of P.W. 54, SI Sushil Sawaria, and P.W. 77, the MHC(M). Thereafter, on 03.01.2013, the report of the CFSL was received. In fact, the trial court had assured itself of the correct identification of the bus by playing the said CCTV footage shown in the pen drive, Ex. P.W. 67/1, and the CD, Ex. P.W. 67/2, during the cross- examination of P.W. 67, Pramod Jha.

98. Learned Counsel Mr. Singh has asserted that bus, Ex. P- 1, has been falsely implicated in the present case as is evidenced from the recovery of the CCTV footage. In an attempt to discredit the CCTV footage, he pointed out that only the CCTV recording alleged to be of this bus was recorded and not of all other white buses that had 'Yadav' written on them. The learned Counsel for the defence subsequently maintained that the CCTV footage cannot be relied upon as the same has been tampered with by the investigating officers.

99. P.W. 76, Gautam Roy, HOD, Computer Cell, Forensic Division, has testified that on 02.01.2013, he had received two sealed parcels sealed with the seal of PS and the seals tallied with the specimen seals provided. He marked the blue coloured pen drive found in parcel No. 1 as Ex. 1 and the Moser Baer CD found in the second parcel as Ex. 2. He further testified that both the exhibits were played by him in the computer and the bus was seen twice, at 9:34 p.m. and 9:54 p.m. He had photographed all these three by freezing the pen drive and the CD and these photographs were compared by him with the photographs taken by the photographer, P.W. 79, P.K. Gottam, which he had summoned. The witness testified that he had prepared the three comparison charts in this regard as Ex. P.W. 76/B, P.W. 76/C and P.W. 76/D, and his detailed report as Ex. P.W. 76/E. The footage taken in a CD and pen drive was sealed in P.W. 67's presence and as the recording was automatic data being fed on regular basis into the hard disk, the question of tampering with the same could not arise. P.W. 79, P.K. Gottam, from CFSL, CBI, has stated in his examination that he took photographs of the bus bearing No. DL- 1P- C- 0149 parked at Thyagraj Stadium, INA, New Delhi from different angles on 17.12.2012 and 18.12.2012 and handed over the same to P.W. 76. The said photographs were marked as B1 in Ex. P.W. 76/B; as C1 and C2 in Ex. P.W. 76/C; and as D1 in Ex. P.W. 76/D. He has deposed as to the genuineness of the photographs by deposing that the software used for developing the photographs was tamper proof.

100. Once it is proved before the court through the testimony of the experts that the photographs and the CCTV footage are not tampered with, there is no reason or justification to perceive the same with the lens of doubt. The opinion of the CFSL expert contained in the CFSL report marked as Ex. P.W. 76/E authenticates that there was no tampering or editing in both the exhibits, Ex. P- 67/1 and Ex. P- 67/2, and that a bus having identical patterns as the one parked at Thyagraj

Stadium is seen in the CCTV footage, which includes the word "Yadav" written on one side, "back side dent (left)" and absence of wheel cover on the front left side. The contents of the report is also admitted to be true by its author, P.W. 76, Gautam Roy. Quite apart from that, it is perceptible that the High Court, in order to satisfy itself, had got the CCTV footage played during the hearing and found the same to be creditworthy and acceptable.

101. As the narrative proceeds, the next step was to find out the bus. The identity of the bus in the CCTV footage was known and the said knowledge could propel the prosecution to move for recovery. We may start from the beginning. The bus, Ex. P- 1, bearing registration No. DL- 1P- C- 0149, is the vehicle alleged to have been involved in the incident. P.W. 74, SI Subhash Chand, on 17.12.2012, along with P.W. 1, the informant, and P.W. 80, WSI Pratibha Singh, went to Munirka bus stand from where the victims had boarded the alleged bus, Ex. P- 1, and then to Mahipalpur to the spot where both the victims were thrown off the bus on 16.12.2012. After the collection of exhibits from the spot, P.W. 74 and P.W. 80 went to the hotels opposite the spot having CCTV cameras installed and amongst those was Hotel Delhi 37. At the said hotel, the informant/P.W. 1 identified the bus they had boarded in the CCTV footage of the road and the relevant footage of the recording was taken in a pen drive and CD and was handed over to the Investigating Officer as Ex. P.W. 67/A. Later in the day, secret information was received by P.W. 80 that the alleged bus was parked at Sector 3, R.K. Puram. P.W. 74 accompanied P.W. 80 and P.W. 65, Ct. Kripal Singh, to Ravidass Camp where a bus matching the description given by P.W. 1 was parked near the Gurudwara. It was white in colour with 'Yadav' written on the side. When the police approached the bus, A- 1, Ram Singh, got down from it and started to run; he was later apprehended in a chase by P.W. 74 and P.W. 65. From A- 1, the fitness certificate, PUC and other documents regarding the registration of the vehicle DL- 1PC- 0149 were seized as Ex. P.W. 74/I, P.W. 74/J and P.W. 74/K. The entry door of the bus was ahead of the front wheel and the wheel cap was missing from the front tyre. After recovery of the burnt clothes at the behest of A1, he was sent to the police station with P.W. 65. P.W. 42, Ct. Suresh Kumar, was called to the spot and he drove the bus to Thyagraj Stadium around 5:45 p.m. on the same day. An inspection of the bus was conducted inside the stadium and the CFSL team lifted Ex. P.W. 74/P. Thereafter, P.W. 32, SI Vishal Chaudhary, and P.W. 33, SI Vikas Rana, were called from police station Kotla Mubarakpur to guard the bus.

102. Mr. Singh has raised the following issues with respect to the identification and recovery of the alleged bus:

1. CCTV footage was not properly examined to check all possible buses plying on the said route;

2. The bus was taken to Thyagraj Stadium instead of the Police Station to avoid the media and to better facilitate the planting of evidence; and

3. P.W. 81, Dinesh Yadav, owner of the Bus was in judicial custody for 6 months before his examination in the Court and he was so detained in custody to bring pressure upon him.

103. Mr. Singh has made bald allegation that the bus, Ex. P- 1, was falsely implicated and that all the DNA evidence recovered therefrom was actually planted. He contends that the bus, Ex. P- 1, was sent to Thyagraj Stadium instead of the concerned Police Station, PS Vasant Vihar, with the deliberate intention of avoiding the media attention so that the evidence could be planted easily. This argument is in furtherance of his false implication theory. He has, however, provided no further specific assertions to cast a doubt in our mind that the police has planted the evidence in the bus.

104. Mr. Luthra, in his turn, relying on the decision of the Delhi High Court in Manjit Singh v. State MANU/DE/2131/2014 : 214 (2014) DLT 646, has placed statistics before us pointing to the paucity of physical space in police stations across the city. In Manjit Singh (supra), the High Court had ordered the Delhi Police to furnish data regarding case properties with the Police. The High Court noted that there was an accumulation of "2,86,741 case properties including 25,547 vehicles, out of which as many as 2,479 properties are lying in public places outside the police stations". Given the state of affairs, the submission put forth by Mr. Luthra is acceptable. There is dearth of space inside the police stations in Delhi and the use of Thyagraj Stadium as parking lot in the present case does not necessarily mean that there was any mala fide intention on the part of the investigating agency without any specific assertion to advance the said bald allegation.

105. It may also be noted that on 17.12.2012, P.W. 42, Ct. Suresh Kumar, drove the bus from Ravidass Camp to Thyagraj Stadium around 5:45 p.m. along with P.W. 74 and P.W. 80. About 6:15 p.m., P.W. 32, SI Vishal Chaudhary, along with Ct. Amit, both of PS Kotla Mubarakpur, were sent to Thyagraj Stadium where on the instructions of P.W. 80, SI Pratibha, P.W. 32, guarded the bus till 8:00 a.m. the next day. On 18.12.2012, he handed over the charge of guarding the bus to P.W. 33, SI Vikas Rana, PS Kotla Mubarakpur, and he guarded the bus till 8:30 p.m., until after the CFSL team left. Thus, the criticism as regards the parking of the bus at Thyagraj Stadium and not at the Police Station pales into insignificance.

Reliability of the testimony of P.W. 81 (the owner of the bus)

106. Having dealt with the recovery of the bus, it is necessary to dwell upon the contention put forth by the learned Counsel for the Appellants which pertains to the acceptability and reliability of the testimony of P.W. 81, Dinesh Yadav. The principal contention in this regard is that P.W. 81, Dinesh Yadav, the owner of the bus, was in judicial custody and, therefore, his version in the court is under tremendous pressure as he was desirous of getting a bail order to enjoy his liberty. Highlighting this aspect, it is urged by Mr. Sharma and Mr. Singh, learned Counsel for the Appellants, that the testimony of the said witness deserves to be totally discarded.

107. P.W. 81, Dinesh Yadav, is a transporter and owns 8 to 10 buses including Ex. P- 1. He runs the buses under the name 'Yadav Travels'. He was examined by the prosecution to prove that A- 1, A- 2 and A- 3 are connected with the bus, Ex. P- 1. In his examination, P.W. 81 admitted that the word 'Yadav' is written across Ex. P- 1 and that it is white in colour with yellow stripes. P.W. 81 stated that A- 1, Ram Singh (since deceased), was the driver of the said bus in December 2012, A- 3, Akshay Kumar Singh, was his helper and the bus was usually parked by A- 1, Ram Singh, in R.K. Puram, near his residence. The bus was attached to Birla Vidya Niketan School, Pushp Vihar, New Delhi to ferry students in the morning and also to a Company, M/s. Net Ambit, Sector 132, Noida, to take its employees from Delhi to Noida. On 17.12.2012, the bus went from Delhi to Sector 132, Noida to take the staff of M/s. Net Ambit to their office and P.W. 81 was informed by A- 1, Ram Singh, or A- 2, Mukesh, that the bus was checked at the DND toll plaza on their route to Noida.

108. Learned Counsel Mr. Singh has asserted that P.W. 81 was kept in judicial custody to obtain a statement favourable to the prosecution in the present case. In this aspect, it is noted that P.W. 81 also stated that he was kept in judicial custody. The arrest was, however, not made in the present case; it was in connection with another case in relation to providing incorrect address to the Transport Authority. He was lodged in jail in case FIR No. 02/2013 of PS Civil Lines Under Sections 420, 468, 471 Indian Penal Code. P.W. 81 had provided his friend's address as his own at the time of registration and was arrested on a complaint made by the Transport Authority. He was named in the charge- sheet in the present case and was cited as a witness at serial No. 36 but was dropped by the prosecution on 28.05.2013. Later on, his examination was sought by way of an application Under Section 311 Code of Criminal Procedure. The application was allowed by the trial court order dated 03.07.2013 on the ground that he was the owner of the bus and his examination was necessary to prove as to whom he had handed over the custody of the bus on the night of the incident, i.e., 16.12.2012. It is limpid from the deposition of P.W. 81 that he was in judicial custody for a separate offence and, therefore, it is difficult to accede to the argument advanced by Mr. Singh that he was under pressure to support the version of the prosecution.

109. Apart from the above, the prosecution, in order to place A- 1 as the driver of the bus, Ex. P- 1, has examined P.W. 16, Rajeev Jakhmola. P.W. 16, Manager (Admn) of Birla Vidya Niketan School, Pushp Vihar, handled their transport. In his examination, he stated that P.W. 81, Dinesh Yadav, had provided the school with 7 buses on contract basis including Ex. P- 1 and that A- 1, Ram Singh, was its driver. He also submitted a copy of Ram Singh's Driving Licence to the Police along with the copy of the agreement of the school with the owner of the bus, copy of the RC, copy of the fitness certificate, certificate of third party technical inspection, pollution certificate, two copies of certificate- cum- policy schedule (Insurance), copy of certificate of training undergone by accused Ram Singh, copy of permit and list of the transporters, collectively as Ex. P.W. 16/A.

110. Thus, according to the prosecution, from the evidence of P.W. 16, Rajeev Jakhmola, and P.W. 81, Dinesh Yadav, it stands proved that the bus in question was routinely driven by Ram Singh.

When an argument was raised before the High Court over the veracity of P.W. 81's testimony, it recorded as under:

270. We are constrained to say that there is no substance in the aforesaid contention of Mr. Sharma for the reason that P.W. 81 Dinesh Yadav, the owner of the bus bearing registration No. DL1PC-0149, in which the offence was committed, has categorically stated in his cross- examination that bus Ex. P- 1 was being used for ferrying the students in the morning and thereafter as a chartered bus for taking the officials of M/s. Net Ambit from Delhi to Noida. He further stated in cross-examination that on 17.12.2012, the bus took the staff of M/s. Net Ambit from Delhi to Sector 132, Noida, UP. Quite apparently, therefore, accused Ram Singh as disclosed by him had thrown the SIM card near about the bus stand of Sector 37, where according to P.W. 44 Mohd. Zeeshan, it was found at the noon hour. Since it is not in dispute that accused Ram Singh was the driver of the bus and this fact stands fully established by the evidence on record, Noida was possibly found by him to be the safest destination to dispose of the SIM card.

111. The aforesaid analysis commends our approval because we, having analysed the said aspect on our own, have arrived at the same conclusion. There is no trace of doubt that the testimony of the said witness withstands close scrutiny and there is no reason to treat it with any kind of disapproval. That apart, the evidence of P.W. 16 corroborates the testimony of the owner of the bus.

Personal search and statements of disclosure leading to recovery

112. Learned Counsel for the Appellants have seriously questioned the arrest of the accused persons and the recoveries made pursuant to the said arrest. It is the stand of the prosecution that pursuant to the arrest of all the accused A- 1 to A- 5, there were disclosure statements recorded Under Section 27 of the Evidence Act which led to recoveries of incriminating articles such as objects belonging to the victims as also objects which have been linked orally or scientifically (such as through DNA profiling) to the prosecutrix and P.W. 1. These material objects recovered are used to link the convicts with the crime and corroborate the version of the eye witness P.W. 1 and the dying declaration of the deceased victim.

113. First, we shall refer to the arrest of Ram Singh and the recoveries made at his instance. As already stated, on 17.12.2012, P.W. 80, SI Pratibha Sharma, had spotted accused Ram Singh sitting in the offending bus, Ex. P1, which was parked at Ravidass Camp, R.K. Puram, New Delhi. On seeing the police, Ram Singh got down from the bus and started running. He was chased and instantly arrested at 4:15 p.m. vide memo Ex. P.W. 74/D and subsequently, his personal search was conducted vide memo Ex. P.W. 74/E and his disclosure Ex. P.W. 74/F was recorded. Notably, Ram Singh has led to several important discoveries and seizures from inside the bus.

114. Accused Mukesh was apprehended on 18.12.2012 from village Karoli, Rajasthan, by a team headed by P.W. 58, SI Arvind. He produced accused Mukesh before P.W. 80, SI Pratibha Sharma, the Investigating Officer, at Safdarjung Hospital in muffled face alongwith a mobile, Samsung Galaxy Duos, Ex. P- 6, seized by her vide memo Ex. P.W. 58/A. The accused was arrested at 6:30 p.m. on 18- 12- 2012 by her vide memo Ex. P.W. 58/B and his personal search was conducted vide memo Ex. P.W. 58/C. The accused pointed the Munirka bus stand vide memo Ex. P.W. 68/K and the dumping spot vide memo Ex. P.W. 68/L. This Samsung Galaxy phone was identified to be that of P.W. 1, the informant.

115. On 23.12.2012, accused Mukesh led the police to Anupam Apartment, garage No. 2, Saidulajab, Saket, New Delhi, and got recovered a green colour T- shirt, Ex. P- 48/1, on which the word "play boy" was printed; a grey colour pant, Ex. P- 48/2, and a jacket, Ex. P- 48/3, of bluish grey colour, all seized vide memo Ex. P.W. 48/B. The Investigating Officer also prepared the site plan, Ex. P.W. 80/I, of the place of recovery. On 24.12.2012, accused Mukesh also got prepared a route chart Ex. P.W. 80/H.

116. On 18.12.2012, accused Ram Singh led the Investigating Officer to Ravidass Camp and pointed towards his associates, namely, accused Vinay and accused Pawan. Accused Pawan was apprehended and arrested about 1:15 p.m. vide memo Ex. P.W. 60/A; his disclosure, Ex. P.W. 60/G, was recorded and his personal search was conducted vide memo Ex. P.W. 60/C. Accused Pawan Gupta pointed out the Munirka bus stand and a pointing out memo Ex. P.W. 68/I was prepared. He also pointed the dumping spot and memo Ex. P.W. 68/J was prepared in this regard.

117. On 19.12.2012, from accused Pawan Gupta, P.W. 80, got effected the following recoveries:

(a) Wrist watch Ex. P3 seized vide memo Ex. P.W. 68/G;

(b) Two currency notes of denomination of Rs. 500/- Ex. P- 7 colly were seized vide memo Ex. P.W. 68/G;

(c) Clothes worn by the accused at the time of the incident seized vide memo Ex. P.W. 68/F; and

(d) Black coloured sweater having grey stripes with label Abercrombie and Fitch Ex. P- 68/6 and a pair of coca- cola colour pants Ex. P- 68/7 colly; underwear having elastic labeled Redzone Ex. P- 68/8 and a pair of sports shoes with Columbus inscribed on them as Ex. P- 68/9.

It may be stated here that Sonata wrist watch, Ex. P3, was identified as that of P.W. 1.

118. On 18.12.2012, about 1:30 p.m., accused Vinay Sharma was arrested in front of Ravidass Mandir, Main Road, Sector- 3, R.K. Puram, New Delhi vide arrest memo Ex. P.W. 60/B; and his disclosure Ex. P.W. 60/H was also recorded. He pointed out the Munirka bus stand from where the victims were picked up vide memo Ex. P.W. 68/I and he also pointed out Mahipalpur Flyover, the place where the victims were thrown out of the moving bus vide pointing out memo Ex. P.W. 68/J. On 19.12.2012, he led to the following recoveries:

(a) Hush Puppies shoes Ex. P- 2 seized vide memo Ex. P.W. 68/C; and

(b) Nokia mobile phone Ex. P- 68/5 of the prosecutrix seized vide memo Ex. P.W. 68/D.

Hush Puppies shoes, Ex. P2, were identified to be that of P.W. 1, the informant. Nokia Mobile Phone, Ex. P- 68/5, was identified to be that of the prosecutrix.

119. On 19.12.2012, pursuant to his supplementary disclosure statement Ex. P.W. 68/A, the following recoveries were made by the accused vide seizure memo Ex. P.W. 68/B:

(a) One blue coloured jeans having monogram of Expert Ex. P- 68/1;

(b) A black coloured sports jacket with white stripes and a monogram of moments as Ex. P- 68/3 and a pair of rubber slippers as Ex. P- 68/4.

120. During the personal search of Vinay Sharma, the following article was recovered:

(a) Nokia mobile phone with IMEI No. 35413805830821418 belonging to the accused, which was returned to him on superdari vide order dated 4- 4- 2013

121. On 21.12.2012, about 9:15 p.m., accused Akshay Kumar Singh @ Thakur was arrested from village Karmalahang, P.S. Tandwa, District Aurangabad, Bihar vide memo Ex. P.W. 53/A and on 21.12.2012 and 22.12.2012, his disclosures, Ex. P.W. 53/I and Ex. P.W. 53/D, respectively were recorded. On 22.12.2012, he got effected the following recoveries from the residence of his brother, Abhay, from the rented house of one Tara Chand, village Naharpur, Gurgaon, viz;

i. Blood stained jeans (Ex. P- 53/3) worn by the accused at the time of the incident, recovered from a black bag (Ex. P- 53/2)

ii. A blue black coloured Nokia mobile phone (Ex. P- 53/1)

iii. Blood- stained red coloured banian (vest).

122. On 27.12.2012, he got recovered the informant's Metro card Ex. P- 5 and the informant's silver ring, Ex. P- 4, from House No. 1943, 3rd Floor, Gali No. 3, Rajiv Nagar, Sector- 14, Gurgaon, Haryana.

123. Learned Counsel for the Appellants and learned amicus, Mr. Hegde, have vehemently criticized the arrest and recoveries that have been made or effected. It is urged by Mr. Sharma that the Appellant Mukesh was not in custody when the recovery took place and additionally, he was not produced before the nearest Magistrate within twenty- four hours from the time of detention. Mr. Luthra, in his turn, would submit that the said accused was formally arrested at Delhi and, thereafter, the recovery on the basis of his disclosure took place. Mr. Singh, learned Counsel, contended that the disclosure statements which have been recorded by the police do tantamount to confessional statements relating to the involvement and commission of the crime. This argument requires to be squarely dealt with. For appreciating the said submission, it is necessary to appreciate the inter- se relationship between the accused persons and thereafter dwell upon the process of the arrest and judge the acceptability on the anvil of the precedents in the field.

124. As the evidence brought on record would show, the accused persons were known to each other. Mukesh, A- 2, and deceased Ram Singh, A- 1, were brothers. According to the testimony of Dinesh Yadav, P.W. 81, Ram Singh was the driver of the bus and A- 3, Akshay, was working as a helper in the bus. The same is manifest from the Attendance Register, Ex. P- 81/2, seized vide Ex. P.W. 80/K and the Driving License of A- 1, Ram Singh, Ex. P- 74/4, seized vide Ex. P.W. 74/1. From the testimony of P.W. 13, Brijesh Gupta, and P.W. 14, Jiwant Shah, it is evident that Ram Singh and Mukesh were brothers. From the evidence of Champa Devi, DW- 5, mother of Vinay, A- 4, it is quite clear that Vinay, Pawan, A- 5, and Ram Singh, A- 1, were known to each other. Mukesh, in his statement Under Section 313 Code of Criminal Procedure, has admitted that he and Ram Singh are brothers. A- 3, Akshay, in his statement Under Section 313 Code of Criminal Procedure, has admitted that he was working with Ram Singh in the bus, Ex. P- 1, as a helper. He has also admitted that he knew Ram Singh and there had been altercation on 16.12.2012 with A- 1, Ram Singh. A- 5, Pawan, in his statement Under Section 313 Code of Criminal Procedure, admitted that he was a witness to the quarrel between A- 4, Vinay, and A- 1, Ram Singh. From the aforesaid evidence, it is luminous that all the accused persons were closely associated with each other.

125. Having dealt with this facet, we shall now proceed to meet the criticism advanced by the learned Counsel for the Appellants with regard to the recoveries and the disclosure statements that led to the discoveries.

126. Assailing the acceptability of the arrest and the disclosure statements leading to the recoveries, Mr. Sharma and Mr. Singh have contended that the materials brought on record cannot be taken aid of for any purpose since the items seized have been planted at the places of recovery and a contrived version has been projected in court. That apart, it is submitted that the recoveries are gravely doubtful inasmuch as the prosecution has not seized all the articles from one accused on one occasion but on various dates. We have cleared the maze as regards the arrest and copiously noted the manner of arrest of the accused persons and their leading to recoveries. Be it noted, recovery is a part of investigation and permissible Under Section 27 of the Evidence Act. However, Mr. Sharma has raised a contention that this Court should take note of the fact that Section 27 of the Evidence Act has become a powerful weapon in the hands of the prosecution to rope in any citizen. The said submission, as we perceive, is quite broad and specious. It is open to the defence to find fault with recovery and the manner in which it is done and its relevance. It is not permissible to advance an argument that Section 27 of the Evidence Act is constantly abused by the prosecution or that it uses the said provision as a lethal weapon against anyone it likes. In the instant case, we have noted how the recoveries have been made and how they have been proved by the unimpeachable testimony of the prosecution witnesses.

127. Mr. Luthra, learned Senior Counsel appearing for the State, would submit that in the present case, the material objects recovered serve as links to corroborate and they have been used as the law permits. In this regard, he has filed a chart which we think it appropriate to reproduce for better appreciation of the said aspect. It is as follows:

128. Having reproduced the chart, now we shall refer to certain authorities on how a statement of disclosure is to be appreciated. In Pulukuri Kottaya v. Emperor MANU/PR/0049/1946 : AIR 1947 PC 67, it has been observed:

It is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed A', these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.

129. In Delhi Administration v. Bal Krishan and Ors. MANU/SC/0093/1971 : (1972) 4 SCC 659, the Court, analyzing the concept, use and evidentiary value of recovered articles, expressed thus:

7. ... Section 27 of the Evidence Act permits proof of so much of the information which is given by persons accused of an offence when in the custody of a police officer as relates distinctly to the fact thereby discovered, irrespective of whether such information amounts to a confession or not. Under Sections 25 and 26 of the Evidence Act, no confession made to a police officer whether in custody or not can be proved as against the accused. But Section 27 is by way of a proviso to these sections and a statement, even by way of confession, which distinctly relates to the fact discovered is admissible as evidence against the accused in the circumstances stated in Section 27....

130. In Mohd. Inayatullah v. State of Maharashtra MANU/SC/0166/1975 : (1976) 1 SCC 828, dealing with the scope and object of Section 27 of the Evidence Act, the Court held:

12. The expression "provided that" together with the phrase "whether it amounts to a confession or not" show that the section is in the nature of an exception to the preceding provisions particularly Sections 25 and 26. It is not necessary in this case to consider if this section qualifies, to any extent, Section 24, also. It will be seen that the first condition necessary for bringing this section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only "so much of the information" as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The word "distinctly" means "directly", "indubitably", "strictly", "unmistakably". The word has been advisedly used to limit and define the scope of the provable information. The phrase "distinctly relates to the fact thereby discovered" is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery. The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered.

13. At one time it was held that the expression "fact discovered" in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact (see Sukhan v. Crown MANU/LA/0128/1929 : AIR 1929 Lah 344; Rex v. Ganee AIR 1932 Bom 286). Now it is fairly settled that the expression "fact discovered" includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this (see Palukuri Kotayya v. Emperor; Udai Bhan v. State of Uttar Pradesh MANU/SC/0144/1962 : AIR 1962 SC 1116).

131. Analysing the earlier decisions, in Anter Singh v. State of Rajasthan MANU/SC/0096/2004 : (2004) 10 SCC 657, the Court summed up the various requirements of Section 27 as follows:

(1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with the question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.

(2) The fact must have been discovered.

(3) The discovery must have been in consequence of some information received from the accused and not by the accused's own act.

(4) The person giving the information must be accused of any offence.

(5) He must be in the custody of a police officer.

(6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

(7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible.

132. In State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru MANU/SC/0465/2005 : (2005) 11 SCC 600, the Court referred to the initial prevalence of divergent views and approaches and the same being put to rest in Pulukuri Kottaya case (supra) which has been described as locus classicus, relying on the said authority, observed:

120. To a great extent the legal position has got crystallised with the rendering of this decision. The authority of the Privy Council's decision has not been questioned in any of the decisions of the highest court either in the pre- or post- independence era. Right from the 1950s, till the advent of the new century and till date, the passages in this famous decision are being approvingly quoted and reiterated by the Judges of this Apex Court. Yet, there remain certain grey areas as demonstrated by the arguments advanced on behalf of the State.

133. Explaining the said facet, the Court proceeded to state thus:

121. The first requisite condition for utilising Section 27 in support of the prosecution case is that the investigating police officer should depose that he discovered a fact in consequence of the information received from an accused person in police custody. Thus, there must be a discovery of fact not within the knowledge of police officer as a consequence of information received. Of course, it is axiomatic that the information or disclosure should be free from any element of compulsion. The next component of Section 27 relates to the nature and extent of information that can be proved. It is only so much of the information as relates distinctly to the fact thereby discovered that can be proved and nothing more. It is explicitly clarified in the section that there is no taboo against receiving such information in evidence merely because it amounts to a confession. At the same time, the last clause makes it clear that it is not the confessional part that is admissible but it is only such information or part of it, which relates distinctly to the fact discovered by means of the information furnished. Thus, the information conveyed in the statement to the police ought to be dissected if necessary so as to admit only the information of the nature mentioned in the section. The rationale behind this provision is that, if a fact is actually discovered in consequence of the information supplied, it affords some guarantee that the information is true and can therefore be safely allowed to be admitted in evidence as an incriminating factor against the accused. As pointed out by the Privy Council in Kottaya case:

clearly the extent of the information admissible must depend on the exact nature of the fact discovered

and the information must distinctly relate to that fact.

Elucidating the scope of this section, the Privy Council speaking through Sir John Beaumont said:

Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused.

134. Expatriating the idea further, the Court proceeded to lay down:

121. ...We have emphasised the word "normally" because the illustrations given by the learned Judge are not exhaustive. The next point to be noted is that the Privy Council rejected the argument of the counsel appearing for the Crown that the fact discovered is the physical object produced and that any and every information which relates distinctly to that object can be proved. Upon this view, the information given by a person that the weapon produced is the one used by him in the commission of the murder will be admissible in its entirety. Such contention of the Crown's counsel was emphatically rejected with the following words:

If this be the effect of Section 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect.

Then, Their Lordships proceeded to give a lucid exposition of the expression "fact discovered" in the following passage, which is quoted time and again by this Court:

In Their Lordships' view it is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed A' these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.

(Emphasis supplied)

122. The approach of the Privy Council in the light of the above exposition of law can best be understood by referring to the statement made by one of the accused to the police officer. It reads thus:

...About 14 days ago, I, Kottaya and people of my party lay in wait for Sivayya and others at about sunset time at the corner of Pulipad tank. We, all beat Beddupati China Sivayya and Subayya, to death. The remaining persons, Pullayya, Kottaya and Narayana ran away. Dondapati Ramayya who was in our party received blows on his hands. He had a spear in his hands. He gave it to me then. I hid it and my stick in the rick of Venkatanarasu in the village. I will show if you come. We did all this at the instigation of Pulukuri Kottaya.

The Privy Council held that:

14. The whole of that statement except the passage 'I hid it (a spear) and my stick in the rick of Venkatanarasu in the village. I will show if you come' is inadmissible.

(Emphasis supplied)

There is another important observation at para 11 which needs to be noticed. The Privy Council explained the probative force of the information made admissible Under Section 27 in the following words:

Except in cases in which the possession, or concealment, of an object constitutes the gist of the offence charged, it can seldom happen that information relating to the discovery of a fact forms the foundation of the prosecution case. It is only one link in the chain of proof, and the other links must be forged in manner allowed by law.

135. In the instant case, the recoveries made when the accused persons were in custody have been established with certainty. The witnesses who have deposed with regard to the recoveries have remained absolutely unshaken and, in fact, nothing has been elicited from them to disprove their creditworthiness. Mr. Luthra, learned Senior Counsel for the State, has not placed reliance on any kind of confessional statement made by the accused persons. He has only taken us through the statement to show how the recoveries have taken place and how they are connected or linked with the further investigation which matches the investigation as is reflected from the DNA profiling and other scientific evidence. The High Court, while analyzing the facet of Section 27 of the Evidence Act, upheld the argument of the prosecution relying on State, Govt. of NCT of Delhi v. Sunil and Anr. MANU/SC/0735/2000 : (2001) 1 SCC 652, Sunil Clifford Daniel v. State of Punjab MANU/SC/0740/2012 : (2012) 11 SCC 205, Ashok Kumar Chaudhary and Ors. v. State of Bihar MANU/SC/7611/2008 : (2008) 12 SCC 173, and Pramod Kumar v. State (Government of NCT of Delhi) MANU/SC/0624/2013 : (2013) 6 SCC 588.

136. On a studied scrutiny of the arrest memo, statements recorded Under Section 27 and the disclosure made in pursuance thereof, we find that the recoveries of articles belonging to the informant and the victim from the custody of the accused persons cannot be discarded. The recovery is founded on the statements of disclosure. The items that have been seized and the places from where they have been seized, as is limpid, are within the special knowledge of the accused persons. No explanation has come on record from the accused persons explaining as to how they had got into possession of the said articles. What is argued before us is that the said recoveries have really not been made from the accused persons but have been planted by the investigating agency with them. On a reading of the evidence of the witnesses who constituted the investigating team, we do not notice anything in this regard. The submission, if we allow ourselves to say so, is wholly untenable and a futile attempt to avoid the incriminating circumstance that is against the accused persons.

Test Identification Parade and the identification in Court

137. Now, we shall deal with the various facets of test identification parade. Upon application moved by P.W. 80, SI Pratibha Sharma, Investigating Officer, P.W. 17, Sandeep Garg, Metropolitan Magistrate, conducted the Test Identification Parade (TIP) for the accused Ram Singh (since deceased), who refused to participate in the TIP proceedings on the ground that he was shown to the witnesses in the police station. Since accused Ram Singh died during the trial, neither the trial court nor the High Court delved into this aspect regarding the refusal of accused Ram Singh to participate in the TIP proceedings.

138. On 19.12.2012, P.W. 17, Sandeep Garg, Metropolitan Magistrate initiated TIP proceedings for accused Vinay and Pawan, but they refused to participate in the TIP. In the TIP proceedings, the Metropolitan Magistrate has recorded the following:

.....accused Pawan Kumar @ Kalu and accused Vinay, both refused to participate in the TIP proceedings and stated that they had committed a horrible crime. I recorded their refusal and gave certificate.

139. Vinay and Pawan refused to participate in the TIP proceedings without giving any reason whatsoever. TIP of accused Mukesh was conducted on 20.12.2012 at Tihar Jail by P.W. 17, Sandeep Garg, in which P.W. 1, Awninder Pratap, identified accused Mukesh. In his testimony, the informant, P.W. 1, has identified his signature at point 'A' in TIP proceedings with respect to the accused Mukesh, Ex. P.W. 1/E. The High Court has pointed out that there was no serious challenge to the TIP proceedings of accused Mukesh in the cross- examination of the Metropolitan Magistrate, P.W. 17, or even the Investigating Officer, P.W. 80. TIP of accused Akshay was conducted on 26.12.2012 at Central Jail No. 4, Tihar Jail, where the informant, P.W. 1, identified accused Akshay. P.W. 1 identified his signature at point 'A' in the TIP proceedings of accused Akshay marked as Ex. P.W. 1/F. The accused Mukesh and Akshay were already identified in the TIP proceedings by the informant. Test Identification Proceedings corroborate and lend assurance to the dock identification of accused Mukesh and Akshay by the informant, P.W. 1.

140. Criticizing the TIP, it is urged by the learned Counsel for the Appellants and Mr. Hegde, learned amicus curiae, that refusal to participate may be considered as circumstance but it cannot by itself lead to an inference of guilt. It is also argued that there is material on record to show that the informant had the opportunity to see the accused persons after they were arrested. It is necessary to state here that TIP does not constitute substantive evidence. It has been held in Matru alias Girish Chandra v. State of Uttar Pradesh MANU/SC/0141/1971 : (1971) 2 SCC 75 that identification test is primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation of an offence is proceeding on the right lines.

141. In Santokh Singh v. Izhar Hussain and Anr. MANU/SC/0165/1973 : (1973) 2 SCC 406, it has been observed that the identification can only be used as corroborative of the statement in court.

142. In Malkhansingh v. State of M.P. MANU/SC/0445/2003 : (2003) 5 SCC 746, it has been held thus:

7. ...The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. ...

And again:

16. It is well settled that the substantive evidence is the evidence of identification in court and the test identification parade provides corroboration to the identification of the witness in court, if required. However, what weight must be attached to the evidence of identification in court, which is not preceded by a test identification parade, is a matter for the courts of fact to examine. ...

143. In this context, reference to a passage from Visveswaran v. State represented by S.D.M. MANU/SC/0352/2003 : (2003) 6 SCC 73 would be apt. It is as follows:

11. ...The identification of the accused either in test identification parade or in Court is not a sine qua non in every case if from the circumstances the guilt is otherwise established. Many a time, crimes are committed under the cover of darkness when none is able to identify the accused. The commission of a crime can be proved also by circumstantial evidence. ...

144. In Sidhartha Vashisht alias Manu Sharma v. State (NCT of Delhi) MANU/SC/0268/2010 : (2010) 6 SCC 1, the Court, after referring to Munshi Singh Gautam v. State of M.P. MANU/SC/0964/2004 : (2005) 9 SCC 631, Harbhajan Singh v. State of J & K MANU/SC/0127/1975 : (1975) 4 SCC 480 and Malkhansingh (supra), came to hold that the proposition of law is quite clear that even if there is no previous TIP, the court may appreciate the dock identification as being above board and more than conclusive.

145. In the case at hand, the informant, apart from identifying the accused who had made themselves available in the TIP, has also identified all of them in Court. On a careful scrutiny of the evidence on record, we are of the convinced opinion that it deserves acceptance. Therefore, we hold that TIP is not dented.

Admissibility and acceptability of the dying declaration of the prosecutrix:

146. At this stage, it would be immensely seemly to appreciate the acceptability and reliability of the dying declaration made by the prosecutrix.

147. The circumstances in this case, as is noticeable, makes the prosecution bring in three dying declarations. Mr. Sharma and Mr. Singh have been extremely critical about the manner in which they have been recorded and have highlighted the irreconcilable facets. In quintessence, their submission is that the three dying declarations have been contrived and deserve to be kept out of consideration. Mr. Hegde, learned friend of the Court, contends that the dying declarations do not inspire confidence, for variations in them relate to the number of assailants, the description of the bus, the identity of the accused and the overt acts committed by them. It is contended that the three dying declarations made by the prosecutrix vary from each other and the said variations clearly reveal the inconsistencies and the improvements in the dying declarations mirror the improvements that are brought about in P.W. 1's statements and the progress of the investigation.

148. The sudden appearance of the name 'Vipin' in the third dying declaration after the recording of Akshay's disclosure statement where he mentions a person named Vipin is alleged to be indicative of the fact that the dying declaration is, in fact, doubtful. It is contended that the prosecution has failed to explain 'Vipin', his connection with the crime and his elimination from the case. The vapourisation of Vipin has to be considered against the backdrop of repeated assertions by the prosecution that every word of the three dying declarations is correct, consciously made and worthy of implicit belief. Learned Senior Counsel has also submitted that apart from the inconsistencies, the numerous procedural irregularities in the recording of the declarations make it suspicious. In this regard, lack of an independent assessment of the mental fitness of the prosecutrix, while recording the second dying declaration, has been highlighted. The multiple choice questions in the third and final dying declaration are being nomenclatured as leading questions and it is asserted that they have not been satisfactorily explained by the prosecution. Further, the evidence by the doctors does not cure the impropriety of lack of an independent assessment by the SDM while recording her second dying declaration.

149. It is submitted that if at all any dying declaration is to be relied on, it should only be the first dying declaration made on 16.12.2012 and recorded by P.W. 49, Dr. Rashmi Ahuja, and the said dying declaration only states that there were 4 to 5 persons on the bus. It is further stated that the prosecutrix was raped by a minimum of 2 men and that she does not remember intercourse after that. It is, therefore, unsafe to proceed on the assumption that all six persons on the bus committed rape upon the prosecutrix within a span of 21 minutes.

150. Keeping the aforesaid criticism in view, we proceed to analyse the acceptability and reliability of the dying declarations. Firstly, when the prosecutrix was brought to the Gynae Casualty about 11:15 p.m., she gave a brief account of the incident to P.W. 49, Dr. Rashmi Ahuja,

in her MLC on 16.12.2012. P.W. 49, Dr. Rashmi Ahuja, has deposed that on the night of 16.12.2012 about 11:15 p.m., the prosecutrix was brought to the casualty by a PCR constable and that she gave a brief history of the incident. P.W. 49, Dr. Rashmi Ahuja, recorded the same in her writing in the Casualty/GRR paper, i.e., Ex. P.W. 49/A.

151. In the instant case, as per the history told by the prosecutrix to Dr. Rashmi Ahuja, it was a case of gang rape in a moving bus by 4- 5 persons when the prosecutrix was returning after watching a film with her friend. She was slapped on her face, kicked on her abdomen and bitten over lips, cheek, breast and vulval region. She remembers intercourse two times and rectal penetration also. She was also forced to suck their penis but she refused. All this continued for half an hour and then she was thrown off from the moving bus with her friend. We have already stated about the injuries which were noted by Dr. Rashmi Ahuja in Ex. P.W. 49/A.

152. The relevant statement of the prosecutrix in the Medico Legal Expert, Ex. P.W. 49/A, reads as under:

...she went to watch movie with her boyfriend, Awnidra: she left the movie at 8:45 PM and was waiting for bus at Munirka Bus stop where a bus going to Bahadurgarh, stopped and both climbed the bus at around 9 PM. At around 9:05- 9:10 PM, around 4- 5 people in the bus started misbehaving with the girl, took her to the rear side of bus while her boyfriend was taken to the front of bus, where both were beaten up badly. Her clothes were torn over and she was beaten up, slapped repeatedly over her face, bitten over lips, cheeks, breast and Mons veneris. She was also kicked over her abdomen again and again. She was raped by at least minimum of two men, she does not remember intercourse after that. She had rectal penetration. They also forced their penis into her mouth and forced her to suck which she refused and was beaten up instead. This continued for half hour and she was then thrown away from the moving bus with her boyfriend. She was taken up by PCR Van and brought to GRR. She has history of intercourse with her boyfriend about two months back. (willfully)

153. P.W. 49, Dr. Rashmi Ahuja, had noticed number of injuries on the person of the prosecutrix and the same were noted in Ex. P.W. 49/B as under:

154. P.W. 50, Dr. Raj Kumar Chejara, and the surgery team operated the prosecutrix in the intervening night of 16/17.12.2012 and the operative findings have also been earlier noted.

155. P.W. 50, Dr. Raj Kumar Chejara, has proved the OT notes as Ex. P.W. 50/A bearing the signature of Dr. Gaurav and his own note in this regard is Ex. P.W. 50/B. As per his opinion, the condition of the small and large bowels were extremely bad for any definitive repair. After performing the operation, the patient was shifted to ICU. The first surgery was damage control surgery and it was expected that unhealthy bowel would be there.

156. The second surgery was performed on 19.12.2012 by him along with his operating team consisting of Prof. Sunil Kumar, Dr. Pintu and Dr. Siddharth. From the gynaecological side, Dr. Aruna Batra and Dr. Rekha Bharti were present along with anaesthetic team. The findings were as under:

Abdominal findings:

1. Rectum was longtitudinally torn on anterior aspect in continuation with perineal tear. This tear was continuing upward involving sigmoid colon, descending colon which was splayed open. The margin were edematous. There were multiple longitudinal tear in the mucosa of recto sigmoid area. Transverse colon was also torn and gangrenous. Hepatic flexure , ascending colon & caecum were gangrenous with multiple perforations at many places. Terminal ileum approximately one and a half feet loosely hanging in the abdominal cavity, it was avulsed from its mesentery and was non- viable. Rest of the small bowel was non- existent with only patches of mucosa at places and borders of the mesentery was contused. The contused mesentery borders initially appeared (during 1st surgery) as contused small bowel.

2. Jejunostomy stoma was gangrenous for approximately 2cm.

3. Stomach and duodenum was distended but healthy.

157. Dying Declaration was recorded by SDM, Smt. Usha Chaturvedi, P.W. 27, on 21.12.2012. The medical record of the prosecutrix shows that the prosecutrix was not found fit for recording of her statement until 21st December, 2012 about 6:00 p.m. when the prosecutrix was declared fit for recording statement by P.W. 52, Dr. P.K. Verma. P.W. 52 had examined the prosecutrix and found her to be fit, conscious, oriented and meaningfully communicative for making statement vide his endorsement at point 'A' on application, Ex. P.W. 27/DB. The second dying declaration, Ex. P.W. 27/A, was recorded by P.W. 27, Smt. Usha Chaturvedi, SDM. This dying declaration is an elaborate one where the prosecutrix has described the incident in detail including the act of insertion of rod in her private parts. She also stated that the accused were addressing each other with names like, "Ram Singh, Thakur, Raju, Mukesh, Pawan and Vinay".

158. The relevant portion of the dying declaration Ex. P.W. 27/A recorded by P.W. 27, SDM, is extracted below:

Q.1. What is your name, your father's name and your residential address?

Ans. My name is prosecutrix and my father name is Sh. ..... and we reside at .....

Q.2 Do you study or work somewhere?

Ans. I have completed my BPT (Bachelor of Physiotherapy).

Q.3 On which date and place, the incident occurred?

Ans. This happened on 16.12.12 in the midst of at about 9:00- 9:15 p.m.

Q.4 Where had you gone on that day and how did you reach the place of occurrence?

Ans. I had gone to watch the movie i.e. "Life of Pi" 6.40- 8.30 p.m. to Select City Mall, Saket on the day of incident along with my friend Sh. Awninder S/o. Sh. Bhanu Pratap, R/o House No. 14, Bair Sarai, New Delhi- 16. We took an Auto Rikshaw from there and reached Munirka.

Q.5 How did you go further?

Ans. After that, I saw white colored bus whose conductor had been calling the passengers of Palam Mor and Dwarka. I had to go to Dwarka, Sec- 1. That is why both of us, I and my friend boarded the bus and gave twenty rupees (Rs. 20/-) at the fare of Rs. 10/- per passenger.

Q.6. Were there passengers inside the bus?

Ans. When I entered the bus there were 6- 7 passengers. Assuming them to be passenger, we sat outside the cabin of the bus.

Q.7 Provide the detailed information about the bus?

Ans. The bus was of the white colour and the seats were of the red colour. Yellow coloured curtains were fixed. The glasses of the bus were black and were closed. I could see outside from inside but nothing could be seen inside from outside. In one row of the bus there were two seats and in the other row, there were three seats.

Q.8 After entering the bus, did you suspect anything seeing the people occupying the seats there?

Ans. I had suspected (something amiss) but the conductor had already taken the (fare) money and the bus had started. So, I kept sitting there.

Q.9 What did happen afterwards? Please inform in detail.

Ans. After five minutes when the bus climbed the bridge of Malai Mandir, the Conductor closed the door of the bus and switched off the light inside the bus. And they came to my friend and started hitting and beating him. Three four (3- 4) people caught hold of him and the remaining people dragged me to the rear portion of the bus and tore off my clothes and took turns to rape me. They hit me on my stomach with an iron rod and bit me on my whole body. Prior to that, they snatched from me and my friend all our articles i.e. mobile phone, purse, credit card, debit card, watches, etc. All six of the persons committed oral, vaginal, anal rape on me. These people inserted the iron rod into my body through my vagina and rectum and also pulled it out. They extracted the internal private part of my body through inserting hand and iron rod into my private parts and caused hurt to me. Six persons kept committing rape on me for approximately one hour by turns. The drivers kept changing in the moving bus so that they can rape me. .....

P.W. 27 Usha Chaturvedi, SDM, when examined and recorded the dying declaration of prosecutrix come off in her dying declaration she state as under:

159. The clinical notes, Ex. P.W. 50/C, and notes prepared by the gynaecology team were proved as Ex. P.W. 50/D. The gynaecological notes were prepared on actual examination of the patient on the operation table during the surgery. P.W. 50 further operated the prosecutrix on 23.12.2012 for peritoneal lavage and placement of drain under general anaesthesia and his notes are Ex. P.W. 50/E.

160. Statement of the prosecutrix was recorded by P.W. 30, Pawan Kumar, Metropolitan Magistrate, vide Ex. P.W. 30/D. On 24.12.2012, an application for recording the statement of the prosecutrix Under Section 164 Code of Criminal Procedure was moved by the Investigating Officer, which is exhibited as Ex. P.W. 30/A and, thereafter, the learned Metropolitan Magistrate fixed the date for recording of the statement as 25.12.2012 at 9:00 a.m. at Safdarjung Hospital vide his endorsement at Point "P" to "P- 1" on Ex. P.W. 30/A. On 25.12.2012, P.W. 28, Dr. Rajesh Rastogi, at 12:40 p.m., declared the prosecutrix fit for recording statement through gestures. She was found conscious, oriented, co- operative, comfortable and meaningfully communicative to make a statement through non- verbal gestures.

161. On 25.12.2012, the prosecutrix's statement, Ex. P.W. 30/D, Under Section 164 Code of Criminal Procedure was recorded by P.W. 30, Pawan Kumar, Metropolitan Magistrate, in the form of questions by putting her multiple choice questions. This statement was made through gestures and writings. The statement recorded by P.W. 30 which ultimately became another dying declaration reads as under:

25/12/2012 at 01.00 p.m. at ICU Safdarjung Hospital. Statement of Prosecutrix (Name and Particulars withheld) As opined by the attending doctors the Prosecutrix is not in position to speak but she is otherwise conscious and oriented and responding by way of gestures, so I am putting question in such a manner so as to enable to narrate the incident by way of gesture or writing.

Ques. : When and at what time the incident happened?

1. 20/12/2012 2. 13/12/2012 3. 16/12/2012

Ans : 16/12/12 (by writing after taking time)

Ques.: Have you seen the staff of the bus? 1. Yes 2. No

Ans.: 1 yes by gesture (nodding her head)

Ques.: Have you seen those people at that time? 1. Yes 2. No

Ans.: 1

Ques.: By which article they have given beatings? (answer by writing)

Ans.: By iron rod which was long.

Ques.: What happened of your belongings means mobile etc.?

1. Fell down 2. Snatched by them 3. Don't know

Ans.: 2

Ques.: Besides rape where and how did you get the injuries? (tried to answer by writing)

Ans.: Head, face, back, whole body including genital parts (by gesture indication)

Ques.: By which names they were addressing to each other? (tried answer by writing)

Ans.: 1. Ram Singh, Mukesh, Vinay, Akshay, Vipin, Raju.

Ques.: What did they do after rape? 1. Left at home 2. Threw at unknown place 3. Got down at some other bus stop.

Ans: 2

As per Ex. P.W. 30/D, this answer was written by the prosecutrix in her own hand.

162. On 26.12.2012, the condition of the prosecutrix was examined and it was decided to shift her abroad for further treatment. Notes in this regard are Ex. P.W. 50/F bearing the signatures of Dr. Raj Kumar, Dr. Sunil Kumar, Dr. Aruna Batra and Dr. P.K. Verma.

163. The prosecutrix died at Mount Elizabeth Hospital, Singapore on 29.12.2012 at 4:45 a.m. The cause of death is stated as sepsis with multi organ failure following multiple injuries, as is evincible from Ex. P.W. 34/A.

164. Learned Counsel for the Appellants have objected to the admissibility of the dying declarations available on record mainly on the ground that they are not voluntary but tutored. It is argued that the second and third dying declarations are nothing but a product of tutoring and are non- voluntary and the only statement recorded is the MLC, Ex. P.W. 49/A and Ex. P.W. 49/B, prepared immediately after the incident, wherein the prosecutrix has neither named any of the accused nor mentioned the factum of iron rod being used by the accused persons and the act of the accused in committing unnatural offence. It is further alleged that the prosecutrix could not have given such a lengthy dying declaration running upto four pages on 21.12.2012 as she was on oxygen support. P.W. 27 has deposed that the prosecutrix was on oxygen support at the time

of recording the second dying declaration. It is further contended that it must be taken into account that ever since the prosecutrix was admitted to the hospital, she was continuously on morphine and, thus, she could not have gained consciousness. The second dying declaration has been further assailed on the ground of being recorded at the behest of SDM, P.W. 27, instead of a Magistrate and that too after a delay of nearly four days. The third dying declaration, Ex. P.W. 30/D, recorded by the Metropolitan Magistrate, P.W. 30, on 25.12.2012 through gestures and writings is controverted by putting forth the allegations of false medical fitness certificate and absence of videography.

165. Another argument advanced by the learned Counsel raising suspicion on the genuineness of the second and third dying declarations is that the dates on which the dying declarations were recorded have been manipulated. The counsel asseverated that the second dying declaration, i.e., Ex. P.W. 27/A, purported to have been recorded by P.W. 27 on 21.12.2012 was, in fact, recorded on the previous day as evidenced from the overwriting of the date in Ex. P.W. 27/B. The counsel also pointed to the overwriting of the date in the third dying declaration, i.e., Ex. P.W. 30/C, recorded by P.W. 30. It is propounded by them that the date was modified thrice in order to fit in the fake chain of circumstances contrived by the prosecution.

166. Resisting the said submissions, Mr. Luthra, learned Senior Counsel for the State, astutely contended that all the three dying declarations recorded at the instance of the prosecutrix are consistent and well corroborated by medical evidence as well as by P.W. 1's testimony, and other scientific evidence. The prosecutrix's first statement, Ex. P.W. 49/A, given to P.W. 49 was only a brief account of the heinous act committed on her and in that state of shock, nothing more could be legitimately expected of her. Only after receiving medical attention, she was declared fit to record statement and on 21.12.2012, P.W. 52 had examined the prosecutrix and found her to be fit, conscious, oriented and meaningfully communicative for making statement vide his endorsement at point 'A' on application Ex. P.W. 27/DB. P.W. 27, Smt. Usha Chaturvedi, SDM, recorded her statement in which the prosecutrix described the incident in detail and also named the accused persons. In fact, P.W. 27 has also deposed before the court that the prosecutrix was in a fit mental condition to give the statement on 21.12.2012. Moreover, the prosecutrix's third statement, Ex. P.W. 30/D, which was recorded in question- answer form through gestures and writings by P.W. 30, Pawan Kumar, Metropolitan Magistrate, is consistent with the earlier two dying declarations and that adds to the credibility and conclusively establishes reliability.

167. In the first dying declaration made to P.W. 49, Dr. Rashmi Ahuja, recorded in Ex. P.W. 49/A and in MLC, Ex. P.W. 49/B, due to her medical condition, though the prosecutrix broadly described the incident of gang rape committed on her and injuries caused to her and P.W. 1, yet she failed to vividly describe the incident of inserting iron rod, etc. As soon as the prosecutrix was brought to the hospital, she gave a brief description of the incident to P.W. 49, Dr. Rashmi Ahuja. As it appears from the record, the prosecutrix had lost sufficient quantity of blood due to which she was drowsy and could only give a brief account of the incident and injuries caused to her and the informant. Even though the prosecutrix has given only a brief account of the

occurrence, yet she was responding to verbal command and hence, the same is natural and trustworthy and furthermore, Ex. P.W. 49/A is also consistent with the other dying declarations.

168. By virtue of the second dying declaration recorded as Ex. P.W. 27/A on 21.12.2012 about 9:10 p.m. by the SDM, Smt. Usha Chaturvedi, the exact details of the incident and the injuries caused to the prosecutrix have come on record. The learned SDM has satisfied herself that the prosecutrix was fit to make the statement. While recording the dying declaration of the prosecutrix, Ex. P.W. 27/A, Dr. P.K. Verma, P.W. 52, had found her conscious, oriented and meaningfully communicative vide his endorsement at point 'A' on the application, Ex. P.W. 27/DB. It was only thereafter that P.W. 27, Smt. Usha Chaturvedi, SDM, recorded the statement, Ex. P.W. 27/A, of the prosecutrix. The prosecutrix not only signed it but even wrote the date and time in this statement. She narrated the entire incident specifying the role of each accused; gang rape/unnatural sex committed upon her; the injuries caused in her vagina and rectum by use of iron rod and by inserting of hands by the accused; description of the bus, robbery and lastly throwing of both the victims out of the moving bus, Ex. P1, in naked condition at the footfall of Mahipalpur flyover.

169. As it appears from the record, P.W. 27, after recording the statement of the prosecutrix, as contained in Ex. P.W. 27/A, forwarded the statement alongwith the forwarding letter, Ex. P.W. 27/B, to the ACP, Vasant Vihar undersigned by herself. Ex. P.W. 27/A, which contains the statement of the prosecutrix, is duly signed by the prosecutrix on all the pages and also signed by P.W. 27, SDM. P.W. 27 has certified in Ex. P.W. 27/A that the signature of the prosecutrix was obtained in her presence at 9:00 p.m. on 21.12.2012 after which she has signed the same. No overwriting of date is evidenced in Ex. P.W. 27/A. However, so far as the forwarding letter, i.e., Ex. P.W. 27/B, is concerned, the date mentioned by P.W. 27 after putting her signature is overwritten as 21.12.2012. When cross- examined on this aspect, P.W. 27 has stated that she had herself overwritten the date and, thus, overruled the possibility of any falsification of the document at the behest of the investigating team. P.W. 27 explained the overwriting of date as a 'human error' and the same has been rightly construed by the trial court and accepted by the High Court as a complete explanation. The relevant statement of P.W. 27 is as under:

It is correct that in Ex. P.W. 27/B there is an over writing on the date under my signature. VOL: It was a human error. The statement was recorded on 21- 12- 2012, so for all purpose this date will be 21- 12- 2012.

170. Agian on 25.12.2012 on an application, Ex. P.W. 28/A, though Dr. P.K. Verma, P.W. 52, opined that the prosecutrix was unable to speak as she was having endotracheal tube, i.e., in larynx and trachea and was on ventilator, yet P.W. 28, Dr. Rajesh Rastogi, declared her to be conscious, oriented and meaningfully communicative through non- verbal gestures and fit to give statement. P.W. 30, Pawan Kumar, Metropolitan Magistrate, also satisfied himself qua fitness and ability of the prosecutrix to give rational answers by gestures to his multiple choice questions. The opinion of the doctors obtained prior to recording of the statements, Ex. P.W. 27/A and Ex. P.W. 30/D- 1, as also the observations made by the SDM and Metropolitan Magistrate qua her

fitness cannot be disregarded completely on the basis of surmises of the learned Counsel for the Appellants.

171. Adverting to the third dying declaration, Ex. P.W. 30/C, we are able to appreciate that P.W. 30, after recording the statement of the prosecutrix, has signed the document. The date mentioned therein is overwritten as 25.12.2012. However, in the forwarding note to the investigating officer which is contained in continuation of the prosecutrix's statement annexed as Ex. P.W. 30/C, the signature and date mentioned by P.W. 30 is very clear and no overwriting is visible. Be it noted, P.W. 30 was never cross- examined on the aspect of overwriting of the date in Ex. P.W. 30/C. The learned Counsel has, for the first time, raised this issue before us merely to substantiate his suspicion of manipulation on the part of the prosecution. We hold that pointing at insignificant errors is inconsequential so far as cogent evidence produced by the prosecution stand on a terra firma. It is beyond human prudence to discard the detailed and well signed statements of the prosecutrix, in spite of clear date put by herself, merely because P.W. 30 erred at one point of time in correctly recording the date. Moreover, the testimony of P.W. 52, Dr. P.K. Verma, who was incharge of the ICU and in whose supervision the entire treatment and recording of statements by the prosecutrix was done, cannot be discarded on account of meagre technical errors.

172. Another line of argument developed by the learned Counsel is that there has been failure on the part of the prosecutrix to disclose the names of any of the accused persons in the brief history given by her to the doctor in MLC, Ex. P.W. 49/A, and so, her dying declarations, Ex. P.W. 27/A and Ex. P.W. 30/D- 1, where she had given the names of the accused persons, are tutored versions and cannot form the basis of conviction. This argument, however, is completely unjustified in the light of the medical condition of the prosecutrix when she was brought to the hospital. As per the records, the prosecutrix was brought to the hospital in a state of sub- consciousness and sheer trauma. In her MLC, Ex. P.W. 49/B, her condition is described as drowsy responding only to verbal commands and hence, not completely alert due to the shock and excessive loss of blood. The prosecutrix was declared fit to make statements, Ex. P.W. 27/A and Ex. P.W. 30/D- 1, only when she was operated thrice. Her dying declarations, Ex. P.W. 27/A and Ex. P.W. 30/D- 1, also stand corroborated by the medical evidence as well as the testimony of P.W. 1.

173. A dying declaration is an important piece of evidence which, if found veracious and voluntary by the court, could be the sole basis for conviction. If a dying declaration is found to be voluntary and made in fit mental condition, it can be relied upon even without any corroboration. However, the court, while admitting a dying declaration, must be vigilant towards the need for 'Compos Mentis Certificate' from a doctor as well as the absence of any kind of tutoring. In Laxman v. State of Maharashtra MANU/SC/0707/2002 : (2002) 6 SCC 710, the law relating to dying declaration was succinctly put in the following words:

3. ... A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is

reduced to writing by someone like a Magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a Magistrate absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.

174. The legal position regarding the admissibility of a dying declaration is settled by this Court in several judgments. This Court, in Atbir v. Government of NCT of Delhi MANU/SC/0576/2010 : (2010) 9 SCC 1, taking into consideration the earlier judgment of this Court in Paniben v. State of Gujarat MANU/SC/0346/1992 : (1992) 2 SCC 474 and another judgment of this Court in Panneerselvam v. State of Tamil Nadu MANU/SC/7726/2008 : (2008) 17 SCC 190, has exhaustively laid down the following guidelines with respect to the admissibility of dying declaration:

22. (i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.

(ii) The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.

(iii) Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.

(iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.

(v) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.

(vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.

(vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.

(viii) Even if it is a brief statement, it is not to be discarded.

(ix) When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.

(x) If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration.

175. It is well settled that dying declaration can form the sole basis of conviction provided that it is free from infirmities and satisfies various other tests. In a case where there are more than one dying declaration, if some inconsistencies are noticed between one and the other, the court has to examine the nature of inconsistencies as to whether they are material or not. The court has to examine the contents of the dying declarations in the light of the various surrounding facts and circumstances. In Shudhakar v. State of Madhya Pradesh MANU/SC/0590/2012 : (2012) 7 SCC 569, this Court, after referring to the landmark decisions in Laxman (supra) and Chirra Shivraj v. State of Andhra Pradesh MANU/SC/0992/2010 : (2010) 14 SCC 444, has dealt with the issues arising out of multiple dying declarations and has gone to the extent of declining the first dying declaration and accepting the subsequent dying declarations. The Court found that the first dying declaration was not voluntary and not made by free will of the deceased; and the second and third dying declarations were voluntary and duly corroborated by other prosecution witnesses and medical evidence. In the said case, the accused was married to the deceased whom he set ablaze by pouring kerosene in the matrimonial house itself. The smoke arising from the house attracted the neighbours who rushed the victim to the hospital where she recorded three statements before dying. In her first statement given to the Naib Tehsildar, she did not implicate her husband, but in the second and third statements, which were also recorded on the same day, she clearly stated that the accused poured kerosene on her and set her on fire. The accused was convicted Under Section 302 Indian Penal Code. In this regard, the Court made the following observations:

21. Having referred to the law relating to dying declaration, now we may examine the issue that in cases involving multiple dying declarations made by the deceased, which of the various dying declarations should be believed by the court and what are the principles governing such determination. This becomes important where the multiple dying declarations made by the deceased are either contradictory or are at variance with each other to a large extent. The test of common prudence would be to first examine which of the dying declarations is corroborated by other prosecution evidence. Further, the attendant circumstances, the condition of the deceased at the relevant time, the medical evidence, the voluntariness and genuineness of the statement

made by the deceased, physical and mental fitness of the deceased and possibility of the deceased being tutored are some of the factors which would guide the exercise of judicial discretion by the court in such matters.

176. Recently, a two- Judge Bench of this Court in Sandeep and Anr. v. State of Haryana MANU/SC/0654/2015 : (2015) 11 SCC 154 : (2015) 2 SCR 1999 SC was faced with a similar situation where the first dying declaration given to a police officer was more elaborate and the subsequent dying declaration recorded by the Judicial Magistrate lacked certain information given earlier. After referring to the two dying declarations, this Court examined whether there was any inconsistency between the two dying declarations. After examining the contents of the two dying declarations, this Court held that there was no inconsistency between the two dying declarations and non- mention of certain features in the dying declaration recorded by the Judicial Magistrate does not make both the dying declarations incompatible.

177. In this regard, it will be useful to reproduce a passage from Babulal and Ors. v. State of M.P. MANU/SC/0855/2003 : (2003) 12 SCC 490 wherein the value of dying declaration in evidence has been stated:

7. ... A person who is facing imminent death, with even a shadow of continuing in this world practically non- existent, every motive of falsehood is obliterated. The mind gets altered by most powerful ethical reasons to speak only the truth. Great solemnity and sanctity is attached to the words of a dying person because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person. The maxim is "a man will not meet his Maker with a lie in his mouth" (nemo moriturus praesumitur mentire). Mathew Arnold said, "truth sits on the lips of a dying man". The general principle on which the species of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death, and when every hope of this world is gone, when every motive to falsehood is silenced and mind induced by the most powerful consideration to speak the truth; situation so solemn that law considers the same as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice. ...

178. Dealing with oral dying declaration, a two- Judge Bench in Prakash and Anr. v. State of Madhya Pradesh MANU/SC/0005/1993 : (1992) 4 SCC 225 has ruled thus:

11. ... In the ordinary course, the members of the family including the father were expected to ask the victim the names of the assailants at the first opportunity and if the victim was in a position to communicate, it is reasonably expected that he would give the names of the assailants if he had recognised the assailants. In the instant case there is no occasion to hold that the deceased was not in a position to identify the assailants because it is nobody's case that the deceased did not know the accused persons. It is therefore quite likely that on being asked the deceased would name the assailants. In the facts and circumstances of the case the High Court has accepted the dying declaration and we do not think that such a finding is perverse and requires to be interfered with. ...

179. In Vijay Pal v. State (Government of NCT of Delhi) MANU/SC/0230/2015 : (2015) 4 SCC 749, after referring to the Constitution Bench decision in Laxman (supra) and the two- Judge Bench decisions in Babulal (supra) and Prakash (supra), the Court held:

22. Thus, the law is quite clear that if the dying declaration is absolutely credible and nothing is brought on record that the deceased was in such a condition, he or she could not have made a dying declaration to a witness, there is no justification to discard the same. In the instant case, PW 1 had immediately rushed to the house of the deceased and she had told him that her husband had poured kerosene on her. The plea taken by the Appellant that he has been falsely implicated because his money was deposited with the in- laws and they were not inclined to return, does not also really breathe the truth, for there is even no suggestion to that effect.

23. It is contended by the learned Counsel for the Appellant that when the deceased sustained 100% burn injuries, she could not have made any statement to her brother. In this regard, we may profitably refer to the decision in Mafabhai Nagarbhai Raval v. State of Gujarat MANU/SC/0425/1992 : (1992) 4 SCC 69 wherein it has been held that a person suffering 99% burn injuries could be deemed capable enough for the purpose of making a dying declaration. The Court in the said case opined that unless there existed some inherent and apparent defect, the trial court should not have substituted its opinion for that of the doctor. In the light of the facts of the case, the dying declaration was found to be worthy of reliance.

24. In State of M.P. v. Dal Singh MANU/SC/0550/2013 : (2013) 14 SCC 159, a two- Judge Bench placed reliance on the dying declaration of the deceased who had suffered 100% burn injuries on the ground that the dying declaration was found to be credible.

180. In the case at hand, the first statement of the prosecutrix was recorded by P.W. 49, Dr. Rashmi Ahuja, on the night of 16.12.2012 and the second statement was recorded by the SDM on 21.12.2012 after a delay of five days. In the present facts and circumstances of the case, we do not find that there is any inconsistency in the dying declarations to raise suspicion as to the genuinity and voluntariness of the subsequent dying declarations. The prosecutrix had been under constant medical attention and was reported to be fit for giving a statement on 21.12.2012 only. On the night of the incident itself, she underwent first surgery conducted by P.W. 50, Dr. Raj Kumar Chejara, Surgical Specialist, Department of Surgery, Safdarjung Hospital, New Delhi and his surgery team comprising of himself, Dr. Gaurav and Dr. Piyush, and the prosecutrix was shifted to ICU. The second surgery was performed on her on 19.12.2012. Ex. P.W. 50/C, OT notes dated 19.12.2012 show that the prosecutrix was put on ventilation after the surgery. Considering the facts and circumstances and the law laid down above, a mere omission on the part of the prosecutrix to state the entire factual details of the incident in her very first statement does not make her subsequent statements unworthy, especially when her statements are duly corroborated by other prosecution witnesses including the medical evidence.

181. The contention that no dying declaration could have been recorded on 21.12.2012 as the prosecutrix was administered morphine does not hold good as P.W. 52, Dr. P.K. Verma, has deposed that morphine was injected at 6:00 p.m. on 20.12.2012 and its effect would have lasted for only 3- 4 hours. P.W. 52 has denied that the prosecutrix was unconscious and had difficulty in breathing at the time when she made the statement to P.W. 27, SDM, on 21.12.2012.

182. Yet another objection raised by the learned Counsel for the Appellants concerning the medical fitness of the prosecutrix, while recording the third dying declaration is that when P.W. 30, Metropolitan Magistrate, Pawan Kumar, recorded the dying declaration of the prosecutrix, she was not in a position to speak as per the endorsement made by P.W. 52, Dr. P.K. Verma, and, therefore, no weight could be attached to the dying declaration recorded by P.W. 30. In this regard, reliance is placed upon Ex. P.W. 30/B1. This contention was raised before the High Court as well as the trial court and while considering the contention, we find that:

On 25.12.2012, application [Ex. P.W. 30/B] moved by P.W. 80 S.I. Pratibha Sharma between 9:30 a.m. to 10:00 a.m. seeking opinion regarding fitness of prosecutrix to get statement recorded. P.W. 52 Dr. P.K. Verma examined the prosecutrix and opined at 12:35 p.m. that "patient has endotracheal tube in place (i.e. in her larynx and trachea) and was on ventilator and hence she could not speak.

183. P.W. 28, Dr. Rajesh Rastogi, opined vide Ex. P.W. 28/A at 12:40 p.m. on 25.12.2012 that the prosecutrix was conscious, cooperative, meaningfully communicative through non- verbal gestures, oriented and fit to give statement. P.W. 28, Dr. Rajesh Rastogi, examined the prosecutrix around 12 noon and finished it by 12:00- 12:30 p.m. On 25.12.2012 at 12:35 p.m., Dr. P.K. Verma had endorsed on the document Exhibit P.W. 30/B that the victim could not speak as she had endotracheal tube in place (that is, in larynx and trachea) and was on ventilator. However, subsequently, at 12:40 p.m. on the same day, P.W. 28, Dr. Rajesh Rastogi, had endorsed on the said document, Ex. P.W. 30/B, to the effect that the victim was conscious, cooperative, meaningfully communicative, oriented, responding through non- verbal gestures and fit to give statement. The learned Counsel contended that it is inconceivable that the prosecutrix who was on life support system at 12:35 p.m. could be opined to be conscious, cooperative and fit to give statement within five minutes, i.e., at 12:40 p.m.

184. The said contention, as we find, has been appropriately dealt with by both courts below by adverting to the depositions of P.W. 52, Dr. P.K. Verma, and P.W. 28, Dr. Rajesh Rastogi. Regarding the fit mental condition of the prosecutrix and as to the different endorsements made by P.W. 52, Dr. P.K. Verma, and P.W. 28, Rajesh Rastogi, P.W. 52 was questioned suggesting that the prosecutrix was not in a fit mental condition to give the dying declaration. P.W. 52 has clearly deposed in his cross- examination that he had never endorsed that the victim was unfit to give statement at 12:35 p.m., rather he had said that she was on ventilator and hence, could not speak. The aforesaid explanation of P.W. 52, Dr. P.K. Verma, who was incharge of the ICU in Safdarjung Hospital at the relevant time makes it limpid that even though the prosecutrix was not able to speak, yet she was conscious and oriented and was in a position to make the statement by gestures.

185. The contention that the third dying declaration made through gestures lacks credibility and that the same ought to have been videographed, in our view, is totally sans substance. The dying declaration recorded on the basis of nods and gestures is not only admissible but also possesses evidentiary value, the extent of which shall depend upon who recorded the statement. In the instant case, the dying declaration was recorded by P.W. 30, Mr. Pawan Kumar, Metropolitan Magistrate. A perusal of the questions and the simple answers by way of multiple choice put to the prosecutrix is manifest of the fact that those questions and answers were absolutely simple, effective and indispensable. The dying declaration recorded by P.W. 30, Ex. P.W. 30/D, though by nods and gestures and writings, inspires confidence and has been rightly relied upon by the trial Court as well as the High Court. Videography of the dying declaration is only a measure of caution and in case it is not taken care of, the effect of it would not be fatal for the case and does not, in any circumstance, compel the court to completely discard that particular dying declaration.

186. In Meesala Ramakrishan v. State of A.P. MANU/SC/0709/1994 : (1994) 4 SCC 182, this Court, while admitting the dying declaration made through gestures, made the following observations:

20. ... that dying declaration recorded on the basis of nods and gestures is not only admissible but possesses evidentiary value, the extent of which shall depend upon who recorded the statement, what is his educational attainment, what gestures and nods were made, what were the questions asked - - whether they were simple or complicated - - and how effective or understandable the nods and gestures were.

187. In B. Shashikala v. State of A.P. MANU/SC/0052/2004 : (2004) 13 SCC 249, it was observed that:

13. The evidence of PW 8 is absolutely clear and unambiguous as regards the manner in which he recorded the statement of the deceased with the help of PW 4. It is also evident that he also has knowledge of Hindi although he may not be able to read and write or speak in the said language. His evidence also shows that he has taken all precautions and care while recording the statement. Furthermore, he had the opportunity of recording the statement of the deceased upon noticing her gesture. The court in a situation of this nature is also entitled to take into consideration the circumstances which were prevailing at the time of recording the statement of the deceased.

188. Appreciating the third dying declaration recorded on the basis of gestures, nods and writings on the base of aforesaid pronouncements, we have no hesitation in holding that the dying declaration made through signs, gestures or by nods are admissible as evidence, if proper care was taken at the time of recording the statement. The only caution the court ought to take is that the person recording the dying declaration is able to notice correctly as to what the declarant means by answering by gestures or nods. In the present case, this caution was aptly taken, as the person who recorded the prosecutrix's dying declaration was the Metropolitan Magistrate and

he was satisfied himself as regards the mental alertness and fitness of the prosecutrix, and recorded the dying declaration of the prosecutrix by noticing her gestures and by her own writings.

189. Considering the facts and circumstances of the present case and upon appreciation of the evidence and the material on record, in our view, all the three dying declarations are consistent with each other and well corroborated with other evidence and the trial court as well as the High Court has correctly placed reliance upon the dying declarations of the prosecutrix to record the conviction.

Insertion of the iron rod:

190. Presently, we shall advert to the contentions raised as regards the use of iron rod for causing recto- vaginal injury. The case of the prosecution is that the accused, in most inhumane and unfeeling manner, inserted iron rod in the rectum and vagina of the prosecutrix and took out the internal organs of the prosecutrix from the vaginal and anal opening while pulling out the said iron rod. They also took out the internal organs of the prosecutrix by inserting iron rod in the vagina of the prosecutrix thereby causing dangerous injuries. Two iron rods, Ex. P- 49/1 and Ex. P- 49/2, were recovered vide seizure memo Ex. P.W. 74/G by the Investigating Officer, P.W. 80, at the instance of accused Ram Singh (since deceased). As per Ex. P.W. 49/A, the internal injuries sustained by the victim were like vaginal tear, profused bleeding from vagina, rectal tear communicating with vaginal tear and other injuries.

191. P.W. 50, Dr. Raj Kumar Chejara, and the surgery team operated the prosecutrix in the intervening night of 16/17.12.2012 and the operative findings are as under:

a. collection of around 500ml of blood in peritoneal cavity

b. stomach pale,

c. duodenum contused

d. jejunum contused & bruised at whole of the length and lacerated & transected at many places. First transaction was 5cm away from DJ junction. Second one was 2 feet from the DJ, after that there was transaction and laceration at many places. Jejunal loop was of doubtful viability. Lieum - whole lieum was totally contused and it was of doubtful viability. Distal ileum was completely detached from the mesentery till ICJ (ileocaecal junction). It was completely devascularized.

e. Large bowel was also contused, bruised and of doubtful viability. Descending colon was lacerated vertically downward in such a manner that it was completely opened.

f. Sigmoid colon & rectum was lacerated at many places. Linearlyu, mucosa was detached completely at places, a portion of it around 10cm was prolapsing through perineal wound.

g. Liver and spleen was normal.

h. Both sides retro peritoneal (posterior wall of the abdomen) haematoma present.

i. Mesentery and omentum was totally contused and bruised.

j. Vaginal tear present, recto vaginal septum was completely torn.

192. P.W. 80, SI Pratibha Sharma, the Investigating Officer, deposed before the trial court that accused Ram Singh had led her inside the bus, Ex. P1 and had taken out two iron rods from the shelf of the driver's cabin. One of the rods, 59 cm in length, was primarily used for changing punctured tyres; it was hooked from one end and chiseled from the other. It also had multiple serrations on both the ends. The other rod was of silver colour, hollow and 70 cm long. This rod formed part of a hydraulic jack and was used as its lever, Ex. P.W. 49/G. The rods were blood stained and the recovered rods were sealed with the seal of PS and were deposited in the Malkhana. On 24.12.2012, the said iron rods along with the sample seal were sent to CFSL, CBI for examination through SI Subhash, P.W. 74, vide RC No. 178/21/12, proved as Ex. P.W. 77/R. The DNA report prepared by Dr. B.K. Mohapatra, P.W. 45, suggests that the DNA profile developed from the bloodstains from both the iron rods is consistent with the DNA profile of the prosecutrix.

193. Mr. Sharma, learned Counsel for the Appellants, has countered the prosecution case on the use of iron rods. He has drawn support from the medical records and the testimony of the witnesses as also the prosecutrix to assert the aforesaid submission. He submits that the prosecution has fabricated the story as regards the use of iron rods only to falsely implicate all the accused in the death of the prosecutrix. The defence has refuted the use of iron rods by the accused on the ground that the informant as well as the prosecutrix did not mention about the use of iron rods in their first statements. The main contention of the accused is that the prosecutrix herself, in her first statement given to Dr. Rashmi Ahuja, P.W. 49, Ex. P.W. 49/A, failed to disclose the use of iron rods. He relies on the absence of the words 'iron rods' in Ex. P.W. 49/A to fortify this submission. He contends that as recorded by P.W. 49, the prosecutrix was in a fit state of

mind for she even gave her residential address after undergoing the traumatic experience, but she failed to mention that the accused persons also used the iron rods on her, a fact that would have had a bearing on her treatment.

194. The aforesaid proponement is not sustainable as MLC, Ex. P.W. 49/A, of the prosecutrix suggests that she was brought to the hospital in a traumatized state with grievous injuries and she was cold and clammy, i.e., whitish (due to vasoconstriction) and had lost a lot of blood. As per Ex. P.W. 49/A, the prosecutrix was sure of intercourse to have been committed twice along with rectal penetration whereafter she did not remember intercourse. It is worthy to note that she was oscillating between consciousness and unconsciousness at the time of the incident and there was loss of lot of blood by the time she had reached the hospital which is evident from Ex. P.W. 49/B- MLC. A victim who has just suffered a ghastly and extremely frightening incident cannot be expected to immediately come out of the state of shock and state the finest details of the incident. The subsequent dying declarations of the prosecutrix corroborated by the medical evidence cannot be disregarded merely on the ground that the use of iron rods is not substantiated by the prosecutrix's first statement.

195. The gravity and hideousness of the injuries caused to the prosecutrix, as has already been discussed above, clearly shows the use of iron rods by the accused. The injuries caused to the prosecutrix by incessantly and abominably injuring her private parts using the concerned iron rods were so grave that death was the inevitable consequence. As already noted, both the iron rods, Ex. P- 49/1 and Ex. P- 49/2, were recovered at the instance of accused Ram Singh from inside the concerned bus. The DNA profile developed from the blood stains obtained from the iron rods is also consistent with the DNA profile of the prosecutrix. In such circumstances, merely because the finger prints of the accused were not obtained from the iron rods, it cannot be concluded that the accused were not linked with the concerned iron rods. Accused Ram Singh himself had the iron rods recovered to the Investigating Officer. Furthermore, the dying declaration of the prosecutrix, which is highly reliable, clearly establishes the horrendous use of iron rods by the accused persons.

196. The iron rods were sent for forensic examination to the CFSL. The DNA profile developed from the blood stains obtained from the iron rods recovered at the instance of accused Ram Singh was found to be of female origin and were found to be consistent with the DNA profile of the prosecutrix. Hence, the factum of insertion of iron rods in the private parts of the prosecutrix is also fortified by the scientific evidence.

197. P.W. 1, in his chief examination, deposed that he was severely assaulted by the accused with iron rods on his head and the rest of his body. It is submitted that as per MLC of P.W. 1, Ex. P.W. 51/A, the nature of injuries sustained by P.W. 1 were simple. It is contended that if P.W. 1 was beaten with the iron rod in the manner alleged by him, he would have sustained more serious injuries. It is canvassed that P.W. 1 sustained only simple injuries which leads to an inference that the iron rod was not used in the manner stated by the prosecution. Of course, as per Ex. P.W.

51/A, P.W. 1 sustained simple injuries but as seen from Ex. P.W. 51/A, there was also nasal bleeding from his nose and P.W. 1 was also vomiting. Merely because the injuries sustained by P.W. 1 were opined to be of simple nature, the use of iron rods cannot be doubted.

198. Learned Counsel for the Appellants further stressed on the point that P.W. 1 neither in his MLC, Ex. P.W. 51/A, nor in his complaint, Ex. P.W. 1/A, mentioned the use of iron rod; the description of bus or the names of the accused. In this regard, it has to be kept in mind that the purpose of FIR is mainly to set the criminal law in motion and not to lay down every minute detail and the entire gamut of the evidence relating to the case and, therefore, non- mention of use of iron rods in the FIR does not remotely create a dent in the case of the prosecution. When the subsequent statements of the prosecutrix well corroborated by the medical evidence are available, it is completely immaterial that the statement of P.W. 1 does not mention the use of iron rods. Thus, P.W. 1's omission to state the factum of use of iron rods in his complaint or MLC is not fatal to the case of the prosecution.

199. It is apposite to state here that non- mention of the use of iron rods in P.W. 1's statement has been a ground for giving rise to suspicion of his testimony. We find it difficult to comprehend as to how P.W. 1 could have been aware of any use of iron rods against the prosecutrix. P.W. 1 was being held by the accused towards the front of the bus, while the prosecutrix was being raped at the rear side of the bus and the lights of the bus also had been turned off. His statement in his complaint, Ex. P.W. 1/A, that he heard the prosecutrix shouting and crying and that her voice was oscillating is consistent with the narration of facts as also the medical records.

200. The second statement of the prosecutrix recorded in Ex. P.W. 27/A by P.W. 27, Smt. Usha Chaturvedi, has detailed the account of the entire incident specifying the role of each accused; gang rape/unnatural sex committed upon her; and the injuries caused in her vagina and rectum by use of iron rod and by inserting of hands by the accused are mentioned. This statement, in fact, bears the date and signature of the prosecutrix and records that the accused committed gang rape on her, inserted iron rod in the vagina and through anal opening causing injuries to the internal organs of the prosecutrix. The subsequent statement of the prosecutrix also affirms the above facts. That apart, as per the medical opinion Ex. P.W. 49/G given by P.W. 49, the recto-vaginal injury of the prosecutrix could be caused by the rods recovered from the bus.

Anatomy argument

201. Learned Counsel for the Appellants also submitted that if the rods purported to be used had actually been inserted through the vagina, it would have first destroyed the uterus before the intestines were pulled out. It was submitted that there were no rods related injuries in her uterus and medical science too does not assist the prosecution in their claim that the iron rods were used as a weapon for penetration. Mr. Sharma placed reliance on:

1. the first OT notes, Ex. P.W. 50/A that were made following the first operation of the prosecutrix on 17.12.2012 and where the following was recorded:

uterus, B/L tubes and ovaries seen and healthy

2. the case sheet of the operation conducted on 19.12.2012, presented as Ex. P.W. 50/D, wherein the following was recorded:

Gynae findings

... Cx, vaginal vault and ant vaginal wall (H)...

3. the post- mortem report, Ex. P.W. 34/A, that was prepared in Mount Elizabeth Hospital, Health Science Authority, Singapore, by the Autopsy doctor, Dr. Paul Chui on 29.12.2012 and where the following was recorded:

Uterus, Tubes and Ovaries

Uterus, tubes and ovaries were present in their normal anatomical positions. The uterus measured 8 cm x 5 cm x 3.5 cm. Thin fibrinopurulent adhesions were present on the serosal surfaces of the uterus and the adnexae. Cervix appeared normal and the os was closed. There were no cervical erosions and no haemorrhages on the intra- vaginal aspect of the cervix. Cut sections showed thin endometrium and normal myometrium. Tubes were normal. Both ovaries were normal in size. Cut sections of both ovaries showed corpus lutea, the largest of which was present in the right ovary.

The learned Counsel for the Appellants submit that that if the doctors in the surgery team did not find the uterus damaged, then it cannot be claimed that the rod was inserted in her private parts and intestines were pulled out.

202. The aforesaid submission can be singularly rejected without much discussion on the foundation that a question to that effect was not put to the doctors in their respective cross-examinations. However, instead of summary rejection, we shall deal with it for the sake of our satisfaction and also to meet the contention. While it may be so that the uterus, tubes and the cervix were not damaged, that does not mean that the intestines could not have been damaged

as they have been. It stands to reason based on common understanding and medical science to allay this contention. First, it is nowhere the stance that the rod was inserted only through the vagina. The prosecutrix herself had stated in her dying declarations that she was raped through the vagina as also the anus, Ex. P.W. 27/A. The anus is directly connected to the intestines via the rectum and, thus, deep penetration by use of a rod or other long object could have caused injuries to the bowels/intestines.

203. To appreciate the above contention, it is necessary to understand the anatomy and position of the uterus. We may profitably refer to the following excerpts from 'Gray's Anatomy: Descriptive and Applied', 34th Edn. [Orient Longman Publication] at pages 1572 and 1579:

THE UTERUS: The uterus, or womb, is a hollow, thick- walled, muscular organ situated in the lesser pelvis between the urinary bladder in front and the rectum behind. Into its upper part the uterine tubes open one on each side, while below, its cavity communicates with that of the vagina. When the ova are discharged from the ovaries, they are carried to the uterine cavity through the uterine tubes. If an ovum be fertilized it embeds itself in the uterine wall and is normally retained in the uterus until prenatal development is completed, the uterus undergoing changes in size and structure to accommodate itself to the needs of the growing embryo. After parturition the uterus returns almost to its former condition, though it is somewhat larger than in the virgin state. For general descriptive purposes the adult virgin uterus is taken as the type form.

In the virgin state the uterus is flattened from before backwards and is pear- shaped, with the narrow end directed downwards and backwards. It lies between the bladder below and in front, and the sigmoid colon and rectum above and behind, and is completely below the level of the pelvic inlet.

The long axis of the uterus usually lies approximately in the axis of the pelvic inlet (p. 440), but as the organ is freely movable its position varies with the state of distension of the bladder and rectum. Except when much displaced by a distended bladder, it forms almost a right angle with the vagina, since the axis of the vagina correspond to the axes of the cavity and outlet of the lesser pelvis (p. 440)" (at page 1572)

THE VAGINA: The vagina is a canal which extends from the vestibule, or cleft between the labia minora, to the uterus, and is situated, behind the bladder and urethra, and in front of the rectum and anal canal; it is directed upwards and backwards, its axis forming with that of the uterus an angle of over ninety degrees, opening forwards..." (at page 1579)

And 'A Fascimile: Gray's Anatomy' (at page 723) [Black Rose Publications]

THE VAGINA

.....

Relations: Its anterior surface is concave, and in relation with the base of the bladder, and with the urethra. Its posterior surface is convex, and connected to the anterior wall of the rectum, for the lower three- fourths of its extent....

The aforesaid excerpts establish that the vagina and uterus are almost at right angles to each other and the rectum is only separated by a wall of tissue. The pelvic cavity as set forth in the diagram in the book supports the same.

204. The exhibits relating to injuries may be noted. OT notes from 17.12.2012 and 19.12.2012 read as under:

OT Notes:

PW 50/B: Call received from Dr. Gaurav and Dr. Piyush at approx. 4.00 a.m. from noty OT.

Immediately reached OT and reviewed the details of internal injury (as mentioned in OT notes) the condition of the small and large bowel extremely bad for any definitive repair. The condition explained to the mother of the patient and the police officials present. Case discussed with Dr. S.K. Jain. Int. I/C telephonically.

205. The operative findings which are seen from the examination done by the Gynaecologist and the Surgeons are:

Perineal

• Abdominal findings: Rectum is longitudinally torn on anterior aspect in continuation with tear. This tear is continuing upward involving sigmoid colon descending colon which is splayed open. The margins are edematous.

• There are multiple longitudinal tear in the mucosa of rectosigmoid area.

• Transverse colon was also torn and gangrenous.

• Hepatic flexure ascending colon and caecum were gangrenous and multiple perforation at many places.

• Terminal item approximately 1 1/2 feet loosely hanging in the abdominal cavity. It was avulsed from its mesentery and was nonviable.

• Rest of small bowel was nonenlistend with only patens of mucosa at places and border of the mesentery was contused. This contused mesentery border initially appeared (during first surgery) as contused small bowel.

• Jejunostomy stoma was gangrenous for approximately 2 cm.

• Stomach and duodenum was distended but healthy.

Surgical Procedure:

• Resection of gangrenous terminal ileum, caecum, appendix, ascending colon, hepatic flexure and transverse colon was done.

• Resection of necrotic jejunal stoma with closure of duodenojejunal flexure in two layers by 3- 0 viaeny.

• Diverting lateral tube dudoenostomy (with 18F Folley's catheter) brought through right flank.

• Tube gastrostomy was added as another decompressive measures (28 size apotere tube was used) Tube gastrostomy was brought and from previous jejunostomy site.

• Abdominal drain placed in pelvis.

- Rectal sheath closed by using No. 1 prolene interrupted sutures.
- Skin closed by using 1- 0 nylon.
- Perineal wound packed with Betadine soaked gauze piece.
- T- Bandage applied
- ASD done for abdominal wound.
- Patient tolerated procedure and was shifted back to ICU- I.

Post OP Advise

1. NPO
2. CRTA
3. IVF as per CVP and output by ICU team.
4. Injection menopenum Limezolid to be continued as before.
5. Injection metronidazole 100ml IV TDS.
6. Injection Pantoprozole 20 mg IV OD
7. Strict I/O charting.
8. Rest of the treatment as advised by ICU team.

206. From the nature of the injuries noted in the OT Notes, the rectum was longitudinally torn and transverse colon was torn. From the Post- Mortem Certificate, the uterus was found in position (no injuries to uterus). If the rod was inserted in the vagina, having regard to the fact that the injury within the vagina was only in the posterior surface, it indicates that the rod was pushed inside with a downward force and not upward (which could have resulted in injury to the uterus) and it perhaps tunneled its way through the vagina into the rectal cavity and the bowels. Therefore, merely because no injuries to the uterus of the victim were noticed, that does not lead to the conclusion that iron rod was not used. Thus, the submission that has been raised with immense enthusiasm and ambition to create a concavity in the case of the prosecution on this score deserves to be repelled and we do so.

Analysis of evidence pertaining to DNA

207. Having dealt with the aspect pertaining to insertion of rod, it is apposite to advert to the medical evidence and post mortem report. We have, while dealing with other aspects, referred to certain aspects including DNA analysis of medical evidence but the same requires to be critically dealt with as the prosecution has placed heavy reliance upon it.

208. DNA is the abbreviation of Deoxyribo Nucleic Acid. It is the basic genetic material in all human body cells. It is not contained in red blood corpuscles. It is, however, present in white corpuscles. It carries the genetic code. DNA structure determines human character, behavior and body characteristics. DNA profiles are encrypted sets of numbers that reflect a person's DNA makeup which, in forensics, is used to identify human beings. DNA is a complex molecule. It has a double helix structure which can be compared with a twisted rope 'ladder'.

209. The nature and characteristics of DNA had been succinctly explained by Lord Justice Phillips in Regina v. Alan James Doheny & Gary Adams 1997 (1) Criminal Appeal Reports 369. In the above case, the accused were convicted relying on results obtained by comparing DNA profiles obtained from a stain left at the scene of the crime with DNA profiles obtained from a sample of blood provided by the Appellant. In the above context, with regard to DNA, the following was stated by Lord Justice Phillips:

Deoxyribonucleic acid, or DNA, consists of long ribbon- like molecules, the chromosomes, 46 of which lie tightly coiled in nearly every cell of the body. These chromosomes - 23 provided from the mother and 23 from the father at conception, form the genetic blueprint of the body. Different sections of DNA have different identifiable and discrete characteristics. When a criminal leaves a stain of blood or semen at the scene of the crime it may prove possible to extract from that crime stain sufficient sections of DNA to enable a comparison to be made with the same sections extracted from a sample of blood provided by the suspect. This process is complex and we could not hope to describe it more clearly or succinctly than did Lord Taylor C.J. in the case of Deen (transcript:December 21, 1993), so we shall gratefully adopt his description.

The process of DNA profiling starts with DNA being extracted from the crime stain and also from a sample taken from the suspect. In each case the DNA is cut into smaller lengths by specific enzymes. The fragments produced are sorted according to size by a process of electrophoresis. This involves placing the fragments in a gel and drawing them electromagnetically along a track through the gel. The fragments with smaller molecular weight travel further than the heavier ones. The pattern thus created is transferred from the gel onto a membrane. Radioactive DNA probes, taken from elsewhere, which bind with the sequences of most interest in the sample DNA are then applied. After the excess of the DNA probe is washed off, an X- ray film is placed over the membrane to record the band pattern. This produces an auto radiograph which can be photographed. When the crime stain DNA and the sample DNA from the suspect have been run in separate tracks through the gel, the resultant auto- radiographs can be compared. The two DNA profiles can then be said either to match or not.

210. In the United States, in an early case Frye v. United States 54 App. D.C. 46 (1923), it was laid down that scientific evidence is admissible only if the principle on which it is based is substantially established to have general acceptance in the field to which it belonged. The US Supreme Court reversed the above formulation in Daubert v. Merrell Dow Pharmaceuticals, Inc. MANU/USSC/0103/1993 : 113 S.CT. 2786 (1993) stating thus:

11. Although the Frye decision itself focused exclusively on "novel" scientific techniques, we do not read the requirements of Rule 702 to apply specially or exclusively to unconventional evidence. Of course, well- established propositions are less likely to be challenged than those that are novel, and they are more handily defended. Indeed, theories that are so firmly established as to have attained the status of scientific law, such as the laws of thermodynamics, properly are subject to judicial notice under Fed. Rule Evid. 201.

13. This is not to say that judicial interpretation, as opposed to adjudicative fact finding, does not share basic characteristics of the scientific endeavor: "The work of a judge is in one sense enduring and in another ephemeral... In the endless process of testing and retesting, there is a constant rejection of the dross and a constant retention of whatever is pure and sound and fine." B. Cardozo, The nature of the Judicial Process 178, 179 (1921).

211. The principle was summarized by Blackmun, J., as follows:

To summarize: "general acceptance" is not a necessary precondition to the admissibility of scientific evidence under the Federal Rules of Evidence, but the Rules of Evidence- - especially Rule 702- - do assign to the trial judge the task of ensuring that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand. Pertinent evidence based on scientifically valid principles will satisfy those demands.

The inquiries of the District Court and the Court of Appeals focused almost exclusively on "general acceptance," as gauged by publication and the decisions of other courts. Accordingly, the judgment of the Court of Appeals is vacated and the case is remanded for further proceedings consistent with this opinion.

212. After the above judgment, the DNA Test has been frequently applied in the United States of America. In District Attorney's Office for the Third Judicial District et al. v. William G. Osborne 129 Supreme Court Reporter 2308, Chief Justice Roberts of the Supreme Court of United States, while referring to the DNA Test, stated as follows:

DNA testing has an unparalleled ability both to exonerate the wrongly convicted and to identify the guilty. It has the potential to significantly improve both the criminal justice system and police investigative practices. The Federal Government and the States have recognized this, and have developed special approaches to ensure that this evidentiary tool can be effectively incorporated into established criminal procedure- usually but not always through legislation.

... ...

Modern DNA testing can provide powerful new evidence unlike anything known before. Since its first use in criminal investigations in the mid- 1980s, there have been several major advances in DNA technology, culminating in STR technology. It is now often possible to determine whether a biological tissue matches a suspect with near certainty. While of course many criminal trials proceed without any forensic and scientific testing at all, there is no technology comparable to DNA testing for matching tissues when such evidence is at issue.

213. DNA technology as a part of Forensic Science and scientific discipline not only provides guidance to investigation but also supplies the Court accrued information about the tending features of identification of criminals. The recent advancement in modern biological research has regularized Forensic Science resulting in radical help in the administration of justice. In our country also like several other developed and developing countries, DNA evidence is being increasingly relied upon by courts. After the amendment in the Code of Criminal Procedure by the insertion of Section 53A by Act 25 of 2005, DNA profiling has now become a part of the statutory scheme. Section 53A relates to the examination of a person accused of rape by a medical practitioner.

214. Similarly, Under Section 164A inserted by Act 25 of 2005, for medical examination of the victim of rape, the description of material taken from the person of the woman for DNA profiling

is must. Section 53A Sub- section (2) as well as Section 164(A) Sub- section (2) are to the following effect:

Section 53A. Examination of person accused of rape by Medical Practitioner.-

(1)... ... ...

(2) The registered medical practitioner conducting such examination shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely:

(i) the name and address of the accused and of the person by whom he was brought,

(ii) the age of the accused,

(iii) marks of injury, if any, on the person of the accused,

(iv) the description of material taken from the person of the accused for DNA profiling, and

(v) other material particulars in reasonable detail.

Section 164A. Medical Examination of the victim of rape.-

(1)... ... ...

(2) The registered medical practitioner, to whom such woman is sent, shall, without delay, examine her person and prepare a report of his examination giving the following particulars, namely:

(i) the name and address of the woman and of the person by whom she was brought;

(ii) the age of the woman;

(iii) the description of material taken from the person of the woman for DNA profiling;

(iv) marks of injury, if any, on the person of the woman;

(v) general mental condition of the woman; and

(vi) other material particulars in reasonable detail.

215. This Court had the occasion to consider various aspects of DNA profiling and DNA reports. K.T. Thomas, J. in Kamti Devi (Smt.) and Anr. v. Poshi Ram MANU/SC/0335/2001 : (2001) 5 SCC 311, observed:

10. We may remember that Section 112 of the Evidence Act was enacted at a time when the modern scientific advancements with deoxyribonucleic acid (DNA) as well as ribonucleic acid (RNA) tests were not even in contemplation of the legislature. The result of a genuine DNA test is said to be scientifically accurate. ...

216. In Pantangi Balarama Venkata Ganesh v. State of Andhra Pradesh MANU/SC/1306/2009 : (2009) 14 SCC 607, a two- Judge Bench had explained as to what is DNA in the following manner:

41. Submission of Mr. Sachar that the report of DNA should not be relied upon, cannot be accepted. What is DNA? It means:

Deoxyribonucleic acid, which is found in the chromosomes of the cells of living beings is the blueprint of an individual. DNA decides the characteristics of the person such as the colour of the skin, type of hair, nails and so on. Using this genetic fingerprinting, identification of an individual is done like in the traditional method of identifying fingerprints of offenders. The identification is hundred per cent precise, experts opine.

There cannot be any doubt whatsoever that there is a need of quality control. Precautions are required to be taken to ensure preparation of high molecular weight DNA, complete digestion of the samples with appropriate enzymes, and perfect transfer and hybridization of the blot to obtain distinct bands with appropriate control. (See article of Lalji Singh, Centre for Cellular and Molecular Biology, Hyderabad in DNA profiling and its applications.) But in this case there is nothing to show that such precautions were not taken.

42. Indisputably, the evidence of the experts is admissible in evidence in terms of Section 45 of the Evidence Act, 1872. In cross- examination, PW 46 had stated as under:

If the DNA fingerprint of a person matches with that of a sample, it means that the sample has come from that person only. The probability of two persons except identical twins having the same DNA fingerprint is around 1 in 30 billion world population.

217. In Santosh Kumar Singh v. State Through CBI MANU/SC/0801/2010 : (2010) 9 SCC 747, which was a case of a young girl who was raped and murdered, the DNA reports were relied upon by the High Court which were approved by this Court and it was held thus:

71. We feel that the trial court was not justified in rejecting the DNA report, as nothing adverse could be pointed out against the two experts who had submitted it. We must, therefore, accept the DNA report as being scientifically accurate and an exact science as held by this Court in Kamti Devi v. Poshi Ram (supra). In arriving at its conclusions the trial court was also influenced by the fact that the semen swabs and slides and the blood samples of the Appellant had not been kept in proper custody and had been tampered with, as already indicated above. We are of the opinion that the trial court was in error on this score. We, accordingly, endorse the conclusions of the High Court on Circumstance 9.

218. In Inspector of Police, Tamil Nadu v. John David MANU/SC/0461/2011 : (2011) 5 SCC 509, a young boy studying in MBBS Course was brutally murdered by his senior. The torso and head were recovered from different places which were identified by the father of the deceased. For confirming the said facts, the blood samples of the father and mother of the deceased were taken which were subject to DNA test. From the DNA, the identification of the deceased was proved. Paragraph 60 of the decision is reproduced below:

60. ... The said fact was also proved from the DNA test conducted by PW 77. PW 77 had compared the tissues taken from the severed head, torso and limbs and on scientific analysis he has found that the same gene found in the blood of P.W. 1 and Baby Ponnusamy was found in the recovered parts of the body and that therefore they should belong to the only missing son of PW 1.

219. In Krishan Kumar Malik v. State of Haryana MANU/SC/0718/2011 : (2011) 7 SCC 130, in a gang rape case when the prosecution did not conduct DNA test or analysis and matching of semen of the Appellant- accused with that found on the undergarments of the prosecutrix, this Court held that after the incorporation of Section 53- A in Code of Criminal Procedure, it has become necessary for the prosecution to go in for DNA test in such type of cases. The relevant paragraph is reproduced below:

44. Now, after the incorporation of Section 53- A in the Code of Criminal Procedure w.e.f. 23.06.2006, brought to our notice by the learned Counsel for the Respondent State, it has become necessary for the prosecution to go in for DNA test in such type of cases, facilitating the

prosecution to prove its case against the accused. Prior to 2006, even without the aforesaid specific provision in Code of Criminal Procedure the prosecution could have still restored to this procedure of getting the DNA test or analysis and matching of semen of the Appellant with that found on the undergarments of the prosecutrix to make it a foolproof case, but they did not do so, thus they must face the consequences.

220. In Surendra Koli v. State of Uttar Pradesh and Ors. MANU/SC/0119/2011 : (2011) 4 SCC 80, the Appellant, a serial killer, was awarded death sentence which was confirmed by the High Court. While confirming the death sentence, this Court relied on the result of the DNA test conducted on the part of the body of the deceased girl. Para 12 is reproduced below:

12. The DNA test of Rimpa by CDFD, a pioneer institute in Hyderabad matched with that of blood of her parents and brother. The doctors at AIIMS have put the parts of the deceased girls which have been recovered by the doctors of AIIMS together. These bodies have been recovered in the presence of the doctors of AIIMS at the pointing out by the accused Surendra Koli. Thus, recovery is admissible Under Section 27 of the Evidence Act.

221. In Mohammed Ajmal Mohammad Amir Kasab alias Abu Mujahid v. State of Maharashtra MANU/SC/0681/2012 : (2012) 9 SCC 1, the accused was awarded death sentence on charges of killing large number of innocent persons on 26th November, 2008 at Bombay. The accused with others had come from Pakistan using a boat 'Kuber' and several articles were recovered from 'Kuber'. The stains of sweat, saliva and other bodily secretions on those articles were subjected to DNA test and the DNA test matched with several accused. The Court observed:

333. It is seen above that among the articles recovered from Kuber were a number of blankets, shawls and many other items of clothing. The stains of sweat, saliva and other bodily secretions on those articles were subjected to DNA profiling and, excepting Imran Babar (deceased Accused 2), Abdul Rahman Bada (deceased Accused 5), Fahadullah (deceased Accused 7) and Shoaib (deceased Accused 9), the rest of six accused were connected with various articles found and recovered from the Kuber. The Appellant's DNA matched the DNA profile from a sweat stain detected on one of the jackets. A chart showing the matching of the DNA of the different accused with DNA profiles from stains on different articles found and recovered from the Kuber is annexed at the end of the judgment as Schedule III.

222. In Sandeep v. State of Uttar Pradesh MANU/SC/0422/2012 : (2012) 6 SCC 107, the facts related to the murder of pregnant paramour/girlfriend and unborn child of the accused. The DNA report confirmed that the Appellant was the father of the unborn child. The Court, relying on the DNA report, stated as follows:

67. In the light of the said expert evidence of the Junior Scientific Officer it is too late in the day for the Appellant Sandeep to contend that improper preservation of the foetus would have resulted in a wrong report to the effect that the accused Sandeep was found to be the biological father of the foetus received from the deceased Jyoti. As the said submission is not supported by any relevant material on record and as the Appellant was not able to substantiate the said argument with any other supporting material, we do not find any substance in the said

submission. The circumstance, namely, the report of DNA in having concluded that accused Sandeep was the biological father of the recovered foetus of Jyoti was one other relevant circumstance to prove the guilt of the said accused.

223. In Rajkumar v. State of Madhya Pradesh MANU/SC/0136/2014 : (2014) 5 SCC 353, the Court was dealing with a case of rape and murder of a 14 year old girl. The DNA report established the presence of semen of the Appellant in the vaginal swab of the prosecutrix. The conviction was recorded relying on the DNA report. In the said context, the following was stated:

8. The deceased was 14 years of age and a student in VIth standard which was proved from the school register and the statement of her father Iknis Jojo (P.W. 1). Her age has also been mentioned in the FIR as 14 years. So far as medical evidence is concerned, it was mentioned that the deceased prosecutrix was about 16 years of age. So far as the analysis report of the material sent and the DNA report is concerned, it revealed that semen of the Appellant was found on the vaginal swab of the deceased. The clothes of the deceased were also found having Appellant's semen spots. The hair which were found near the place of occurrence were found to be that of the Appellant.

224. In Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik and Anr. MANU/SC/0006/2014 : (2014) 2 SCC 576, the Appellant, father of the child born to his wife, questioned the paternity of the child on the ground that she did not stay with him for the last two years. The Court directed for DNA test. The DNA result opined that the Appellant was not the biological father of the child. The Court also had the occasion to consider Section 112 of the Evidence Act which raises a presumption that birth during marriage is conclusive proof of legitimacy. The Court relied on the DNA test holding the DNA test to be scientifically accurate. The pertinent observations are extracted below:

19. The husband's plea that he had no access to the wife when the child was begotten stands proved by the DNA test report and in the face of it, we cannot compel the Appellant to bear the fatherhood of a child, when the scientific reports prove to the contrary. We are conscious that an innocent child may not be bastardised as the marriage between her mother and father was subsisting at the time of her birth, but in view of the DNA test reports and what we have observed above, we cannot forestall the consequence. It is denying the truth. "Truth must triumph" is the hallmark of justice.

20. As regards the authority of this Court in Kamti Devi, this Court on appreciation of evidence came to the conclusion that the husband had no opportunity whatsoever to have liaison with the wife. There was no DNA test held in the case. In the said background i.e. non- access of the husband to the wife, this Court held that the result of DNA test "is not enough to escape from the conclusiveness of Section 112 of the Act." The judgment has to be understood in the factual scenario of the said case. The said judgment has not held that DNA test is to be ignored. In fact, this Court has taken note of the fact that DNA test is scientifically accurate. We hasten to add that in none of the cases referred to above, this Court confronted with a situation in which a DNA test report, in fact, was available and was in conflict with the presumption of conclusive proof of

legitimacy of the child Under Section 112 of the Evidence Act. In view of what we have observed above, these judgments in no way advance the case of the Respondents.

From the aforesaid authorities, it is quite clear that DNA report deserves to be accepted unless it is absolutely dented and for non- acceptance of the same, it is to be established that there had been no quality control or quality assurance. If the sampling is proper and if there is no evidence as to tampering of samples, the DNA test report is to be accepted.

225. In order to establish a clear link between the accused persons and the incident at hand, the prosecution has also adduced scientific evidence in the form of DNA, fingerprint and bite mark analysis.

226. Various samples, for the purpose of DNA profiling, were lifted from the person of the prosecutrix; the informant; the accused, their clothes/articles; the dumping spot; the iron rods; the ashes of partly burnt clothes; as well as from the offending bus. P.W. 45, Dr. B.K. Mohapatra, analysed the said DNA profiles and submitted his report thereof. In his report, he concluded that the samples were authentic and capable of establishing the identities of the persons concerned beyond reasonable doubt.

227. After establishing the identities of each of the accused persons, the informant and the prosecutrix through DNA analysis, the DNA profiles generated from the remaining samples, where the identity of biological material found thereon needed to be ascertained, were matched with the DNA profiles of the prosecutrix, the informant and the accused, generated earlier from known samples. Such an analysis cogently linked each of the accused with the victims as also with the crime scene. A summary of the findings in the report submitted by P.W. 45, Dr. B.K. Mohapatra, is as under:

228. Further, a summary of the DNA analysis of the biological samples lifted from the material objects such as the bus, the iron rods, and the ash and unburnt pieces of clothes is also worth producing here:

229. P.W. 45, Dr. B.K. Mohapatra, has clearly testified in his cross- examination that all the experiments conducted by him confirmed to the guidelines and methodology documented in the Working Procedure Manuals of the laboratory which have been validated and recommended for use in the laboratory. He further added that once a DNA profile is generated, its accuracy is 100%. The trial court and the High Court have consistently noted that the counsel for the defence did not raise any substantial ground to challenge the DNA report during the cross- examination of P.W. 45. In such circumstances, there is no reason to declare the DNA report as inaccurate, especially when it clearly links the accused persons with the incident.

230. Mr. Sharma, learned Counsel appearing for Appellants - Mukesh and Pawan Kumar Gupta, submitted that in the instant case, the DNA test cannot be treated to be accurate, for there was blood transfusion as the prosecutrix required blood and when there is mixing of blood, the DNA profiling is likely to differ. It is seemly to note, nothing had been put to the expert in his cross-examination in this regard. As the authorities relating to DNA would show, if the quality control is maintained, it is treated to be quite accurate and as the same has been established, we are compelled to repel the said submission of Mr. Sharma.

The evidence relating to finger print analysis:

231. Next aspect that is required to be adverted is the evidence of fingerprint analysis adduced by the prosecution to establish the identity of the accused persons. By virtue of the finger print analysis, the prosecution has tried mainly to establish the presence of the accused in the offending bus. On 17.12.2012 and 18.12.2012, a team of experts from the CFSL had lifted chance finger prints from the concerned bus, Ex. P- 1, at Thyagraj Stadium. On 28.12.2012, P.W. 78, Inspector Anil Sharma of P.S. Vasant Vihar, the then S.H.O. of Police Station Vasant Vihar, requested the Director, CFSL for taking digital palm prints and foot prints of all the accused persons vide his letter Ex. P.W. 46/C. Pursuant to the said request made by P.W. 78, Inspector Anil Sharma, the CFSL on 31.12.2012 took the finger/palm prints and foot prints of the accused persons at Tihar Jail. After comparing the chance prints lifted from the bus with the finger prints/palm prints and foot prints of all the accused persons, P.W. 46, Shri A.D. Shah, Senior Scientific Officer (Finger Prints), CFSL, CBI, submitted his report, Ex. P.W. 46/D.

232. As per the report, Ex. P.W. 46/D, the result of the aforesaid examination of the Finger Print Division of the CFSL, CBI, New Delhi was that the chance prints of accused Vinay Sharma were found on the bus in question. The relevant portion of the report is as under:

RESULT OF EXAMINATION:

I. The chance print marked as Q.1 is identical with left palmprint specimen of Vinay Sharma S/o. Sh. Hari Ram Sharma marked here as LPS- 28 on the slip marked here as S.28 (Matching ridge characteristics have been found in their relative positions in the chance palmprint and specimen palm print. This forms the basis of the opinion that these prints are identical. Eight of them have been marked with projected red lines with their detailed description are placed at Annexure- 1)

II. The chance print marked as Q.4 is identical with right thumb impression of Vinay Sharma S/o. Sh. Hari Ram Sharma marked here as RTS- 23 on the slip marked here as S.23 (Matching ridge characteristics have been found in their relative positions in the chance print and specimen finger print. This forms the basis of the opinion that these prints are identical. Eight of them have been marked with projected red lines with their detailed description are placed at Annexure- 2).

The above report incontrovertibly proves that accused Vinay was present in the bus at the time of the incident. Be it noted, the other chance prints were found to be unfit for comparison or different from specimen print.

The Odontology report

233. Now, we shall analyse the Odontology report. In today's world, Odontology is a branch of forensic science in which dental knowledge is applied to assist the criminal justice delivery system. S. Keiser- Nielsen, an authority on Forensic Odontology defines the basic concept of Forensic Odontology in the following words:

A. Forensic odontology is that branch of odontology which in the interests of justice deals with the proper handling and examination of dental evidence and with the proper evaluation and presentation of dental findings. Only a dentist can handle and examine dental evidence with any degree of accuracy; therefore, this field is above all a dental field.

234. Professor Neilsen, elaborating on Forensic Odontology, further states:

B. There are three reasons for considering forensic odontology a well- defined and more or less independent subject:1) it has objectives different from those at which conventional dental education aims; 2) forensic dental work requires investigations and considerations different from those required in ordinary dental practice; and 3) forensic dental reports and statements have to be presented in accordance with certain legal formalities in order to be of value to those requesting aid.

The area of forensic odontology consists of three major fields of activity: 1) the examination and evaluation of injuries to teeth, jaws, and oral tissues from various causes: 2) the examination of bite marks with a view to the subsequent elimination or possible identification of a suspect as the originator; and 3) the examination of dental remains (whether fragmentary or complete, and including all types of dental restoration) from unknown persons or bodies for the purpose of identification.

235. In the instant case, the prosecution has relied upon the odontology report, i.e., bite mark analysis report prepared by P.W. 71, Dr. Ashith B. Acharya, to link the incident with the accused persons. The Odontology report links accused Ram Singh and accused Akshay with the crime in question.

236. Dr. K.S. Narayan Reddy, in his book, Medical Jurisprudence and Toxicology (Law, Practice and Procedure), Third Edition, 2010, Chapter VIII page 268, has extensively dealt with human bites, their patterns, the manner in which they should be lifted with a swab and moistened with sterile water and the manner in which such swabs need to be handled is delineated along with their usefulness in identification. The High Court has also referred to the same. It is as follows:

They are useful in identification because the alignment of teeth is peculiar to the individual. Bite marks may be found in materials left at the place of crime e.g., foodstuffs, such as cheese, bread, butter, fruit, or in humans involved in assaults, when either the victim or the accused may show the marks, usually on the hands, fingers, forearms, nose and ears.

237. After making the aforesaid observations, the author dwells upon the various methods used for bite mark analysis including the photographic method, which method was utilized in the instant case. The photographic method is described as under:

Photographic method: The bite mark is fully photographed with two scales at right angle to one another in the horizontal plane. Photographs of the teeth are taken by using special mirrors which allow the inclusion of all the teeth in the upper or lower jaws in one photograph. The photographs of the teeth are matched with photographs or tracings of the teeth. Tracings can be made from positive casts of a bite impression, inking the cutting edges of the front teeth. These are transferred to transparent sheets, and superimposed over the photographs, or a negative photograph of the teeth is superimposed over the positive photograph of the bite. Exclusion is easier than positive matching.

238. In the present case, the photographs of bite marks taken by P.W. 66, Shri Asghar Hussein, of different parts of the body of the prosecutrix were examined by P.W. 71, Dr. Ashith B. Acharya. The photographs depicted the bite marks on the body of the prosecutrix. The said bite marks found on the body of the victim were compared with the dental models of the suspects. The analysis showed that at least three bite marks were caused by accused Ram Singh, whereas one bite mark has been identified to have been most likely caused by accused Akshay. An excerpt from the report, Ex. P.W. 71/C, of P.W. 71, Dr. Ashith B. Acharya, has been extracted by the High Court. It reads thus:

..... There is absence of any unexplainable discrepancies between the bite marks on Photograph No. 4 and the biting surfaces of one of the accused person's teeth, namely Ram Singh. Therefore, there is reasonable medical certainty that the teeth on the dental models of the accused person named Ram Singh caused the bite marks visible on Photograph No. 4; also the bite marks on Photograph Nos. 1 and 2 show some degree of specificity to this accused person's teeth by virtue of a sufficient number of concordant points, including some corresponding unconventional/individual characteristics. Therefore, the teeth on the dental models of the accused person with the name Ram Singh probably also caused the bite marks visible on Photograph Nos. 1 and 2.....

x x x x x The comparison also shows that there is a concordance in terms of general alignment and angulation of the biting surfaces of the teeth of the lower jaw on the dental models of the accused person with the name Akshay and the corresponding bite marks visible on Photograph No. 5. In particular, the comparison revealed concordance between the biting surface of the teeth on the lower jaw of the dental models of the accused person with the name Akshay and the bite mark visible on Photograph No. 5 in relation to the rotated left first incisor whose mesial surface pointed towards the tongue. Overall, the bite mark shows some degree of specificity to the accused person's teeth by virtue of a number of concordant points, including one corresponding unconventional/individual characteristic. There is an absence of any unexplainable discrepancies between the bite mark and the biting surfaces of this accused person's teeth. Therefore, the teeth on the dental models of the accused person with the name Akshay probably caused the bite marks visible on Photograph No. 5.

239. Be it noted, the present is a case where the victim's body contained various white bite marks. Bite mark analysis play an important role in the criminal justice system. Advanced development of technology such as laser scanning, scanning electron microscopy or cone beam computed tomography in forensic odontology is utilized to identify more details in bite marks and in the individual teeth of the bite. Unlike fingerprints and DNA, bite marks lack the specificity and durability as the human teeth may change over time. However, bite mark evidence has other advantages in the criminal justice system that links a specific individual to the crime or victim. For a bite mark analysis, it must contain abundant information and the tooth that made the mark must be quite distinctive.

240. Bite marks in skin are photographed in cases where the suspect is apprehended. A thorough dental combination is administered after dental examination of the suspect. Final comparison of the details of the original mark with the dentation of the suspect is done by experts.

241. The bite marks generally include only a limited number of teeth. The teeth and oral structure of the accused are examined by experts and, thereafter, bite marks are compared and reports are submitted. Forensic Odontology is a science and the most common application of Forensic Odontology is for the purpose of identification of persons from their tooth structure.

242. Forensic Odontology has established itself as an important and indispensable science in medico- legal matters and expert evidence through various reports which have been utilized by courts in the administration of justice. In the case at hand, the report is wholly credible because of matching of bite marks with the tooth structure of the accused persons and there is no reason to view the same with any suspicion. Learned Counsel for the Appellants would only contend that the whole thing has been stage- managed. We are not impressed by the said submission, for the evidence brought on record cogently establish the injuries sustained by the prosecutrix and there is consistency between the injuries and the report. We are not inclined to accept the hypothesis that bite marks have been managed.

Acceptability of the plea of alibi

243. Presently, we shall deal with the plea of alibi as the same has been advanced with immense conviction. It is well settled in law that when a plea of alibi is taken by an accused, the burden is upon him to establish the same by positive evidence after the onus as regards the presence on the spot is established by the prosecution. In this context, we may usefully reproduce a few paragraphs from Binay Kumar Singh v. State of Bihar MANU/SC/0088/1997 : (1997) 1 SCC 283:

22. We must bear in mind that an alibi is not an exception (special or general) envisaged in the Indian Penal Code, 1860 or any other law. It is only a rule of evidence recognised in Section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant. Illustration (a) given under the provision is worth reproducing in this context:

The question is whether A committed a crime at Calcutta on a certain date. The fact that, on that date, A was at Lahore is relevant.

23. The Latin word alibi means 'elsewhere' and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of alibi. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter- evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi. ...

[underlining is ours]

244. The said principle has been reiterated in Gurpreet Singh v. State of Haryana MANU/SC/0770/2002 : (2002) 8 SCC 18, Shaikh Sattar v. State of Maharashtra

MANU/SC/0649/2010 : (2010) 8 SCC 430, Jitender Kumar v. State of Haryana MANU/SC/0532/2012 : (2012) 6 SCC 204 and Vijay Pal (supra).

245. We had earlier indicated that in their Section 313 Code of Criminal Procedure statements, the accused have advanced the plea of alibi. Accused Pawan Kumar Gupta @ Kaalu has taken the plea of alibi stating, inter alia, that throughout the evening of 16.12.2012 till late night, he was in the DDA District Park, Hauz Khas, Opposite IIT Gate, New Delhi, watching a musical event organised in connection with Christmas Celebration and that he was never in the bus, Ex. P1, and had not committed any offence with the prosecutrix or with the informant.

246. Before coming to the defence evidence led by him, we may refer to the answers given by him in response to the questions put to him in his statement Under Section 313 Code of Criminal Procedure wherein he has admitted that mobile No. 9711927157 belongs to him. He further stated that he had consumed liquor in the evening of 16.12.2012 and had accompanied accused Vinay Sharma to the musical event at DDA District Park where he took more liquor and fell unconscious and was later brought to his house by his father and uncle. He stated that he went out in the evening of 16.12.2012 and saw a quarrel between accused Vinay Sharma and accused Ram Singh (since deceased). Then he returned to his jhuggi. After sometime, he came out of his jhuggi and saw accused Vinay Sharma, his sister, mother and others going to a musical party and so, he also went with them and took more liquor in the party and even lost his mobile phone. Strangely enough, in his supplementary statement recorded on 16.08.2013 Under Section 313 Code of Criminal Procedure, he stated that he was present in the said party with his family members and friends and that a video clip was prepared by one Ram Babu, DW- 13, and that he does not remember if he had accompanied accused Vinay Sharma to the said park on that evening. It is in contradiction to the stand taken by him in his earlier statement recorded Under Section 313 Code of Criminal Procedure.

247. Accused Pawan examined his father, DW- 2, Shri Hira Lal Ram, who deposed that on 16.12.2012 about 7:15 p.m., when he came to his house, he was informed by his daughter that accused Pawan had gone to DDA District Park, Hauz Khas. It is in contradiction to the deposition made by the other defence witnesses who have said that accused Vinay Sharma and his family members had left Ravi Dass Camp, Sector- 3, R.K. Puram, New Delhi, about 8:00/8:30 p.m. and that accused Pawan had accompanied them. Accused Pawan also said so in his initial statement Under Section 313 Code of Criminal Procedure.

248. DW- 4, Shri Gyan Chand, the maternal uncle of accused Pawan, deposed that he brought accused Pawan Gupta @ Kaalu to the jhuggi from the DDA District Park and saw one Ram Charan warming his hands on a bonfire just outside his jhuggi who came and asked him about the well-being of accused Pawan. Ram Charan, DW- 3, however, deposed that about 8:30/9:00 p.m., he was sitting inside his jhuggi with its door open and he saw accused Pawan being brought by his uncle in drunken state. This is yet again in contradiction to what has been deposed by the other defence witnesses who said that accused Pawan Gupta and accused Vinay Sharma had rather left

Ravi Dass Camp, Sector- 3, R.K. Puram, New Delhi about 8:00/8:30 p.m. for the DDA District Park.

249. DW- 16, a shopkeeper of the locality, had deposed that he had seen the vehicle of Shri Gyan Chand about 9:00/9:30 p.m. on 16.12.2012 when accused Pawan Gupta was brought in drunken condition and was taken to his jhuggi. Initially, he failed to mention if Shri Hira Ram was accompanying Shri Gyan Chand.

250. Though the witnesses have also deposed about the taking away of accused Pawan by 3/4 persons on 17.12.2012, yet that plea too is in contradiction to the arrest memo Ex. P.W. 60/A wherein the accused is stated to have been arrested on 18.12.2012 about 1:15 p.m. at the instance of accused Ram Singh (since deceased).

251. Hence, there exist contradictions in the statements of the defence witnesses produced on behalf of accused Pawan Gupta (a): qua the timing when the accused had left his jhuggi at Ravi Dass Camp on the fateful night of 16.12.2012 inasmuch as some of the witnesses deposed that accused Pawan left for DDA District Park at 8:00/8:30 p.m. and some others deposed that they saw him being brought to his jhuggi about 8:30/9:00 p.m.; (b) qua the fact if DW- 2 had gone with DW- 1 to the park to fetch his son; and (c) qua the fact if accused Pawan went to the park with accused Vinay Sharma or not.

252. Accused Akshay Kumar Singh @ Thakur, in his statement Under Section 313 Code of Criminal Procedure, stated that he was not in Delhi on the fateful night and that on 15.12.2012, he had left Delhi for his village in Mahabodhi Express on the ticket of his brother, Abhay, along with his brother's wife and nephew. He produced certain witnesses in his defence. DW- 11, Shri Chavinder, an auto driver from his village, deposed that he had brought accused Akshay Kumar Singh @ Thakur and his family members from Anugrah Narayan Railway Station, District Aurangabad, Bihar to his native village Karmalahang, P.S. Tandwa, in his own auto on 16.12.2012 at 10:00 a.m. It is interesting to note that he does not remember about any other passenger/native who shared his auto on that day. DW- 13, Sh. Raj Mohan Singh, the father- in- law of the accused, deposed that when he reached accused Akshay's house, he found his son- in- law being implicated in a rape case allegedly committed on 16.12.2012. It probably shows that DW- 13 had gone to meet Akshay Kumar Singh @ Thakur only when he had come to know about his implication in the rape case and when accused Akshay Kumar Singh @ Thakur was on the run. It is an admitted fact that the Chowkidar of P.S. Tandwa had met father- in- law of the accused on 20.12.2012 and had informed him about the implication of accused Akshay for the first time. If it was so, then DW- 13, Shri Raj Mohan, must have visited the house of accused Akshay Kumar Singh @ Thakur either on 20.12.2012 or on 21.12.2012.

253. DW- 12, DW- 14 and DW- 15 are all relatives of accused Akshay Kumar Singh @ Thakur and, as observed by both the courts, they tried to wriggle him out of the messy situation, as is the

natural instinct of the family members. However, it is to be seen that during the evidence of DW-14, wife of accused Akshay Kumar Singh @ Thakur, she was interrupted from answering by accused Akshay from behind on more than one occasion. Similarly, DW- 15, the sister- in- law of the accused, who had allegedly accompanied the accused to her native village, mysteriously, was not aware as to why her husband Abhay who was to accompany her on 15.12.2012 to the native village did not accompany her. She was not aware of the reason which made her husband stay behind in Delhi. Being the wife, she was expected to know this, at least.

254. While weighing the plea of 'alibi', the same has to be weighed against the positive evidence led by the prosecution, i.e., not only the substantive evidence of P.W. 1 and the dying declarations, Ex. P.W. 27/A and Ex. P.W. 30/D- 1, but also against the scientific evidence, viz., the DNA analysis, finger print analysis and bite marks analysis, the accuracy of which is scientifically acclaimed. Considering the inconsistent and contradictory nature of the evidence of 'alibi' led by the accused against the positive evidence of the prosecution, including the scientific one, we hold that the accused have miserably failed to discharge their burden of absolute certainty qua their plea of 'alibi'. The plea taken by them appears to be an afterthought and rather may be read as an additional circumstance against them.

255. In response to the questions put to him in his statement Under Section 313 Code of Criminal Procedure, accused Vinay had admitted that mobile No. 8285947545, Ex. D.W. 10/1, belongs to his mother and its SIM was lost prior to 16.12.2012 and that on 16.12.2012, at 9:30 p.m., his friend Vipin had taken his phone to the DDA District Park and had returned it the next morning without SIM card and memory card.

256. In response to question No. 221, he stated that about 8:00/8:30 p.m., he went to see accused Ram Singh and he had a scuffle/exchange of fist blow and then he returned to his jhuggi. Thereafter, he left for musical party with his sister, mother and others. He did not say if his father had accompanied them. He also told that about 11:30 p.m., he had returned to his jhuggi.

257. It is worthy to note that the prosecution had proved the Call Detail Record, Ex. P.W. 22/B, of the phone of accused Vinay Sharma, having SIM No. 8285947545, admittedly in the name of his mother, Smt. Champa Devi, but in the possession of accused Vinay Sharma in the evening of 16.12.2012 and allegedly snatched by one Vipin in the said music party and returned to him in the morning of 17.12.2012 without SIM card and memory card. The Call Detail Record Ex. P.W. 22/B does show that the accused had been making calls to one particular number, viz., 8601274533 from 15.12.2012 till 20:19:37 of 17.12.2012. The authenticity of the CDR is proved Under Section 65- B of the Indian Evidence Act. If the accused was not having a SIM card in his phone No. 8285947545, then how could he have called from this SIM on 15.12.2012, then on 16.12.2012 and in the morning of 17.12.2012 till about 8:23:42 p.m.

258. The accused rather said that his SIM and memory card were not in his phone when it was returned by his friend Vipin and that the phone was not with him at 9:55:21 when it registered a call for 58 seconds and when his location was found near IGI Airport, i.e., the road covered by the Route Map, Ex. P.W. 80/H, where the bus, Ex. P1, was moving on that night. Further, if as per accused Vinay Sharma he had no memory card and SIM card in his mobile phone, then the question of making of a video clip from his mobile phone by his friend DW- 10, Shri Ram Babu, does not arise. Even his personal search memo Ex. P.W. 60/D does not show that the said mobile phone, when seized, had any memory card in it. The intention of the accused appears to be to wriggle himself out of explaining the receipt of call on his mobile at 9:55 p.m. on 16.12.2012.

259. After referring to the decision in Ram Singh and Ors. v. Col. Ram Singh MANU/SC/0176/1985 : 1985 (Supp.) SCC 611, the trial Court has held that accused Vinay had miserably failed to prove the authenticity of the video clip in terms of the above judgment. The accused had failed to show if DW- 10, Ram Babu, aged 15 years, was ever competent to record the clip and how such device was preserved. Admittedly by him, the memory card was not in the phone when returned to him by his friend, Vipin. It is also not shown in the seizure memo Ex. P.W. 60/D that the mobile, Ex. DW- 10/1, was seized along with memory card. Thus, it raises a doubt as to how and by whom this memory card was later inserted in his phone, Ex. DW- 10/1, and how and when the video clip was taken and whether there was any tampering, etc. and thus, the compliance of Section 65- B of the Indian Evidence Act was mandatory in these circumstances to ensure the purity of the evidence and in its absence, it would be difficult to rely upon such evidence.

260. Even otherwise, in the alternative, the properties of mobile Ex. DW- 10/1 show the timing of the video clip as 8:16 p.m. of 16.12.2012 which is patently false because as per the defence witnesses, accused Vinay Sharma with his family had left Ravi Dass Camp at 8:00/8:30 p.m. and as per Smt. Champa Devi, DW- 5, it takes about one hour on foot to reach the DDA District Park and, thus, even if we believe their theory, then also accused Vinay Sharma and accused Pawan Gupta @ Kaalu were not in the park at 8:16 p.m. on 16.12.2012.

261. Vinay Sharma's mother, Smt. Champa Devi, DW- 5, deposed that her son, accused Vinay Sharma, had gone to meet accused Ram Singh (since deceased), about 8:00 p.m. on 16.12.2012 and he had a quarrel with Ram Singh, he was beaten and then the accused returned to his jhuggi. Thereafter, accused Vinay Sharma accompanied her to DDA District Park, Hauz Khas, Opposite IIT Gate, New Delhi to watch a musical programme and stayed in the park till late in the night. His mother does not speak if her husband had also accompanied her to the said DDA District Park but DW- 6 deposed that his son had returned about 8:00 p.m. after the quarrel and then they had gone to the said DDA District Park. DW- 7, Shri Kishore Kumar Bhat, also deposed that about 8:00/8:30 p.m., he was in his jhuggi when the father of accused Vinay Sharma with his children came to his jhuggi and they all went to DDA District Park. He has also stated that a musical programme was organized by St. Thomas Church, Sector- 2, R.K. Puram, New Delhi, in the said DDA District Park, Hauz Khas, on that night.

262. DW- 9, Shri Manu Sharma, deposed that he went with accused Vinay Sharma to reason with accused Ram Singh (since deceased) but accused Vinay Sharma had stated that his brother had accompanied him to meet accused Ram Singh (since deceased). Further, DW- 9, Manu Sharma, stated that he had accompanied accused Vinay Sharma to the musical event but accused Vinay Sharma did not say so.

263. Hence, as per the statement of accused Vinay Sharma (Under Section 313 Code of Criminal Procedure) and as per the statements of the defence witnesses, accused Vinay Sharma and his family with accused Pawan Gupta @ Kaalu had left Ravi Dass Camp about 8:15 p.m. to 8:30 p.m. and as per DW- 5, Smt. Champa Devi, it takes about an hour to reach the DDA District Park, Hauz Khas, on foot, so even according to them, they allegedly reached the park about 9:15 p.m. or 9:30 p.m. Thus, from this angle too, the video clip showing the accused in the park on 16.12.2012 about 8:16 p.m. appears to have been tampered.

264. P.W. 83, Shri Angad Singh, the Deputy Director (Horticulture), DDA, had deposed that no such permission was ever granted by any authority to organize any such function in the evening of 16.12.2012 in the said DDA District Park, Hauz Khas, New Delhi and that no function was ever organized in the park on 16.12.2012 by anyone. P.W. 84, Father George Manimala of St. Thomas Church, as also P.W. 85, Brother R.P. Samual, Secretary, Ebenezer Assembly Church, deposed that their Church(es) never organized any musical programme/event in the DDA District Park, Hauz Khas, in the evening of Sunday, i.e., on 16.12.2012. Rather, they deposed that on Sundays, there is always a mass prayer in the church and there is no question of organizing any programme outside the Church premises and that even otherwise, they have their own space/lawn within the Church premises where they can hold such type of programmes/functions.

265. Though Shri Singh, learned Counsel for the respective Appellants, tried to press upon a document, Ex. P.W. 84/B, a programme pamphlet of St. Thomas Church wherein it was mentioned that the Church was holding programmes of "Carol Singing" from 10.12.2012 to 23.12.2012 at 7:00 p.m. at public places, yet in view of the categorical denial by P.W. 84 and P.W. 85 that any such programme was organized by the Church on 16.12.2012 in the DDA District Park, opposite IIT Gate, Hauz Khas, New Delhi, the plea has no substance.

266. It is settled in law that while raising a plea of 'alibi', the burden squarely lies upon the accused person to establish the plea convincingly by adducing cogent evidence. The plea of 'alibi' that accused Vinay Sharma and accused Pawan Gupta @ Kaalu had attended the alleged musical programme in the evening of 16.12.2012 in the DDA District Park, Hauz Khas, opposite IIT Gate, New Delhi, has been rightly rejected by the trial court which has been given the stamp of approval by the High Court.

Criminal conspiracy

267. The next aspect that we intend to address pertains to criminal conspiracy. The accused persons before us were charge- sheeted for the offence of criminal conspiracy within the meaning of Section 120A Indian Penal Code apart from other offences. The trial court found all the accused guilty of the offence Under Section 120B Indian Penal Code and awarded life imprisonment alongwith a fine of Rs. 5,000/- to each of the convicts. The High Court has also affirmed their conviction Under Section 120B after recording concurrent findings.

268. Before analysing the present facts with reference to Section 120A Indian Penal Code in order to find out whether the charge of criminal conspiracy is proved in respect of each of the accused, it is pertinent to note the actual nature and purport of Section 120A Indian Penal Code and allied provisions. Section 120A Indian Penal Code as contained in Chapter V- A defines the offence of criminal conspiracy. The provision was inserted in the Indian Penal Code by virtue of Criminal Law (Amendment) Act, 1913. Section 120A Indian Penal Code reads as under:

120A. Definition of criminal conspiracy: When two or more persons agree to do, or cause to be done,- (1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy: Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation- It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

269. Section 120B being pertinent is reproduced below:

120B. Punishment of criminal conspiracy- (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

270. The underlying purpose for the insertion of Sections 120A and 120B Indian Penal Code was to make a mere agreement to do an illegal act or an act which is not illegal by illegal means

punishable under law. The criminal thoughts in the mind when take concrete shape of an agreement to do or cause to be done an illegal act or an act which is not illegal by illegal means than even if nothing further is done an agreement is designated as a criminal conspiracy. The proviso to Section 120A engrafts a limitation that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

271. By insertion of Chapter V- A in Indian Penal Code, the understanding of criminal conspiracy in the Indian context has become akin to that in England. The illegal act may or may not be done in pursuance of an agreement but the mere formation of an agreement is an offence and is punishable. The law relating to conspiracy in England has been put forth in Halsbury's Laws of England (vide 5th Ed. Vol. 25, page 73) as under:

73. Matters common to all conspiracies. There are statutory common law offences of conspiracy. The essence of the offences of both statutory and common law conspiracy is the fact of combination by agreement. The agreement may be express or implied, or in part express and in part implied. The conspiracy arises and the offence is committed as soon as the agreement is made; and the offence continues to be committed so long as the combination persists, that is until the conspiratorial agreement is terminated by completion of its performance or by abandonment or frustration or however it may be. The actus reus in a conspiracy is therefore the agreement for the execution of the unlawful conduct, not the execution of it. It is not enough that two or more persons pursued the same unlawful object at the same time or in the same place; it is necessary to show a meeting of minds, a consensus to effect an unlawful purpose. It is not, however, necessary that each conspirator should have been in communication with every other.

272. The English law on 'conspiracy' has been succinctly explained by Russell on Crimes (12th Ed. Vol. 1 page 202) in the following passage:

The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se enough.

273. Coleridge J. in R. v. Murphy (1837) 173 ER 508 explained 'conspiracy' in the following words:

... I am bound to tell you, that although the common design is the root of the charge, it is not necessary to prove that these two parties came together and actually agreed in terms to have this common design, and to pursue it by common means, and so to carry it into execution. This is not necessary, because in any cases of the most clearly established conspiracies there are no means of proving any such thing and neither law nor common sense requires that it should be proved. If you find that these two persons pursued by their acts the same object, often by the same means, one performing one part of an act, and the other another part of the same act, so as to complete it, with a view to the attainment of the object which they were pursuing, you will be at liberty to

draw the conclusion that they have been engaged in a conspiracy to effect that object. The question you have to ask yourselves is, 'had they this common design, and did they pursue it by these common means the design being unlawful?

274. Lord Brampton of the House of Lords in Quinn v. Leatham (1901) AC 495 had aptly defined conspiracy which definition was engrafted in Sections 120A and 120B Indian Penal Code. Following was stated by the House of Lords:

'A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more, to do an unlawful act, or to do a lawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and the act of each of the parties, promise against promise, actus contra actum, capable of being enforced, if lawful; and punishable if for a criminal object, or for the use of criminal means'.

275. A perusal of the above shows that in order to constitute an offence of criminal conspiracy, two or more persons must agree to do an illegal act or an act which if not illegal by illegal means. This Court on several occasions has explained and elaborated the element of conspiracy as contained in our penal law. In Noor Mohammad Mohd. Yusuf Momin v. State of Maharashtra MANU/SC/0157/1970 : AIR 1971 SC 885, this Court has observed:

Criminal conspiracy postulates an agreement between two or more persons to do, or cause to be done an illegal act or an act which is not illegal, by illegal means. It differs from other offences in that mere agreement is made an offence even if no step is taken to carry out that agreement. Though there is close association of conspiracy with incitement and abetment the substantive offence of criminal conspiracy is somewhat wider in amplitude than abetment by conspiracy as contemplated by Section 107, Indian Penal Code. A conspiracy from its very nature is generally hatched in secret. It is, therefore, extremely rare that direct evidence in proof of conspiracy can be forthcoming from wholly disinterested, quarters or from utter strangers. But, like other offences, criminal conspiracy can be proved by circumstantial evidence.

276. In E.G. Barsay v. State of Bombay MANU/SC/0123/1961 : AIR 1961 SC 1762, the following was stated:

.....The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Under Section 43 of the Indian Penal Code, an act would be illegal if it is an offence or if it is prohibited by law. Under the first charge the accused are charged with having conspired to do three categories of illegal acts, and the mere fact that all of them could not be convicted separately in respect of each of the offences has no relevancy in considering the question whether the offence of conspiracy has been committed. They are all guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may not be liable.

277. A three- Judge Bench in Yash Pal Mittal v. State of Punjab MANU/SC/0169/1977 : (1977) 4 SCC 540 had noted the ingredients of the offence of criminal conspiracy and held:

10. The main object of the criminal conspiracy in the first charge is undoubtedly cheating by personation. The other means adopted, inter alia, are preparation or causing to be prepared spurious passports; forging or causing to be forged entries and endorsements in that connection; and use of or causing to be used forged passports as genuine in order to facilitate travel of persons abroad. The final object of the conspiracy in the first charge being the offence of cheating by personation, as we find, the other offences described therein are steps, albeit, offences themselves, in aid of the ultimate crime. The charge does not connote plurality of objects of the conspiracy. That the Appellant himself is not charged with the ultimate offence, which is the object of the criminal conspiracy, is beside the point in a charge Under Section 120- B Indian Penal Code as long as he is a party to the conspiracy with the end in view. Whether the charges will be ultimately established against the accused is a completely different matter within the domain of the trial court.

11. The principal object of the criminal conspiracy in the first charge is thus "cheating by personation", and without achieving that goal other acts would be of no material use in which any person could be necessarily interested. That the Appellant himself does not personate another person is beside the point when he is alleged to be a collaborator of the conspiracy with that object. We have seen that some persons have been individually and specifically charged with cheating by personation Under Section 419 Indian Penal Code. They were also charged along with the Appellant Under Section 120- B Indian Penal Code. The object of criminal conspiracy is absolutely clear and there is no substance in the argument that the object is merely to cheat simpliciter Under Section 417, Indian Penal Code.

278. Certainly, entering into an agreement by two or more persons to do an illegal act or legal act by illegal means is essential to the offence of criminal conspiracy as has been rightly emphasized by this Court in Kehar Singh and Ors. v. State (Delhi Administration) MANU/SC/0241/1988 : (1988) 3 SCC 609. In the said case, the court further stressed upon the relevance of circumstantial evidence in proving conspiracy as direct evidence in such cases is almost impossible to adduce.

279. In the said case, K. Jagannatha Shetty, J., in his concurring opinion, has also elaborated the concept of conspiracy to the following effect:

274. It will be thus seen that the most important ingredient of the offence of conspiracy is the agreement between two or more persons to do an illegal act. The illegal act may or may not be done in pursuance of agreement, but the very agreement is an offence and is punishable. Reference to Sections 120- A and 120- B Indian Penal Code would make these aspects clear beyond doubt. Entering into an agreement by two or more persons to do an illegal act or legal act by illegal means is the very quintessence of the offence of conspiracy.

275. Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the court must enquire whether the two persons are independently pursuing the same end or they have come together in the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of conspiracy requires some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient. Gerald Orchard of University of Canterbury, New Zealand explains the limited nature of this proposition:

Although it is not in doubt that the offence requires some physical manifestation of agreement, it is important to note the limited nature of this proposition. The law does not require that the act of agreement take any particular form and the fact of agreement may be communicated by words or conduct. Thus, it has been said that it is unnecessary to prove that the parties 'actually came together and agreed in terms' to pursue the unlawful object; there need never have been an express verbal agreement, it being sufficient that there was 'a tacit understanding between conspirators as to what should be done'.

276. I share this opinion, but hasten to add that the relative acts or conduct of the parties must be conscientious and clear to mark their concurrence as to what should be done. The concurrence cannot be inferred by a group of irrelevant facts artfully arranged so as to give an appearance of coherence. The innocuous, innocent or inadvertent events and incidents should not enter the judicial verdict. We must thus be strictly on our guard.

280. In Saju v. State of Kerala MANU/SC/0688/2000 : (2001) 1 SCC 378, explaining the concept of conspiracy, this Court stated the following:

7. To prove the charge of criminal conspiracy the prosecution is required to establish that two or more persons had agreed to do or caused to be done, an illegal act or an act which is not legal, by illegal means. It is immaterial whether the illegal act is the ultimate object of such crime or is merely incidental to that object. To attract the applicability of Section 120- B it has to be proved that all the accused had the intention and they had agreed to commit the crime. There is no doubt that conspiracy is hatched in private and in secrecy for which direct evidence would rarely be available...

10. It has thus to be established that the accused charged with criminal conspiracy had agreed to pursue a course of conduct which he knew was leading to the commission of a crime by one or more persons to the agreement, of that offence. Besides the fact of agreement the necessary mens rea of the crime is also required to be established.

281. In Mir Nagvi Askari v. Central Bureau of Investigation MANU/SC/1412/2009 : (2009) 15 SCC 643, this Court reiterated the various facets of 'criminal conspiracy' and laid down as follows:

60. Criminal conspiracy, it must be noted in this regard, is an independent offence. It is punishable separately. A criminal conspiracy must be put to action; for so long as a crime is generated in the mind of the accused, the same does not become punishable. Thoughts even criminal in character, often involuntary, are not crimes but when they take a concrete shape of an agreement to do or caused to be done an illegal act or an act which is not illegal, by illegal means then even if nothing further is done, the agreement would give rise to a criminal conspiracy.

61. The ingredients of the offence of criminal conspiracy are:

(i) an agreement between two or more persons;

(ii) an agreement must relate to doing or causing to be done either (a) an illegal act; (b) an act which is not illegal in itself but is done by illegal means.

Condition precedent for holding the accused persons to be guilty of a charge of criminal conspiracy must, therefore, be considered on the anvil of the fact which must be established by the prosecution viz. meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means.

62. The courts, however, while drawing an inference from the materials brought on record to arrive at a finding as to whether the charges of the criminal conspiracy have been proved or not, must always bear in mind that a conspiracy is hatched in secrecy and it is difficult, if not impossible, to obtain direct evidence to establish the same. The manner and circumstances in which the offences have been committed and the accused persons took part are relevant. For the said purpose, it is necessary to prove that the propounders had expressly agreed to it or caused it to be done, and it may also be proved by adduction of circumstantial evidence and/or by necessary implication. (See Mohd. Usman Mohammad Hussain Maniyar v. State of Maharashtra MANU/SC/0180/1981 : (1981) 2 SCC 443.)

282. In Pratapbhai Hamirbhai Solanki v. State of Gujrat and Anr. MANU/SC/0854/2012 : (2013) 1 SCC 613, this Court explained the ingredients of 'criminal conspiracy' as under:

21. At this stage, it is useful to recapitulate the view this Court has expressed pertaining to criminal conspiracy. In Damodar v. State of Rajasthan MANU/SC/0726/2003 : (2004) 12 SCC 336, a two- Judge Bench after referring to the decision in Kehar Singh v. State (Delhi Admn.) and State of Maharashtra v. Som Nath Thapa MANU/SC/0451/1996 : (1996) 4 SCC 659, has stated thus:

15. ... The most important ingredient of the offence being the agreement between two or more persons to do an illegal act. In a case where criminal conspiracy is alleged, the court must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not (sic*-) sufficient. A conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During its subsistence whenever any one of the conspirators does an act or a series of acts, he would be held guilty Under Section 120- B of the Penal Code, 1860.

22. In Ram Narayan Popli v. CBI MANU/SC/0017/2003 : (2003) 3 SCC 641 while dealing with the conspiracy the majority opinion laid down that:

342. ... The elements of a criminal conspiracy have been stated to be: (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that object, (c) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, and (d) in the jurisdiction where the statute required an overt act.

It has been further opined that:

342. ... The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. ... no overt act need be done in furtherance of the conspiracy, and that the object of the combination need not be accomplished, in order to constitute an indictable offence. Law making conspiracy a crime is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co- conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all

its members wherever and whenever any member of the conspiracy acts in furtherance of the common design.

The two- Judge Bench proceeded to state that:

342. ... For an offence punishable Under Section 120- B, the prosecution need not necessarily prove that the perpetrators expressly agree to do or cause to be done illegal act; the agreement may be proved by necessary implication. Offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means.

23. In the said case it has been highlighted that in the case of conspiracy there cannot be any direct evidence. The ingredients of offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing by illegal means an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused.

283. As already stated, in a criminal conspiracy, meeting of minds of two or more persons for doing an illegal act is the sine qua non but proving this by direct proof is not possible. Hence, conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. Moreover, it is also relevant to note that conspiracy being a continuing offence continues to subsist till it is executed or rescinded or frustrated by the choice of necessity. In K.R. Purushothaman v. State of Kerala MANU/SC/1518/2005 : (2005) 12 SCC 631, the Court has made the following observations with regard to the formation and rescission of an agreement constituting criminal conspiracy:

To constitute a conspiracy, meeting of minds of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every detail of the conspiracy. Neither is it necessary that every one of the conspirators takes active part in the commission of each and every conspiratorial acts. The agreement amongst the conspirators can be inferred by necessary implication. In most of the cases, the conspiracies are proved by the circumstantial evidence, as the conspiracy is seldom an open affair. The existence of conspiracy and its objects are usually deduced from the circumstances of the case and the conduct of the accused involved in the conspiracy. While appreciating the evidence of the conspiracy, it is incumbent on the court to keep in mind the well-known rule governing circumstantial evidence viz. each and every incriminating circumstance must be clearly established by reliable evidence and the circumstances proved must form a chain

of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn, and no other hypothesis against the guilt is possible. Criminal conspiracy is an independent offence in the Penal Code. The unlawful agreement is sine qua non for constituting offence under the Penal Code and not an accomplishment. Conspiracy consists of the scheme or adjustment between two or more persons which may be express or implied or partly express and partly implied. Mere knowledge, even discussion, of the plan would not per se constitute conspiracy. The offence of conspiracy shall continue till the termination of agreement.

284. After referring to a catena of judicial pronouncements and authorities, a three- Judge Bench of this Court in State through Superintendent of Police, CBI/SIT v. Nalini and Ors. MANU/SC/0945/1999 : (1999) 5 SCC 253 summarised the principles relating to criminal conspiracy as under:

Some of the broad principles governing the law of conspiracy may be summarized though, as the name implies, a summary cannot be exhaustive of the principles.

1. Under Section 120A Indian Penal Code offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is legal act by illegal means overt act is necessary. Offence of criminal conspiracy is exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in a case is did all the accused had the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever, horrendous it may be, that offence be committed.

2. Acts subsequent to the achieving of object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.

3. Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.

4. Conspirators may, for example, be enrolled in a chain - A enrolling B, B enrolling C, and so on; and all will be members of a single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enrolls. There may be a kind of umbrella- spoke enrollment, where a single person at the center doing the enrolling and all the other members being unknown to each other, though they know that there are to be other members. These are theories and in practice it may be difficult to tell whether the conspiracy

in a particular case falls into which category. It may, however, even overlap. But then there has to be present mutual interest. Persons may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse role to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.

5. When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose, a crime is committed by each and every one who joins in the agreement. There has thus to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy.

6. It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.

7. A charge of conspiracy may prejudice the accused because it is forced them into a joint trial and the court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of object of conspiracy but also of the agreement. In the charge of conspiracy court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed by Judge Learned Hand that "this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders".

8. As stated above it is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement, which is the graham of the crime of conspiracy. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts, and conduct of the conspirators. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy.

9. It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is in contemplation of law, the act of each of them and they are jointly responsible therefore. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done, or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incident to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co- conspirator after termination of the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies.

10. A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the others put the conspiracy into effect, is guilty though he intends to take no active part in the crime.

285. The rationale of conspiracy is that the required objective manifestation of disposition of criminality is provided by the act of agreement. Conspiracy is a clandestine activity. Persons generally do not form illegal covenants openly. In the interest of security, a person may carry out his part of a conspiracy without even being informed of the identity of his co- conspirators. An agreement of this kind can rarely be shown by direct proof; it must be inferred from the circumstantial evidence of co- operation between the accused. What people do is, of course, evidence of what lies in their minds. To convict a person of conspiracy, the prosecution must show that he agreed with others that they would together accomplish the unlawful object of the conspiracy. [See: Firozuddin Basheeruddin and Ors. v. State of Kerala MANU/SC/0471/2001 : (2001) 7 SCC 596]

286. In Suresh Chandra Bahri v. State of Bihar MANU/SC/0500/1994 : 1995 Supp (1) SCC 80, this Court reiterated that the essential ingredient of criminal conspiracy is the agreement to commit an offence. After referring to the judgments in Noor Mohd. Mohd. Yusuf Momi (supra) and V.C. Shukla v. State (Delhi Admn.) MANU/SC/0545/1980 : (1980) 2 SCC 665, it was held in S.C. Bahri (supra) as under:

[A] cursory look to the provisions contained in Section 120- A reveals that a criminal conspiracy envisages an agreement between two or more persons to commit an illegal act or an act which by itself may not be illegal but the same is done or executed by illegal means. Thus the essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence. In a case

where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event no overt act is necessary to be proved by the prosecution because in such a fact-situation criminal conspiracy is established by proving such an agreement. In other words, where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in Section 120- B read with the proviso to Sub- section (2) of Section 120- A Indian Penal Code, then in that event mere proof of an agreement between the accused for commission of such a crime alone is enough to bring about a conviction Under Section 120- B and the proof of any overt act by the accused or by any one of them would not be necessary. The provisions in such a situation do not require that each and every person who is a party to the conspiracy must do some overt act towards the fulfillment of the object of conspiracy, the essential ingredient being an agreement between the conspirators to commit the crime and if these requirements and ingredients are established the act would fall within the trapping of the provisions contained in Section 120- B since from its very nature a conspiracy must be conceived and hatched in complete secrecy, because otherwise the whole purpose may be frustrated and it is common experience and goes without saying that only in very rare cases one may come across direct evidence of a criminal conspiracy to commit any crime and in most of the cases it is only the circumstantial evidence which is available from which an inference giving rise to the conclusion of an agreement between two or more persons to commit an offence may be legitimately drawn.

287. From the law discussed above, it becomes clear that the prosecution must adduce evidence to prove that:

(i) the accused agreed to do or caused to be done an act;

(ii) such an act was illegal or was to be done by illegal means within the meaning of Indian Penal Code;

(iii) irrespective of whether some overt act was done by one of the accused in pursuance of the agreement.

288. In the case at hand, the prosecution has examined P.W. 82 to prove the charges of conspiracy and for further identification of all the accused persons in the bus on the date of the incident. He has also been presented to support the prosecution case that immediately preceding the fateful incident, all the accused persons had, in execution of their conspiracy, been robbing/merry-making with passengers on the road.

289. The defence has controverted the testimony of P.W. 82 on several aspects which has already been discussed before. It has been alleged that Ram Adhar, P.W. 82, is a planted witness who was brought in by the investigators to fill the lacunae, if any, in their investigation and to further make a strong case against the accused persons. The defence has further denied the presence of accused Mukesh at the scene of the crime. Accused Vinay and accused Akshay have also raised the plea

of alibi which has been dealt with separately by us. Regardless of the fact that we have found the testimony of P.W. 82 to be creditworthy, even if the same is not taken into account for the purpose of establishing that the accused acted in concert with each other to commit heinous offences against the victim, the testimony of P.W. 1 coupled with the dying declarations of the prosecutrix irrefragably establish the charge Under Section 120B against all the accused persons.

290. First of all, in order to prove the presence of all the accused on board the bus where the entire incident took place, the prosecution has relied upon the testimony of P.W. 1, P.W. 82, P.W. 16 and, most importantly, the dying declarations of the prosecutrix.

291. As per the records, P.W. 82 has testified to the effect that on the date of the incident, about 8:30 p.m., he had boarded the concerned bus from Munirka Bus Stand, New Delhi, on noticing that the conductor of the bus sought commuters for Khanpur. However, he was later informed that he would be dropped at Nehru Place instead of Khanpur. When P.W. 82 tried to get down the bus, he was wrongfully confined, attacked by the persons inside the bus who robbed him of his belongings, viz., Rs. 1500/- in cash and a mobile phone, and he was then thrown out of the moving bus. During the trial, P.W. 82 has identified all the four accused persons, viz., Akshay Kumar Singh @ Thakur, Pawan Gupta, Vinay Sharma and accused Mukesh, present in the concerned bus at the time of the incident. P.W. 82 had lodged the complaint on 18.12.2012 on the basis of which FIR No. 414 of 2012 was registered at P.S. Vasant Vihar, New Delhi Under Sections 365, 397, 342 Indian Penal Code.

292. Learned Senior Counsel for the State, Mr. Luthra, has submitted that P.W. 82 had been examined to establish the conduct of the accused on the aspect of conspiracy and also to establish the identity of the accused persons before the trial court. It was further submitted that P.W. 82, Ram Adhar, identified all the four accused in the court, namely, Akshay Kumar Singh @ Thakur, Pawan Gupta, Vinay Sharma and Mukesh besides two others present inside the bus and also identified Mukesh as driving the bus and stated that others took him inside the bus and robbed him and attacked him.

293. The contention of the Appellants is that the testimony of P.W. 82 is not bereft of doubt for several reasons, namely, a) delay in lodging FIR, b) non- examination of Sanjiv Bhai as a witness, c) he has stated that he heard the person with the burnt hand say "Mukesh, tez chalao", d) apart from that, he does not mention that he heard the names of any of the accused, and e) he had not visited a doctor/hospital despite stating that he had injuries on his face which prevented him from registering an FIR.

294. Regarding the alleged incident of attack on P.W. 82 by the accused, it was submitted that the said case against the accused ended in conviction and the same is pending in appeal. In respect of the credibility of the testimony of P.W. 82 as to the commission of the offence, we are not inclined to take into account the evidence of P.W. 82 except on one limited aspect, that is, the

presence of the accused in the bus, Ex. P1, on the night of 16.12.2012 since P.W. 82's presence in the bus on the night of 16.12.2012 is admitted. In his statement Under Section 313 Code of Criminal Procedure, Mukesh- A2 admitted that P.W. 82 had boarded the offending bus prior to the boarding of the bus by the informant and the victim. The relevant portion of his statement is extracted as under:

Q.211: It is in evidence against you that P.W. 82 Shri Ram Adhar deposed that on 16.12.2012 after finishing his carpenter's work at a shop at Munirka till about 8:30 PM, he boarded a white colour bus from sabji Market across the road of my work place. The helper of the bus was calling the passenger by saying "khanpur- khanpur". As P.W. 82 boarded the bus, one of the occupants told him that the bus is going to Nehru Place. As P.W. 82 tried to get down, one person whose one limb was having burn injuries, gave beating to him. The other person pulled him inside the bus towards the back side and they all gave beating to him and removed his belongings i.e. one mobile with two sims and Rs. 1500/- . The sim card numbers were 9999095739 and 9971612554. What do you have to say?

Ans: It is correct that P.W. 82 Shri Ram Adhar had boarded the bus Ex. P1 on 16.12.2012 prior to the boarding of the bus Ex. P1 by the complainant and the victim. He boarded the bus from Sabji Mandi at Sector- 4 on the main road. He went on the back side of the bus but after sometime he was made to deboard the bus at IIT flyover by accused Akshay as he had no money to pay the fare. At that time accused Akshay, accused Ram Singh, since deceased, accused Vinay accused Pawan along with JCL were present in the bus and I was driving it.

[underlining added]

The presence of P.W. 82 in Ex. P1 bus prior to the boarding of the bus by the informant, P.W. 1, and the victim and the presence of all the accused in the bus is, thus, established by the prosecution.

295. The evidence of P.W. 81, Dinesh Yadav, the owner of the offending bus, indicates accused Ram Singh, A- 1, (since deceased) as the driver of the bus and Akshay Kumar as the cleaner of the bus which is further shown in the attendance register of the bus exhibited as Ex. P.W. 80/K. The evidence of P.W. 81, Dinesh Yadav, is corroborated by the entries made in the attendance register where in the driver's page at Sl. No. 5, the name of accused Ram Singh (since deceased) is written against bus No. 0149 and at Sl. No. 15, the name of Akshay is written as helper against bus No. 0149. As stated earlier, the bus bearing Registration No. DL- 1PC- 0149 was one of the buses hired by Birla Vidya Niketan School, Pushp Vihar, New Delhi and the fact that the driver of the bus at the relevant time was Ram Singh is sought to be proved by the prosecution through the testimony of P.W. 16, Rajeev Jakhmola, Manager (Administration) of the said school. The said witness has testified that one Dinesh Yadav, P.W. 81, had provided seven buses to the school including bus bearing No. DL- 1PC- 0149 for the purpose of ferrying the children of the school.

The driver of this bus was one Ram Singh, son of Mange Lal. The documents relating to the bus including the photocopies of the agreement between the school and the bus contractor, copy of the driving licence of Ram Singh, A- 1, and the letter of termination dated 18.12.2012 with "Yadav Travels" were furnished to the Investigating Officer, SI Pratibha Sharma, vide his letter dated 25.12.2012, exhibited as Ex. P.W. 16/A (colly.). From the evidence of P.W. 16, Rajeev Jakhmola, it stands proved that the bus in question was routinely driven by Ram Singh (since deceased). The statement of P.W. 16, Rajeev Jakhmola, is corroborated by the testimony of P.W. 81, Dinesh Yadav. Significantly, P.W. 81, Dinesh Yadav, further testified:

This bus was being parked by accused Ram Singh near his house because this bus was attached with the school and also with an office as a chartered bus and that the accused used to pick up the students early in the morning.

296. The testimony of P.W. 13, Brijesh Gupta, who was an auto driver and also resident of jhuggi at Ravi Dass Camp from where the offending bus was seized is also relevant to prove the presence of the accused in the bus. He stated in his evidence that A- 1, Ram Singh (since deceased), is the brother of A- 2, Mukesh, and that both resided in the jhuggi at Ravi Dass camp and that Ram Singh used to drive the said bus and park it in the night near his jhuggi. P.W. 13, in his evidence, deposed that on the night of 16.12.2012, about 11:30 p.m., when he returned to his jhuggi after plying his auto, he saw accused Mukesh, A- 2, taking water in some can inside a white colour bus and washing it from inside. He also noticed some clothes and pieces of curtains being burnt in the fire.

297. In his questioning Under Section 313 Code of Criminal Procedure, Mukesh, A- 2, has admitted that he and A- 1, Ram Singh (since deceased), are brothers. He has also admitted that on the night of 16.12.2012, he was driving the bus and that accused Pawan and Vinay Sharma were seated on the backside of the driver's seat, whereas Akshay and Ram Singh were sitting in the driver's cabin. The relevant portion of his statement Under Section 313 Code of Criminal Procedure reads as under:

Q2. It is in evidence against you that P.W. 1 further deposed that they inquired from 4- 5 auto rickshaw- walas to take them to Dwarka, but they all refused. At about 9 PM they reached at Munirka bus stand and found a white colour bus on which "Yadav" was written. A boy in the bus was calling for commuters for Dwarka/Palam Mod. P.W. 1 noticed yellow and green line/strips on the bus and that the entry gate of the bus was ahead of its front tyre, as in luxury buses and that the front tyre was not having a wheel cover. What do you have to say?

Ans: I was driving the bus while my brother Ram Singh, since deceased and JCL, Raju was calling for passengers by saying "Palam/Dwarka Mod".

Q4: It is in evidence against you that during the course of his deposition, complainant, P.W. 1 has identified you accused Mukesh to be the person who was sitting on the driver's seat and was driving the bus; P.W. 1 further identified your co- accused Ram Singh (since deceased), and Akshay Kumar to be the person who were sitting in the driver's cabin alongwith the driver; P.W. 1 had also identified your co- accused Pawan Kumar who was sitting in front of him in two seats row of the bus; P.W. 1 had also identified your co- accused Vinay Sharma to be the person who was sitting in three seats row just behind the Driver's cabin, when P.W. 1 entered the bus; P.W. 1 has also deposed before the court that the conductor who was calling him and his friend/prosecutrix to board the bus Ex. P1 was not among the accused person being tried in this Court.

Ans: Accused Pawan and accused Vinay Sharma were sitting on my back side of the driver's seat and whereas accused Akshay was sitting in the driver's cabin while my brother Ram Singh, since deceased was asking for passengers.

Q5: It is in evidence against you that after entering the bus P.W. 1 noticed that seats cover of the bus were of red colour and it had yellow colour curtains and the windows of the bus had black film on it. The windows were at quite a height as in luxury buses. As P.W. 1 sat down inside the bus, he noticed that two of you accused were sitting in the driver's cabin were coming and returning to the driver's cabin. P.W. 1 paid an amount of Rs. 20/- as bus fare to the conductor i.e. Rs. 10/- per head. What do you have to say?

Ans: It is correct that the windows of the bus Ex. P1 were having black film on it but I cannot say if the seats of the bus were having red covers or that the curtains were of yellow colour as my brother Ram Singh, since deceased, only used to drive the bus daily and that on that day since he was drunk heavily so I had gone to Munirka to bring him to my house and hence, I was driving the bus on that day. I had gone to Munirka with my nephew on my cycle to fetch Ram Singh since deceased and that the other boys alongwith Ram Singh had already taken the bus from R.K. Puram. I was called by Ram Singh on phone to come at Munirka.

298. A- 3, Akshay @ Thakur, in his statement Under Section 313 Code of Criminal Procedure, has admitted that he was working with A- 1, Ram Singh (since deceased), in the offending bus, Ex. P1, as a helper. He has also admitted therein that he had joined A- 1, Ram Singh (since deceased), on 03.11.2012. The relevant portion of his statement Under Section 313 Code of Criminal Procedure is extracted hereunder:

Q.210: It is in evidence against you that P.W. 81 Shri Dinesh Yadav is the owner of the bus Ex. P1 and that he has employed accused Ram Singh, since deceased, as the driver of the bus in the month of December, 2012 and you accused Akshay was working as helper in the said bus. Further, he deposed that on 25.12.2012 he had handed over the documents relating to the bus to the investigating officer, seized vide memo Ex. P.W. 80/K. The copy of the challan and copy of

the notice are collectively Ex. P- 81/1 and the register on which "Yadav Travels 2012" is written is Ex. P- 81/2. He also identified the driving license Ex. P- 74/1 of his driver, accused Ram Singh, since deceased. He further deposed that the bus Ex. P1 used to ply in Birla Vidya Niketan as well as chartered bus and used to take the office- goers from Delhi and drop them at Noida every morning and evening. What do you have to say?

Ans: It is correct that I was working as a helper in the bus Ex. P1. I joined Ram Singh, since deceased as helper on 3.11.2012 but I left the company of Ram Singh on 15.12.2012 at about 10.30 AM and I left for my village at 11:30 am and I went to New Delhi Railway Station and I left Delhi in the train at about 2:30 P.M.

299. DW- 5, Smt. Champa Devi, is the mother of Vinay Sharma, A- 4. She has stated in her evidence that her son, Vinay Sharma, A- 4, who returned home at 4:00 p.m. on 16.12.2012, went in search of A- 1 on hearing about the misbehaviour of A- 1, Ram Singh (since deceased), with his sister and was able to trace him by 8:00 p.m. and that her son Vinay Sharma, A- 4, had quarreled with Ram Singh, A- 1. She has deposed in her evidence that her son Vinay Sharma returned bleeding from his mouth and after some time they had left to the DDA District Park to attend a musical programme where they had met A- 5, Pawan alias Kaalu, alongwith two others.

300. The prosecution has, thus, established that the accused were associated with each other. The criminal acts done in furtherance of conspiracy is established by the sequence of events and the conduct of the accused. An important facet of the law of conspiracy is that apart from it being a distinct offence, all conspirators are liable for the acts of each other of the crime or crimes which have been committed as a result of the conspiracy. Section 10 of the Indian Evidence Act which reads as under is relevant in this context:

10. Things said or done by conspirator in reference to common design.- Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

301. Section 10 of the Indian Evidence Act begins with the phrase "where there is reasonable ground to believe that two or more persons have conspired together to commit an offence" which implies that if prima facie evidence of the existence of a conspiracy is given and accepted, the evidence of acts and statements made by any one of the conspirators in furtherance of the common intention is admissible against all. In the facts of the present case, the prima facie evidence of the existence of conspiracy is well established.

302. The informant, P.W. 1, has also deposed as to the clarity of the entire incident. He has identified all the accused to be present in the bus when he had boarded the same with the prosecutrix. He has maintained that he saw three persons sitting in the driver's cabin who were moving in and out of the cabin. Both the informant and the prosecutrix had sensed some sort of hostility and strangeness in the behavior of the accused. But, as they had paid for the ticket, they quietly kept sitting. Soon they found that the lights in the bus were put off and the accused Ram Singh (since deceased) and accused Akshay came near them to ask where P.W. 1 was heading with the prosecutrix at that odd time of the evening. P.W. 1, on objecting to such a query, was beaten and pinned down by the accused. Thereafter, all the accused, one after the other, committed rape and unnatural sex on the prosecutrix using iron rods which has been explicitly described by the prosecutrix herself in her dying declarations recorded by P.W. 27, Sub-Divisional Magistrate, and P.W. 30, Metropolitan Magistrate. The relevant portion of the second dying declaration of the prosecutrix as contained in Ex. P.W. 27/A is as under:

Q.09 Iske baad kya hua? Kripya vistaar se bataiye.

Ans. 09 Paanch minute baad jab bus Malai Mandir ke pul par chadi toh conductor ne bus ke darwaze bandh kar diye aur andar ki batiya bujha di aur mere dost ke paas akar galiyan dene lage aur marne lage. Usko 3- 4 logo ne pakad liya aur mujh ko baki log mujhe bus ke peechey hisey mein le gaye aur mere kapde faad diye aur bari- 2 se rape kiya. Lohey ki rod se mujhe mere paet par maara aur poore shareer par danto se kata. Is se pehle mere dost ka saman - mobile phone, purse, credit card & debit card, ghadi aadi cheen liye. But total chhey (6) log the jinhoney bari- bari se oral (oral) vaginal (through vagina) aur pichhey se (anal) balatkar kiya. In logo ne lohe ki rod ko mere shareer ke andar vaginal/guptang aur guda (pichhey se) (through rectum) dala aur phir bahar bhi nikala. Aur mere guptango haath aur lohe ki rod dal kar mere shareer ke andruni hisson ko bahar nikala aur chot pahunchayi. Chhey logo ne bari- bari se mere saath kareeb ek ghante tak balatkar kiya. Chalti huyi bus mein he driver badalta raha taaki woh bhi balatkar kar sake.

303. The chain of events described by the prosecutrix in her dying declarations coupled with the testimonies of the other witnesses clearly establish that as soon as the informant and the prosecutrix boarded the bus, the accused persons formed an agreement to commit heinous offences against the victim. Forcefully having sexual intercourse with the prosecutrix, one after the other, inserting iron rod in her private parts, dragging her by her hair and then throwing her out of the bus all establish the common intent of the accused to rape and murder the prosecutrix. The trial court has rightly recorded that the prosecutrix's alimentary canal from the level of duodenum upto 5 cm of anal sphincter was completely damaged. It was beyond repair. Causing of damage to the jejunum is indicative of the fact that the rod was inserted through the vagina and/or anus upto the level of jejunum. Further, septicemia was the direct result of multiple internal injuries. Moreover, the prosecutrix has also maintained in her dying declaration that the accused persons were exhorting that the prosecutrix had died and she be thrown out of the bus. Ultimately, both the prosecutrix as well as the informant were thrown out of the moving bus through the front door by the accused after having failed to throw them through the rear door.

The conduct of the accused in committing heinous offences with the prosecutrix in concert with each other and thereafter throwing her out of the bus in an unconscious state alongwith P.W. 1 unequivocally bring home the charge Under Section 120B in case of each of them. The criminal acts done in furtherance of the conspiracy is evident from the acts and also the words uttered during the commission of the offence. Therefore, we do not have the slightest hesitation in holding that the trial court and the High Court have correctly considered the entire case on the touchstone of well- recognised principles for arriving at the conclusion of criminal conspiracy. The prosecution has been able to unfurl the case relating to criminal conspiracy by placing the materials on record and connecting the chain of circumstances. The relevant evidence on record lead to a singular conclusion that the accused persons are liable for criminal conspiracy and their confessions to counter the same deserve to be repelled.

Summary of conclusions:

304. From the critical analysis, keen appreciation of the evidence and studied scrutiny of the oral evidence and other materials, we arrive at the following conclusions:

i. The evidence of P.W. 1 is unimpeachable and it deserves to be relied upon.

ii. The accused persons alongwith the juvenile in conflict with law were present in the bus when the prosecutrix and her friend got into the bus.

iii. There is no reason or justification to disregard the CCTV footage, for the same has been duly proved and it clearly establishes the description and movement of the bus.

iv. The arrest of the accused persons from various places at different times has been clearly proven by the prosecution.

v. The personal search, recoveries and the disclosure leading to recovery are in consonance with law and the assail of the same on the counts of custodial confession made under torture and other pleas are highly specious pleas and they do not remotely create a dent in the said aspects.

vi. The contention raised by the accused persons that the recoveries on the basis of disclosure were a gross manipulation by the investigating agency and deserve to be thrown overboard does not merit acceptance.

vii. The relationship between the parties having been clearly established, their arrest gains more credibility and the involvement of each accused gains credence.

viii. The dying declarations, three in number, do withstand close scrutiny and they are consistent with each other.

ix. The stand that the deceased could not have given any dying declaration because of her health condition has to be repelled because the witnesses who have stated about the dying declarations have stood embedded to their version and nothing has been brought on record to discredit the same. That apart, the dying declaration by gestures has been proved beyond reasonable doubt.

x. There is no justification in any manner whatsoever to think that P.W. 1 and the deceased would falsely implicate the accused- Appellants and leave the real culprits.

xi. The dying declarations made by the deceased have received corroboration from the oral and documentary evidence and also enormously from the medical evidence.

xii. The DNA profiling, which has been done after taking due care for quality, proves to the hilt the presence of the accused persons in the bus and their involvement in the crime. The submission that certain samples were later on taken from the accused and planted on the deceased to prove the DNA aspect is noted only to be rejected because it has no legs to stand upon.

xiii. The argument that the transfusion of blood has the potentiality to give rise to two categories of DNA or two DNAs is farthest from truth and there is no evidence on that score. On the contrary, the evidence in exclusivity points to the matching of the DNA of the deceased with that of the accused on many aspects. The evidence brought on record with regard to finger prints is absolutely impeccable and the trial court and the High Court have correctly placed reliance on the same and we, in our analysis, have found that there is no reason to disbelieve the same.

xiv. The scientific evidence relating to odontology shows how far the accused have proceeded and where the bites have been found and definitely, it is extremely impossible to accept the submission that it has been a manipulation by the investigating agency to rope in the accused persons.

xv. The evidence brought on record as regards criminal conspiracy stands established.

In view of the aforesaid summation, the inevitable conclusion is that the prosecution has proved the charges leveled against the Appellants beyond reasonable doubt.

Sentencing procedure and compliance of Section 235(2) Code of Criminal Procedure:

305. Now we shall proceed to sentencing. A submission was raised that provisions of Section 235(2) Code of Criminal Procedure was not complied with. The said provision reads as follows:

235. Judgment of acquittal or conviction

(1) .....

(2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of Section 360, hear the accused on the question of sentence, and then pass sentence on him according to law.

306. While discussing Section 235(2) Code of Criminal Procedure, this Court, in Santa Singh v. State of Punjab MANU/SC/0167/1976 : (1976) 4 SCC 190, observed as follows:

4. .... the hearing contemplated by Section 235(2) is not confined merely to hearing oral submissions, but it is also intended to give an opportunity to the prosecution and the accused to place before the court facts and material relating to various factors bearing on the question of sentence and if they are contested by either side, then to produce evidence for the purpose of establishing the same.

307. A three- Judge Bench in Dagdu and Ors. v. State of Maharashtra MANU/SC/0086/1977 : (1977) 3 SCC 68 considered the object and scope of Section 235(2) Code of Criminal Procedure and held that:

79. But we are unable to read the judgment in Santa Singh as laying down that the failure on the part of the Court, which convicts an accused, to hear him on the question of sentence must necessarily entail a remand to that Court in order to afford to the accused an opportunity to be heard on the question us sentence. The Court, on convicting an accused, must unquestionably hear him on the question of sentence. But if, for any reason, it omits to do so and the accused makes a grievance of it in the higher court, it would be open to that Court to remedy the breach by giving a hearing to the accused on the question of sentence. That opportunity has to be real and effective, which means that the accused must be permitted to adduce before the Court all the data which he desires to adduce on the question of sentence. The accused may exercise that right either by instructing his counsel to make oral submissions to the Court or he may, on affidavit or otherwise, place in writing before the Court whatever he desires to place before it on the question of sentence. The Court may, in appropriate cases, have to adjourn the matter in order to give to

the accused sufficient time to produce the necessary data and to make his contentions on the question of sentence. That, perhaps, must inevitably happen where the conviction is recorded for the first time by a higher court.

80. Bhagwati, J. has observed in his judgment that care ought to be taken to ensure that the opportunity of a hearing on the question of sentence is nut abused and turned into an instrument for unduly protracting the proceedings. The material on which the accused proposes to rely may therefore, according to the learned Judge, be placed before the Court by means of an affidavit. Fazal Ali, J., also observes that the courts must be vigilant to exercise proper control over their proceedings, that the accused must not be permitted to adopt dilatory tactics under the cover of the new right and that what Section 235(2) contemplates is a short and simple opportunity to place the necessary material before the Court. These observations show that for a proper and effective implementation of the provision contained in Section 235(2), it is not always necessary to remand the matter to the court which has recorded the conviction. The fact that in Santa Singh this Court remanded the matter to the Sessions Court does not spell out the ratio of the judgment to be that in every such case there has to be a remand. Remand is an exception, not the rule, and ought therefore to be avoided as far as possible in the interests of expeditious, though fair, disposal of cases.

308. Mr. Raju Ramachandran, learned amicus curiae, submitted that the sentence passed by the trial court that has been confirmed by the High Court ought to be set aside as they have not followed the fundamental norms of sentencing and have not been guided by the paramount beacons of legislative policy discernible from Section 354(3) and Section 235(2) Code of Criminal Procedure. It is urged by him that the import of Section 235 Code of Criminal Procedure is not only to hear the submissions orally but also to afford an opportunity to the prosecution and the defence to place the relevant material having bearing on the question of sentence. Learned amicus curiae would submit that the trial court as well as the High Court has failed to put any of the accused persons to notice on the question of imposition of death sentence; that sufficient time was not granted to reflect on the question of death penalty; that none of the accused persons were heard in person; that the learned trial Judge has failed to elicit those circumstances of the accused which would have a bearing on the question of sentence, especially the mitigating factors in a case where death penalty is imposed; that no separate reasons were ascribed for the imposition of death penalty on each of the accused; and that it was obligatory on the part of the learned trial Judge to individually afford an opportunity to the accused persons. Learned amicus curiae would submit that the learned trial Judge has pronounced the sentence in a routine manner which vitiates the sentence inasmuch as the solemn duty of the sentencing court has not been kept in view. Mr. Ramachandran had emphatically put forth that denial of an individualized sentencing process results in the denial of Articles 14 and 21 of the Constitution of India. Mr. Luthra, learned Senior Counsel for the Respondent- State, submitted that the learned trial Judge had heard the accused persons and there has been compliance with Section 235(2) Code of Criminal Procedure and the High Court has appositely concurred with the same.

309. Be it stated, after hearing the learned Counsel for the both sides and the learned amicus curiae, the Court, on 03.02.2017, passed the following order:

After the argument for the accused persons by Mr. M.L. Sharma and Mr. A.P. Singh, learned Counsel were advanced, we thought it appropriate to hear the learned friends of the Court and, accordingly, we have heard Mr. Raju Ramachandran and Mr. Sanjay R. Hegde, learned Senior Counsel. It is worthy to note here that Mr. Hegde, learned Senior Counsel argued on the sustainability of the conviction on many a ground and submitted a written note of submission. Mr. Ramachandran, learned Senior Counsel, inter alia, emphasized on the aspect of sentence imposed by the trial court which has been confirmed Under Section 366 Code of Criminal Procedure. While arguing with regard to the imposition of the capital punishment on the accused persons, one of the main submissions of Mr. Ramachandran was that neither the trial court nor the High Court has followed the mandate enshrined Under Section 235(2) of the Code of Criminal Procedure. Section 235(2) Code of Criminal Procedure reads as follows:

235. Judgment of acquittal or conviction.- (1) After hearing arguments and points of law (if any), the Judge shall give a judgment in the case. (2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of Section 360, hear the accused on the question of sentence, and then pass sentence on him according to law.

Referring to the procedure adopted by the trial court, it was urged by Mr. Ramachandran that the learned trial Judge had not considered the aggravating and mitigating circumstances, as are required to be considered in view of the Constitution Bench decision in Bachan Singh v. State of Punjab MANU/SC/0055/1982 : (1980) 2 SCC 684, and further there has been a failure of the substantive law, inasmuch as there has been weighing of the mitigating or the aggravating circumstances in respect of each individual accused. Learned Senior Counsel contended that Section 235(2) Code of Criminal Procedure is not a mere formality and in a case when there are more than one accused, it is obligatory on the part of the learned trial Judge to hear the accused individually on the question of sentence and deal with him. As put forth by Mr. Ramachandran, the High Court has also failed to take pains in that regard. To bolster his submission, he has commended us to the authority in Santa Singh v. The State of Punjab. In the said case, Bhagwati, J. dealt with the anatomy of Section 235 Code of Criminal Procedure, the purpose and purport behind it and, eventually, came to hold that:

Law strives to give them social and economic justice and it has, therefore, necessarily to be weighted in favour of the weak and the exposed. This is the new law which judges are now called upon to administer and it is, therefore, essential that they should receive proper training which would bring about an orientation in their approach and outlook, stimulate sympathies in them for the vulnerable sections of the community and inject a new awareness and sense of public commitment in them. They should also be educated in the new trends in penology and sentencing procedures so that they may learn to use penal law as a tool for reforming and rehabilitating criminals and smoothening out the uneven texture of the social fabric and not as a weapon,

fashioned by law, for protecting and perpetuating the hegemony of one class over the other. Be that as it may, it is clear that the learned Sessions Judge was not aware of the provision in Section 235(2) and so also was the lawyer of the Appellant in the High Court unaware of it. No inference can, therefore, be drawn from the omission of the Appellant to raise this point, that he had nothing to Say in regard to the sentence and that consequently no prejudice was caused to him.

Thereafter, the learned Judge opined that non- compliance goes to the very root of the matter and it results in vitiating the sentence imposed. Eventually, Bhagwati, J. set aside the sentence of death and remanded the case to the court of session with a direction to pass appropriate sentence after giving an opportunity to the Appellant therein to be heard in regard to the question of sentence in accordance with the provision contained in Section 235(2) Code of Criminal Procedure as interpreted by him.

In the concurring opinion, Fazal Ali, J., ruled thus:

The last point to be considered is the extent and import of the word "hear" used in Section 235(2) of the 1973 Code. Does it indicate, that the accused should enter into a fresh trial by producing oral and documentary evidence on the question of the sentence which naturally will result in further delay of the trial? The Parliament does not appear to have intended that the accused should adopt dilatory tactics under the cover of this new provision but contemplated that a short and simple opportunity has to be given to the accused to place materials if necessary by leading evidence before the Court bearing on the question of sentence and a consequent opportunity to the prosecution to rebut those materials. The Law Commission was fully aware of this anomaly and it accordingly suggested thus:

We are aware that a provision for an opportunity to give evidence in this respect may necessitate an adjournment; and to avoid delay adjournment, for the purpose should, ordinarily be for not more than 14 days. It may be so provided in the relevant clause. It may not be practicable to keep up to the time- limit suggested by the Law Commission with mathematical accuracy but the Courts must be vigilant to exercise proper control over the proceedings so that the trial is not unavoidably or unnecessarily delayed.

The said decision was considered by a three- Judge Bench in Dagdu and Ors. v. State of Maharashtra MANU/SC/0086/1977 : (1977) 3 SCC 68. The three- Judge Bench referred to the law laid down in Santa Singh (supra) and opined that the mandate of Section 235(2) Code of Criminal Procedure has to be obeyed in letter and spirit. However, the larger Bench thought that Santa Singh (supra) does not lay down as a principle that failure on the part of the Court which convicts an accused, to hear him on the question of sentence must necessarily entail a remand to that Court in order to afford the accused an opportunity to be heard on the question of sentence. Chandrachud, J. (as His Lordship then was) speaking for the Bench ruled thus:

The Court, on convicting an accused, must unquestionably hear him on the question of sentence. But if, for any reason, it omits to do so and the accused makes a grievance of it in the higher court, it would be open to that Court to remedy the breach by giving a hearing to the accused on the question of sentence. That opportunity has to be real and effective, which means that the accused must be permitted to adduce before the Court all the data which he desires to adduce on the question of sentence. The accused may exercise that right either by instructing his counsel to make oral submissions to the Court or he may, on affidavit or otherwise, place in writing before the Court whatever he desires to place before it on the question of sentence. The Court may, in appropriate cases, have to adjourn the matter in order to give to the accused sufficient time to produce the necessary data and to make his contentions on the question of sentence. That, perhaps, must inevitably happen where the conviction is recorded for the first time by a higher court.

It is seemly to note here that Mr. Ramachandran has also commended us to a three- Judge Bench decision in Malkiat Singh and Ors. v. State of Punjab MANU/SC/0622/1991 : (1991) 4 SCC 341, wherein the three- Judge Bench ruled that sufficient time has to be given to the accused or the prosecution on the question of sentence, to show the grounds on which the prosecution may plead or the accused may show that the maximum sentence of death may be the appropriate sentence or the minimum sentence of life imprisonment may be awarded, as the case may be.

Learned Senior Counsel has also drawn our attention to a two- Judge Bench decision in Ajay Pandit alias Jagdish Dayabhai Patel and Anr. v. State of Maharashtra MANU/SC/0562/2012 : (2012) 8 SCC 43, wherein the matter was remanded to the High Court. Mr. Ramachandran has drawn our attention to paragraph 47 of the said authority. It reads as follows:

Awarding death sentence is an exception, nor the rule, and only in the rarest of rare cases, the court could award death sentence. The state of mind of a person awaiting death sentence and the state of mind of a person who has been awarded life sentence may not be the same mentally and psychologically. The court has got a duty and obligation to elicit relevant facts even if the accused has kept totally silent in such situations. In the instant case, the High Court has not addressed the issue in the correct perspective bearing in mind those relevant factors, while questioning the accused and, therefore, committed a gross error of procedure in not properly assimilating and understanding the purpose and object behind Section 235(2) Code of Criminal Procedure.

Having considered all the authorities, we find that there are two modes, one is to remand the matter or to direct the accused persons to produce necessary data and advance the contention on the question of sentence. Regard being had to the nature of the case, we think it appropriate to adopt the second mode. To elaborate, we would like to give opportunity before conclusion of the hearing to the accused persons to file affidavits along with documents stating about the mitigating circumstances. Needless to say, for the said purpose, it is necessary that the learned Counsel, Mr. M.L. Sharma and his associate Ms. Suman and Mr. A.P. Singh and his associate Mr.

V.P. Singh should be allowed to visit the jail and communicate with the accused persons and file the requisite affidavits and materials.

At this juncture, Mr. M.L. Sharma, learned Counsel has submitted that on many a occasion, he has faced difficulty as he had to wait in the jail to have a dialogue with his clients. Mr. Sidharth Luthra, learned Senior Counsel has submitted that if this Court directs, Mr. M.L. Sharma and Mr. A.P. Singh, learned Counsel and their associate Advocates can visit the jail at 2.45 p.m. each day and they shall be allowed to enter the jail between 3.00 p.m. to 3.15 p.m. and can spend time till 5.00 p.m. Needless to say, they can commence their visits from 7th February, 2017, and file the necessary separate affidavits and documents. After the affidavits are made ready by the learned Counsel for the accused persons, they can intimate about the same to Mr. Luthra, who in his turn, shall intimate the same to the Superintendent of Jail, who shall make arrangement for a Notary so that affidavits can be notarized, treating this as a direction of this Court. Needless to say, while the learned Counsel will be discussing with the accused persons, the meeting shall be held in separate rooms inside the jail premises so that they can have a free discussion with the accused persons. Needless to say, they can reproduce in verbatim what the accused persons tell them in the affidavit. The affidavits shall be filed by 23rd February, 2017.

We may hasten to add that after the affidavits come on record, a date shall be fixed for hearing of the affidavits and pertaining to quantum of sentence if, eventually, the conviction is affirmed. The learned Counsel for the prosecution, needless to say, is entitled to file necessary affidavits with regard to the circumstances or reasons for sustenance of the sentence. Additionally, the prosecution is given liberty to put forth in the affidavit any refutation, after the copies of the affidavits by the learned Counsel for the accused persons are served on him. For the said purpose, a week's time is granted. Needless to say, the matter shall be heard on sentence, after affidavits from both the sides are brought on record. The date shall be given at 2.00 p.m. on 6th February, 2017. For the present, the matter stands adjourned to 4th February, 2017, for hearing.

Let a copy of the order be handed over to Mr. Sidharth Luthra by 4th February, 2017, who shall get it translated in Hindi and give it to the Superintendent of Jail, who in his turn, shall hand over it to the accused persons and, simultaneously, explain the purport and effect of the order.

The Superintendent of Jail is also directed to submit a report with regard to the conduct of the accused persons while they are in custody.

310. After passing of the said order, the hearing continued and on 13.02.2017, the following order was passed:

Mr. A.P. Singh, learned Counsel has concluded his arguments. After his conclusion of the arguments, as per our order, dated 3.2.2017, affidavits are required to be filed by 23.2.2017. Let the affidavits be filed by that date. Mr. Siddharth Luthra, learned Senior Counsel appearing for

the State shall file the affidavit by 2nd March, 2017. Registry is directed to hand over copies of the affidavits to Mr. K. Parameshwar, learned Counsel assisting Mr. Raju Ramachandran, learned Senior Counsel and Mr. Anil Kumar Mishra- I, learned Counsel assisting Mr. Sanjay Kumar Hegde, learned Senior Counsel (Amicus Curiae).

Mr. Luthra, learned Senior Counsel shall make arrangements for visit of Mr. A.P. Singh and Mr. Manohar Lal Sharma, learned Counsel for the Petitioners even on Saturday and sunday. He shall intimate our order to the jail authorities so that they can arrange the visit of Mr. A.P. Singh and Mr. Manohar Lal Sharma on Saturday and Sunday.

Let the matter be listed on 3.3.2017 for hearing on the question of sentence, aggravating and mitigating circumstances on the basis of the materials brought on record by learned Counsel for the parties.

311. In pursuance of the aforesaid order, affidavits on behalf of the Appellants have been filed. It is necessary to note that the learned Counsel for the Appellants addressed the Court on the basis of affidavits on 06.03.2017 and the order passed on that date is extracted hereunder:

Mr. A.P. Singh, learned Counsel has filed affidavits on behalf of the three accused persons, namely, Pawan Kumar Gupta, Vinay Sharma and Akshay Kumar Singh and Mr. M.L. Sharma, learned Counsel has filed the affidavit on behalf of Mukesh. Be it noted, Mr. A.P. Singh, learned Counsel has filed the translated version of the affidavits and Mr. Manohar Lal Sharma, learned Counsel has filed the original version in Hindi as well as the translated one.

At this juncture, Mr. Raju Ramachandran, learned Senior Counsel who has been appointed as Amicus Curiae to assist the Court, submitted that two aspects are required to be further probed to comply with the order dated 3.2.2017 inasmuch as this Court has taken the burden on itself for compliance of Section 235(2) of the Code of Criminal Procedure. Learned Senior Counsel would point out that the affidavit filed by Mukesh does not cover many aspects, namely, socio- economic background, criminal antecedents, family particulars, personal habits, education, vocational skills, physical health and his conduct in the prison.

Mr. Manohar Lal Sharma, learned Counsel submits that a report was asked for from the Superintendent of Jail with regard to the conduct of the accused persons while they are in custody, but the same has not directly been filed by the Superintendent of Jail.

Mr. Siddharth Luthra, learned Senior Counsel for the Respondent- State, would, per contra, contend that he has filed the affidavit and the affidavit contains the report of the Superintendent of Jail.

In our considered opinion, the Superintendent of Jail should have filed the report with regard to the conduct of the accused persons since they are in custody for almost four years. That would have thrown light on their conduct. Let the report with regard to their conduct be filed by the Superintendent of Jail in a sealed cover in the Court on the next date of hearing.

As far as the affidavit filed by Mukesh is concerned, Mr. Sharma, learned Counsel stated that he will keep the aspects which are required to be highlighted in mind and file a further affidavit within a week hence.

The direction issued on the earlier occasion with regard to the visit of jail by the learned Counsel for the parties shall remain in force till the next date of hearing.

Let the matter be listed at 2.00 p.m. on 20.3.2017. The report of the Superintendent of Jail, as directed hereinabove, shall be filed in Court on that date.

312. Thereafter, the matter was heard on 20.03.2017 and the following order came to be passed:

Mr. M.L. Sharma, learned Counsel has filed an additional affidavit of the Petitioner, Mukesh and Mr. A.P. Singh, learned Counsel has filed affidavits for the Petitioners, Pawan Kumar Gupta, Vinay Kumar Sharma, and Akshay Kumar Singh.

Mr. Siddharth Luthra, learned Senior Counsel has produced two sealed covers containing the reports submitted by Superintendent of the Central Jail No. 2 and the Superintendent of Central Jail No. 4 in respect of the Petitioners who are in the respective jails. Two sealed covers are opened in presence of the learned Counsel for the parties. They be kept on record.

Registry is directed to supply a copy of the aforesaid reports to Mr. M.L. Sharma and Mr. A.P. Singh, learned Counsel for the Petitioners. Registry shall also supply a copy thereof to Mr. K. Parameshwar, learned Counsel assisting Mr. Raju Ramachandran, learned Amicus Curiae and Mr. Anil Kumar Mishra- I, learned Counsel assisting Mr. Sanjay R. Hegde, learned Amicus Curiae. A copy of the report shall also be handed over to Ms. Supriya Juneja, learned Counsel assisting Mr. Siddharth Luthra, learned Senior Counsel, for he does not have a copy as the reports have been produced before us in the sealed covers.

Mr. Siddharth Luthra, learned Senior Counsel prays for and is granted three days time to file a status report and argue the matter.

Delineation as regards the imposition of sentence

313. Be it noted, we have heard the learned Counsel appearing for the parties, Mr. Luthra, learned Senior Counsel for the Respondent- State, Mr. Ramachandran and Mr. Hegde on the question of sentence. Before we advert to the principles for imposition of sentence, we think it appropriate to deal with the affidavits filed by the accused. For the sake of convenience, it is necessary to make a summary of the affidavits.

314. Accused Mukesh, A- 2, filed his statement, written in his own hand- writing in Hindi, denying his involvement in the occurrence and pleading innocence. He stated that on 17.12.2012, he was picked up from his house at Karoli, Rajasthan and brought to Delhi where the police tortured him and threatened to kill him. Therefore, he acted as per the direction of the police and V.K. Anand, Advocate. He further stated that he is uneducated and poor, but not a criminal and if he is acquitted, he would go back to Karoli, Rajasthan and would take care of his parents.

315. Accused Akshay Kumar Singh, A- 3, has stated that he hails from a naxal affected area in District Aurangabad, Bihar and due to poverty, he could not continue his studies beyond 9th class. He has stated that his aged father Shri Saryu Singh and mother, Smt. Malti Devi, are dependent on him. He has further stated that he is married to Punita Devi since 2010 and they have a son, now aged about six years. He further stated that due to poverty and lack of adequate opportunity in home town, he came to Delhi in the month of November 2012 to earn his livelihood. To maintain his dependants which include his parents, wife and child, he started working as a cleaner in the concerned bus at a wage of Rs. 50/- per day. He reiterated his plea of alibi asserting that he had left Delhi on 15.12.2012 in Mahabodhi Express accompanied by his sister- in- law, Sarita Devi, and went to his native place Karmalahang where he was arrested. He further stated that after his confinement in Tihar Jail, he has been maintaining good behavior and is working hard as a labourer in the prison to maintain his family.

316. Accused Vinay Sharma, A- 4, in his affidavit stated that he was born in Kapiya Kalan, Tehsil Rudra Nagar, District Basti, Uttar Pradesh and that his parents used to work as labourers and that his family is very poor. The accused stated that he used to take care of his grandfather who was a religious saint and up to July, 2012, he was studying at his native place in Uttar Pradesh and only after July, 2012, he came to Delhi to pursue his further studies. He has stated that he got himself admitted to the University of Delhi, School of Open Learning, Delhi and to earn his livelihood, he worked as a part- time instructor in gym and also as a seasonal waiter in hotels and marriage ceremonies at night. Accused Vinay Sharma further stated that he has to take care of his ailing parents and also his younger sisters and younger brother, who are totally dependent on him. In his affidavit, he reiterated his plea of alibi asserting that on the fateful day, he had participated in the Christmas celebration and was enjoying there with his family. The accused has further stated that he has no criminal antecedents and after his confinement in Tihar Jail, he

has maintained good behavior and has also organized various musical programmes and his paintings are displayed in Tihar Jail.

317. Accused Pawan Gupta, A- 5, filed his affidavit stating that he comes from a very poor family where his father used to sell fruits on the road for their living. He further stated that he is a resident of Cluster Jhuggi Basti and was assisting his father in selling fruits on a cart. The accused also illustrated the ailing condition of his family stating that his parents are heart patients and his mother is a handicapped person suffering from BP and thyroid. He also stated that his younger sister, Dimple Gupta, was under depression on account of the false implication of her brother in the present case and could not tolerate humiliation by the society and she has committed suicide on 09.02.2013. Apart from that, he has to look after his dependant parents and two other sisters, one married and the other unmarried and aged 17 years, and one younger brother. On behalf of accused Pawan Gupta, fervent plea was made that he has no prior criminal antecedent and after being confined to Central Jail, Tihar, he is trying to reform himself into a better person.

318. Mr. Ramachandran, learned amicus curiae, criticized the sentence, placed reliance on Bachan Singh v. State of Punjab MANU/SC/0055/1982 : (1980) 2 SCC 684 and submitted that the trial court and the High Court have committed the error of not applying the doctrine of equality which prescribes similar treatment to similar persons and stated that the Court in Bachan Singh (supra) has categorically held that the extreme penalty can be inflicted only in gravest cases of extreme culpability; in making the choice of sentence, in addition to the circumstances of the offence, due regard must be paid to the circumstances of the offender also; and that the mitigating circumstances referred therein are undoubtedly relevant and must be given great weight in the determination of sentence. Further placing reliance on Machhi Singh v. State of Punjab MANU/SC/0211/1983 : (1983) 3 SCC 470, it is submitted by learned amicus curiae that in the said case, the Court held that a balance sheet of the aggravating and mitigating circumstances should be drawn up and the mitigating circumstances should be accorded full weightage and a just balance should be struck between the aggravating and mitigating circumstances. He further pointed out number of decisions wherein this Court has given considerable weight to the circumstances of the criminal and commuted the sentence to life imprisonment.

319. Mr. Ramachandran further urged that in the present case, the decision in Bachan Singh (supra) was completely disregarded and the trial court, while sentencing the accused, only placed emphasis on the brutal and heinous nature of the crime and the mitigating factors including the possibility of reform and rehabilitation were ruled out on the basis of the nature of the crime and not on its own merits. It is further contended by him that in Sangeet and Anr. v. State of Haryana MANU/SC/0989/2012 : (2013) 2 SCC 452 and Shankar Kisanrao Khade v. State of Maharashtra MANU/SC/0476/2013 : (2013) 5 SCC 546, the decisions, i.e., Shiv v. High Court of Karnataka MANU/SC/7103/2007 : (2007) 4 SCC 713, B.A. Umesh v. Registrar General, High Court of Karnataka MANU/SC/0082/2011 : (2011) 3 SCC 85 and Dhananjoy Chaterjee v. State of West Bengal MANU/SC/0626/1994 : (1994) 2 SCC 220, relied upon by the Special Public Prosecutor and the High Court, have been doubted by this Court.

320. Learned amicus curiae has further propounded that sentencing and non- consideration of the mitigating circumstances are violative of Articles 14 and 21 of the Constitution. It is his submission that the prosecution's argument on aggravating circumstances gets buttressed by the material on record while the plea of mitigating circumstances rests solely on arguments and this imbalance is a serious violation of the doctrine of fairness and reasonableness enshrined in Article 14 of the Constitution; that there should be a fair and principle- based sentencing process in death penalty cases by which a genuine and conscious attempt is made to investigate and evaluate the circumstances of the criminal; that the fair and principled approaches are facets of Article 14; and that if the enumeration and evaluation of mitigating factors are left only to the accused or his counsel and the Court does not accord a principle- based treatment, the imposition of death penalty will be rendered the norm and not the exception, which is an inversion of the Bachan Singh (supra) logic and a serious violation of Article 21 of the Constitution.

321. Mr. Ramachandran submitted that the trial court and the High Court failed to pay due regard to the mitigating factors; that the courts have committed the mistake of rejecting the mitigating factors by reasoning that it may not be sufficient for awarding life sentence; and that the courts have not considered all the mitigating factors cumulatively to arrive at the conclusion whether the case fell within the rarest of rare category. He has referred to the Constitution Bench decision in Triveniben v. State of Gujarat MANU/SC/0520/1989 : (1989) 1 SCC 678 wherein Shetty, J. in his concurring opinion, opined that death sentence cannot be given if there is any one mitigating circumstance in favour of the accused and all circumstances of the case should be aggravating and submitted that this line of judicial thought has been completely ignored by the High Court and the trial court.

322. Learned amicus curiae further contended that the attribution of individual role with respect to the iron rod, which was a crucial consideration in convicting the accused Under Section 302 Indian Penal Code, was not considered by the trial court or the High Court in the sentencing process and stressed that when life imprisonment is the norm and death penalty the exception, the lack of individual role has to be regarded as a major mitigating circumstance. In this regard, reliance has been placed by him on Karnesh Singh v. State of U.P. MANU/SC/0051/1968 : AIR 1968 SC 1402, Ronny v. State of Maharashtra MANU/SC/0199/1998 : (1998) 3 SCC 625, Nirmal Singh v. State of Haryana MANU/SC/0178/1999 : (1999) 3 SCC 670 and Sahdeo v. State of U.P. MANU/SC/0423/2004 : (2004) 10 SCC 682.

323. Mr. Ramachandran has also contended that subsequent to the pronouncement in Machhi Singh (supra), there are series of decisions by this Court where the Court has given considerable weight to the concept of reformation and rehabilitation and commuted the sentence to life imprisonment. According to him, young age is a mitigating factor and this Court has taken note of the same in Raghubir Singh v. State of Haryana MANU/SC/0185/1974 : (1975) 3 SCC 37, Harnam Singh v. State of Uttar Pradesh MANU/SC/0129/1975 : (1976) 1 SCC 163, Amit v. State of Maharashtra MANU/SC/0567/2003 : (2003) 8 SCC 93, Rahul v. State of Maharashtra (2005) 10 SCC 322, Rameshbhai Chandubhai Rathod v. State of Gujarat MANU/SC/0663/2009 : (2009) 5 SCC 740, Santosh Kumar Bariyar v. State of Maharashtra MANU/SC/0801/2009 : (2009) 6 SCC

498, Sebastian v. State of Kerala MANU/SC/1717/2009 : (2010) 1 SCC 58, Santosh Kumar Singh (supra), Rameshbhai Chandubhai Rathod II v. State of Gujarat MANU/SC/0075/2011 : (2011) 2 SCC 764, Amit v. State of Uttar Pradesh MANU/SC/0133/2012 : (2012) 4 SCC 107 and Lalit Kumar Yadav v. State of Uttar Pradesh MANU/SC/0368/2014 : (2014) 11 SCC 129. That apart, it is urged by him that when the crime is not pre- meditated, the same becomes a mitigating factor and that has been taken note of by this Court in the authorities in Akhtar v. State of Uttar Pradesh MANU/SC/1008/1999 : (1999) 6 SCC 60, Raju v. State of Haryana MANU/SC/0324/2001 : (2001) 9 SCC 50 and Amrit Singh v. State of Punjab MANU/SC/8642/2006 : (2006) 12 SCC 79.

324. Learned amicus curiae would further urge that when the criminal antecedents are lacking and the prosecution has not been able to say about that the Appellants deserve imposition of lesser sentence. For the said purpose, he has commended us to the authorities in Nirmal Singh (supra), Raju v. State of Haryana (supra), Amit v. State of Maharashtra (supra), Surender Pal v. State of Gujarat MANU/SC/0794/2004 : (2005) 3 SCC 127, Rameshbhai Chandubhai Rathod II (supra), Amit v. State of Uttar Pradesh (supra), Anil v. State of Maharashtra MANU/SC/0124/2014 : (2014) 4 SCC 69 and Lalit Kumar Yadav v. State of Uttar Pradesh MANU/SC/0368/2014 : (2014) 11 SCC 129.

325. Learned Senior Counsel has emphasized on the reform, rehabilitation and absence of any continuing threat to the collective which are factors to be taken into consideration for the purpose of commutation of death penalty to life imprisonment. In this regard, learned Senior Counsel has drawn inspiration from the decisions in Ronny (supra), Nirmal Singh (supra), Bantu v. State of Madhya Pradesh MANU/SC/0684/2001 : (2001) 9 SCC 615, Lehna (supra), Rahul (supra), Santosh Kumar Bariyar (supra), Santosh Kumar Singh (supra), Rajesh Kumar v. State MANU/SC/1130/2011 : (2011) 13 SCC 706, Amit v. State of Uttar Pradesh (supra), Ramnaresh v. State of Chhattisgarh MANU/SC/0163/2012 : (2012) 4 SCC 257, Sandesh v. State of Maharashtra MANU/SC/1128/2012 : (2013) 2 SCC 479 and Lalit Kumar Yadav (supra).

326. Mr. Ramachandran has also submitted that the present case should be treated as a special category as has been held in Swamy Shradhananda (2) v. State of Karnataka MANU/SC/3096/2008 : (2008) 13 SCC 767 and the recent Constitution Bench decision in Union of India v. Sriharan MANU/SC/1377/2015 : (2016) 7 SCC 1. It is urged by him that in many a case, this Court has exercised the said discretion. Learned Senior Counsel in that regard has drawn our attention to the pronouncements in Rameshbhai Chandubhai Rathod (supra), Neel Kumar v. State of Haryana MANU/SC/0416/2012 : (2012) 5 SCC 766, Ram Deo Prasad v. State of Bihar MANU/SC/0360/2013 : (2013) 7 SCC 725, Chhote Lal v. State of Madhya Pradesh MANU/SC/0935/2011 : (2013) 9 SCC 795, Anil v. State of Maharashtra (supra), Rajkumar (supra) and Selvam v. State MANU/SC/0401/2014 : (2014) 12 SCC 274.

327. Mr. Hegde, learned friend of the Court, canvassed that the theory of reformation cannot be ignored entirely in the obtaining factual matrix in view of the materials brought on record. Learned Senior Counsel would contend that imposition of death penalty would be extremely

harsh and totally unwarranted inasmuch as the case at hand does not fall in the category of rarest of rare case. That apart, it is contended by him that the entire incident has to be viewed from a different perspective, that is, the accused persons had the bus in their control, they were drunk, and situation emerged where the poverty- stricken persons felt empowered as a consequence of which the incident took place and considering the said aspect, they may be imposed substantive custodial sentence for specific years but not death penalty. Additionally, it is submitted by him that in the absence of pre- meditation to commit a crime of the present nature, it would not invite the harshest punishment.

328. Mr. Luthra, learned Senior Counsel, has referred to the reports of the Superintendent of Jail that the conduct of the accused persons in the jail has been absolutely non- satisfactory and non-cooperative and the diabolic nature of the crime has shaken the collective conscience. According to him, the diabolic nature of the crime has nothing to do with poverty, for it was not committed for alleviation of poverty but to satiate their sexual appetite and enormous perversity. He would submit that this would come in the category of rarest of the rare cases in view of the law laid down in Sevaka Perumal v. State of Tamil Nadu MANU/SC/0338/1991 : (1991) 3 SCC 471, Kamta Tiwari v. State of Madhya Pradesh MANU/SC/0722/1996 : (1996) 6 SCC 250, State of U.P. v. Satish MANU/SC/0090/2005 : (2005) 3 SCC 114, Holiram Bordoloi v. State of Assam MANU/SC/0271/2005 : (2005) 3 SCC 793, Ankush Maruti Shinde v. State of Maharashtra MANU/SC/0700/2009 : (2009) 6 SCC 667, Sundar v. State MANU/SC/0105/2013 : (2013) 3 SCC 215 and Mohfil Khan v. State of Jharkhand MANU/SC/0915/2014 : (2015) 1 SCC 67.

329. It is also submitted by Mr. Luthra that mitigating circumstances are required to be considered in the light of the offence and not alone on the backdrop of age and family background. For this purpose, he has relied upon Deepak Rai v. State of Bihar MANU/SC/0965/2013 : (2013) 10 SCC 421 and Purshottam Dashrath Borate v. State of Maharashtra MANU/SC/0583/2015 : (2015) 6 SCC 652.

330. Mr. Sharma and Mr. Singh, learned Counsel for the Appellants, would submit that the conduct of the accused persons shows reformation as there are engaged in educating themselves and also they have been participating in affirmative and constructive activities adopted in jail and so, death penalty should not be affirmed and should be commuted. Mr. Sharma, learned Counsel appearing for the accused Mukesh, submits that he is not connected with the crime in question. It is put forth that the case at hand cannot be regarded as rarest of the rare cases and, therefore, the maximum punishment that can be given should be for a specific period.

331. Presently, we shall proceed to analyse the aforesaid aspect. In Bachan Singh (supra), the Court held thus:

(a) The normal rule is that the offence of murder shall be punished with the sentence of life imprisonment. The court can depart from that rule and impose the sentence of death only if there

are special reasons for doing so. Such reasons must be recorded in writing before imposing the death sentence.

(b) While considering the question of sentence to be imposed for the offence of murder Under Section 302 of the Penal Code, the court must have regard to every relevant circumstance relating to the crime as well as the criminal. If the court finds, but not otherwise, that the offence is of an exceptionally depraved and heinous character and constitutes, on account of its design and the manner of its execution, a source of grave danger to the society at large, the court may impose the death sentence.

332. In the said case, the Court, after referring to the authority in Furman v. Georgia MANU/USSC/0008/1972 : 33 L Ed 2d 346 : 408 US 238 (1972), noted the suggestion given by the learned Counsel about the aggravating and the mitigating circumstances. The aggravating circumstances suggested by the counsel read as follows:

Aggravating circumstances: A court may, however, in the following cases impose the penalty of death in its discretion:

(a) if the murder has been committed after previous planning and involves extreme brutality; or

(b) if the murder involves exceptional depravity; or

(c) if the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed- -

(i) while such member or public servant was on duty; or

(ii) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member or public servant; or

(d) if the murder is of a person who had acted in the lawful discharge of his duty Under Section 43 of the Code of Criminal Procedure, 1973, or who had rendered assistance to a Magistrate or a police officer demanding his aid or requiring his assistance Under Section 37 and Section 129 of the said Code.

After reproducing the same, the Court opined:

Stated broadly, there can be no objection to the acceptance of these indicators but as we have indicated already, we would prefer not to fetter judicial discretion by attempting to make an exhaustive enumeration one way or the other.

333. Thereafter, the Court referred to the suggestions pertaining to mitigating circumstances:

Mitigating circumstances.- In the exercise of its discretion in the above cases, the court shall take into account the following circumstances:

(1) That the offence was committed under the influence of extreme mental or emotional disturbance.

(2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.

(3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.

(4) The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the conditions (3) and (4) above.

(5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.

(6) That the accused acted under the duress or domination of another person.

(7) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.

The Court then observed:

We will do no more than to say that these are undoubtedly relevant circumstances and must be given great weight in the determination of sentence.

334. In the said case, the Court has also held thus:

It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guidelines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3) viz. that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed.

335. In Machhi Singh (supra), a three- Judge Bench has explained the concept of 'rarest of the rare cases' by observing thus:

The reasons why the community as a whole does not endorse the humanistic approach reflected in 'death sentence- in- no- case' doctrine are not far to seek. In the first place, the very humanistic edifice is constructed on the foundation of 'reverence for life' principle. When a member of the community violates this very principle by killing another member, the society may not feel itself bound by the shackles of this doctrine. Secondly, it has to be realised that every member of the community is able to live with safety without his or her own life being endangered because of the protective arm of the community and on account of the rule of law enforced by it. The very existence of the rule of law and the fear of being brought to book operates as a deterrent for those who have no scruples in killing others if it suits their ends. Every member of the community owes a debt to the community for this protection.

336. Thereafter, the Court has adverted to the aspects of the feeling of the community and its desire for self- preservation and opined that the community may well withdraw the protection by sanctioning the death penalty. What has been ruled in this regard is worth reproducing:

But the community will not do so in every case. It may do so 'in the rarest of rare cases' when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty.

337. It is apt to state here that in the said case, stress was laid on certain aspects, namely, the manner of commission of the murder, the motive for commission of the murder, anti- social or socially abhorrent nature of the crime, magnitude of the crime and personality of the victim of murder.

338. After so enumerating, the propositions that emerged from Bachan Singh (supra) were culled out which are as follows:

The following propositions emerge from Bachan Singh case:

(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

(ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime'.

(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

(iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

339. The three- Judge Bench further opined that to apply the said guidelines, the following questions are required to be answered:

(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?

In the said case, the Court upheld the extreme penalty of death in respect of three accused persons.

340. The Court in Haresh Mohandas Rajput v. State of Maharashtra MANU/SC/1099/2011 : (2011) 12 SCC 56, while dealing with the situation where the death sentence is warranted, referred

to the guidelines laid down in Bachan Singh (supra) and the principles culled out in Machhi Singh (supra) and opined as follows:

19. In Machhi Singh v. State of Punjab this Court expanded the "rarest of rare" formulation beyond the aggravating factors listed in Bachan Singh to cases where the "collective conscience" of the community is so shocked that it will expect the holders of the judicial power centre to inflict the death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining the death penalty, such a penalty can be inflicted. But the Bench in this case underlined that full weightage must be accorded to the mitigating circumstances in a case and a just balance had to be struck between the aggravating and the mitigating circumstances.

After so stating, the Court ruled thus:

20. The rarest of the rare case" comes when a convict would be a menace and threat to the harmonious and peaceful coexistence of the society. The crime may be heinous or brutal but may not be in the category of "the rarest of the rare case". There must be no reason to believe that the accused cannot be reformed or rehabilitated and that he is likely to continue criminal acts of violence as would constitute a continuing threat to the society. The accused may be a menace to the society and would continue to be so, threatening its peaceful and harmonious coexistence. The manner in which the crime is committed must be such that it may result in intense and extreme indignation of the community and shock the collective conscience of the society. Where an accused does not act on any spur- of- the- moment provocation and indulges himself in a deliberately planned crime and meticulously executes it, the death sentence may be the most appropriate punishment for such a ghastly crime. The death sentence may be warranted where the victims are innocent children and helpless women. Thus, in case the crime is committed in a most cruel and inhuman manner which is an extremely brutal, grotesque, diabolical, revolting and dastardly manner, where his act affects the entire moral fibre of the society e.g. crime committed for power or political ambition or indulging in organised criminal activities, death sentence should be awarded. (See C. Muniappan v. State of T.N. MANU/SC/0655/2010 : (2010) 9 SCC 567, Dara Singh v. Republic of India MANU/SC/0062/2011 : (2011) 2 SCC 490, Surendra Koli v. State of U.P. Ibid, Mohd. Mannan MANU/SC/0460/2011 : (2011) 5 SCC 317 and Sudam v. State of Maharashtra MANU/SC/0850/2011 : (2011) 7 SCC 125s.)

21. Thus, it is evident that for awarding the death sentence, there must be existence of aggravating circumstances and the consequential absence of mitigating circumstances. As to whether the death sentence should be awarded, would depend upon the factual scenario of the case in hand.

341. This Court, while dealing with the murder of a young girl of about 18 years in Dhananjoy Chatterjee (supra), took note of the fact that the accused was a married man of 27 years of age, the principles stated in Bachan Singh's case and further took note of the rise of violent crimes against women in recent years and, thereafter, on consideration of the aggravating factors and mitigating circumstances, opined that:

In our opinion, the measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenceless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment.

342. After so stating, the Court took note of the fact that the deceased was a school- going girl and it was the sacred duty of the Appellant, being a security guard, to ensure the safety of the inhabitants of the flats in the apartment but to gratify his lust, he had raped and murdered the girl in retaliation which made the crime more heinous. Appreciating the manner in which the barbaric crime was committed on a helpless and defenceless school- going girl of 18 years, the Court came to hold that the case fell in the category of rarest of the rare cases and, accordingly, affirmed the capital punishment imposed by the High Court.

343. In Laxman Naik v. State of Orissa MANU/SC/0264/1995 : (1994) 3 SCC 381, the Court commenced the judgment with the following passage:

The present case before us reveals a sordid story which took place sometime in the afternoon of February 17, 1990, in which the alleged sexual assault followed by brutal and merciless murder by the dastardly and monstrous act of abhorrent nature is said to have been committed by the Appellant herein who is none else but an agnate and paternal uncle of the deceased victim Nitma, a girl of the tender age of 7 years who fell a prey to his lust which sends shocking waves not only to the judicial conscience but to everyone having slightest sense of human values and particularly to the blood relations and the society at large.

344. It is worthy to note that in the said case, the High Court had dismissed the Appellant's appeal and confirmed the death sentence awarded to him. While discussing as regards the justifiability of the sentence, the Court referred to the decision in Bachan Singh's case and opined that there were absolutely no mitigating circumstances and, on the contrary, the facts of the case disclosed only aggravating circumstances against the Appellant. Elaborating further, the Court held thus:

The hard facts of the present case are that the Appellant Laxman is the uncle of the deceased and almost occupied the status and position that of a guardian. Consequently the victim who was aged about 7 years must have reposed complete confidence in the Appellant and while reposing such faith and confidence in the Appellant must have believed in his bona fides and it was on account of such a faith and belief that she acted upon the command of the Appellant in accompanying him under the impression that she was being taken to her village unmindful of the preplanned unholy designs of the Appellant. The victim was a totally helpless child there being no one to protect her in the desert where she was taken by the Appellant misusing her confidence to fulfill his lust. It appears that the Appellant had preplanned to commit the crime

by resorting to diabolical methods and it was with that object that he took the girl to a lonely place to execute his dastardly act.

After so stating, the Court, while affirming the death sentence, opined that:

.....The victim of the age of Nitma could not have even ever resisted the act with which she was subjected to. The Appellant seems to have acted in a beastly manner as after satisfying his lust he thought that the victim might expose him for the commission of the offence of forcible rape on her to the family members and others, the Appellant with a view to screen the evidence of his crime also put an end to the life of innocent girl who had seen only seven summers. The evidence on record is indicative of the fact as to how diabolically the Appellant had conceived of his plan and brutally executed it and such a calculated, cold- blooded and brutal murder of a girl of a very tender age after committing rape on her would undoubtedly fall in the category of rarest of the rare cases attracting no punishment other than the capital punishment and consequently we confirm the sentence of death imposed upon the Appellant for the offence Under Section 302 of the Penal Code.

345. Kamta Tiwari (supra) is a case where the Appellant was convicted for the offences punishable Under Sections 363, 376, 302 and 201 of Indian Penal Code and sentenced to death by the learned trial Judge and the same was affirmed by the High Court. In appeal, the two- Judge Bench referred to the propositions culled out in Machhi Singh (supra) and expressed thus:

Taking an overall view of all the facts and circumstances of the instant case in the light of the above propositions we are of the firm opinion that the sentence of death should be maintained. In vain we have searched for mitigating circumstances - but found aggravating circumstances aplenty. The evidence on record clearly establishes that the Appellant was close to the family of Parmeshwar and the deceased and her siblings used to call him Tiwari Uncle'. Obviously her closeness with the Appellant encouraged her to go to his shop, which was near the saloon where she had gone for a haircut with her father and brother, and ask for some biscuits. The Appellant readily responded to the request by taking her to the nearby grocery shop of Budhsen and handing over a packet of biscuits apparently as a prelude to his sinister design which unfolded in her kidnapping, brutal rape and gruesome murder - - as the numerous injuries on her person testify; and the finale was the dumping of her dead body in a well. When an innocent hapless girl of 7 years was subjected to such barbaric treatment by a person who was in a position of her trust his culpability assumes the proportion of extreme depravity and arouses a sense of revulsion in the mind of the common man. In fine, the motivation of the perpetrator, the vulnerability of the victim, the enormity of the crime, the execution thereof persuade us to hold that this is a "rarest of rare" cases where the sentence of death is eminently desirable not only to deter others from committing such atrocious crimes but also to give emphatic expression to society's abhorrence of such crimes.

346. In Bantu v. State of Uttar Pradesh MANU/SC/7863/2008 : (2008) 11 SCC 113, a five year old minor girl was raped and murdered and the Appellant was awarded death sentence by the trial Court which was affirmed by the High Court. This Court found the Appellant guilty of the crime and, thereafter, referred to the principles stated in Bachan Singh, Machhi Singh (supra) and Devender Pal Singh v. State of A.P. MANU/SC/0217/2002 : (2002) 5 SCC 234 and eventually

came to hold that the said case fell in the rarest of the rare category and the capital punishment was warranted. Being of this view, the Court declined to interfere with the sentence.

347. In Rajendra Pralhadrao Wasnik v. State of Maharashtra MANU/SC/0160/2012 : (2012) 4 SCC 37, the Appellant was awarded sentence of death by the learned trial Judge which was confirmed by the High Court, for he was found guilty of the offences punishable Under Sections 376(2)(f), 377 and 302 Indian Penal Code. In the said case, the prosecution had proven that the Appellant had lured a three year old minor girl child on the pretext of buying her biscuits and then raped her and eventually, being apprehensive of being identified, killed her. In that context, while dismissing the appeal, the Court ruled thus:

37. When the Court draws a balance sheet of the aggravating and mitigating circumstances, for the purposes of determining whether the extreme sentence of death should be imposed upon the accused or not, the scale of justice only tilts against the accused as there is nothing but aggravating circumstances evident from the record of the Court. In fact, one has to really struggle to find out if there were any mitigating circumstances favouring the accused.

38. Another aspect of the matter is that the minor child was helpless in the cruel hands of the accused. The accused was holding the child in a relationship of "trust- belief" and "confidence", in which capacity he took the child from the house of PW 2. In other words, the accused, by his conduct, has belied the human relationship of trust and worthiness. The accused left the deceased in a badly injured condition in the open fields without even clothes. This reflects the most unfortunate and abusive facet of human conduct, for which the accused has to blame no one else than his own self.

348. At this stage, it is fruitful to refer to some authorities where in cases of rape and murder, the death penalty was not awarded. In State of T.N. v. Suresh and Anr. MANU/SC/0939/1998 : (1998) 2 SCC 372, the Court, while unsettling the judgment of acquittal recorded by the High Court and finding that the accused was guilty of rape of a pregnant woman and also murder, awarded the sentence of life imprisonment by observing:

The above discussion takes us to the final conclusion that the High Court has seriously erred in upsetting the conviction entered by the Sessions Court as against A- 2 and A- 3. The erroneous approach has resulted in miscarriage of justice by allowing the two perpetrators of a dastardly crime committed against a helpless young pregnant housewife who was sleeping in her own apartment with her little baby sleeping by her side and during the absence of her husband. We strongly feel that the error committed by the High Court must be undone by restoring the conviction passed against A- 2 and A- 3, though we are not inclined, at this distance of time, to restore the sentence of death passed by the trial court on those two accused.

From the aforesaid authority, it is seen that the Court did not think it appropriate to restore the death sentence passed by the trial court regard being had to the passage of time.

349. In Akhtar v. State of U.P. (supra), the Appellant was found guilty of murder of a young girl after committing rape on her and was sentenced to death by the learned Sessions Judge and the said sentence was confirmed by the High Court. The two- Judge Bench referred to the decisions in Laxman Naik (supra) and Kamta Tiwari (supra) and addressed itself whether the case in hand was one of the rarest of the rare case for which punishment of death could be awarded. The Court distinguished the two decisions which have been referred to hereinabove and ruled:

In the case in hand on examining the evidence of the three witnesses it appears to us that the accused- Appellant has committed the murder of the deceased girl not intentionally and with any premeditation. On the other hand the accused- Appellant found a young girl alone in a lonely place, picked her up for committing rape; while committing rape and in the process by way of gagging the girl has died. The medical evidence also indicates that the death is on account of asphyxia. In the circumstances we are of the considered opinion that the case in hand cannot be held to be one of the rarest of rare cases justifying the punishment of death.

350. In State of Maharashtra v. Barat Fakira Dhiwar MANU/SC/0700/2001 : (2002) 1 SCC 622, a three- year old girl was raped and murdered by the accused. The learned trial Judge convicted the accused and awarded the death sentence. The High Court had set aside the order of conviction and acquitted him for the offences. This Court, on scrutiny of the evidence, found the accused guilty of rape and murder. Thereafter, the Court proceeded to deal with the sentence and, in that context, observed:

Regarding sentence we would have concurred with the Sessions Court's view that the extreme penalty of death can be chosen for such a crime. However, as the accused was once acquitted by the High Court we refrain from imposing that extreme penalty in spite of the fact that this case is perilously near the region of "rarest of the rare cases", as envisaged by the Constitution Bench in Bachan Singh v. State of Punjab. However, the lesser option is not unquestionably foreclosed and so we alter the sentence, in regard to the offence Under Section 302 Indian Penal Code, to imprisonment for life.

351. Keeping in view the aforesaid authorities, the Court, in Vasanta Sampat Dupare v. State of Maharashtra MANU/SC/1098/2014 : (2015) 1 SCC 253, proceeded to adumbrate what is the duty of the Court when the collective conscience is shocked because of the crime committed and observed:

... When the crime is diabolical in nature and invites abhorrence of the collective, it shocks the judicial conscience and impels it to react keeping in view the collective conscience, cry of the community for justice and the intense indignation the manner in which the brutal crime is committed. We are absolutely conscious that Judges while imposing sentence, should never be swayed away with any kind of individual philosophy and predilections. It should never have the

flavour of Judge- centric attitude or perception. It has to satisfy the test laid down in various precedents relating to rarest of the rare case. We are also required to pose two questions that has been stated in Machhi Singh's case.

352. In the said case, the Court dwelt upon the manner in which the crime was committed and how a minor girl had become a prey of the sexual depravity and was injured by the despicable act of the accused to silence the voice so that there would be no evidence. Dealing with the same, the Court referred to earlier judgments and held:

58. Presently, we shall proceed to dwell upon the manner in which the crime was committed. Materials on record clearly reveal that the Appellant was well acquainted with the inhabitants of the locality and as is demonstrable he had access to the house of the father of the deceased and the children used to call him "uncle". He had lured the deceased to go with him to have chocolates. It is an act of taking advantage of absolute innocence. He had taken the deceased from place to place by his bicycle and eventually raped her in a brutal manner, as if he had an insatiable and ravenous appetite. The injuries caused on the minor girl are likely to send a chill in the spine of the society and shiver in the marrows of human conscience. He had battered her to death by assaulting her with two heavy stones. The injured minor girl could not have shown any kind of resistance. It is not a case where the accused had a momentary lapse. It is also not a case where the minor child had died because of profuse bleeding due to rape but because of the deliberate cruel assault by the Appellant. After the savage act was over, the coolness of the Appellant is evident, for he washed the clothes on the tap and took proper care to hide things. As is manifest, he even did not think for a moment the trauma and torture that was caused to the deceased. The gullibility and vulnerability of the four year girl, who could not have nurtured any idea about the maladroitly designed biological desires of this nature, went with the uncle who extinguished her life- spark. The barbaric act of the Appellant does not remotely show any concern for the precious life of a young minor child who had really not seen life. The criminality of the conduct of the Appellant is not only depraved and debased, but can have a menacing effect on the society. It is calamitous.

59. In this context, we may fruitfully refer to a passage from Shyam Narain v. State (NCT of Delhi) MANU/SC/0543/2013 : (2013) 7 SCC 77, wherein it has been observed as follows:

1. The wanton lust, vicious appetite, depravity of senses, mortgage of mind to the inferior endowments of nature, the servility to the loathsome beast of passion and absolutely unchained carnal desire have driven the Appellant to commit a crime which can bring in a 'tsunami' of shock in the mind of the collective, send a chill down the spine of the society, destroy the civilised stems of the milieu and comatose the marrows of sensitive polity.

In the said case, while describing the rape on an eight- year- old girl, the Court observed: (Shyam Narain case, SCC p. 88, para 26)

26. ... Almost for the last three decades, this Court has been expressing its agony and distress pertaining to the increased rate of crimes against women. The eight- year- old girl, who was supposed to spend time in cheerfulness, was dealt with animal passion and her dignity and purity of physical frame was shattered. The plight of the child and the shock suffered by her can be well visualised. The torment on the child has the potentiality to corrode the poise and equanimity of any civilised society. The age- old wise saying that 'child is a gift of the providence' enters into the realm of absurdity. The young girl, with efflux of time, would grow with a traumatic experience, an unforgettable shame. She shall always be haunted by the memory replete with heavy crush of disaster constantly echoing the chill air of the past forcing her to a state of nightmarish melancholia. She may not be able to assert the honour of a woman for no fault of hers.

Elucidating further, the Court held:

60. In the case at hand, as we find, not only was the rape committed in a brutal manner but murder was also committed in a barbaric manner. The rape of a minor girl child is nothing but a monstrous burial of her dignity in the darkness. It is a crime against the holy body of a girl child and the soul of society and such a crime is aggravated by the manner in which it has been committed. The nature of the crime and the manner in which it has been committed speaks about its uncommonness. The crime speaks of depravity, degradation and uncommonality. It is diabolical and barbaric. The crime was committed in an inhuman manner. Indubitably, these go a long way to establish the aggravating circumstances.

61. We are absolutely conscious that mitigating circumstances are to be taken into consideration. The learned Counsel for the Appellant pointing out the mitigating circumstances would submit that the Appellant is in his mid- fifties and there is possibility of his reformation. Be it noted, the Appellant was aged about forty- seven years at the time of commission of the crime. As is noticeable, there has been no remorse on the part of the Appellant. There are cases when this Court has commuted the death sentence to life finding that the accused has expressed remorse or the crime was not premeditated. But the obtaining factual matrix when unfolded stage by stage would show the premeditation, the proclivity and the rapacious desire. The learned Counsel would submit that the Appellant had no criminal antecedents but we find that he was a history-sheeter and had a number of cases pending against him. That alone may not be sufficient. The appalling cruelty shown by him to the minor girl child is extremely shocking and it gets accentuated, when his age is taken into consideration. It was not committed under any mental stress or emotional disturbance and it is difficult to comprehend that he would not commit such acts and would be reformed or rehabilitated. As the circumstances would graphically depict, he would remain a menace to society, for a defenceless child has become his prey. In our considered opinion, there are no mitigating circumstances.

62. As we perceive, this case deserves to fall in the category of the rarest of rare cases. It is inconceivable from the perspective of the society that a married man aged about two scores and

seven makes a four- year minor innocent girl child the prey of his lust and deliberately causes her death. A helpless and defenceless child gets raped and murdered because of the acquaintance of the Appellant with the people of the society. This is not only betrayal of an individual trust but destruction and devastation of social trust. It is perversity in its enormity. It irrefragably invites the extreme abhorrence and indignation of the collective. It is an anathema to the social balance. In our view, it meets the test of the rarest of the rare case and we unhesitatingly so hold.

353. In the said case, a review petition bearing Review Petition (Criminal) Nos. 637- 638 of 2015 was filed which has been recently dismissed. U.U. Lalit, J., authoring the judgment, has held:

19. It is thus well settled, "the Court would consider the cumulative effect of both the aspects (namely aggravating factors as well as mitigating circumstances) and it may not be very appropriate for the Court to decide the most significant aspect of sentencing policy with reference to one of the classes completely ignoring other classes under other heads and it is the primary duty of the Court to balance the two." Further, "it is always preferred not to fetter the judicial discretion by attempting to make excessive enumeration, in one way or another; and that both aspects namely aggravating and mitigating circumstances have to be given their respective weightage and that the Court has to strike the balance between the two and see towards which side the scale/balance of justice tilts." With these principles in mind we now consider the present review petition.

20. The material placed on record shows that after the Judgment under review, the Petitioner has completed Bachelors Preparatory Programme offered by the Indira Gandhi National Open University enabling him to prepare for Bachelor level study and that he has also completed the Gandhi Vichar Pariksha and had participated in drawing competition organized sometime in January 2016. It is asserted that the jail record of the Petitioner is without any blemish. The matter is not contested as regards Conditions 1, 2, 5, 6 and 7 as stated in paragraph 206 of the decision in Bachan Singh but what is now being projected is that there is a possibility of the accused being reformed and rehabilitated. Though these attempts on part of the Petitioner are after the judgment under review, we have considered the material in that behalf to see if those circumstances warrant a different view. We have given anxious consideration to the material on record but find that the aggravating circumstances namely the extreme depravity and the barbaric manner in which the crime was committed and the fact that the victim was a helpless girl of four years clearly outweigh the mitigating circumstances now brought on record. Having taken an overall view of the matter, in our considered view, no case is made out to take a different view in the matter. We, therefore, affirm the view taken in the Judgment under review and dismiss the present Review Petition.

354. The mitigating factors which have been highlighted before us on the basis of the affidavits filed by the Appellants pertain to the strata to which they belong, the aged parents, marital status and the young children and the suffering they would go through and the calamities they would face in case of affirmation of sentence, their conduct while they are in custody and the reformative

path they have chosen and their transformation and the possibility of reformation. That apart, emphasis has been laid on their young age and rehabilitation.

355. Now, we shall focus on the nature of the crime and manner in which it has been committed. The submission of Mr. Luthra, learned Senior Counsel, is that the present case amounts to devastation of social trust and completely destroys the collective balance and invites the indignation of the society. It is submitted by him that that a crime of this nature creates a fear psychosis and definitely falls in the category of rarest of the rare cases.

356. It is necessary to state here that in the instant case, the brutal, barbaric and diabolic nature of the crime is evincible from the acts committed by the accused persons, viz., the assault on the informant, P.W. 1 with iron rod and tearing off his clothes; assaulting the informant and the deceased with hands, kicks and iron rod and robbing them of their personal belongings like debit cards, ring, informant's shoes, etc.; attacking the deceased by forcibly disrobing her and committing violent sexual assault by all the Appellants; their brutish behavior in having anal sex with the deceased and forcing her to perform oral sex; injuries on the body of the deceased by way of bite marks (10 in number); and insertion of rod in her private parts that, inter alia, caused perforation of her intestine which caused sepsis and, ultimately, led to her death. The medical history of the prosecutrix (as proved in the record in Ex. P.W. 50/A and Ex. P.W. 50) demonstrates that the entire intestine of the prosecutrix was perforated and splayed open due to the repeated insertion of the rod and hands; and the Appellants had pulled out the internal organs of the prosecutrix in the most savage and inhuman manner that caused grave injuries which ultimately annihilated her life. As has been established, the prosecutrix sustained various bite marks which were observed on her face, lips, jaws, near ear, on the right and left breast, left upper arm, right lower limb, right inner groin, right lower thigh, left thigh lateral, left lower anterior and genitals. These acts itself demonstrate the mental perversion and inconceivable brutality as caused by the Appellants. As further proven, they threw the informant and the deceased victim on the road in a cold winter night. After throwing the informant and the deceased victim, the convicts tried to run the bus over them so that there would be no evidence against them. They made all possible efforts in destroying the evidence by, inter alia, washing the bus and burning the clothes of the deceased and after performing the gruesome act, they divided the loot among themselves. As we have narrated the incident that has been corroborated by the medical evidence, oral testimony and the dying declarations, it is absolutely obvious that the accused persons had found an object for enjoyment in her and, as is evident, they were obsessed with the singular purpose sans any feeling to ravish her as they liked, treat her as they felt and, if we allow ourselves to say, the gross sadistic and beastly instinctual pleasures came to the forefront when they, after ravishing her, thought it to be just a matter of routine to throw her alongwith her friend out of the bus and crush them. The casual manner with which she was treated and the devilish manner in which they played with her identity and dignity is humanly inconceivable. It sounds like a story from a different world where humanity has been treated with irreverence. The appetite for sex, the hunger for violence, the position of the empowered and the attitude of perversity, to say the least, are bound to shock the collective conscience which knows not what to do. It is manifest that the wanton lust, the servility to absolutely unchained carnal desire and slavery to the loathsome beastility of passion ruled the mindset of the Appellants to commit a crime which can summon

with immediacy "tsunami" of shock in the mind of the collective and destroy the civilised marrows of the milieu in entirety.

357. When we cautiously, consciously and anxiously weigh the aggravating circumstances and the mitigating factors, we are compelled to arrive at the singular conclusion that the aggravating circumstances outweigh the mitigating circumstances now brought on record. Therefore, we conclude and hold that the High Court has correctly confirmed the death penalty and we see no reason to differ with the same.

358. Before we part with the case, we are obligated to record our unreserved appreciation for the assistance rendered by Mr. Raju Ramachandran and Mr. Sanjay R. Hegde, learned amicus curiae appointed by the Court. We must also record our uninhibited appreciation for Mr. M.L. Sharma and Mr. A.P. Singh, learned Counsel for the Appellants, for they, keeping the tradition of the Bar, defended the Appellants at every stage.

359. In view of our preceding analysis, the appeals are bound to pave the path of dismissal, and accordingly, we so direct.

R. Banumathi, J.

360. I have gone through the judgment of my esteemed Brother Justice Dipak Misra. I entirely agree with the reasoning adopted by him and the conclusions arrived at. However, in view of the significant issues involved in the matter, in the light of settled norms of appreciation of evidence in rape cases and the role of Judiciary in addressing crime against women, I would prefer to give my additional reasoning for concurrence.

361. Honesty, pride, and self- esteem are crucial to the personal freedom of a woman. Social progress depends on the progress of everyone. Following words of the father of our nation must be noted at all times:

To call woman the weaker sex is a libel; it is man's injustice to woman. If by strength is meant moral power, then woman is immeasurably man's superior. Has she not greater intuition, is she not more self- sacrificing, has she not greater powers of endurance, has she not greater courage? Without her, man could not be. If non- violence is the law of our being, the future is with woman. Who can make a more effective appeal to the heart than woman?

362. Crimes against women - an area of concern: Over the past few decades, legal advancements and policy reforms have done much to protect women from all sources of violence and also to sensitize the public on the issue of protection of women and gender justice. Still, the crimes

against women are on the increase. As per the annual report of National Crime Records Bureau titled, 'Crime in India 2015' available at http://ncrb.nic.in/StatePublications/CII/CII2015/FILES/Compendium- 15.11.16.pdf, a total of 3,27,394 cases of crime against women were reported in the year 2015, which shows an increase of over 43% in crime against women since 2011, when 2,28,650 cases were reported. A percentage change of 110.5% in the cases of crime against women has been witnessed over the past decade (2005 to 2015), meaning thereby that crime against women has more than doubled in a decade. An overall crime rate under the head, 'crime against women' was reported as 53.9% in 2015, with Delhi UT at the top spot.

363. As per the National Crime Records Bureau, a total of 34,651 cases of rape Under Section 376 Indian Penal Code were registered during 2015 (excluding cases under the Protection of Children from Sexual Offences Act, 2012). An increasing trend in the incidence of rape has been observed during the period 2011- 2014. These cases have shown an increase of 9.2% in the year 2011 (24,206 cases) over the year 2010 (22,172 cases), an increase of 3.0% in the year 2012 (24,923 cases) over 2011, with further increase of 35.2% in the year 2013 (33,707 cases) over 2012 and 9.0% in 2014 (36,735 cases) over 2013. A decrease of 5.7% was reported in 2015 (34,651 cases) over 2014 (36,735 cases). 12.7% (4,391 out of 34,651 cases) of total reported rape cases in 2015 were reported in Madhya Pradesh followed by Maharashtra (4,144 cases), Rajasthan (3,644 cases), Uttar Pradesh (3,025 cases) and Odisha (2,251 cases) accounting for 11.9%, 10.5%, 8.7% and 6.5% of total cases respectively. NCT of Delhi reported highest crime rate of 23.7% followed by Andaman & Nicobar Islands at 13.5% as compared to national average of 5.7%. In order to combat increasing crime against women, as depicted in the statistics of National Crime Records Bureau, the root of the problem must be studied in depth and the same be remedied through stringent legislation and other steps. In order to secure social order and security, it is imperative to address issues concerning women, in particular crimes against women on priority basis.

364. Stringent legislation and punishments alone may not be sufficient for fighting increasing crimes against women. In our tradition bound society, certain attitudinal change and change in the mind- set is needed to respect women and to ensure gender justice. Right from childhood years' children ought to be sensitized to respect women. A child should be taught to respect women in the society in the same way as he is taught to respect men. Gender equality should be made a part of the school curriculum. The school teachers and parents should be trained, not only to conduct regular personality building and skill enhancing exercise, but also to keep a watch on the actual behavioral pattern of the children so as to make them gender sensitized. The educational institutions, Government institutions, the employers and all concerned must take steps to create awareness with regard to gender sensitization and to respect women. Sensitization of the public on gender justice through TV, media and press should be welcomed. On the practical side, few of the suggestions are worthwhile to be considered. Banners and placards in the public transport vehicles like autos, taxis and buses etc. must be ensured. Use of street lights, illuminated bus stops and extra police patrol during odd hours must be ensured. Police/security guards must be posted at dark and lonely places like parks, streets etc. Mobile apps for immediate assistance of women should be introduced and effectively maintained. Apart from effective implementation of the various legislation protecting women, change in the mind set of the society at large and

creating awareness in the public on gender justice, would go a long way to combat violence against women.

365. Factual Matrix: The entire factual matrix of the concerned horrendous incident has already been fairly set out in the judgment of my esteemed brother Justice Dipak Misra, the High Court and the trial Court. Suffice only to briefly recapitulate the facts, for my reference purpose and for completion.

366. In the wintry night of 16.12.2012, when the entire Delhi was busy in its day- to- day affair, embracing the joy of year- end, two youths were bravely struggling to save their dignity and life. It is a case of barbaric sexual violence against women, in fact against the society at large, where the accused and juvenile in conflict with law picked up a 23 year old physiotherapy student and her male friend (P.W. 1) accompanying her, from a busy place in Delhi- Munirka Bus stop and subjected them to heinous offences. The accused gang- raped the prosecutrix in the moving bus and completely ravished her in front of her helpless friend, Awninder Pratap (P.W. 1). The accused, on satisfaction of their lust, threw both the victims, half naked, outside the bus, in December cold near Mahipalpur flyover. The prosecutrix and P.W. 1 were noticed in miserable condition near Mahipalpur flyover, where they were thrown, by P.W. 72 Raj Kumar, who was on patrolling duty that night in the area and P.W. 73 Ram Chandar, Head Constable, rushed the prosecutrix and P.W. 1 to Safdarjung Hospital owing to the need of immediate medical attention. Law was set in motion by the statement of P.W. 1, which was recorded after giving primary medical treatment to him. Statement/Dying declaration of the prosecutrix was also recorded by P.W. 49 Doctor, P.W. 27 Sub- Divisional Magistrate and P.W. 30 Metropolitan Magistrate. After intensive care and treatment in ICU in Delhi, the victim was airlifted to a hospital in Singapore by an air- ambulance where she succumbed to her injuries on 29.12.2012.

367. The incident shocked the nation and generated public rage. A Committee headed by Justice J.S. Verma, Former Chief Justice of India was constituted to suggest amendments to deal with sexual offences more sternly and effectively in future. The suggestions of the Committee led to the enactment of Criminal Law (Amendment) Act, 2013 which, inter alia, brought in substantive as well as procedural reforms in the core areas of rape law. The changes brought in, inter alia, can broadly be titled as under: (i) Extension of the definition of the offence of rape in Section 375 Indian Penal Code; (ii) Adoption of a more pragmatic approach while dealing with the issue of consent in the offence of rape; and (iii) Introduction of harsher penalty commensurating with the gravity of offence. These subsequent events though not relevant for the purpose of this judgment, I have referred to it for the sake of factual completion.

368. Both the courts below, by recording concurrent findings, have found all the accused guilty of the offences they were charged with and owing to the gravity and manner of committing the heinous offences held that the acts of the accused shake the conscience of the society falling within the category of rarest of rare cases and awarded death penalty. Briefly put, the courts below have found that the prosecution has established the guilt of the accused inter alia on the following:

1. Three dying declarations of the prosecutrix, complementing each other, corroborated by medical evidence and other direct as well as circumstantial evidence.

2. Testimony of eye witness - P.W. 1, corroborated by circumstantial evidence as well as scientific evidence.

3. Recovery of the bus in which incident took place and recovery of the concerned iron rod therefrom, completing the chain of circumstantial evidence, by proof of scientific evidence like DNA analysis, finger print analysis etc.

4. Arrest of the accused and their identification by P.W. 1, recovery of articles belonging to the prosecutrix and P.W. 1 from the accused, pursuant to their disclosure statement, substantiated by proof of DNA analysis.

5. Conspiracy of the accused in the commission of offence.

369. While concurring with the majority, I have recorded my reasoning by considering the evidence on record in the light of settled legal principles and also analysed the justifiability of the punishment awarded to the accused. For proper appreciation of evidence, it is apposite to first refer to the settled principles and norms of appreciation of evidence of prosecutrix and other evidence in a rape case.

370. Duty of court in appreciation of evidence while dealing with cases of rape: Crime against women is an unlawful intrusion of her right to privacy, which offends her self- esteem and dignity. Expressing concern over the increasing crime against women, in State of Punjab v. Gurmit Singh and Ors. MANU/SC/0366/1996 : (1996) 2 SCC 384, this Court held as under:

21. Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating woman's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault - - it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get

swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case.....

[Emphasis supplied]

371. The above principle of law, declared in Gurmeet Singh's case is reiterated in various cases viz., State of Rajasthan v. N.K. The Accused MANU/SC/0218/2000 : (2000) 5 SCC 30; State of H.P. v. Lekh Raj and Anr. MANU/SC/0714/1999 : (2000) 1 SCC 247; State of H.P. v. Asha Ram MANU/SC/1902/2005 : (2005) 13 SCC 766.

372. Clause (g) of Sub- section (2) of Section 376 Indian Penal Code (prior to 2013 Amendment Act 13 of 2013) deals with cases of gang rape. In order to establish an offence Under Section 376(2)(g) Indian Penal Code, read with Explanation I thereto, the prosecution must adduce evidence to indicate that more than one accused had acted in concert and in such an event, if rape is committed by even one, all the accused are guilty, irrespective of the fact that only one or more of them had actually committed the act. Section 376(2)(g) read with Explanation I thus embodies a principle of joint liability. But so far as appreciation of evidence is concerned, the principles concerning the cases falling under Sub- section (1) of Section 376 Indian Penal Code apply.

373. In a case of rape, like other criminal cases, onus is always on the prosecution to prove affirmatively each ingredients of the offence. The prosecution must discharge this burden of proof to bring home the guilt of the accused and this onus never shifts. In Narender Kumar v. State (NCT of Delhi) MANU/SC/0481/2012 : (2012) 7 SCC 171, it was held as under:

29. However, even in a case of rape, the onus is always on the prosecution to prove, affirmatively each ingredient of the offence it seeks to establish and such onus never shifts. It is no part of the duty of the defence to explain as to how and why in a rape case the victim and other witnesses have falsely implicated the accused. The prosecution case has to stand on its own legs and cannot take support from the weakness of the case of defence. ..... There is an initial presumption of innocence of the accused and the prosecution has to bring home the offence against the accused by reliable evidence. The accused is entitled to the benefit of every reasonable doubt.

374. At the same time while dealing with cases of rape, the Court must act with utmost sensitivity and appreciate the evidence of prosecutrix in lieu of settled legal principles. Courts while trying an accused on the charge of rape, must deal with the case with utmost sensitivity, examining the broader probabilities of a case and it should not be swayed by minor contradictions and discrepancies in appreciation of evidence of the witnesses which are not of a substantial character. It is now well- settled that conviction for an offence of rape can be based on the sole testimony of the prosecutrix corroborated by medical evidence and other circumstantial evidence such as the report of chemical examination, scientific examination etc., if the same is found natural and trustworthy.

375. Persisting notion that the testimony of victim has to be corroborated by other evidence must be removed. To equate a rape victim to an accomplice is to add insult to womanhood. Ours is a conservative society and not a permissive society. Ordinarily a woman, more so, a young woman will not stake her reputation by levelling a false charge, concerning her chastity. In State of Karnataka v. Krishnappa MANU/SC/0210/2000 : (2000) 4 SCC 75, it was held as under:

15. Sexual violence apart from being a dehumanising act is an unlawful intrusion of the right to privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity - - it degrades and humiliates the victim and where the victim is a helpless innocent child, it leaves behind a traumatic experience. The courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. .....

16. A socially sensitised Judge, in our opinion, is a better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos.

[emphasis supplied]

376. There is no legal compulsion to look for corroboration of the prosecutrix's testimony unless the evidence of the victim suffers from serious infirmities, thereby seeking corroboration. In Bharwada Bhoginbhai Hirjibhai v. State of Gujarat MANU/SC/0090/1983 : (1983) 3 SCC 217, it was held as under:

9. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated society. We must analyze the argument in support of the need for corroboration and subject it to relentless and remorseless cross- examination. And we must do so with a logical, and not an opinionated, eye in the light of probabilities with our feet firmly planted on the soil of India and with our eyes focussed on the Indian horizon. We must not be swept off the feet by the approach made in the western world which has its own social milieu, its own social mores, its own permissive values, and its own code of life. Corroboration may be considered essential to establish a sexual offence in the backdrop of the social ecology of the western world. It is wholly unnecessary to import the said concept on a turnkey basis and to transplant it on the Indian soil regardless of the altogether different atmosphere, attitudes, mores, responses of the Indian society, and its profile. The identities of the two worlds are different. .....

10. By and large these factors are not relevant to India, and the Indian conditions. Without the fear of making too wide a statement, or of overstating the case, it can be said that rarely will a girl or a woman in India make false allegations of sexual assault on account of any such factor as has been just enlisted. The statement is generally true in the context of the urban as also rural society. It is also by and large true in the context of the sophisticated, not so sophisticated, and unsophisticated society. Only very rarely can one conceivably come across an exception or two and that too possibly from amongst the urban elites. Because (1) A girl or a woman in the tradition- bound non- permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. (2) She would be conscious of the danger of being ostracized by the society or being looked down by the society including by her own family members, relatives, friends, and neighbours. (3) She would have to brave the whole world. (4) .....

11. ..... On principle the evidence of a victim of sexual assault stands on par with evidence of an injured witness. Just as a witness who has sustained an injury (which is not shown or believed to be self- inflicted) is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of a sex offence is entitled to great weight, absence of corroboration notwithstanding. And while corroboration in the form of eyewitness account of an independent witness may often be forthcoming in physical assault cases, such evidence cannot be expected in sex offences, having regard to the very nature of the offence. .....

[emphasis supplied]

It was further held in Bharwada Bhoginbhai Hirjibhai (supra) that if the evidence of the victim does not suffer from any basic infirmity and the "probabilities- factor" does not render it unworthy of credence, there is no reason to insist on corroboration except corroboration by the medical evidence. The same view was taken in Krishan Lal v. State of Haryana MANU/SC/0147/1980 : (1980) 3 SCC 159.

377. It is well- settled that conviction can be based on the sole testimony of the prosecutrix if it is implicitly reliable and there is a ring of truth in it. Corroboration as a condition for judicial reliance on the testimony of a prosecutrix is not requirement of law but a guidance of prudence under given circumstances. In Rajinder alias Raju v. State of Himachal Pradesh MANU/SC/1122/2009 : (2009) 16 SCC 69, it was held as under:

19. In the context of Indian culture, a woman- - victim of sexual aggression- - would rather suffer silently than to falsely implicate somebody. Any statement of rape is an extremely humiliating experience for a woman and until she is a victim of sex crime, she would not blame anyone but the real culprit. While appreciating the evidence of the prosecutrix, the courts must always keep in mind that no self- respecting woman would put her honour at stake by falsely alleging commission of rape on her and therefore, ordinarily a look for corroboration of her testimony is

unnecessary and uncalled for. But for high improbability in the prosecution case, the conviction in the case of sex crime may be based on the sole testimony of the prosecutrix. It has been rightly said that corroborative evidence is not an imperative component of judicial credence in every case of rape nor the absence of injuries on the private parts of the victim can be construed as evidence of consent.

378. In Raju and Ors. v. State of Madhya Pradesh MANU/SC/8353/2008 : (2008) 15 SCC 133, it was held as under:

10. .....that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on a par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. .....

11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.

379. In State of H.P. v. Asha Ram MANU/SC/1902/2005 : (2005) 13 SCC 766, this Court highlighted the importance of, and the weight to be attached to, the testimony of the prosecutrix. In para (5), it was held as under:

5. ..... It is now a well- settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital, unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is also a well- settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under the given circumstances. The evidence of the prosecutrix is more reliable than that of an injured witness. Even minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case.

380. As held in the case of State of Punjab v. Ramdev Singh MANU/SC/1063/2003 : (2004) 1 SCC 421, there is no rule of law that the testimony of the prosecutrix cannot be acted upon without corroboration in material particulars. She stands at a higher pedestal than an injured witness. However, if the Court of facts finds it difficult to accept the version of the prosecutrix on its face

value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. The above judgment of Ramdev Singh (supra) has been approvingly quoted in State of U.P. v. Munshi MANU/SC/7982/2008 : (2008) 9 SCC 390.

381. In a catena of decisions, this Court has held that conviction can be based on the sole testimony of the prosecutrix, provided it is natural, trustworthy and worth being relied upon vide State of H.P. v. Gian Chand MANU/SC/0312/2001 : (2001) 6 SCC 71, State of Rajasthan v. N.K. The Accused MANU/SC/0218/2000 : (2000) 5 SCC 30; State of H.P. v. Lekh Raj and Anr. MANU/SC/0714/1999 : (2000) 1 SCC 247, Wahid Khan v. State of Madhya Pradesh MANU/SC/1850/2009 : (2010) 2 SCC 9, Dinesh Jaiswal v. State of Madhya Pradesh MANU/SC/0104/2010 : (2010) 3 SCC 232; Om Prakash v. State of Haryana MANU/SC/0756/2011 : (2011) 14 SCC 309.

382. Observing that once the statement of the prosecutrix inspires confidence, conviction can be based on the solitary evidence of the prosecutrix and that corroboration of testimony of a prosecutrix is not a requirement of law but only a rule of prudence, in Narender Kumar's case (supra), this Court held as under:

20. It is a settled legal proposition that once the statement of the prosecutrix inspires confidence and is accepted by the court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case.

21. A prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject- matter being a criminal charge. However, if the court finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or substantial (sic circumstantial), which may lend assurance to her testimony. (Vide Vimal Suresh Kamble v. Chaluverapinake Apal S.P. MANU/SC/0015/2003 : (2003) 3 SCC 175 and Vishnu v. State of Maharashtra MANU/SC/2156/2005 : (2006) 1 SCC 283.)

383. Courts should not attach undue importance to discrepancies, where the contradictions sought to be brought up from the evidence of the prosecutrix are immaterial and of no consequence. Minor variations in the testimony of the witnesses are often the hallmark of truth of the testimony. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence. Due to efflux of time, there are bound to be minor contradictions/discrepancies in the statement of the prosecutrix but such minor discrepancies and inconsistencies are only natural since when

truth is sought to be projected through human, there are bound to be certain inherent contradictions. But as held in Om Prakash v. State of U.P. MANU/SC/8150/2006 : (2006) 9 SCC 787, the Court should examine the broader probabilities of a case.

384. There is no quarrel over the proposition that the evidence of the prosecutrix is to be believed by examining the broader probabilities of a case. But where there are serious infirmities and inherent inconsistencies in evidence; the prosecutrix making deliberate improvement on material point with a view to rule out consent on her part, no reliance can be placed upon the testimony of the prosecutrix. In Tameezuddin v. State (NCT of Delhi) MANU/SC/1621/2009 : (2009) 15 SCC 566, it was held as under:

9. It is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter. We are of the opinion that the story is indeed improbable.

The same view was taken in Suresh N. Bhusare v. State of Maharashtra MANU/SC/0529/1998 : (1999) 1 SCC 220 and Jai Krishna Mandal v. State of Jharkhand MANU/SC/1347/2010 : (2010) 14 SCC 534.

385. On the anvil of the above principles, let us test the case of prosecution and version of the prosecutrix as depicted in her dying declaration.

386. Dying Declaration: Prosecution relies upon three dying declarations of the victim: (i) Statement of victim recorded by P.W. 49 Dr. Rashmi Ahuja (Ex. P.W. 49/A) when the victim was brought to Safdarjung Hospital and admitted in the Gynae casualty at about 11:15 p.m. on 16.12.2012 - the victim gave a brief account of the incident stating that she went to a movie with her friend Awnindra (P.W. 1) and that after the movie, they together boarded the bus from Munirka bus stop in which she was gang- raped and that she was thrown away from the moving bus thereafter, along with her friend; (ii) Second dying declaration recorded by P.W. 27 Usha Chaturvedi, SDM (Ex. P.W. 27/A) on 21.12.2012 at about 09:00 p.m. - the victim gave the details of the entire incident specifying the role of each accused: gang- rape, unnatural sex committed on her, the injuries inflicted by accused on her vagina and rectum, by use of iron rod and by insertion of hands in her private parts; description of the bus, robbery and lastly throwing both the victim and also her boyfriend out of the moving bus in naked condition near Mahipalpur flyover; (iii) Third dying declaration recorded by P.W. 30 Pawan Kumar, Metropolitan Magistrate (Ex. P.W. 30/D) on 25.12.2012 at 1:00 PM at ICU, Safdarjung Hospital by putting questions in multiple choice and recording answers through such questions by gestures or writings - the victim wrote the names of the accused in the third dying declaration. Evidence of P.W. 28 Dr. Rajesh Rastogi and the certificate (Ex. P.W. 28/A) given by him establishes that the victim was in a fit mental condition to give the statement through gestures. Furthermore, P.W. 75 Asha Devi, mother of the victim in her cross- examination also deposed that she had a talk with her daughter on the night

of 25.12.2012, which shows that the victim was conscious, communicative and oriented. Contentions urged, assailing the fit mental condition of the victim have no merit.

387. With regard to the contention that there were improvements in the dying declarations, I am of he view, the victim was gang- raped and iron rod was inserted in her private parts in the incident and the victim must have been pushed to deep emotional crisis. Rape deeply affects the entire psychology of the woman and humiliates her, apart from leaving her in a trauma. The testimony of the rape victim must be appreciated in the background of the entire case and the trauma which the victim had undergone. As a matter of record, P.W. 49 Dr. Rashmi Ahuja, at around 11:15 p.m. on the night of 16.12.2012, had attended to the prosecutrix as soon as she was brought to the hospital and had prepared casualty/OPD Card of the prosecutrix (Ex. P.W. 49/A), as well as her MLC (Ex. P.W. 49/B). At that time, P.W. 49 had found her cold and clammy due to vaso- constriction. The prosecutrix was found shivering, for which she was administered IV line and warm saline in order to stabilize her pulse and BP. When the victim was in such a condition, the victim cannot be expected to give minute details of the occurrence like overt act played by the accused, insertion of iron rod etc. There is no justification for blowing up such omission out of proportion in the statement recorded by P.W. 49 Dr. Rashmi Ahuja and doubt the same. In the occurrence, physical and emotional balance of the victim must have been greatly disturbed. Startled by the incident, whatever the victim was able to momentarily recollect, she narrated to P.W. 49 and placed in that position non- mention of minute details in Ex. P.W. 49/A cannot be termed as a material omission.

388. Dying declaration is a substantial piece of evidence provided it is not tainted with malice and is not made in an unfit mental state. Each case of dying declaration has to be considered in its own facts and circumstances in which it is made. However, there are some well- known tests to ascertain as to whether the statement was made in reference to cause of death of its maker and whether the same could be relied upon or not. The Court also has to satisfy as to whether the deceased was in a fit mental state to make the statement. The Court must scrutinize the dying declaration carefully and ensure that the declaration is not the result of tutoring, prompting or imagination. Once the Court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. That the deceased had the opportunity to observe and identify the assailants and was in a fit state to make the declaration. [K. Ramachandra Reddy and Anr. v. Public Prosecutor MANU/SC/0127/1976 : (1976) 3 SCC 618]

389. The principles governing dying declarations have been exhaustively laid down in several judicial pronouncements. In Paniben (Smt.) v. State of Gujarat MANU/SC/0346/1992 : (1992) 2 SCC 474, this Court referred to a number of judgments laying down the principles governing dying declaration. In this regard, I find it apposite to quote the following from Paniben (supra) as under:

18. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross- examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the Court also insists that the dying declaration should be of such a nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of deceased was not as a result of either tutoring, prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailants. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under:

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (Munnu Raja v. State of M.P. MANU/SC/0174/1975 : (1976) 3 SCC 104)

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (State of U.P. v. Ram Sagar Yadav MANU/SC/0118/1985 : (1985) 1 SCC 522; Ramawati Devi v. State of Bihar MANU/SC/0135/1983 : (1983) 1 SCC 211).

(iii) This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. (K. Ramachandra Reddy v. Public Prosecutor MANU/SC/0127/1976 : (1976) 3 SCC 618).

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (Rasheed Beg v. State of M.P. MANU/SC/0160/1973 : (1974) 4 SCC 264)

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (Kake Singh v. State of M.P. (1981) Supp. SCC 25)

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (Ram Manorath v. State of U.P. MANU/SC/0207/1981 : (1981) 2 SCC 654)

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (State of Maharashtra v. Krishnamurti Laxmipati Naidu (1980) Supp. SCC 455)

(viii) Equally, merely because it is a brief statement, it is not be discarded. On the contrary, the shortness of the statement itself guarantees truth. Surajdeo Oza v. State of Bihar MANU/SC/0269/1979 : (1980) Supp. SCC 769)

(ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye witness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (Nanahau Ram v. State of M.P. MANU/SC/0334/1988 : (1988) Supp. SCC 152)

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (State of U.P. v. Madan Mohan MANU/SC/0565/1989 : (1989) 3 SCC 390)

The above well- settled tests relating to dying declarations and the principles have been elaborately considered in a number of judgments. [Vide Khushal Rao v. State of Bombay MANU/SC/0107/1957 : AIR 1958 SC 22; State of Uttar Pradesh v. Ram Sagar Yadav MANU/SC/0118/1985 : (1985) 1 SCC 552; State of Orissa v. Bansidhar Singh MANU/SC/0248/1996 : (1996) 2 SCC 194; Panneerselvam v. State of Tamil Nadu MANU/SC/7726/2008 : (2008) 17 SCC 190; Atbir v. Govt. of NCT of Delhi MANU/SC/0576/2010 : (2010) 9 SCC 1 and Umakant and Anr. v. State of Chhattisgarh MANU/SC/0574/2014 : (2014) 7 SCC 405].

390. Multiple Dying Declarations: In cases where there are more than one dying declarations, the Court should consider whether they are consistent with each other. If there are inconsistencies, the nature of the inconsistencies must be examined as to whether they are material or not. In cases where there are more than one dying declaration, it is the duty of the Court to consider each one of them and satisfy itself as to the voluntariness and reliability of the declarations. Mere fact of recording multiple dying declarations does not take away the importance of each individual declaration. Court has to examine the contents of dying declaration in the light of various surrounding facts and circumstances. This Court in a number of cases, where there were multiple dying declarations, consistent in material particulars not being contradictory to each other, has affirmed the conviction. [Vide Vithal v. State of Maharashtra MANU/SC/8618/2006 : (2006) 13 SCC 54].

391. In Amol Singh v. State of Madhya Pradesh MANU/SC/7724/2008 : (2008) 5 SCC 468, while discarding the two inconsistent dying declarations, laid down the principles for consideration of multiple dying declarations as under:

13. Law relating to appreciation of evidence in the form of more than one dying declaration is well settled. Accordingly, it is not the plurality of the dying declarations but the reliability thereof

that adds weight to the prosecution case. If a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without any corroboration. The statement should be consistent throughout. If the deceased had several opportunities of making such dying declarations, that is to say, if there are more than one dying declaration they should be consistent. (See Kundula Bala Subrahmanyam v. State of A.P. MANU/SC/0508/1993 : (1993) 2 SCC 684) However, if some inconsistencies are noticed between one dying declaration and the other, the court has to examine the nature of the inconsistencies, namely, whether they are material or not. While scrutinising the contents of various dying declarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances.

392. In Ganpat Mahadeo Mane v. State of Maharashtra MANU/SC/0167/1993 : (1993) Supp. (2) SCC 242, there were three dying declarations. One recorded by the doctor; the second recorded by the police constable and also attested by the doctor and the third dying declaration recorded by the Executive Magistrate which was endorsed by the doctor. Considering the third dying declaration, this Court held that all the three dying declarations were consistent and corroborated by medical evidence and other circumstantial evidence and that they did not suffer from any infirmity.

393. In Lakhan v. State of M.P. MANU/SC/0577/2010 : (2010) 8 SCC 514, this Court considered a similar situation where in the first dying declaration given to a police officer was more elaborate and the subsequent dying declaration recorded by the Judicial Magistrate lacked certain information given earlier. After examining the contents of the two dying declarations, this Court held that there was no inconsistency between two dying declarations and non- mention of certain features in the dying declarations recorded by the Judicial Magistrate does not make both the dying declarations inconsistent.

394. In the light of the above principles, I now advert to analyze the facts of the present case. The victim made three dying declarations: (i) statement recorded by P.W. 49 Dr. Rashmi Ahuja immediately after the victim was admitted to the hospital; (ii) Dying declaration (Ex. P.W. 27/A) recorded by P.W. 27 SDM Usha Chaturvedi on 21.12.2012; and (iii) dying declaration (Ex. P.W. 30/D) recorded by P.W. 30 Pawan Kumar, Metropolitan Magistrate on 25.12.2012 at 1:00 P.M. by multiple choice questions and recording answers by gestures and writing. In the first dying declaration (Ex. P.W. 49/A), the prosecutrix has stated that more than two men committed rape on her, bit her on lips, cheeks and breast and also subjected her to unnatural sex. In the second dying declaration (Ex. P.W. 27/A) recorded by P.W. 27, the victim has narrated the entire incident in great detail, specifying the role of each accused, rape committed by number of persons, insertion of iron rod in her private parts, description of the bus, robbery committed and throwing of both the victims out of the moving bus in naked condition. In the second dying declaration, she has also stated that the accused were addressing each other with the names like, "Ram Singh, Thakur, Raju, Mukesh, Pawan and Vinay". In the second dying declaration, though there are improvements in giving details of the incident, names of the accused etc., there are no material contradictions between the first and second dying declaration (Ex. P.W. 49/A and Ex. P.W. 27/A).

395. On 25.12.2012 at 1:00 P.M., P.W. 30 Pawan Kumar, Metropolitan Magistrate recorded the statement by putting multiple choice questions to the victim and by getting answers through gestures and writing. The third dying declaration (Ex. P.W. 30/D) is found consistent with the earlier two declarations. It conclusively establishes that the victim was brutally gang- raped, beaten by iron rod, subjected to other harsh atrocities and was finally dumped at an unknown place. While making the third declaration, the victim also tried to reveal the names of the accused by writing in her own handwriting viz. Ram Singh, Mukesh, Vinay, Akshay, Vipin, Raju.

396. As per the settled law governing dying declarations, even if there are minor discrepancies in the dying declarations, in the facts and circumstances of the case, the Court can disregard the same as insignificant. A three- Judge Bench of this Court in Abrar v. State of Uttar Pradesh MANU/SC/1062/2010 : (2011) 2 SCC 750, held that it is practical that minor discrepancies in recording dying declarations may occur due to pain and suffering of the victim, in case the declaration is recorded at multiple intervals and thus, such discrepancies need not be given much emphasis.

12. It is true that there are some discrepancies in the dying declarations with regard to the presence or otherwise of a light or a torch. To our mind, however, these are so insignificant that they call for no discussion. It is also clear from the evidence that the injured had been in great pain and if there were minor discrepancies inter se the three dying declarations, they were to be accepted as something normal. The trial court was thus clearly wrong in rendering a judgment of acquittal solely on this specious ground. We, particularly, notice that the dying declaration had been recorded by the Tahsildar after the doctor had certified the victim as fit to make a statement. The doctor also appeared in the witness box to support the statement of the Tahsildar. We are, therefore, of the opinion, that no fault whatsoever could be found in the dying declarations.

397. When a dying declaration is recorded voluntarily, pursuant to a fitness report of a certified doctor, nothing much remains to be questioned unless, it is proved that the dying declaration was tainted with animosity and a result of tutoring. Especially, when there are multiple dying declarations minor variations does not affect the evidentiary value of other dying declarations whether recorded prior or subsequent thereto. In Ashabai and Anr. v. State of Maharashtra MANU/SC/0011/2013 : (2013) 2 SCC 224, it was held as under:

15. ....As rightly observed by the High Court, the law does not insist upon the corroboration of dying declaration before it can be accepted. The insistence of corroboration to a dying declaration is only a rule of prudence. When the Court is satisfied that the dying declaration is voluntary, not tainted by tutoring or animosity, and is not a product of the imagination of the declarant, in that event, there is no impediment in convicting the accused on the basis of such dying declaration. When there are multiple dying declarations, each dying declaration has to be separately assessed and evaluated and assess independently on its own merit as to its evidentiary value and one cannot be rejected because of certain variation in the other.

398. Considering the present case on the anvil of the above principles, I find that though there was time gap between the declarations, all the three dying declarations are consistent with each

other and there are no material contradictions. All the three dying declarations depict truthful version of the incident, particularly the detailed narration of the incident concerning the rape committed on the victim, insertion of iron rod and the injuries caused to her vagina and rectum, unnatural sex committed on the victim and throwing the victim and P.W. 1 out of the moving bus. All the three dying declarations being voluntary, consistent and trustworthy, satisfy the test of reliability.

399. Dying Declaration by gestures and nods: Adverting to the contention that the third dying declaration made through gestures lacks credibility, it is seen that the multiple choice questions put to the prosecutrix by P.W. 30 Pawan Kumar, Metropolitan Magistrate, were simple and easily answerable through nods and gestures. That apart, before recording the dying declaration, P.W. 30 Pawan Kumar, Metropolitan Magistrate had satisfied himself about fit mental state of the victim to record dying declaration through nods and gestures. There is nothing proved on record to show that the mental capacity of the victim was impaired, so as to doubt the third dying declaration. As the victim was conscious, oriented and meaningfully communicative, it is natural that the victim was in a position to write the names of the accused persons and also about the use of long iron rod. The third dying declaration recorded through nods and gestures and also by the victim's own writing, writing the names of the accused inspires confidence in the Court; the same was rightly relied upon by the trial Court as well as the High Court.

400. Dying declaration made through signs, gesture or by nods are admissible as evidence, if proper care was taken at the time of recording the statement. The only caution the Court ought to take is to ensure that the person recording the dying declaration was able to correctly notice and interpret the gestures or nods of the declarant. While recording the third dying declaration, signs/gestures made by the victim, in response to the multiple choice questions put to the prosecutrix are admissible in evidence.

401. A dying declaration need not necessarily be by words or in writing. It can be by gesture or by nod. In Meesala Ramakrishan v. State of A.P. MANU/SC/0709/1994 : (1994) 4 SCC 182, this Court held as under:

20. .....that dying declaration recorded on the basis of nods and gestures is not only admissible but possesses evidentiary value, the extent of which shall depend upon who recorded the statement, what is his educational attainment, what gestures and nods were made, what were the questions asked - - whether they were simple or complicated - - and how effective or understandable the nods and gestures were.

The same view was reiterated in B. Shashikala v. State of A.P. MANU/SC/0052/2004 : (2004) 13 SCC 249.

402. In the case of rape and sexual assault, the evidence of prosecutrix is very crucial and if it inspires confidence of the court, there is no requirement of law to insist upon corroboration of the same for convicting the accused on the basis of it. Courts are expected to act with sensitivity and appreciate the evidence of the prosecutrix in the background of the entire facts of the case and not in isolation. In the facts and circumstances of the present case as the statements of the prosecutrix in the form of three dying declarations are consistent with each other and there are no material contradiction, they can be completely relied upon without corroboration. In the present case, the prosecutrix has made a truthful statement and the prosecution has established the case against the Respondents beyond reasonable doubt. The victim also wrote the names of the accused persons in her own hand- writing in the dying declaration recorded by P.W. 30 (Ex. P.W. 30/D). Considering the facts and circumstances of the present case and upon appreciation of the evidence and material on record, I find all the three dying declarations consistent, true and voluntary, satisfying the test of probabilities factor. That apart, the dying declarations are well-corroborated by medical and scientific evidence adduced by the prosecution. Moreover, the same has been amply corroborated by the testimony of eye witness- P.W. 1.

403. Corroboration of Dying declaration by Medical Evidence: The dying declaration is amply corroborated by medical evidence depicting injuries to vagina and internal injuries to rectum and recto- vaginal septum as noted by P.W. 49 Dr. Rashmi Ahuja and P.W. 50 Dr, Raj Kumar Chejara. On the night of 16.12.2012, the prosecutrix was medically examined by P.W. 49 who recorded her injuries and statement in the MLC (Ex. P.W. 49/B). On local examination, a sharp cut over right labia and a 6 cm long tag of vagina was found hanging outside the introitus. Vaginal examination showed bleeding and about 7 to 8 cm long posterior vaginal wall tear. A rectal tear of about 4 to 5 cm was also noticed communicating with the vaginal tear. Apart from the said injuries to the private parts of the prosecutrix, guarding and rigidity was also found in her abdomen and several bruises and marks on face were noticed. Bruises and abrasions around both the eyes and nostrils were also found. Lips were found edematous and left side of the mouth was injured by a small laceration. Bite marks over cheeks and breast, below areola, were also present. Bruises over the left breast and bite mark in interior left quadrant were prominent.

404. During surgery, conducted on 16/17.12.2012 P.W. 50 Dr. Raj Kumar Chejara (Ex. P.W. 50/A and Ex. P.W. 50/B) noted contusion and bruising of jejunum, large bowel, vaginal tear, and completely torn recto- vaginal septum. Small and large bowels were affected and were extremely bad for any definitive repair. It was also noted that rectum was longitudinally torn and the tear was continuing upward involving sigmoid colon, descending colon which was splayed open. There were multiple perforations at many places of ascending colon and calcum. Terminal ileum approximately one and a half feet loosely hanging in the abdominal cavity avulsed from its mesentery. Rest of the small bowel was non- existent with only patches of mucosa at places and borders of the mesentery were contused. While performing second surgery on 19th December, 2012, surgery team also recorded findings that rectum was longitudinally torn on anterior aspect in continuation with peritorial tear and other internal injuries. On 26- 12- 2012 the condition of the prosecutrix was examined and it was decided to shift her abroad for further treatment and she was shifted by an air- ambulance to Singapore Mount Elizabeth Hospital. The prosecutrix died at Mount Elizabeth Hospital, Singapore on 29- 12- 2012 at 04:45 AM. Cause of death is stated as sepsis with multi organ failure following multiple injuries. (Ex. P.W. 34/A)

405. Injuries to vagina, rectum and recto- vaginal septum as noted by P.W. 49 Dr. Rashmi Ahuja and P.W. 50 Dr. Raj Kumar Chejara; and the injuries as depicted in the post- mortem certificate, including the other external injuries which are evidently marks of violence during the incident, exhibit the cruel nature of gang rape committed on the victim. The profused bleeding from vagina and tag of vagina hanging outside; completely recto- vaginal septum clearly demonstrate the violent act of gang rape committed on the victim. The medical reports including the operation theatre notes (Ex. P.W. 50/A and 50/B) and the injuries thereon indicates the pain and suffering which the victim had undergone due to multiple organ failure and other injuries caused by insertion of iron rod.

406. If considered on the anvil of settled legal principles, injuries on the person of a rape victim is not even a sine qua non for proving the charge of rape, as held in Joseph v. State of Kerala MANU/SC/0313/2000 : (2000) 5 SCC 197. The same principle was reiterated in State of Maharashtra v. Suresh MANU/SC/0765/1999 : (2000) 1 SCC 471. As rightly held in State of Rajasthan v. N.K., The Accused MANU/SC/0218/2000 : (2000) 5 SCC 30, absence of injury on the person of the victim is not necessarily an evidence of falsity of the allegations of rape or evidence of consent on the part of the prosecutrix. In the present case, the extensive injuries found on the vagina/private parts of the body of the victim and injuries caused to the internal organs and all over the body, clearly show that the victim was ravished.

407. Corroboration of dying declaration by scientific evidence: The DNA profile generated from blood- stained pants, t- shirts and jackets recovered at the behest of A- 2 Mukesh matched with the DNA profile of the victim. Likewise, the DNA profile generated from the blood- stained jeans and banian recovered at the behest of A- 3 Akshay matched with the DNA profile of the victim. DNA profile generated from the blood- stained underwear, chappal and jacket recovered at the behest of A- 4 Vinay matched with the DNA profile of the victim. DNA profiles generated from the clothes of the accused recovered at their behest consistent with that of the victim is an unimpeachable evidence incriminating the accused in the occurrence. As submitted by the prosecution, there is no plausible explanation from the accused as to the matching of DNA profile of the victim with that of the DNA profile generated from the clothes of the accused. The courts below rightly took note of the DNA analysis report in finding the accused guilty.

408. Bite marks on the chest of the victim and Odontology Report: It is also to be noted that the photographs of bite marks found on the body of the victim, lifted by P.W. 66 Shri Asghar Hussain were examined by P.W. 71 Dr. Ashith B. Acharya. The analysis shows that at least three bite marks were caused by accused Ram Singh whereas one bite mark has been identified to have been most likely caused by accused Akshay. This aspect of Odontology Report has been elaborately discussed by the High Court in paragraphs (91) to (94) of its judgment. Odontology Report which links accused Ram Singh and accused Akshay, with the case, strengthens the prosecution case as to their involvement.

409. Going by the version of the prosecutrix, as per the dying declaration and the evidence adduced, in particular medical evidence and scientific evidence, I find the evidence of the prosecutrix being amply corroborated. As discussed earlier, in rape cases, Court should examine the broader probabilities of a case and not get swayed by discrepancies. The conviction can be based even on the sole testimony of the prosecutrix. However, in this case, dying declarations recorded from the prosecutrix are corroborated in material particulars by: (i) medical evidence; (ii) evidence of injured witness P.W. 1; (iii) matching of DNA profiles, generated from blood-stained clothes of the accused, iron rod recovered at the behest of deceased accused Ram Singh and various articles recovered from the bus with the DNA profile of the victim; (iv) recovery of belongings of the victim at the behest of the accused, viz. debit card recovered from A- 1 Ram Singh and Nokia mobile from A- 4 Vinay. The dying declarations well corroborated by medical and scientific evidence strengthen the case of the prosecution by conclusively connecting the accused with the crime.

410. Use of Iron Rod and death of the victim: Case of the prosecution is that the accused brutally inserted iron rod in the vagina of the prosecutrix and pulled out internal organs of the prosecutrix. The defence refuted the use of iron rod by the accused on the ground that the complainant as well as the victim did not mention the use of iron rods in their first statements. Contention of the Appellants is that when the victim had given details of the entire incident to P.W. 49 Dr. Rashmi Ahuja, if iron rod had been used, she would not have omitted to mention the use of iron rods in the incident. We do not find force in such a contention, as ample reliable evidence are proved on record which lead to the irresistible conclusion that iron rod was used and it was not a mere piece of concoction.

411. Use of iron rods and insertion of the same in the private parts of the victim is established by the second dying declaration recorded by SDM P.W. 27 Usha Chaturvedi, where the victim has given a detailed account of the incident, role of the accused, gang rape committed on her and other offences including the use of iron rods. The brutality with which the accused persons inserted iron rod in the rectum and vagina of the victim and took out her internal organs from the vaginal and anal opening is reflected in Ex. P.W. 49/A. Further, medical opinion of P.W. 49 (Ex. P.W. 49/G) stating that the recto- vaginal injury could be caused by the rods recovered from the bus, strengthens the statement of the victim and the prosecution version. When the second and third dying declarations of the prosecutrix are well corroborated by the medical evidence, non- mention of use of iron rods in prosecutrix's statement to P.W. 49 Dr. Rashmi Ahuja (Ex. P.W. 49/A), does not materially affect the credibility of the dying declaration. Insertion of iron rod in the private parts of the prosecutrix is amply established by the nature of multiple injuries caused to jejunum and rectum which was longitudinally torn, tag of vagina hanging out; and completely torn recto- vaginal septum.

412. At the behest of accused Ram Singh two iron rods (Ex. P- 49/1 and Ex. P- 49/2) were recovered from the shelf of the driver's cabin vide seizure Memo Ex. P.W. 74/G. The blood-stained rods deposited in the Malkhana were thereafter sent for chemical analysis. The DNA report prepared by P.W. 45 Dr. B.K. Mohapatra, indicates that the DNA profile developed from

the blood- stained iron rods is consistent with the DNA profile of the victim. Presence of blood on the iron rods and the DNA profile of which is consistent with the DNA profile of the victim establishes the prosecution case as to the alleged use of iron rods in the incident.

413. Evidence of P.W. 1: In his first statement made on 16.12.2012, eye witness P.W. 1 stated that he accompanied the prosecutrix to Select City Mall, Saket, New Delhi in an auto from Dwarka, New Delhi where they watched a movie till about 08:30 p.m. After leaving the Mall, P.W. 1 and the victim took an auto to Munirka from where they boarded the fateful bus. After the prosecutrix and P.W. 1 boarded the bus, the accused surrounded P.W. 1 and pinned him down in front side of the bus. While the accused Vinay and Pawan held P.W. 1, the other three accused committed rape on the victim on the rear side of the bus. Thereafter, other accused held P.W. 1, while Vinay and Pawan committed rape on the victim. Later accused Mukesh who was earlier driving the bus, committed rape on the victim. After the incident, P.W. 1 and the prosecutrix were thrown out of the moving bus, near Mahipalpur flyover. In the incident, P.W. 1 himself sustained injuries which lends assurance to his credibility.

414. That P.W. 1 accompanied the victim to Select City Mall and that he was with the victim till the end, is proved by ample evidence. As per the case of the prosecution, on the fateful day, the complainant and the prosecutrix had gone to Saket Mall to see a movie. CCTV footage produced by P.W. 25 Rajender Singh Bisht in two CDs (Ex. P.W. 25/C- 1 and P.W. 25/C- 2) and seven photographs (Ex. P.W. 25/B- 1 to Ex. P.W. 25/B- 7) corroborate the version of P.W. 1 that the complainant and the victim were present at Saket Mall till 8:57 p.m. The certificate Under Section 65- B of the Indian Evidence Act, 1872 with respect to the said footage is proved by P.W. 26 Shri Sandeep Singh (Ex. P.W. 26/A) who is the CCTV operator at Select City Mall.

415. The computer generated electronic record in evidence, admissible at a trial is proved in the manner specified in Section 65- B of the Evidence Act. Sub- section (1) of Section 65 of the Evidence Act makes electronic records admissible as a document, paper print out of electronic records stored in optical or magnetic media produced by a computer, subject to the fulfillment of the conditions specified in Sub- section (2) of Section 65- B of the Evidence Act. When those conditions are satisfied, the electronic record becomes admissible in any proceeding without further proof or production of the original, as evidence of any of the contents of the original or any fact stated therein of which direct evidence is admissible. Secondary evidence of contents of document can also be led Under Section 65 of the Evidence Act.

416. Having carefully gone through the deposition of P.W. 1, I find that his evidence, even after lengthy cross examination, remains unshaken. The evidence of a witness is not to be disbelieved simply because of minor discrepancies. It is to be examined whether he was present or not at the crime scene and whether he is telling the truth or not. P.W. 1 has clearly explained as to how he happened to be with the victim and considering the cogent evidence adduced by the prosecution, presence of P.W. 1 cannot be doubted in any manner. P.W. 1 himself was injured in the incident and he was admitted in the Casualty Ward, where P.W. 51 Dr. Sachin Bajaj examined him. As per

Ex. P.W. 51/A, lacerated wound over the vertex of scalp, lacerated wound over left upper lip and abrasion over right knee were found on the person of P.W. 1. Testimony of P.W. 1 being testimony of an injured witness lends credibility to his evidence and prosecution's case. As rightly pointed out by the Courts below, no convincing grounds exist to discard the evidence of P.W. 1, an injured witness.

417. The question of the weight to be attached to the evidence of an injured witness has been extensively discussed by this Court in Mano Dutt and Anr. v. State of Uttar Pradesh MANU/SC/0159/2012 : (2012) 4 SCC 79. After exhaustively referring to various judgments on this point, this Court held as under:

31. We may merely refer to Abdul Sayeed v. State of M.P. MANU/SC/0702/2010 : (2010) 10 SCC 259 where this Court held as under: (SCC pp. 271- 72, paras 28- 30)

28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built- in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. 'Convincing evidence is required to discredit an injured witness.' [Vide Ramlagan Singh v. State of Bihar MANU/SC/0216/1972 : (1973) 3 SCC 881, Malkhan Singh v. State of U.P. MANU/SC/0164/1974 : (1975) 3 SCC 311, Machhi Singh v. State of Punjab MANU/SC/0211/1983 : (1983) 3 SCC 470, Appabhai v. State of Gujarat 1988 Supp SCC 241, Bonkya v. State of Maharashtra MANU/SC/0066/1996 : (1995) 6 SCC 447, Bhag Singh v. State of Punjab MANU/SC/1308/1997 : (1997) 7 SCC 712, Mohar v. State of U.P. MANU/SC/0808/2002 : (2002) 7 SCC 606 (SCC p. 606b- c), Dinesh Kumar v. State of Rajasthan MANU/SC/7910/2008 : (2008) 8 SCC 270, Vishnu v. State of Rajasthan (2009) 10 SCC 477, Annareddy Sambasiva Reddy v. State of A.P. MANU/SC/0640/2009 : (2009) 12 SCC 546 and Balraje v. State of Maharashtra MANU/SC/0352/2010 : (2010) 6 SCC 673.]

29. While deciding this issue, a similar view was taken in Jarnail Singh v. State of Punjab MANU/SC/1584/2009 : (2009) 9 SCC 719 where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under: (SCC pp. 726- 27, paras 28- 29)

'28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In Shivalingappa Kallayanappa v. State of Karnataka MANU/SC/0053/1995 : 1994 Supp (3) SCC 235 this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason

that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. In State of U.P. v. Kishan Chand MANU/SC/0652/2004 : (2004) 7 SCC 629 a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross- examination and nothing can be elicited to discard his testimony, it should be relied upon (vide Krishan v. State of Haryana (2006) 12 SCC 459). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below.'

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.

418. After the accused were arrested, they made disclosure statements. Pursuant to the said disclosure statements, recoveries of various articles were effected which included clothes of the accused and articles belonging to P.W. 1 and the prosecutrix. The Samsung Galaxy Duos mobile phone recovered from A- 2 was identified by the complainant in the court as belonging to him and testimony of the complainant was further fortified by the testimony of P.W. 56 Sandeep Dabral, Manager, Spice Mobile Shop, who stated that the said Samsung Mobile bearing the respective IMEI number was sold in the name of the complainant. Also, the metro card and silver ring recovered at the behest of A- 3 Akshay were identified by P.W. 1 in court as belonging to him. The silver ring was also identified by the complainant in the TIP proceedings conducted on 28.12.2012. Likewise, the Hush- Puppies shoes recovered at the behest of A- 4 Vinay and wrist watch of Sonata make recovered at the behest of A- 5 Pawan were identified by P.W. 1 in TIP proceedings as belonging to him. Recoveries of articles of P.W. 1 and other scientific evidence, irrebutably establish the presence of P.W. 1 at the crime scene and strengthens the credibility of P.W. 1's testimony.

419. Apart from the recoveries made at the behest of the accused, presence of P.W. 1 is also confirmed by DNA profile generated from the blood- stained mulberry leaves and grass collected from Mahipalpur (seized vide Memo Ex. P.W. 74/C) where both the victims were thrown after the incident. As per the Chemical Analysis Report, DNA profile generated from the blood-stained murberry leaves collected from the Mahipalpur flyover were found to be of male origin and consistent with the DNA profile of P.W. 1. This proves that P.W. 1 was present with the

victim at the time of the incident and both of them were together thrown out of the bus at Mahipalpur.

420. Further, as discussed infra, pursuant to the disclosure statement of the accused, clothes of accused, some of which were blood- stained and other incriminating articles were recovered. P.W. 45 Dr. B.K. Mohapatra matched the DNA profiles of the blood detected on the clothes of the accused with that of the complainant and the victim. One set of DNA profile generated from jeans- pant of the accused Akshay (A- 3) matched the DNA profile of P.W. 1. Likewise, one set of DNA profile generated from the sports jacket of accused Vinay (A- 4) was found consistent with the DNA profile of P.W. 1. Also, one set of DNA profile generated from black coloured sweater of Accused Pawan Gupta (A- 5) was found consistent with the DNA profile of P.W. 1. Result of DNA analysis further corroborates the version of P.W. 1 and strengthens the prosecution case. DNA Analysis Report, as provided by P.W. 45 is a vital piece of evidence connecting the accused with the crime.

421. Matching of DNA profile generated from the bunch of hair recovered from the floor of the bus near the second row seat on the left side, with DNA profile of the complainant is yet another piece of evidence corroborating the version of P.W. 1 [vide Ex. P.W. 45/B]. Further, DNA profile developed from burnt cloth pieces, recovered from near the rear side entry of the bus was found consistent with DNA profile of P.W. 1; and this again fortifies the presence of P.W. 1 with the victim in the bus.

422. Contention of the Appellants is that there are vital contradictions in the statements of P.W. 1. It is contended that initially P.W. 1 did not give the names of the accused in the FIR and that he kept on improving his version, in particular, in the second supplementary statement recorded on 17.12.2012 in which he gave the details of the bus involved. To contend that testimony of P.W. 1 is not trustworthy, reliance is placed on Kathi Bharat Vajsur and Anr. v. State of Gujarat MANU/SC/0413/2012 : (2012) 5 SCC 724. In Kathi Bharat Vajsur's case, this Court has observed that when there are inconsistencies or contradictions in oral evidence and the same is found to be in contradiction with other evidence then it cannot be held that the prosecution has proved the case beyond reasonable doubt.

423. While appreciating the evidence of a witness, the approach must be to consider the entire evidence and analyze whether the evidence as a whole gives a complete chain of facts depicting truth. Once that impression is formed, it is necessary for the court to scrutinize evidence particularly keeping in view the prosecution case. Any minor discrepancies or improvements not touching the core of the prosecution case and not going to the root of the matter, does not affect the trustworthiness of the witness. Insofar as the contention that P.W. 1 kept on improving his version in his statement recorded at various point of time, it is noted that there are indeed some improvements in his version but, the core of his version as to the occurrence remains consistent. More so, when P.W. 1 and the victim faced such a traumatic experience, immediately after the incident, they cannot be expected to give minute details of the incident. It would have taken some

time for them to come out of the shock and recollect the incident and give a detailed version of the incident. It is to be noted that in the present case, the statements of P.W. 1 recorded on various dates are not contradictory to each other. The subsequent statements though are more detailed as compared to the former ones, in the circumstances of the case, it cannot be said to be unnatural affecting the trustworthiness of P.W. 1's testimony. There is hardly any justification for doubting the evidence of P.W. 1, especially when it is corroborated by recovery of P.W. 1's articles from the accused and scientific evidence.

424. The trial Court as well as the High Court found P.W. 1's evidence credible and trustworthy and I find no reason to take a different view. The view of the High Court and the trial court is fortified by the decisions of this Court in Pudhu Raja and Anr. v. State Rep. by Inspector of Police MANU/SC/0761/2012 : (2012) 11 SCC 196, Jaswant Singh v. State of Haryana MANU/SC/0236/2000 : (2000) 4 SCC 484 and Akhtar and Ors. v. State of Uttaranchal MANU/SC/0556/2009 : (2009) 13 SCC 722. Further, the evidence of P.W. 1 is amply strengthened by scientific evidence and recovery of the incriminating articles from the accused. The alleged omissions and improvements in the evidence of P.W. 1 pointed out by the defence do not materially affect the evidence of P.W. 1.

425. Recovery of the bus and its Involvement in the incident: Description of the entire incident by P.W. 1 and the victim led the investigating team to the Hotel named "Hotel Delhi Airport", where P.W. 1 and the victim were dumped after the incident. P.W. 67 P.K. Jha, owner of Hotel Delhi Airport handed over the pen drive containing CCTV footage (Ex. P- 67/1) and CD (Ex. P- 67/2) to the Investigating Officer which were seized. From the CCTV footage, the offending bus bearing registration No. DL- 1PC- 0149 was identified by P.W. 1. The bus was seized from Ravi Dass Camp and Ram Singh (A- 1) was also arrested.

426. P.W. 81 Dinesh Yadav is the owner of the bus bearing Registration No. DL- 1PC- 0149 (Ex. P- 1). P.W. 81 runs buses under the name and style "Yadav Travels". On interrogation, P.W. 81 Dinesh Yadav stated that A- 1 Ram Singh was the driver of the bus No. DL- 1PC- 0149 in December, 2012 and A- 3 Akshay Kumar Singh was his helper in the bus. P.W. 81 also informed the police that the bus was attached to Birla Vidya Niketan School, Pushp Vihar, New Delhi to ferry students to the school in the morning and that it was also engaged by a Company named M/s. Net Ambit in Noida, to take its employees from Delhi to Noida. P.W. 81 also informed the police that after daily routine trip, A- 1 Ram Singh used to park the bus at Ravi Dass Camp, R.K. Puram, near his residence. P.W. 81 further informed that on 17.12.2012, the bus as usual went from Delhi to Noida to take the Staff of M/s. Net Ambit to their office. The recovery of the bus (Ex. P- 1) and evidence of P.W. 81 led to a breakthrough in the investigation that A- 1 Ram Singh was the driver of the bus and A- 3 Akshay was the cleaner of the bus.

427. Furthermore, in order to prove that A1 Ram Singh (Dead) was the driver of the bus No. DL- 1PC- 0149 (Ex. P- 1), P.W. 16 Rajeev Jakhmola, Manager (Administration) of Birla Vidya Niketan School, Pushp Vihar, New Delhi was examined. In his evidence, P.W. 16 stated that P.W. 81,

Dinesh Yadav had provided the school with seven buses on contract basis including the bus No. DL- 1PC- 0149 (Ex. P- 1) and that A- 1 Ram Singh was its driver. In his interrogation by the police, P.W. 16 had also handed over Ram Singh's driving licence alongwith copy of agreement of the school with the owner of the bus and other documents. By adducing the evidence of P.W. 81 Dinesh Yadav and P.W. 16 Rajeev Jakhmola, the prosecution has established that the bus in question was routinely driven by A- 1 Ram Singh (Dead) and A- 3 Akshay Kumar was the helper in the bus.

428. On 17.12.2012, a team of experts from CFSL comprising P.W. 45 Dr. B.K. Mohapatra, P.W. 46 A.D. Shah, P.W. 79 P.K. Gottam and others, went to the Thyagraj Stadium and inspected the bus Ex. P1. On inspection, certain articles were seized from the said bus vide seizure memo Ex. P.W. 74/P. It is brought on record that the samples were diligently collected and taken to CFSL, CBI by SI Subhash (P.W. 74) vide RC No. 178/21/12 for examination. The DNA profile of material objects lifted from the bus bearing No. DL- 1PC- 0149 were found consistent with that of the victim and the complainant. Matching of the DNA profile developed from the articles seized from the bus DL- 1PC- 0149 like hair recovered from the third row of the bus on the left side with the DNA profile of P.W. 1, strengthens the prosecution case as to the involvement of the offending bus bearing registration No. DL- 1PC- 0149. DNA profile developed from the blood- stained curtains of the bus and blood- stained seat covers of bus and the bunch of hair recovered from the floor of the bus below sixth row matched with the DNA profile of the victim. The evidence of DNA analysis is an unimpeachable evidence as to the involvement of the offending bus in the commission of offence and also strong unimpeachable evidence connecting the accused with the crime.

429. The accused neither rebutted this evidence nor offered any convincing explanation except making feeble attempt by stating that everything was concocted. P.W. 46, A.D. Shah, Senior Scientific Officer (Finger Prints), CFSL, CBI examined the chance prints lifted from the bus. Chance print marked as 'Q.1' lifted from the bus (Ex. P- 1) was found identical with the left palm print of accused Vinay Sharma. Further chance print marked as 'Q.4' was found identical with right thumb impression of accused Vinay Sharma. A finger print expert report (Ex. P.W. 46/D) states that the chance print lifted from the bus being identical with the finger print of accused Vinay Sharma, establishes the presence of accused Vinay Sharma in the bus, thereby strengthening prosecution case.

430. Arrest and Recovery Under Section 27 of the Indian Evidence Act: Prosecution very much relies upon disclosure statements of the accused, pursuant to which articles of the victim and also of P.W. 1 were recovered. Accused being in possession of the articles of the victim and that of P.W. 1, is a militating circumstance against the accused and it is for the accused to explain as to how they came in possession of these articles. Details of arrest of accused and articles recovered from the accused are as under:

431. As noted in the above tabular form, various articles of the complainant and the victim were recovered from the accused viz., Samsung Galaxy Phone (recovered at the behest of A- 2 Mukesh); silver ring (recovered at the behest of A- 3 Akshay); Hush Puppies shoes (recovered at the behest of A- 4 Vinay) and Sonata Wrist Watch (recovered at the behest of A- 5 Pawan). Recovery of belongings of P.W. 1 and that of the victim, at the instance of the accused is a relevant fact duly proved by the prosecution. Notably the articles recovered from the accused thereto have been duly identified by the complainant in test identification proceedings. Recovery of articles of complainant (P.W. 1) and that of the victim at the behest of accused is a strong incriminating circumstance implicating the accused. As rightly pointed out by the Courts below, the accused have not offered any cogent or plausible explanation as to how they came in possession of those articles.

432. Similarly, the Indian bank debit card (Ex. P.W. 74/3) recovered at the behest of A- 1 Ram Singh and black coloured Nokia mobile phone (Ex. P.W. 68/5) recovered at the behest of A- 4 Vinay have been proved to be used by the prosecutrix. P.W. 75 Asha Devi mother of the victim in her testimony stated that the Debit card belonged to her P.W. 75 Asha Devi and that the same was in the possession of her daughter. Nokia mobile phone (Ex. P.W. 68/5) is stated to be the mobile used by the victim. Notably, the articles of the prosecutrix recovered from the accused were proved by the evidence of P.W. 75 Asha Devi (mother of the victim) and the same was not controverted by the defence.

433. Section 25 of the Indian Evidence Act (for short 'the Evidence Act') speaks of a confession made to a police officer, which shall not be proved as against a person accused of an offence. Section 26 of the Evidence Act also speaks that no confession made by the person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person. Sections 25 and 26 of the Evidence Act put a complete bar on the admissibility of a confessional statement made to a police officer or a confession made in absentia of a Magistrate, while in custody. Section 27 of the Evidence Act is by way of a proviso to Sections 25 and 26 of the Evidence Act and a statement even by way of confession made in police custody which distinctly relates to the fact discovered is admissible in evidence against the accused. Section 27 of the Evidence Act reads as under:

27. How much of information received from accused may be proved.- Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

Section 27 is based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information is true and is a relevant fact and accordingly it can be safely allowed to be given in evidence.

434. Section 27 has prescribed two limitations for determining how much of the information received from the accused can be proved against him: (i) The information must be such as the

accused has caused discovery of the fact, i.e. the fact must be the consequence, and the information the cause of its discovery; (ii) The information must 'relate distinctly' to the fact discovered. Both the conditions must be satisfied. Various requirements of Section 27 of the Evidence Act are succinctly summed up in Anter Singh v. State of Rajasthan MANU/SC/0096/2004 : (2004) 10 SCC 657:

16. The various requirements of the section can be summed up as follows:

(1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with the question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.

(2) The fact must have been discovered.

(3) The discovery must have been in consequence of some information received from the accused and not by the accused's own act.

(4) The person giving the information must be accused of any offence.

(5) He must be in the custody of a police officer.

(6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

(7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible.

435. Appending a note of caution to prevent the misuse of the provision of Section 27 of the Evidence Act, this Court in Geejaganda Somaiah v. State of Karnataka MANU/SC/7211/2007 : (2007) 9 SCC 315, observed that the courts need to be vigilant about application of Section 27 of the Evidence Act. Relevant extract from the judgment is as under:

22. As the section is alleged to be frequently misused by the police, the courts are required to be vigilant about its application. The court must ensure the credibility of evidence by police because

this provision is vulnerable to abuse. It does not, however, mean that any statement made in terms of the aforesaid section should be seen with suspicion and it cannot be discarded only on the ground that it was made to a police officer during investigation. The court has to be cautious that no effort is made by the prosecution to make out a statement of the accused with a simple case of recovery as a case of discovery of fact in order to attract the provisions of Section 27 of the Evidence Act.

436. Even though, the arrest and recovery Under Section 27 of the Evidence Act is often sought to be misused, the courts cannot be expected to completely ignore how crucial are the recoveries made Under Section 27 in an investigation. The legislature while incorporating Section 27, as an exception to Sections 24, 25 and 26 of the Evidence Act, was convinced of the quintessential purpose Section 27 would serve in an investigation process. The recovery made Under Section 27 of the Evidence Act not only acts as the foundation stone for proceeding with an investigation, but also completes the chain of circumstances. Once the recovery is proved by the prosecution, burden of proof on the defence to rebut the same is very strict, which cannot be discharged merely by pointing at procedural irregularities in making the recoveries, especially when the recovery is corroborated by direct as well as circumstantial evidence, especially when the investigating officer assures that failure in examining independent witness while making the recoveries was not a deliberate or mala fide, rather it was on account of exceptional circumstances attending the investigation process.

437. While the prosecution has been able to prove the recoveries made at the behest of the accused, the defence counsel repeatedly argued in favour of discarding the recoveries made, on the ground that no independent witnesses were examined while effecting such recoveries and preparing seizure memos.

438. The above contention of the defence counsel urges one to look into the specifics of Section 27 of the Evidence Act. As a matter of fact, need of examining independent witnesses, while making recoveries pursuant to the disclosure statement of the accused is a rule of caution evolved by the Judiciary, which aims at protecting the right of the accused by ensuring transparency and credibility in the investigation of a criminal case. In the present case, P.W. 80 SI Pratibha Sharma has deposed in her cross- examination that no independent person had agreed to become a witness and in the light of such a statement, there is no reason for the courts to doubt the version of the police and the recoveries made.

439. When recovery is made pursuant to the statement of accused, seizure memo prepared by the Investigating Officer need not mandatorily be attested by independent witnesses. In State Govt. of NCT of Delhi v. Sunil and Anr. MANU/SC/0735/2000 : (2001) 1 SCC 652, it was held that non-attestation of seizure memo by independent witnesses cannot be a ground to disbelieve recovery of articles' list consequent upon the statement of the accused. It was further held that there was no requirement, either Under Section 27 of the Evidence Act or Under Section 161 Code of Criminal Procedure to obtain signature of independent witnesses. If the version of the police is not shown to be unreliable, there is no reason to doubt the version of the police regarding arrest and contents of the seizure memos.

440. In the landmark case of Pulukuri Kottaya v. King- Emperor MANU/PR/0049/1946 : AIR 1947 PC 67, the Privy Council has laid down the relevance of information received from the accused for the purpose of Section 27 of the Evidence Act. Relevant extracts from the judgment are as under:

10. Section 27, which is not artistically worded, provides an exception to the prohibition imposed by the preceding section, and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section into operation is that the discovery of a fact in consequence of information received from a person accused of any offence in the custody of a Police officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate.

The test laid down in Pulukuri Kottaya's case was reiterated in several subsequent judgments of this Court including State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru MANU/SC/0465/2005 : (2005) 11 SCC 600.

441. In the light of above discussion, it is held that recoveries made pursuant to disclosure statement of the accused are duly proved by the prosecution and there is no substantial reason to discard the same. Recovery of articles of P.W. 1 and also that of victim at the instance of the accused is a strong incriminating evidence against accused, especially when no plausible explanation is forthcoming from the accused. Further, as discussed infra, the scientific examination of the articles recovered completely place them in line with the chain of events described by the prosecution.

442. DNA Analysis: In order to establish a clear link between the accused persons and the incident at hand, the prosecution has also adduced scientific evidence in the form of DNA analysis. For the purpose of DNA profiling, various samples were taken from the person of the prosecutrix; the complainant; the accused, their clothes/articles; the dumping spot; the iron rods; the ashes of burnt clothes; as well as from the offending bus. P.W. 45 Dr. B.K. Mohapatra analysed the said DNA profiles and submitted his report thereof. In his report, he concluded that the samples were authentic and capable of establishing the identities of the persons concerned beyond reasonable doubt. Prosecution relies upon the biological examination of various articles including the samples collected from the accused and the DNA profiles generated from the blood- stained clothes of the accused. The DNA profile generated from the samples collected, when compared with the DNA profile generated from the blood samples of the victim and P.W. 1 Awninder Pratab Singh, were found consistent.

443. For easy reference and for completion of narration of events, I choose to refer to the articles recovered from the accused pursuant to their disclosure statements and other articles like blood-stained clothes; samples of personal fluids like blood, saliva with control swab; other samples like nail clippings, penil swab, stray hair etc. Details of the DNA analysis is contained in the reports of biological examination and DNA profiling (Ex. P.W. 45/A to Ex. P.W. 45/C), furnished by P.W. 45 Dr. B.K. Mohapatra.

444. Before considering the above findings of DNA analysis contained in tabular form, let me first refer to what is DNA, the infallibility of identification by DNA profiling and its accuracy with certainty. DNA - De- oxy- ribonucleic acid, which is found in the chromosomes of the cells of living beings, is the blueprint of an individual. DNA is the genetic blue print for life and is virtually contained in every cell. No two persons, except identical twins have ever had identical DNA. DNA profiling is an extremely accurate way to compare a suspect's DNA with crime scene specimens, victim's DNA on the blood- stained clothes of the accused or other articles recovered, DNA testing can make a virtually positive identification when the two samples match. A DNA finger print is identical for every part of the body, whether it is the blood, saliva, brain, kidney or foot on any part of the body. It cannot be changed; it will be identical no matter what is done to a body. Even relatively minute quantities of blood, saliva or semen at a crime scene or on clothes can yield sufficient material for analysis. The Experts opine that the identification is almost hundred per cent precise. Using this i.e. chemical structure of genetic information by generating DNA profile of the individual, identification of an individual is done like in the traditional method of identifying finger prints of offenders. Finger prints are only on the fingers and at times may be altered. Burning or cutting a finger can change the make of the finger print. But DNA cannot be changed for an individual no matter whatever happens to a body.

445. We may usefully refer to Advanced Law Lexicon, 3rd Edition Reprint 2009 by P. Ramanatha Aiyar which explains DNA as under:

DNA.- De- oxy- ribonucleic acid, the nucleoprotein of chromosomes.

The double- helix structure in cell nuclei that carries the genetic information of most living organisms.

The material in a cell that makes up the genes and controls the cell. (Biological Term)

DNA finger printing. A method of identification especially for evidentiary purposes by analyzing and comparing the DNA from tissue samples. (Merriam Webster)

In the same Law Lexicon, learned author refers to DNA identification as under:

DNA identification. A method of comparing a person's deoxyribonucleic acid (DNA) - a patterned chemical structure of genetic information - with the DNA in a biological specimen (such as blood, tissue, or hair) to determine if the person is the source of the specimen. - Also termed DNA finger printing; genetic finger printing (Black, 7th Edition, 1999)

446. DNA evidence is now a predominant forensic technique for identifying criminals when biological tissues are left at the scene of crime or for identifying the source of blood found on any articles or clothes etc. recovered from the accused or from witnesses. DNA testing on samples such as saliva, skin, blood, hair or semen not only helps to convict the accused but also serves to exonerate. The sophisticated technology of DNA finger printing makes it possible to obtain conclusive results. Section 53A Code of Criminal Procedure is added by the Code of Criminal Procedure (Amendment) Act, 2005. It provides for a detailed medical examination of accused for an offence of rape or attempt to commit rape by the registered medical practitioners employed in a hospital run by the Government or by a local authority or in the absence of such a practitioner within the radius of 16 kms. from the place where the offence has been committed by any other registered medical practitioner.

447. Observing that DNA is scientifically accurate and exact science and that the trial court was not justified in rejecting DNA report, in Santosh Kumar Singh v. State through CBI MANU/SC/0801/2010 : (2010) 9 SCC 747, the Court held as under:

65. We now come to the circumstance with regard to the comparison of the semen stains with the blood taken from the Appellant. The trial court had found against the prosecution on this aspect. In this connection, we must emphasise that the court cannot substitute its own opinion for that of an expert, more particularly in a science such as DNA profiling which is a recent development.

66. Dr. Lalji Singh in his examination- in- chief deposed that he had been involved with the DNA technology ever since the year 1974 and he had returned to India from the UK in 1987 and joined CCMB, Hyderabad and had developed indigenous methods and techniques for DNA finger printing which were now being used in this country. We also see that the expertise and experience of Dr. Lalji Singh in his field has been recognised by this Court in Kamalanantha v. State of T.N. MANU/SC/0259/2005 : (2005) 5 SCC 194. We further notice that CW 1 Dr. G.V. Rao was a scientist of equal repute and he had in fact conducted the tests under the supervision of Dr. Lalji Singh. It was not even disputed before us during the course of arguments that these two scientists were persons of eminence and that the laboratory in question was also held in the highest esteem in India.

67. The statements of Dr. Lalji Singh and Dr. G.V. Rao reveal that the samples had been tested as per the procedure developed by the laboratory, that the samples were sufficient for the purposes of comparison and that there was no possibility of the samples having been contaminated or tampered with. The two scientists gave very comprehensive statements supported by documents

that DNA of the semen stains on the swabs and slides and the underwear of the deceased and the blood samples of the Appellant was from a single source and that source was the Appellant.

68. It is significant that not a single question was put to PW Dr. Lalji Singh as to the accuracy of the methodology or the procedure followed for the DNA profiling. The trial court has referred to a large number of textbooks and has given adverse findings on the accuracy of the tests carried out in the present case. We are unable to accept these conclusions as the court has substituted its own opinion ignoring the complexity of the issue on a highly technical subject, more particularly as the questions raised by the court had not been put to the expert witnesses. In Bhagwan Das v. State of Rajasthan MANU/SC/0037/1957 : AIR 1957 SC 589 it has been held that it would be a dangerous doctrine to lay down that the report of an expert witness could be brushed aside by making reference to some text on that subject without such text being put to the expert.

71. We feel that the trial court was not justified in rejecting the DNA report, as nothing adverse could be pointed out against the two experts who had submitted it. We must, therefore, accept the DNA report as being scientifically accurate and an exact science as held by this Court in Kamti Devi v. Poshi Ram MANU/SC/0335/2001 : (2001) 5 SCC 311. In arriving at its conclusions the trial court was also influenced by the fact that the semen swabs and slides and the blood samples of the Appellant had not been kept in proper custody and had been tampered with, as already indicated above. We are of the opinion that the trial court was in error on this score. We, accordingly, endorse the conclusions of the High Court on Circumstance 9.

[emphasis added].

448. From the evidence of P.W. 45 and the details given in the above tabular form, it is seen that the DNA profile generated from blood- stained clothes of the accused namely, A- 1 Ram Singh (dead); A- 2 Mukesh; A- 3 Akshay; A- 4 Vinay; and A- 5 Pawan Gupta @ Kalu are found consistent with the DNA profile of the prosecutrix. Also as noted above, two sets of DNA profile were generated from the black colour sweater of the accused Pawan. One set of DNA profile found to be female in origin, consistent with the DNA profile of the prosecutrix; other set found to be male in origin, consistent with the DNA profile of P.W. 1. Likewise, two sets of DNA profile were generated from the black colour sports jacket of accused Vinay, one of which matched the DNA profile of the prosecutrix and another one matched the DNA profile of P.W. 1. Likewise, two sets of DNA profile were generated from the jeans pant of accused Akshay, one of which matched the DNA profile of the prosecutrix and another one matched the DNA profile of P.W. 1. The result of DNA analysis and that of the DNA profile generated from blood- stained clothes of the accused found consistent with that of the victim is a strong piece of evidence incriminating the accused in the offence.

449. DNA profile generated from the blood samples of accused Ram Singh matched with the DNA profile generated from the rectal swab of the victim. Blood as well as human spermatozoa

was detected in the underwear of the accused Ram Singh (dead) and DNA profile generated therefrom was found to be female in origin, consistent with that of the victim. Likewise, the DNA profile generated from the breast swab of the victim was found consistent with the DNA profile of the accused Akshay.

450. As discussed earlier, identification by DNA genetic finger print is almost hundred per cent precise and accurate. The DNA profile generated from the blood- stained clothes of the accused and other articles are found consistent with the DNA profile of the victim and DNA profile of P.W. 1; this is a strong piece of evidence against the accused. In his evidence, P.W. 45 Dr. B.K. Mohapatra has stated that once DNA profile is generated and found consistent with another DNA profile, the accuracy is hundred per cent and we find no reason to doubt his evidence. As pointed out by the Courts below, the counsel for the defence did not raise any substantive ground to rebut the findings of DNA analysis and the findings through the examination of P.W. 45. The DNA report and the findings thereon, being scientifically accurate clearly establish the link involving the accused persons in the incident.

451. Conspiracy: The accused have been charged with the offence of "conspiracy" to commit the offence of abduction, robbery/dacoity, gang rape and unnatural sex, in pursuance of which the accused are alleged to have picked up the prosecutrix and P.W. 1. The charge sheet also states that in furtherance of conspiracy, the accused while committing the offence of gang rape on the prosecutrix intentionally inflicted bodily injury with iron rod and inserted the iron rod in the vital parts of her body with the common intention to cause her death.

452. The learned amicus Mr. Sanjay Hegde submitted that there is no specific evidence to prove that there was prior meeting of minds of the accused and that they had conspired together to commit grave offence by use of iron rod, resulting in the death of the victim and, therefore, insertion/use of iron rod by any one of the accused cannot be attributed to all the accused in order to hold them guilty of the offence of murder.

453. The essentials of the offence of conspiracy and the manner in which it can be proved has been laid down by this Court through a catena of judicial pronouncements and I choose to briefly recapitulate the law on the point, so as to determine whether the offence is made out in this case or not. Meeting of minds for committing an illegal act is sine qua non of the offence of conspiracy. It is also obvious that meeting of minds, thereby resulting in formation of a consensus between the parties, can be a sudden act, spanning in a fraction of a minute. It is neither necessary that each of the conspirators take active part in the commission of each and every conspiratorial act, nor it is necessary that all the conspirators must know each and every details of the conspiracy. Essence of the offence of conspiracy is in agreement to break the law as aptly observed by this Court in Major E.G. Barsay v. State of Bombay MANU/SC/0123/1961 : (1962) 2 SCR 195.

454. So far as the English law on conspiracy is concerned, which is the source of Indian law, KENNY has succinctly stated that in modern times conspiracy is defined as an agreement of two or more persons to effect any unlawful purpose, whether as their ultimate aim or only as a means to it. Stressing on the need of formation of an agreement, he has cautioned that conspiracy should not be misunderstood as a purely mental crime, comprising the concurrence of the intentions of the parties. The meaning of an 'agreement', he has explained by quoting following words of Lord Chelmsford:

Agreement is an act in advancement of the intention which each person has conceived in his mind.

KENNY has further said that it is not mere intention, but the announcement and acceptance of intentions. However, it is not necessary that an overt act is done; the offence is complete as soon as the parties have agreed as to their unlawful purpose, although nothing has yet been settled as to the means and devices to be employed for effecting it. [Refer KENNY on Outlines of Criminal Law, 19th Edn., pp. 426- 427]

455. The most important aspect of the offence of conspiracy is that apart from being a distinct statutory offence, all the parties to the conspiracy are liable for the acts of each other and as an exception to the general law in the case of conspiracy intent i.e. mens rea alone constitutes a crime. As per Section 10 of the Evidence Act, once reasonable ground is shown for believing that two or more persons have conspired to commit an offence then, anything done by any one of them in reference to their common intention, is admissible against the others. As held in State of Maharashtra v. Damu and Ors. MANU/SC/0299/2000 : (2000) 6 SCC 269, the only condition for the application of the rule in Section 10 of the Evidence Act is that there must be reasonable ground to believe that two or more persons have conspired together to commit an offence.

456. The principles relating to the offence of criminal conspiracy and the standard of proof for establishing offence of conspiracy and the joint liability of the conspirators have been elaborately laid down in Shivnarayan Laxminarayan Joshi and Ors. v. State of Maharashtra MANU/SC/0241/1979 : (1980) 2 SCC 465; Mohammad Usman Mohammad Hussain Maniyar and Ors. v. State of Maharashtra MANU/SC/0180/1981 : (1981) 2 SCC 443; Kehar Singh and Ors. v. State (Delhi Administration) MANU/SC/0241/1988 : (1988) 3 SCC 609; State of Maharashtra and Ors. v. Som Nath Thapa and Ors. MANU/SC/0451/1996 : (1996) 4 SCC 659; State (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru MANU/SC/0465/2005 : (2005) 11 SCC 600; State Through Superintendent of Police, CBI/SIT v. Nalini and Ors. MANU/SC/0945/1999 : (1999) 5 SCC 253; Yakub Abdul Razak Menon v. The State of Maharashtra, through CBI, Bombay MANU/SC/0268/2013 : (2013) 13 SCC 1.

457. Another significant aspect of the offence of criminal conspiracy is that it is very rare to find direct proof of it, because of the very fact that it is hatched in secrecy. Unlike other offences, criminal conspiracy in most of the cases is proved by circumstantial evidence only. It is extremely rare that direct evidence in proof of conspiracy can be forthcoming from wholly disinterested,

quarters or from utter strangers. Conspiracy is a matter of inference, deduced from words uttered, criminal acts of the accused done in furtherance of conspiracy. (Vide Noor Mohammad Mohd. Yusuf Momin v. State of Maharashtra MANU/SC/0157/1970 : (1970) 1 SCC 696; Firozuddin Basheeruddin and Ors. v. State of Kerala MANU/SC/0471/2001 : (2001) 7 SCC 596; Ram Narain Poply v. Central Bureau of Investigation and Ors. MANU/SC/0017/2003 : (2003) 3 SCC 641; Yogesh @ Sachin Jagdish Joshi v. State of Maharashtra MANU/SC/7528/2008 : (2008) 10 SCC 394; Pratapbhai Hamirbhai Solanki v. State of Gujarat and Anr. MANU/SC/0854/2012 : (2013) 1 SCC 613; Chandra Prakash v. State of Rajasthan MANU/SC/0457/2014 : (2014) 8 SCC 340 etc.)

458. In Yogesh @ Sachin Jagdish Joshi v. State of Maharashtra MANU/SC/7528/2008 : (2008) 10 SCC 394, this Court, after referring to the law laid down in several pronouncements, summarised the core principles of law of conspiracy in the following words:

23. Thus, it is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is well settled that an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable even if an offence does not take place pursuant to the illegal agreement.

459. In the present case, there is ample evidence proving the acts, statements and circumstances, establishing firm ground to hold that the accused who were present in the bus were in prior concert to commit the offence of rape. The prosecution has established that the accused were associated with each other. The criminal acts done in furtherance of conspiracy, is established by the sequence of events and the conduct of the accused. Existence of conspiracy and its objects could be inferred from the chain of events. The chain of events described by the victim in her dying declarations coupled with the testimony of P.W. 1 clearly establish that as soon as the complainant and the victim boarded the bus, the accused switched off the lights of the bus. Few accused pinned down P.W. 1 and others committed rape on the victim in the back side of the bus one after the other. The accused inserted iron rods in the private parts of the prosecutrix, dragging her holding her hair and then threw her outside the bus. The victim has also maintained in her dying declaration that the accused persons were exhorting that the victim has died and she be thrown out of the bus. Ultimately, both the victim and the complainant were thrown out of the moving bus through the front door, having failed to throw them through the rear door. The chain of action and the act of finally throwing the victim and P.W. 1 out of the bus show that there was unity of object among the accused to commit rape and destroy the evidence thereon.

460. In this case, the existence of conspiracy is sought to be drawn by an inference from the circumstances: (i) the accused did not allow any other passenger to board the bus after P.W. 1 and the prosecutrix boarded the bus; (ii) switching off the lights; pinning P.W. 1 down by some while others commit rape/unnatural sex with the prosecutrix at the rear side of the bus; (iii) exhortation by some of the accused that the victim be not left alive; and (iv) their act of throwing the victim

and P.W. 1 out of the running bus without clothes in the wintery night of December. Existence of conspiracy and its objects is inferred from the above circumstances and the words uttered. In my view, the courts below have rightly drawn an inference that there was prior meeting of minds among the accused and they have rightly held that the prosecution has proved the existence of conspiracy to commit gang rape and other offences.

461. As already stated in the beginning, in achieving the goal of the conspiracy, several offences committed by some of the conspirators may not be known to others, still all the accused will be held guilty of the offence of criminal conspiracy. The trial court has recorded that the victim's complete alimentary canal from the level of duodenum upto 5 cm from anal sphincter was completely damaged. It was beyond repair. Causing of damage to jejunum is indicative of the fact that the rods were inserted through vagina and/or anus upto the level of jejunum." Further "the septicemia was the direct result of internal multiple injuries". Use of iron rod by one or more of the accused is sufficient to inculpate all the accused for the same. In the present case, gang rape and use of iron rod caused grave injuries to victim's vagina and intestines; throwing her out of the bus in that vegetative state in chilled weather led to her death; all this taking place in the course of same transaction and with the active involvement of all the accused is more than sufficient evidence to find the accused guilty of criminal conspiracy. I, thus, affirm the findings of the courts below with regard to conviction of all the accused Under Section 120- B Indian Penal Code and Section 302 read with Section 120- B Indian Penal Code.

462. Apart from considering the principles of law of conspiracy distinctly, if we consider it in the context of 'conspiracy to commit the offence of gang rape, unnatural sex etc., as is specifically relevant in the present case, we find that existence of common intent and joint liability is already implicit in the offence of gang rape. Gang rape is dealt with in Clause (g) of Sub- section (2) of Section 376 Indian Penal Code read with Explanation 1. As per Explanation 1 to Section 376 Indian Penal Code, "where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape" and all of them shall be liable to be punished under Sub- section (2) of Section 376 Indian Penal Code. As per Explanation 1, by operation of deeming provision, a person who has not actually committed rape is deemed to have committed rape even if only one of the groups has committed rape in furtherance of the common intention.

463. While considering the scope of Section 376(2)(g) Indian Penal Code read with Explanation, in Ashok Kumar v. State of Haryana MANU/SC/1176/2002 : (2003) 2 SCC 143, this Court held as under:

8. Charge against the Appellant is Under Section 376(2)(g) Indian Penal Code. In order to establish an offence Under Section 376(2)(g) Indian Penal Code, read with Explanation I thereto, the prosecution must adduce evidence to indicate that more than one accused had acted in concert and in such an event, if rape had been committed by even one, all the accused will be guilty irrespective of the fact that she had been raped by one or more of them and it is not necessary for

the prosecution to adduce evidence of a completed act of rape by each one of the accused. In other words, this provision embodies a principle of joint liability and the essence of that liability is the existence of common intention; that common intention presupposes prior concert which may be determined from the conduct of offenders revealed during the course of action and it could arise and be formed suddenly, but, there must be meeting of minds. It is not enough to have the same intention independently of each of the offenders. In such cases, there must be criminal sharing marking out a certain measure of jointness in the commission of offence.

[Emphasis added]

So far as the offence Under Section 376 (2)(g) Indian Penal Code, the sharing of common intention and the jointness in commission of rape is concerned, the same is established by the presence of all the accused in the bus; their action in concert as established by the dying declaration of the prosecutrix and the evidence of P.W. 1, presence of blood in the clothes of all the accused, DNA profile generated thereon being consistent with the DNA profile of the victim.

464. The prosecution has established the presence of the accused in the bus and the heinous act of gang rape committed on the prosecutrix by the accused by the ample evidence - by the multiple dying declaration of the victim and also by the evidence of P.W. 1 and medical evidence and also by arrest and recovery of incriminating articles of the victim and that of P.W. 1 complainant. The scientific evidence in particular DNA analysis report clearly brings home the guilt of the accused.

465. Section 235(2), Code of Criminal Procedure: Once the conviction of the accused persons is affirmed, what remains to be decided is the question of appropriate punishment imposed on them. On the aspect of sentencing, we were very effectively assisted by the learned Amicus Curiae. Accused were convicted vide judgment and order dated 10.09.2013 and on the very next day of judgment i.e. on 11.09.2013, the arguments on sentencing were concluded. Thereafter, a separate order on sentence was pronounced on 13.09.2013.

466. Counsel for the Appellants as well as the learned amicus Mr. Raju Ramachandran contended that no effective opportunity was given to the Appellants to lead their defence on the point of sentencing as mandated Under Section 235(2) Code of Criminal Procedure and each of the accused were not individually heard in person on the question of sentence. Learned Amicus Curiae, Mr. Raju Ramachandran submitted only the counsel for the accused were heard and all the accused were treated alike irrespective of their individual background and were sentenced to death, which is in clear violation of the mandate of Section 235(2) Code of Criminal Procedure. It was submitted that Section 235(2) Code of Criminal Procedure is intended to give an opportunity to the accused to place before the Court all the relevant facts and material having a bearing on the question of sentence and, therefore, salutary provision should not have been treated as a mere formality by the trial court. In support of his contention, the learned Amicus has placed reliance upon a number of judgments viz. - (i) Dagdu and Ors. v. State of Maharashtra

MANU/SC/0086/1977 : (1977) 3 SCC 68; (ii) Malkiat Singh and Ors. v. State of Punjab MANU/SC/0622/1991 : (1991) 4 SCC 341; and (iii) Ajay Pandit alias Jagdish Dayabhai Patel and Anr. v. State of Maharashtra MANU/SC/0562/2012 : (2012) 8 SCC 43.

467. Section 235 Code of Criminal Procedure deals with the judgments of acquittal or conviction. Under Section 235(2) Code of Criminal Procedure, where the accused is convicted, save in cases of admonition or release on good conduct, the Judge shall hear the accused on the question of sentence and then pass sentence in accordance with law. Section 235(2) Code of Criminal Procedure imposes duty on the court to hear the accused on the question of sentence and then pass sentence on him in accordance with law. The only exception to the said rule is created in case of applicability of Section 360 Code of Criminal Procedure i.e. when the court finds the accused eligible to be released on probation of good conduct or after admonition.

468. Section 354 Code of Criminal Procedure specifies the language and contents of judgment, while delivering the judgment in a criminal case. Section 354(3) Code of Criminal Procedure deals with judgments where conviction is for an offence punishable with death penalty or in the alternative with imprisonment for life. Section 354(3) Code of Criminal Procedure mandates that when the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and in the case of sentence of death, the special reasons for such sentence.

469. The statutory duty to state special reasons Under Section 354(3) Code of Criminal Procedure can be meaningfully carried out only if the hearing on sentence Under Section 235(2) Code of Criminal Procedure is effective and procedurally fair. To afford an effective opportunity to the accused, the Court must hear on the question of sentence to know about (i) age of the accused; (ii) background of the accused; (iii) prior criminal antecedents, if any; (iv) possibility of reformation, if any; and (v) such other relevant factors. The major deficiency in the complex criminal justice system is that important factors which have a bearing on sentence are not placed before the Court. Resultantly, the Courts are constantly faced with the dilemma to impose an appropriate sentence. In this context, hearing of the accused Under Section 235(2) Code of Criminal Procedure on the question of sentencing is a crucial exercise which is intended to enable the accused to place before the Court all the mitigating circumstances in his favour viz. his social and economic backwardness, young age etc. The mandate of Section 235(2) Code of Criminal Procedure becomes more crucial when the accused is found guilty of an offence punishable with death penalty or with the life imprisonment.

470. It is well- settled that Section 235(2) Code of Criminal Procedure is intended to give an opportunity of hearing to the prosecution as well as the accused on the question of sentence. The Court while awarding the sentence has to take into consideration various factors having a bearing on the question of sentence. In case, Section 235(2) Code of Criminal Procedure is not complied with, as held in Dagdu's case, the appellate Court can either send back the case to the Sessions

Court for complying with Section 235(2) Code of Criminal Procedure so as to enable the accused to adduce materials; or, in order to avoid delay, the appellate Court may by itself give an opportunity to the parties in terms of Section 235(2) Code of Criminal Procedure to produce the materials they wish to adduce instead of sending the matter back to the trial Court for hearing on sentence. In the present case, we felt it appropriate to adopt the latter course and accordingly asked the counsel appearing for the Appellants to file affidavits/materials on the question of sentence. Consequently, vide order dated 03.02.2017, we directed the learned Counsel for the accused to place in writing, before this Court, their submissions, whatever they desired to place on the question of sentence. In compliance with the order, Mr. M.L. Sharma, learned Counsel on behalf of the accused A- 2 Mukesh and A- 5 Pawan and Mr. A.P. Singh, learned Counsel on behalf of the accused Akshay Kumar Singh, Vinay Sharma and Pawan Gupta filed the individual affidavits of the accused.

471. Accused Mukesh (A- 2) in his affidavit has stated that he was picked up from his house at Karoli, Rajasthan and brought to Delhi and reiterated that he is innocent and he denied his involvement in the occurrence. In their affidavits, accused Akshay Kumar Singh (A- 3), accused Vinay Sharma (A- 4) and accused Pawan Gupta (A- 5) submitted in their individual affidavits have stated that they hail from an ordinary/poor background and are not much educated. They have also stated that they have aged parents and other family members who are dependent on them and they are to be supported by them. Accused have also stated that they have no criminal antecedents and that after their confinement in Tihar Jail they have maintained good behavior.

472. Learned Counsel Mr. M.L. Sharma submitted that accused Mukesh (A- 2) is innocent and he has been falsely implicated only because he is the brother of accused Ram Singh.

473. Taking us through the affidavits filed by the accused, learned Counsel Mr. A.P. Singh submitted that the accused namely Akshay Kumar Singh, Pawan Gupta and Vinay Sharma hail from very poor background; and have got large families to support; and have no criminal antecedents. It has been contended that having regard to the fact that the three accused have no prior criminal antecedents and are not hardened criminals, the case will not fall under "rarest of rare cases" to affirm the death sentence.

474. Supplementing the affidavits filed by the accused, the learned amicus and senior Counsel Mr. Raju Ramachandran and Mr. Sanjay Hegde submitted that assuming that the conviction of the Appellants are confirmed, the accused who hail from very ordinary poor background and having no criminal antecedents, the death sentence be commuted to life imprisonment.

475. Question of awarding sentence is a matter of discretion and has to be exercised on consideration of circumstances aggravating or mitigating in the individual cases. The courts are consistently faced with the situation where they are required to answer the new challenges and mould the sentence to meet those challenges. Protection of society and deterring the criminal is

the avowed object of law. It is expected of the courts to operate the sentencing system as to impose such sentence which reflects the social conscience of the society. While determining sentence in heinous crimes, Judges ought to weigh its impact on the society and impose adequate sentence considering the collective conscience or society's cry for justice. While considering the imposition of appropriate punishment, courts should not only keep in view the rights of the criminal but also the rights of the victim and the society at large.

476. In State of M.P. v. Munna Choubey and Anr. MANU/SC/0055/2005 : (2005) 2 SCC 710, it was observed as under:

10. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc. This position was illuminatingly stated by this Court in Sevaka Perumal v. State of Tamil Naidu MANU/SC/0338/1991 : (1991) 3 SCC 471.

477. In Jashubha Bharatsinh Gohil and Ors. v. State of Gujarat MANU/SC/1561/1994 : (1994) 4 SCC 353, while upholding the award of death sentence, this Court held that sentencing process has to be stern where the circumstances demand so. Relevant extract is as under:

12.....The courts are constantly faced with the situation where they are required to answer to new challenges and mould the sentencing system to meet those challenges. Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing appropriate sentence. The change in the legislative intendment relating to award of capital punishment notwithstanding, the opposition by the protagonist of abolition of capital sentence, shows that it is expected of the courts to so operate the sentencing system as to impose such sentence which reflects the social conscience of the society. The sentencing process has to be stern where it should be.

478. Whether the Case falls under rarest of rare cases: Law relating to award of death sentence in India has evolved through massive policy reforms- nationally as well as internationally and through a catena of judicial pronouncements, showcasing distinct phases of our view towards imposition of death penalty. Undoubtedly, continuing prominence of reformative approach in sentencing and India's international obligations have been majorly instrumental in facilitating a visible shift in court's view towards restricting imposition of death sentence. While closing the shutter of deterrent approach of sentencing in India, the small window of 'award of death sentence' was left open in the category of 'rarest of rare case' in Bachan Singh v. State of Punjab MANU/SC/0055/1982 : (1980) 2 SCC 684, by a Constitution Bench of this Court.

479. In Bachan Singh (supra), while upholding the constitutional validity of capital sentence, this Court revisited the law relating to death sentence at that point of time, by thoroughly discussing the law laid down in Jagmohan Singh v. State of U.P. MANU/SC/0139/1972 : (1973) 1 SCC 20;

Rajendra Prasad v. State of U.P. MANU/SC/0212/1979 : (1979) 3 SCR 646 and other cases. The principles laid down in Bachan Singh's case is that, normal rule is awarding of 'life sentence', imposition of death sentence being justified, only in rarest of rare case, when the option of awarding sentence of life imprisonment is unquestionably foreclosed'. By virtue of Bachan Singh (supra), 'life imprisonment' became the rule and 'death sentence' an exception. The focus was shifted from 'crime' to the 'crime and criminal' i.e. now the nature and gravity of the crime needs to be analysed juxtaposed to the peculiar circumstances attending the societal existence of the criminal. The principles laid down in Bachan Singh's case were considered in Machhi Singh and Ors. v. State of Punjab MANU/SC/0211/1983 : (1983) 3 SCC 470 and was summarised as under:

38. In this background the guidelines indicated in Bachan Singh's case (supra) will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentence arises. The following propositions emerge from Bachan Singh's case (supra):

(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

(ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime'.

(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

(iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

480. In Machhi Singh's case, this Court took the view that in every case where death penalty is a question, a balance sheet of aggravating and mitigating circumstances must be drawn up before arriving at the decision. The Court held that for practical application of the doctrine of 'rarest of rare case', it must be understood broadly in the background of five categories of cases crafted thereon that is 'Manner of commission of crime', 'Motive', 'Anti- social or socially abhorrent nature of the crime', 'Magnitude of crime', and 'Personality of victim of murder'. These five categories are elaborated in para Nos. 32 to 37 as under:

32. The reasons why the community as a whole does not endorse the humanistic approach reflected in "death sentence- in- no- case" doctrine are not far to seek. In the first place, the very humanistic edifice is constructed on the foundation of "reverence for life" principle. When a member of the community violates this very principle by killing another member, the society may not feel itself bound by the shackles of this doctrine. Secondly, it has to be realized that every member of the community is able to live with safety without his or her own life being endangered because of the protective arm of the community and on account of the rule of law enforced by it. The very existence of the rule of law and the fear of being brought to book operates as a deterrent for those who have no scruples in killing others if it suits their ends. Every member of the community owes a debt to the community for this protection. When ingratitude is shown instead of gratitude by "killing" a member of the community which protects the murderer himself from being killed, or when the community feels that for the sake of self- preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so "in rarest of rare cases" when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. The community may entertain such a sentiment when the crime is viewed from the platform of the motive for, or the manner of commission of the crime, or the anti- social or abhorrent nature of the crime, such as for instance:

I. Manner of commission of murder

33. When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community. For instance,

(i) when the house of the victim is set aflame with the end in view to roast him alive in the house.

(ii) when the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death.

(iii) when the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.

II. Motive for commission of murder

34. When the murder is committed for a motive which evinces total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward (b) a cold-blooded murder is committed with a deliberate design in order to inherit property or to gain

control over property of a ward or a person under the control of the murderer or vis- a- vis whom the murderer is in a dominating position or in a position of trust, or (c) a murder is committed in the course for betrayal of the motherland.

III. Anti- social or socially abhorrent nature of the crime

35. (a) When murder of a member of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath. For instance when such a crime is committed in order to terrorize such persons and frighten them into fleeing from a place or in order to deprive them of, or make them surrender, lands or benefits conferred on them with a view to reverse past injustices and in order to restore the social balance.

(b) In cases of "bride burning" and what are known as "dowry deaths" or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

IV. Magnitude of crime

36. When the crime is enormous in proportion. For instance when multiple murders say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

V. Personality of victim of murder

37. When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder (b) a helpless woman or a person rendered helpless by old age or infirmity (c) when the victim is a person vis- a- vis whom the murderer is in a position of domination or trust (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons.

481. The principle laid down in Bachan Singh (supra) and Machhi Singh (supra) came to be discussed and applied in all the cases relating to imposition of death penalty for committing heinous offences. However, lately, it was felt that the courts have not correctly applied the law laid down in Bachan Singh (supra) and Machhi Singh (supra), which has led to inconsistency in sentencing process in India; also it was observed that the list of categories of murder crafted in Machhi Singh (supra), in which death sentence ought to be awarded are not exhaustive and needs to be given even more expansive adherence owing to changed legal scenario. In Swamy

Shradhananda alias Murali Manohar Mishra (2) v. State of Karnataka MANU/SC/3096/2008 : (2008) 13 SCC 767; a three- Judge Bench of this Court, observed as under in this regard:

43. In Machhi Singh the Court crafted the categories of murder in which 'the Community' should demand death sentence for the offender with great care and thoughtfulness. But the judgment in Machhi Singh was rendered on 20 July, 1983, nearly twenty five years ago, that is to say a full generation earlier. A careful reading of the Machhi Singh categories will make it clear that the classification was made looking at murder mainly as an act of maladjusted individual criminal(s). In 1983 the country was relatively free from organised and professional crime. Abduction for Ransom and Gang Rape and murders committed in course of those offences were yet to become a menace for the society compelling the Legislature to create special slots for those offences in the Penal Code. At the time of Machhi Singh, Delhi had not witnessed the infamous Sikh carnage. There was no attack on the country's Parliament. There were no bombs planted by terrorists killing completely innocent people, men, women and children in dozens with sickening frequency. There were no private armies. There were no mafia cornering huge government contracts purely by muscle power. There were no reports of killings of social activists and 'whistle blowers'. There were no reports of custodial deaths and rape and fake encounters by police or even by armed forces. These developments would unquestionably find a more pronounced reflection in any classification if one were to be made today. Relying upon the observations in Bachan Singh, therefore, we respectfully wish to say that even though the categories framed in Machhi Singh provide very useful guidelines, nonetheless those cannot be taken as inflexible, absolute or immutable. Further, even in those categories, there would be scope for flexibility as observed in Bachan Singh itself.

482. A milestone in the sentencing policy is the concept of 'life imprisonment till the remainder of life' evolved in Swamy Shradhananda (2)(supra). In this case, a man committed murder of his wife for usurping her property in a cold- blooded, calculated and diabolic manner. The trial court convicted the accused and death penalty was imposed on him which was affirmed by the High Court. Though the conviction was affirmed by this Court also on the point of sentencing, the views of a two- Judge Bench of this Court, in Swamy Shradhananda v. State of Karnataka (2007) 12 SCC 282 differed, and consequently, the matter was listed before a three- Judge Bench, wherein a mid way was carved. The three- Judge Bench, was of the view that even though the murder was diabolic, presence of certain circumstances in favour of the accused, viz. no mental or physical pain being inflicted on the victim, confession of the accused before the High Court etc., made them reluctant to award death sentence. However, the Court also realised that award of life imprisonment, which euphemistically means imprisonment for a term of 14 years (consequent to exercise of power of commutation by the executive), would be equally disproportionate punishment to the crime committed. Hence, in Swamy Shradhananda (2) (supra) the Court directed that the accused shall not be released from the prison till the rest of his life. Relevant extract from the judgment reads as under:

92. The matter may be looked at from a slightly different angle. The issue of sentencing has two aspects. A sentence may be excessive and unduly harsh or it may be highly disproportionately inadequate. When an Appellant comes to this Court carrying a death sentence awarded by the trial court and confirmed by the High Court, this Court may find, as in the present appeal, that

the case just falls short of the rarest of the rare category and may feel somewhat reluctant in endorsing the death sentence. But at the same time, having regard to the nature of the crime, the Court may strongly feel that a sentence of life imprisonment that subject to remission normally works out to a term of 14 years would be grossly disproportionate and inadequate. What then the Court should do? If the Court's option is limited only to two punishments, one a sentence of imprisonment, for all intents and purposes, of not more than 14 years and the other death, the court may feel tempted and find itself nudged into endorsing the death penalty. Such a course would indeed be disastrous. A far more just, reasonable and proper course would be to expand the options and to take over what, as a matter of fact, lawfully belongs to the court, i.e., the vast hiatus between 14 years' imprisonment and death. It needs to be emphasized that the Court would take recourse to the expanded option primarily because in the facts of the case, the sentence of 14 years imprisonment would amount to no punishment at all.

483. After referring to a catena of judicial pronouncements post Bachan Singh (supra) and Machhi Singh (supra), in the case of Ramnaresh and Ors. v. State of Chhattisgarh MANU/SC/0163/2012 : (2012) 4 SCC 257, this Court, tried to lay down a nearly exhaustive list of aggravating and mitigating circumstances. It would be apposite to refer to the same here:

Aggravating circumstances

(1) The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, kidnapping, etc. by the accused with a prior record of conviction for capital felony or offences committed by the person having a substantial history of serious assaults and criminal convictions.

(2) The offence was committed while the offender was engaged in the commission of another serious offence.

(3) The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.

(4) The offence of murder was committed for ransom or like offences to receive money or monetary benefits.

(5) Hired killings.

(6) The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.

(7) The offence was committed by a person while in lawful custody.

(8) The murder or the offence was committed to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty Under Section 43 Code of Criminal Procedure. When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community. When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.

(9) When murder is committed for a motive which evidences total depravity and meanness.

(10) When there is a cold- blooded murder without provocation.

(11) The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.

Mitigating circumstances

(1) The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.

(2) The age of the accused is a relevant consideration but not a determinative factor by itself.

(3) The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.

(4) The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.

(5) The circumstances which, in normal course of life, would render such a behavior possible and could have the effect of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behavior that, in the facts and

circumstances of the case, the accused believed that he was morally justified in committing the offence.

(6) Where the court upon proper appreciation of evidence is of the view that the crime was not committed in a preordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.

(7) Where it is absolutely unsafe to rely upon the testimony of a sole eyewitness though the prosecution has brought home the guilt of the accused.

484. Similarly, this Court in Sangeet and Anr. v. State of Haryana MANU/SC/0989/2012 : (2013) 2 SCC 452, extensively analysed the evolution of sentencing policy in India and stressed on the need for further evolution. In para (77), this Court emphasized on making the sentencing process a principled one, rather than Judge- centric one and held that a re- look is needed at some conclusions that have been taken for granted and we need to continue the development of the law on the basis of experience gained over the years and views expressed in various decisions of this Court.

485. As dealing with sentencing, courts have thus applied the "Crime Test", "Criminal Test" and the "Rarest of the Rare Test", the tests examine whether the society abhors such crimes and whether such crimes shock the conscience of the society and attract intense and extreme indignation of the community. Courts have further held that where the victims are helpless women, children or old persons and the accused displayed depraved mentality, committing crime in a diabolic manner, the accused should be shown no remorse and death penalty should be awarded. Reference may be made to Holiram Bordoloi v. State of Assam MANU/SC/0271/2005 : (2005) 3 SCC 793 [Para 15- 17], Ankush Maruti Shinde and Ors. v. State of Maharashtra MANU/SC/0700/2009 : (2009) 6 SCC 667 (para 31- 34), Kamta Tiwari v. State of Madhya Pradesh MANU/SC/0722/1996 : (1996) 6 SCC 250 (para 7- 8), State of U.P. v. Satish MANU/SC/0090/2005 : (2005) 3 SCC 114 (para 24- 31), Sundar alias Sundarajan v. State by Inspector of Police and Anr. MANU/SC/0105/2013 : (2013) 3 SCC 215 (para 36- 38, 42- 42.7, 43), Sevaka Perumal and Anr. v. State of Tamil Nadu MANU/SC/0338/1991 : (1991) 3 SCC 471 (para 8- 10, 12), Mohfil Khan and Anr. v. State of Jharkhand MANU/SC/0915/2014 : (2015) 1 SCC 67 (para 63- 65).

486. Even the young age of the accused is not a mitigating circumstance for commutation to life, as has been held in the case of Bhagwan Swarup v. State of U.P. MANU/SC/0094/1970 : (1971) 3 SCC 759 (para 5), Deepak Rai v. State of Bihar MANU/SC/0965/2013 : (2013) 10 SCC 421 (para 91- 100) and Shabhnam v. State of Uttar Pradesh MANU/SC/0649/2015 : (2015) 6 SCC 632 (para 36).

487. Let me now refer to a few cases of rape and murder where this Court has confirmed the sentence of death. In Molai & Anr. v. State of M.P. MANU/SC/0680/1999 : (1999) 9 SCC 581, death sentence awarded to both the accused for committing offences Under Sections 376(2)(g) Indian Penal Code, 302 read with Section 34 Indian Penal Code and 201 Indian Penal Code, was confirmed by this Court. The accused had committed gang rape on the victim, strangulated her thereafter and threw away her body into the septic tank with the cycle, after causing stab injuries. It was held as under:

36.....It cannot be overlooked that Naveen, a 16 year old girl, was preparing for her 10th examination at her house and suddenly both the accused took advantage of she being alone in the house and committed a most shameful act of rape. The accused did not stop there but they strangulated her by using her under- garment and thereafter took her to the septic tank alongwith the cycle and caused injuries with a sharp edged weapon. The accused did not even stop there but they exhibited the criminality in their conduct by throwing the dead body into the septic tank totally disregarding the respect for a human dead body. Learned Counsel for the accused (Appellants) could not point any mitigating circumstances from the record of the case to justify the reduction of sentence of either of the accused. In a case of this nature, in our considered view, the capital punishment to both the accused is the only proper punishment and we see no reason to take a different view than the one taken by the courts below.

488. In Bantu v. State of Uttar Pradesh MANU/SC/7863/2008 : (2008) 11 SCC 113, the victim aged about five years was not only raped, but was murdered in a diabolic manner. The Court awarded extreme punishment of death, holding that for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed must be delicately balanced by the Court in a dispassionate manner.

489. In Ankush Maruti Shinde and Ors. v. State of Maharashtra MANU/SC/0700/2009 : (2009) 6 SCC 667, concerned accused were found guilty of offences Under Sections 307 Indian Penal Code, 376(2)(g) Indian Penal Code and 397 read with 395 and 396 of Indian Penal Code. This Court declined to interfere with the concurrent findings of the courts below and upheld death penalty awarded to the accused, taking into account the brutality of the incident, tender age of the deceased, and the fact of a minor girl being mercilessly gang raped and then put to death. The court also noted that there was no provocation from the deceased's side and the two surviving eye witnesses had fully corroborated the case of the prosecution.

490. In Mehboob Batcha and Ors. v. State rep. by Supdt. of Police MANU/SC/0260/2011 : (2011) 7 SCC 45, accused were policemen who had wrongfully confined one Nandagopal in police custody in Police Station Annamalai Nagar on suspicion of theft from 30.05.1992 till 02.06.1992 and had beaten him to death there with lathis, and had also gang raped his wife Padmini in a barbaric manner. This Court could not award death penalty due to omission of the courts below in framing charge Under Section 302, Indian Penal Code. However, the observations made by this Court are worth quoting here:

Bane hain ahal- e- hawas muddai bhi munsif bhi Kise vakeel karein kisse munsifi chaahen - - Faiz Ahmed Faiz

1. If ever there was a case which cried out for death penalty it is this one, but it is deeply regrettable that not only was no such penalty imposed but not even a charge Under Section 302 Indian Penal Code was framed against the accused by the Courts below.

.....

9. We have held in Satya Narain Tiwari @ Jolly and Anr. v. State of U.P. MANU/SC/0910/2010 : (2010) 13 SCC 689 and in Sukhdev Singh v. State of Punjab MANU/SC/1355/2010 : (2010) 13 SCC 656 that crimes against women are not ordinary crimes committed in a fit of anger or for property. They are social crimes. They disrupt the entire social fabric, and hence they call for harsh punishment.....

491. In Mohd. Mannan @ Abdul Mannan v. State of Bihar MANU/SC/0460/2011 : (2011) 5 SCC 317, this Court upheld award of death sentence to a 43 year old accused who brutally raped and murdered a minor girl, while holding a position of trust. Relevant considerations of the Court while affirming the death sentence are extracted as under:

26....The postmortem report shows various injuries on the face, nails and body of the child. These injuries show the gruesome manner in which she was subjected to rape. The victim of crime is an innocent child who did not provide even an excuse, much less a provocation for murder. Such cruelty towards a young child is appalling. The Appellant had stooped so low as to unleash his monstrous self on the innocent, helpless and defenseless child. This act no doubt had invited extreme indignation of the community and shocked the collective conscience of the society. Their expectation from the authority conferred with the power to adjudicate, is to inflict the death sentence which is natural and logical. We are of the opinion that Appellant is a menace to the society and shall continue to be so and he cannot be reformed. We have no manner of doubt that the case in hand falls in the category of the rarest of the rare cases and the trial court had correctly inflicted the death sentence which had rightly been confirmed by the High Court.

In Shivaji @ Dadya Shankar Alhat v. State of Maharashtra MANU/SC/8019/2008 : (2008) 15 SCC 269; Rajendra Pralhadrao Wasnik v. The State of Maharashtra MANU/SC/0160/2012 : (2012) 4 SCC 37 award of death penalty in case of rape and murder was upheld, finding the incident brutal and accused a menace for the society.

492. In Dhananjoy Chatterjee alias Dhana v. State of W.B. MANU/SC/0626/1994 : (1994) 2 SCC 220, a security guard who was entrusted with the security of a residential apartment had raped

and murdered an eighteen year old inhabitant of one of the flats in the said apartment, between 5.30 p.m. and 5.45 p.m. The entire case of the prosecution was based on circumstantial evidence. However, Court found that it was a fit case for imposing death penalty. Following observation of the Court while imposing death penalty is worth quoting:

14. In recent years, the rising crime rate- particularly violent crime against women has made the criminal sentencing by the courts a subject of concern. Today there are admitted disparities. Some criminals get very harsh sentences while many receive grossly different sentence for an essentially equivalent crime and a shockingly large number even go unpunished, thereby encouraging the criminal and in the ultimate making justice suffer by weakening the system's credibility. Of course, it is not possible to lay down any cut and dry formula relating to imposition of sentence but the object of sentencing should be to see that the crime does not go unpunished and the victim of crime as also the society has the satisfaction that justice has been done to it. In imposing sentences, in the absence of specific legislation, Judges must consider variety of factors and after considering all those factors and taking an over- all view of the situation, impose sentence which they consider to be an appropriate one. Aggravating factors cannot be ignored and similarly mitigating circumstances have also to be taken into consideration.

15. In our opinion, the measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenceless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment fitting to the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment.

(Emphasis added)

493. In a landmark judgment Shankar Kisanrao Khade v. State of Maharashtra MANU/SC/0476/2013 : (2013) 5 SCC 546, Justice Madan B. Lokur (Concurring) after analysing various cases of rape and murder, wherein death sentence was confirmed by this Court, in para (122) briefly laid down the grounds which weighed with the Court in confirming the death penalty and the same read as under:

122. The principal reasons for confirming the death penalty in the above cases include:

(1) the cruel, diabolic, brutal, depraved and gruesome nature of the crime (Jumman Khan v. State of U.P. MANU/SC/0081/1991 : (1991) 1 SCC 752, Dhananjoy Chatterjee v. State of W.B. MANU/SC/0626/1994 : (1994) 2 SCC 220, Laxman Naik v. State of Orissa MANU/SC/0264/1995 : (1994) 3 SCC 381, Kamta Tewari v. State of M.P. MANU/SC/0722/1996

: (1996) 6 SCC 250, Nirmal Singh v. State of Haryana MANU/SC/0178/1999 : (1999) 3 SCC 670, Jai Kumar v. State of M.P. MANU/SC/0360/1999 : (1999) 5 SCC 1, State of U.P. v. Satish MANU/SC/0090/2005 : (2005) 3 SCC 114, Bantu v. State of U.P. MANU/SC/7863/2008 : (2008) 11 SCC 113, Ankush Maruti Shinde v. State of Maharashtra MANU/SC/0700/2009 : (2009) 6 SCC 667, B.A. Umesh v. State of Karnataka MANU/SC/0082/2011 : (2011) 3 SCC 85, Mohd. Mannan v. State of Bihar MANU/SC/0460/2011 : (2011) 5 SCC 317 and Rajendra Pralhadrao Wasnik v. State of Maharashtra MANU/SC/0160/2012 : (2012) 4 SCC 37);

(2) the crime results in public abhorrence, shocks the judicial conscience or the conscience of society or the community (Dhananjoy Chatterjee MANU/SC/0626/1994 : (1994) 2 SCC 220, Jai Kumar MANU/SC/0360/1999 : (1999) 5 SCC 1, Ankush Maruti Shinde MANU/SC/0700/2009 : (2009) 6 SCC 667 and Mohd. Mannan MANU/SC/0460/2011 : (2011) 5 SCC 317);

(3) the reform or rehabilitation of the convict is not likely or that he would be a menace to society (Jai Kumar MANU/SC/0360/1999 : (1999) 5 SCC 1, B.A. Umesh MANU/SC/0082/2011 : (2011) 3 SCC 85 and Mohd. Mannan MANU/SC/0460/2011 : (2011) 5 SCC 317);

(4) the victims were defenceless (Dhananjoy Chatterjee MANU/SC/0626/1994 : (1994) 2 SCC 220, Laxman Naik MANU/SC/0264/1995 : (1994) 3 SCC 381, Kamta Tewari MANU/SC/0722/1996 : (1996) 6 SCC 250, Ankush Maruti Shinde MANU/SC/0700/2009 : (2009) 6 SCC 667, Mohd. Mannan MANU/SC/0460/2011 : (2011) 5 SCC 317 and Rajendra Pralhadrao Wasnik MANU/SC/0160/2012 : (2012) 4 SCC 37);

(5) the crime was either unprovoked or that it was premeditated (Dhananjoy Chatterjee MANU/SC/0626/1994 : (1994) 2 SCC 220, Laxman Naik MANU/SC/0264/1995 : (1994) 3 SCC 381, Kamta Tewari MANU/SC/0722/1996 : (1996) 6 SCC 250, Nirmal Singh MANU/SC/0178/1999 : (1999) 3 SCC 670, Jai Kumar MANU/SC/0360/1999 : (1999) 5 SCC 1, Ankush Maruti Shinde MANU/SC/0700/2009 : (2009) 6 SCC 667, B.A. Umesh MANU/SC/0082/2011 : (2011) 3 SCC 85 and Mohd. Mannan MANU/SC/0460/2011 : (2011) 5 SCC 317) and in three cases the antecedents or the prior history of the convict was taken into consideration (Shivu v. High Court of Karnataka MANU/SC/7103/2007 : (2007) 4 SCC 713, B.A. Umesh MANU/SC/0082/2011 : (2011) 3 SCC 85 and Rajendra Pralhadrao Wasnik MANU/SC/0160/2012 : (2012) 4 SCC 37).

494. We also refer to para (106) of Shankar Kisanrao Khade's case where Justice Madan B. Lokur (Concurring) has exhaustively analysed the case of rape and murder where death penalty was converted to that of imprisonment for life and some of the factors that weighed with the Court in such commutation. Para (106) reads as under:

106. A study of the above cases suggests that there are several reasons, cumulatively taken, for converting the death penalty to that of imprisonment for life. However, some of the factors that have had an influence in commutation include:

(1) the young age of the accused [Amit v. State of Maharashtra MANU/SC/0567/2003 : (2003) 8 SCC 93 aged 20 years, Rahul v. State of Maharashtra (2005) 10 SCC 322 aged 24 years, Santosh Kumar Singh v. State MANU/SC/0801/2010 : (2010) 9 SCC 747 aged 24 years, Rameshbhai Chandubhai Rathod (2) MANU/SC/0075/2011 : (2011) 2 SCC 764 aged 28 years and Amit v. State of U.P. MANU/SC/0133/2012 : (2012) 4 SCC 107 aged 28 years];

(2) the possibility of reforming and rehabilitating the accused (in Santosh Kumar Singh MANU/SC/0801/2010 : (2010) 9 SCC 747 and Amit v. State of U.P. MANU/SC/0133/2012 : (2012) 4 SCC 107 the accused, incidentally, were young when they committed the crime);

(3) the accused had no prior criminal record (Nirmal Singh MANU/SC/0178/1999 : (1999) 3 SCC 670, Raju MANU/SC/0324/2001 : (2001) 9 SCC 50, Bantu MANU/SC/0684/2001 : (2001) 9 SCC 615, Amit v. State of Maharashtra MANU/SC/0567/2003 : (2003) 8 SCC 93, Surendra Pal Shivbalakpal MANU/SC/0794/2004 : (2005) 3 SCC 127, Rahul (2005) 10 SCC 322 and Amit v. State of U.P. MANU/SC/0133/2012 : (2012) 4 SCC 107);

(4) the accused was not likely to be a menace or threat or danger to society or the community (Nirmal Singh MANU/SC/0178/1999 : (1999) 3 SCC 670, Mohd. Chaman MANU/SC/0781/2000 : (2001) 2 SCC 28, Raju MANU/SC/0324/2001 : (2001) 9 SCC 50, Bantu MANU/SC/0684/2001 : (2001) 9 SCC 615, Surendra Pal Shivbalakpal MANU/SC/0794/2004 : (2005) 3 SCC 127, Rahul (2005) 10 SCC 322 and Amit v. State of U.P. MANU/SC/0133/2012 : (2012) 4 SCC 107).

(5) a few other reasons need to be mentioned such as the accused having been acquitted by one of the courts (State of T.N. v. Suresh MANU/SC/0939/1998 : (1998) 2 SCC 372, State of Maharashtra v. Suresh MANU/SC/0765/1999 : (2000) 1 SCC 471, State of Maharashtra v. Bharat Fakira Dhiwar MANU/SC/0700/2001 : (2002) 1 SCC 622, State of Maharashtra v. Mansingh MANU/SC/1159/2004 : (2005) 3 SCC 131 and Santosh Kumar Singh MANU/SC/0801/2010 : (2010) 9 SCC 747);

(6) the crime was not premeditated (Kumudi Lal v. State of U.P. MANU/SC/0275/1999 : (1999) 4 SCC 108, Akhtar v. State of U.P. MANU/SC/1008/1999 : (1999) 6 SCC 60, Raju v. State of Haryana MANU/SC/0324/2001 : (2001) 9 SCC 50 and Amrit Singh v. State of Punjab MANU/SC/8642/2006 : (2006) 12 SCC 79);

(7) the case was one of circumstantial evidence (Mansingh MANU/SC/1159/2004 : (2005) 3 SCC 131 and Bishnu Prasad Sinha MANU/SC/7022/2007 : (2007) 11 SCC 467).

In one case, commutation was ordered since there was apparently no "exceptional" feature warranting a death penalty (Kumudi Lal MANU/SC/0275/1999 : (1999) 4 SCC 108) and in another case because the trial court had awarded life sentence but the High Court enhanced it to death (Haresh Mohandas Rajput MANU/SC/1099/2011 : (2011) 12 SCC 56).

495. In the same judgment in Shankar Kisanrao Khade v. State of Maharashtra MANU/SC/0476/2013 : (2013) 5 SCC 546, Justice Madan B. Lokur (concurring) while elaborately analysing the question of imposing death penalty in specific facts and circumstances of that particular case, concerning rape and murder of a minor, discussed the sentencing policy of India, with special reference to execution of the sentences imposed by the Judiciary. The Court noted the prima facie difference in the standard of yardsticks adopted by two organs of the government viz. Judiciary and the Executive in treating the life of convicts convicted of an offence punishable with death and recommended consideration of Law Commission of India over this issue. The relevant excerpt from the said judgment, highlighting the inconsistency in the approach of Judiciary and Executive in the matter of sentencing, is as under:

148. It seems to me that though the Courts have been applying the rarest of rare principle, the Executive has taken into consideration some factors not known to the Courts for converting a death sentence to imprisonment for life. It is imperative, in this regard, since we are dealing with the lives of people (both the accused and the rape- murder victim) that the Courts lay down a jurisprudential basis for awarding the death penalty and when the alternative is unquestionably foreclosed so that the prevailing uncertainty is avoided. Death penalty and its execution should not become a matter of uncertainty nor should converting a death sentence into imprisonment for life become a matter of chance. Perhaps the Law Commission of India can resolve the issue by examining whether death penalty is a deterrent punishment or is retributive justice or serves an incapacitative goal.

In Shankar Kisanrao's case, it was observed by Justice Madan B. Lokur that Dhananjay Chatterjee's case was perhaps the only case where death sentence imposed on the accused, who was convicted for rape was executed.

496. Another significant development in the sentencing policy of India is the 'victim- centric' approach, clearly recognised in Machhi Singh (Supra) and re- emphasized in a plethora of cases. It has been consistently held that the courts have a duty towards society and that the punishment should be corresponding to the crime and should act as a soothing balm to the suffering of the victim and their family. [Ref: Gurvail Singh @ Gala and Anr. v. State of Punjab MANU/SC/0111/2013 : (2013) 2 SCC 713; Mohfil Khan and Anr. v. State of Jharkhand MANU/SC/0915/2014 : (2015) 1 SCC 67; Purushottam Dashrath Borate and Anr. v. State of Maharashtra MANU/SC/0583/2015 : (2015) 6 SCC 652]. The Courts while considering the issue of sentencing are bound to acknowledge the rights of the victims and their family, apart from the

rights of the society and the accused. The agony suffered by the family of the victims cannot be ignored in any case. In Mohfil Khan (supra), this Court specifically observed that 'it would be the paramount duty of the Court to provide justice to the incidental victims of the crime - the family members of the deceased persons.

497. The law laid down above, clearly sets forth the sentencing policy evolved over a period of time. I now proceed to analyse the facts and circumstances of the present case on the anvil of above- stated principles. To be very precise, the nature and the manner of the act committed by the accused, and the effect it casted on the society and on the victim's family, are to be weighed against the mitigating circumstances stated by the accused and the scope of their reform, so as to reach a definite reasoned conclusion as to what would be appropriate punishment in the present case- 'death sentence', life sentence commutable to 14 years' or 'life imprisonment for the rest of the life'.

498. The question would be whether the present case could be one of the rarest of rare cases warranting death penalty. Before the court proceed to make a choice whether to award death sentence or life imprisonment, the court is to draw up a balance- sheet of aggravating and mitigating circumstances attending to the commission of the offence and then strike a balance between those aggravating and mitigating circumstances. Two questions are to be asked and answered: (i) Is there something uncommon about the crimes which regard sentence of imprisonment for life inadequate; (ii) Whether there is no alternative punishment suitable except death sentence. Where a crime is committed with extreme brutality and the collective conscience of the society is shocked, courts must award death penalty, irrespective of their personal opinion as regards desirability of death penalty. By not imposing a death sentence in such cases, the courts may do injustice to the society at large.

499. We are here concerned with the award of an appropriate sentence in case of brutal gang-rape and murder of a young lady, involving most gruesome and barbaric act of inserting iron rods in the private parts of the victim. The act was committed in connivance and collusion of six who were on a notorious spree running a bus, showcasing as a public transport, with the intent of attracting passengers and committing crime with them. The victim and her friend were picked up from the Munirka bus stand with the mala fide intent of ravishing and torturing her. The accused not only abducted the victim, but gang- raped her, committed unnatural offence by compelling her for oral sex, bit her lips, cheeks, breast and caused horrifying injuries to her private parts by inserting iron rod which ruptured the vaginal rectum, jejunum and rectum. The diabolical manner in which crime was committed leaves one startled as to the pervert mental state of the inflictor. On top of it, after having failed to kill her on the spot, by running the bus over her, the victim was thrown half naked in the wintery night, with grievous injuries.

500. If we look at the aggravating circumstances in the present case, following factors would emerge:

• Diabolic nature of the crime and the manner of committing crime, as reflected in committing gang- rape with the victim; forcing her to perform oral sex, injuries on the body of the deceased by way of bite marks; insertion of iron rod in her private parts and causing fatal injuries to her private parts and other internal injuries; pulling out her internal organs which caused sepsis and ultimately led to her death; throwing the victim and the complainant (P.W. 1) naked in the cold wintery night and trying to run the bus over them.

• The brazenness and coldness with which the acts were committed in the evening hours by picking up the deceased and the victim from a public space, reflects the threat to which the society would be posed to, in case the accused are not appropriately punished. More so, it reflects that there is no scope of reform.

• The horrific acts reflecting the in- human extent to which the accused could go to satisfy their lust, being completely oblivious, not only to the norms of the society, but also to the norms of humanity.

• The acts committed so shook the conscience of the society.

501. As noted earlier, on the aspect of sentencing, seeking reduction of death sentence to life imprisonment, three of the convicts/Appellants namely A- 3 Akshay, A- 4 Vinay and A- 5 Pawan placed on record, through their individual affidavits dated 23.03.2017, following mitigating circumstances:

(a) Family circumstances such as poverty and rural background,

(b) Young age,

(c) Current family situation including age of parents, ill health of family members and their responsibilities towards their parents and other family members,

(d) Absence of criminal antecedents,

(e) Conduct in jail, and

(f) Likelihood of reformation.

In his affidavit, accused Mukesh reiterated his innocence and only pleaded that he is falsely implicated in the case.

502. In Purushottam Dashrath Borate and Anr. v. State of Maharashtra MANU/SC/0583/2015 : (2015) 6 SCC 652, this Court held that age of the accused or family background of the accused or lack of criminal antecedents cannot be said to be the mitigating circumstance. It cannot also be considered as mitigating circumstance, particularly taking into consideration, the nature of heinous offence and cold and calculated manner in which it was committed by the accused persons.

503. Society's reasonable expectation is that deterrent punishment commensurate with the gravity of the offence be awarded. When the crime is brutal, shocking the collective conscience of the community, sympathy in any form would be misplaced and it would shake the confidence of public in the administration of criminal justice system. As held in Om Prakash v. State of Haryana MANU/SC/0129/1999 : (1999) 3 SCC 19, the Court must respond to the cry of the society and to settle what would be a deterrent punishment for what was an apparently abominable crime.

504. Bearing in mind the above principles governing the sentencing policy, I have considered all the aggravating and mitigating circumstances in the present case. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the crime. Justice demands that the courts should impose punishments befitting the crime so that it reflects public abhorrence of the crime. Crimes like the one before us cannot be looked with magnanimity. Factors like young age of the accused and poor background cannot be said to be mitigating circumstances. Likewise, post- crime remorse and post- crime good conduct of the accused, the statement of the accused as to their background and family circumstances, age, absence of criminal antecedents and their good conduct in prison, in my view, cannot be taken as mitigating circumstances to take the case out of the category of "rarest of rare cases". The circumstances stated by the accused in their affidavits are too slender to be treated as mitigating circumstances.

505. In the present case, there is not even a hint of hesitation in my mind with respect to the aggravating circumstances outweighing the mitigating circumstances and I do not find any justification to convert the death sentence imposed by the courts below to 'life imprisonment for the rest of the life'. The gruesome offences were committed with highest viciousness. Human lust was allowed to take such a demonic form. The accused may not be hardened criminals; but the cruel manner in which the gang- rape was committed in the moving bus; iron rods were inserted in the private parts of the victim; and the coldness with which both the victims were thrown naked in cold wintery night of December, shocks the collective conscience of the society. The present case clearly comes within the category of 'rarest of rare case' where the question of any other punishment is 'unquestionably foreclosed'. If at all there is a case warranting award of death sentence, it is the present case. If the dreadfulness displayed by the accused in committing the

gang- rape, unnatural sex, insertion of iron rod in the private parts of the victim does not fall in the 'rarest of rare category', then one may wonder what else would fall in that category. On these reasoning recorded by me, I concur with the majority in affirming the death sentence awarded to the accused persons.

506. The incident of gang- rape on the night of 16.12.2012 in the capital sparked public protest not only in Delhi but nation- wide. We live in a civilized society where law and order is supreme and the citizens enjoy inviolable fundamental human rights. But when the incident of gang- rape like the present one surfaces, it causes ripples in the conscience of society and serious doubts are raised as to whether we really live in a civilized society and whether both men and women feel the same sense of liberty and freedom which they should have felt in the ordinary course of a civilized society, driven by rule of law. Certainly, whenever such grave violations of human dignity come to fore, an unknown sense of insecurity and helplessness grabs the entire society, women in particular, and the only succour people look for, is the State to take command of the situation and remedy it effectively.

507. The statistics of National Crime Records Bureau which I have indicated in the beginning of my judgment show that despite the progress made by women in education and in various fields and changes brought in ideas of women's rights, respect for women is on the decline and crimes against women are on the increase. Offences against women are not a women's issue alone but, human rights issue. Increased rate of crime against women is an area of concern for the law-makers and it points out an emergent need to study in depth the root of the problem and remedy the same through a strict law and order regime. There are a number of legislations and numerous penal provisions to punish the offenders of violence against women. However, it becomes important to ensure that gender justice does not remain only on paper.

508. We have a responsibility to set good values and guidance for posterity. In the words of great scholar, Swami Vivekananda, "the best thermometer to the progress of a nation is its treatment of its women." Crime against women not only affects women's self esteem and dignity but also degrades the pace of societal development. I hope that this gruesome incident in the capital and death of this young woman will be an eye- opener for a mass movement "to end violence against women" and "respect for women and her dignity" and sensitizing public at large on gender justice. Every individual, irrespective of his/her gender must be willing to assume the responsibility in fight for gender justice and also awaken public opinion on gender justice. Public at large, in particular men, are to be sensitized on gender justice. The battle for gender justice can be won only with strict implementation of legislative provisions, sensitization of public, taking other pro- active steps at all levels for combating violence against women and ensuring widespread attitudinal changes and comprehensive change in the existing mind set. We hope that this incident will pave the way for the same.

MANU/SC/0205/2002

Back to Section 100 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Appeal (crl.) 31 of 2000

Decided On: 20.03.2002

Khet Singh Vs. Union of India (UOI)

Hon'ble Judges/Coram:

R.P. Sethi and K.G. Balakrishnan, JJ.

JUDGMENT

K.G. Balakrishnan, J.

1. This appeal is directed against the judgment of the High Court of Rajasthan challenging the conviction and sentence of the appellant under Sections 17 18 & 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "NDPS Act"). Appellant had been sentenced to undergo 10 years' rigorous imprisonment and a fine of Rs. 1 lakh and in default of payment of fine further to undergo two years and six months' rigorous imprisonment.

2. Appellant Khet Singh was tried along with one Kanhaiya Lal for the aforesaid offences and Kanhaiya Lal was acquitted by the Sessions Court. The case of the prosecution is that on 6.5.1989, PW6 Shri Narain Das Lakhara, Inspector, Customs Department, Jaisalmer, along with the Superintendent of Customs and two other constables was proceeding on patrolling and checking duty towards Ramgarh. Near Brahamsar crossing, they started checking several motor vehicles as it was suspected that there might be drug trafficking. In truck no. RJC 1472, the appellant was found sitting with a cloth basket in his hand. During the search, a polythene bag was found in the basket which contained some black substance suspected to be opium. Appellant Khet Singh and Kanhaiya Lal along with the cloth basket were brought to the Office of the Customs. In the office of the Customs, the opium was seized, samples were taken from it and were sealed. Appellant and Kanhaiya Lal were questioned. The appellant stated that he had purchased the seized opium from Kanhaiya Lal. The samples were sent for chemical examination and the report from the Forensic Science Laboratory revealed that the sample was 'opium'.

3. The appellant contended before the trial court that there was violation of Section 50 of the NDPS Act as the search and seizure was not made in the presence of a Gazetted Officer or a Magistrate and that the appellant was not told in advance that he had a right to demand that the search to be effected shall be in the presence of a Magistrate or a Gazetted Officer. This plea was rejected on the ground that search and checking was being conducted of the vehicles and it was during the course of this general search that the appellant was found travelling with the opium and hence

Section 50 of the NDPS Act is not applicable and that the same would apply in the case of a search on the person of the appellant. The same plea was raised before the High Court and was rightly rejected.

4. The learned Counsel, Mr. Doongar Singh who appeared on behalf of the appellant raised a contention that though the search and seizure was effected near Brahamsar crossing, no mahazar was prepared and no samples were taken from the contraband article; the seizure memo was prepared in the Office of the Customs Department and the samples were also taken at the Office of the Customs Department, and that this has caused serious prejudice to the appellant. According to the appellant's Counsel, the seizure memo should have been prepared at the place where the contraband article was seized from the accused. He further pointed out that the recovery was effected but the contraband article was not sealed at the spot and the truck along with the driver and the appellant were brought to the office of Customs Department at Jaisalmer and that there were about 10 other persons in the truck and all of them were allowed to go. The learned counsel further contended that had the search mahazar been prepared at the spot, it could have been satisfactorily proved that it was from the appellant's possession that the bag was taken and it is doubtful whether the bag belonged to the appellant or to any other passengers.

5. It is true that the search and seizure of contraband article is a serious aspect in the matter of investigation related to offences under the NDPS Act. The NDPS Act and the rules framed thereunder have laid down a detailed procedure and guidelines as to the manner in which search and seizure are to be effected. If there is any violation of these guidelines, Courts would take a serious view and the benefit would be extended to the accused. The offences under NDPS Act are grave in nature and minimum punishment prescribed under the Statute is incarceration for a long period. As the possession of any narcotic drugs or psychotropic substance by itself is made punishable under the act, the seizure of the article from the appellant is of vital importance.

6. Section 51 of the NDPS Act provides that the provisions of the Code of Criminal Procedure, 1973 shall apply in respect of warrants, arrests, searches and seizure in so far as they are not inconsistent with the provisions of the NDPS Act. Section 165 of the Code confers powers on the police to search any place without search warrant. 'Place' has been defined in Section 2(p) of the Code as one which includes house, building, tent, vehicle and vessel. Section 165 of the Code empowers a police officer making an investigation to conduct search without a warrant if he has reasonable grounds for believing that anything necessary for the purpose of an investigation into any offence may be found and that he is of the opinion that undue delay may frustrate the object of the search. Further, Section 100 of the Code lays down the detailed procedure and guidelines regarding the manner in which search is to be conducted of a closed place.

7. In the present case, the learned Counsel for the appellant contended that the police officer did not prepare the seizure mahazar at the spot and thereby violated the provisions of law. Therefore, it is argued that the evidence collected by the prosecution was not admissible. The learned Counsel further contended that the directions contained in the Standing Instructions issued by

the Narcotics Control Bureau were not complied with. Our attention was drawn to clause 1.5 of the Standing Instruction No. 1/88 issued by the Narcotics Control Bureau, New Delhi, which is to the following effect :- \

" Place and time for drawal of sample

Samples from the Narcotic Drugs and Psychotropic Substances seized, must be drawn on the spot of recovery, in duplicate, in the presence of search(Panch) witnesses and the person from whose possession the drug is recovered, and a mention to this effect should invariably be made in the panchnama drawn on the spot."

8. The learned Counsel for the appellant also pointed out to us Clause 3.8 of the Standing Order No. 2/88 issued by the Narcotics Control Bureau, New Delhi, which reads as follows :-

Each seizing officer should deposit the drugs fully packed and sealed with his seal in the godown within 48 hours of seizure of such drugs, with a forwarding memo indicating:

(i) NDPS Crime No. as per crime and prosecution register under the new law (i.e. NDPS Act)

(ii) Name (s) of accused

(iii) Reference of test memo

(iv) Description of drugs in the sealed packages/containers and other goods, if any

(v) Drug- wise quantity in each package/container

(vi) Drug- wise number of packages/containers

(vii) Total number of all packages/containers.

9. The learned Counsel for the appellant contended that these instructions issued by the Narcotics Control Bureau, New Delhi, were not followed and the seizure memo was not prepared at the spot and there was delay in depositing the seized drug in the godown. It was argued that this has caused serious prejudice to the accused and therefore, his conviction is vitiated on that account.

10. The instructions issued by the Narcotics Control Bureau, New Delhi are to be followed by the officer in- charge of the investigation of the crimes coming within the purview of the NDPS Act, even though these instructions do not have the force of law. They are intended to guide the officers and to see that a fair procedure is adopted by the officer in- charge of the investigation. It is true that when a contraband article is seized during investigation or search, a seizure mahazar should be prepared at the spot in accordance with law. There may, however, be circumstances in which it would not have been possible for the officer to prepare the mahazar at the spot, as it may be a chance recovery and the officer may not have the facility to prepare a seizure mahazar at the spot itself. If the seizure is effected at the place where there are no witnesses and there is no facility for weighing the contraband article or other requisite facilities are lacking, the officer can prepare the seizure mahazar at a later stage as and when the facilities are available, provided there are justifiable and reasonable grounds to do so. In that event, where the seizure mahazar is prepared

at a later stage, the officer should indicate his reasons as to why he had not prepared the mahazar at the spot of recovery. If there is any inordinate delay in preparing the seizure mahazar, that may give an opportunity to tamper with the contraband article allegedly seized from the accused. There may also be allegations that the article seized was by itself substituted and some other items were planted to falsely implicate the accused. To avoid these suspicious circumstances and to have a fair procedure in respect of search and seizure, it is always desirable to prepare the seizure mahazar at the spot itself from where the contraband articles were taken into custody.

11. In the present case, though the article was seized from the accused while he was travelling in a truck, no seizure mahazar was prepared at that time. The accused persons were taken to the office of customs and the seizure mahazar was prepared at the office of customs. The learned Single Judge of the High Court held that no prejudice was caused to the appellant. The learned Counsel for the appellant contended that NDPS Act being a special Statute with provision for severe punishment on the accused found guilty of the offences punishable thereunder, the procedure established by law for search and seizure is to be strictly complied with and any failure to comply with such procedure is to be viewed seriously and any evidence collected shall be made inadmissible under law.

12. Whether evidence collected by illegal search or seizure is admissible or not was considered by this Court in series of decisions and one of the earliest decisions is the decision of the Constitution Bench in Pooran Mal vs. The Director of Inspection (Investigation), New Delhi and others, etc.etc. MANU/SC/0055/1973 : [1974]93ITR505(SC) . Though the search in that case was done under the provisions of the Income Tax Act, it is apposite to note the following observation made by this court:-

"So far as India is concerned its law of evidence is modelled on the rules of evidence which prevailed in English Law, and Courts in India and in England have consistently refused to exclude relevant evidence merely on the ground that it is obtained by illegal search or seizure."

13. In State of Punjab vs. Baldev Singh MANU/SC/0972/1998 : (1999)6SCC172 , the Constitution Bench of this Court extensively considered the question whether the procedure laid down under Section 50 of NDPS Act is mandatory or not. It was held that the judgment in Pooran Mal case cannot be understood to have laid down that an illicit article seized during a search of a person, on prior information, conducted in violation of the provisions of Section 50 of the Act, can by itself be used as evidence of unlawful possession of the illicit article on the person from whom the contraband has been seized during the illicit search. In paragraph 45 of the Judgment, Dr. A.S. Anand(Chief Justice) held as under:-

"..Prosecution cannot be permitted to take advantage of its own wrong. Conducting a fair trial for those who are accused of a criminal offence is the cornerstone of our democratic society. A conviction resulting from an unfair trial is contrary to our concept of justice. Conducting a fair trial is both for the benefit of the society as well as for an accused and cannot be abandoned. While considering the aspect of fair trial, the nature of the evidence obtained and the nature of the safeguard violated are both relevant factors. Courts cannot allow admission of evidence against

an accused, where the court is satisfied that the evidence had been obtained by a conduct of which the prosecution ought not to take advantage particularly when that conduct had caused prejudice to the accused. If after careful consideration of the material on record it is found by the court that the admission of evidence collected in search conducted in violation of Section 50 would render the trial unfair then that evidence must be excluded.."

14. In State of H.P. vs. Prithi Chand and Another MANU/SC/0259/1996 : 1996CriLJ1354 , it was held that it would thus be settled law that every deviation from the details of the procedure prescribed for search does not necessarily lead to the conclusion that search by the police renders the recovery of the articles pursuant to the illegal search irrelevant evidence nor the discovery of the fact inadmissible at the trial. Weight to be attached to such evidence depends on facts and circumstances in each case. The court is required to scan the evidence with care and to act upon it when it is proved and the court would hold that the evidence would be relied upon.

15. In Radha Kishan vs. State of Uttar Pradesh MANU/SC/0146/1962 : (1963)IILLJ667SC this Court held that the evidence obtained by illegal search and seizure would not be rejected but requires to be examined carefully. In State of Maharashtra vs. Natwarlal Damodardas Soni MANU/SC/0518/1979 : 1980CriLJ429 it was held that even if the search was illegal, it will not affect the validity of the seizure and further investigation of the authorities or the validity of the trial which followed on the complaint by the customs officials.

16. Law on the point is very clear that even if there is any sort of procedural illegality in conducting the search and seizure, the evidence collected thereby will not become inadmissible and the Court would consider all the circumstances and find out whether any serious prejudice had been caused to the accused. If the search and seizure was in complete defiance of the law and procedure and there was any possibility of the evidence collected likely to have been tampered with or interpolated during the course of such search or seizure, then, it could be said that the evidence is not liable to be admissible in evidence.

17. In the present case, though the mahazar was not prepared at the spot where the accused persons were found to be in possession of the contraband article but the same was done only at the Office of the Customs Department while the accused persons were very much present throughout, there was no allegation or suggestion that the contraband article was, in any way, meddled with by the officers. Therefore, we are of the view that the appellant has rightly been found to be in possession of the opium. We find no reason to interfere with the conviction and sentence entered against the appellant. The appeal is dismissed accordingly.

MANU/SC/7020/2008

Back to Section 102 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 179 of 2008 (Arising out of SLP (Crl.) 3408 of 2007)

Decided On: 24.01.2008

Suresh Nanda Vs. C.B.I.

Hon'ble Judges/Coram:

P.P. Naolekar and Markandey Katju, JJ.

ORDER

1. Leave granted.

2. The appellant claims to be a non- resident Indian settled in United Kingdom for the last 23 years. The passport of the appellant as well as other documents were seized by the respondent from 4, Prithviraj Road, New Delhi in a search conducted on 10.10.2006 when the appellant was on a visit to India. The said search and seizure was pursuant to an F.I.R. dated 9.10.2006 registered on the basis of a sting operation carried out by a news portal in the year 2001. The passport seized during the search was retained by the C.B.I. officials. An application was moved by the appellant before the Special Judge, C.B.I., Patiala House Courts, New Delhi praying for release of his passport so that he can travel abroad to London and Ducal for a period of 15 days. The learned Special Judge, by order dated 13.1.2007, directed the release of the passport to the appellant by imposing upon him certain conditions. Aggrieved against the order passed by the Learned Special Judge, C.B.I., the respondent preferred a Criminal Revision before the High Court, The High Court, by order dated 5.2.2007, reversed the order of the learned Special Judge and refused to release the passport to the appellant. Aggrieved against the order of the High Court, present appeal, by special leave, has been preferred by the appellant.

3. Learned senior counsel appearing for the appellant submitted that the power and jurisdiction to impound the passport of any individual has to be exercised under the Passports Act, 1967 (hereinafter referred to as "The Act"). He specifically referred to Sub- section (3)(e) of Section 10 of the Act which reads as under:

(3) The passport authority may impound or cause to be impounded or revoke a passport or travel document -

(e) if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India:

Reference was also made to Section 10A of the Act which has been introduced by Act 17/2002 w.e.f. 17.10.2001.

4. Learned senior counsel for the appellant also placed reliance on the decision of 5- Judge Bench of this Court in Satwant Singh Sawhney v. D. Rajnarathnam, Asstt. Passport Officer MANU/SC/0040/1967 : [1967]3SCR525 wherein in para 31, it was held as under:

31: For the reasons mentioned above, we would accept the view of Kerala, Bombay and Mysore High Courts in preference to that expressed by the Delhi High Court. It follows that under Article 21 of the Constitution no person can be deprived of his right to travel except according to procedure established by law. It is not disputed that no law was trade by the State regulating or depriving persons of such a right.

5. A similar view is reiterated in the decision rendered by 7- Juage Bench of this Court in Maneka Gandhi v. Union of India and Anr. MANU/SC/0133/1978 : [1978]2SCR621 wherein at page 280, it was held as under;

...Now, it has been held by this Court in Satwant Singh's case (supra) that 'personal liberty' within the meaning of Article 21 includes within its ambit the right to go abroad and consequently no person can be deprived of this right except according to procedure prescribed by law. Prior to the enactment of the Passports Act, 1967, there was no law regulating the right of a person to go abroad and that was the reason why the order of the Passport Officer refusing to issue passport to the petitioner in Satwant Singh's case (supra) was struck down as invalid. It will be seen at once from the language of Article 21 that the protection it secures is a limited one. It safeguards the right to go abroad against executive interference which is not supported by law; and law here means 'enacted law' or 'State law' (Vide A.K. Gopalan's case). Thus, no person can be deprived of his right to go abroad unless there is a law made by the State prescribing the procedure for so depriving him and the deprivation is effected strictly in accordance with such procedure....

6. On the other hand, learned Additional Solicitor General appearing for the respondent submitted that the passport was seized and impounded by exercising the powers under Section 102 read with Sections 165 and 104 of Code of Criminal Procedure (hereinafter referred to as "the Cr.P.C"). He further contended that the power to retain and impound the passport has been rightly exercised by the respondent as there is an order dated 3.11.2006' passed by the learned Special Judge for C.B.I, exercising the power under Section 104 of Cr.P.C.

7. Sub- section (3) (e) of Section 10 of the Act provides for impounding of a passport if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India. Thus, the Passport Authority has the

power to impound the passport under the Act, Section 102 of Cr.P.C. gives powers to the police officer to seize any property which may be alleged or suspected to have been stolen or which may be found under circumstances which create suspicion of the commission of any offence. Sub-section (5) of Section 165 of Cr.P.C. provides that the copies of record made under Sub- section (1) or sub- section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance to the offence Whereas Section 104 of Cr.P.C. authorizes the court to impound any document or thing produced before it under the Code. Section 165 of Cr.P.C. does not speak about the passport which has been searched and seized as in the present case. It does not speak about the documents found in search, but copies of the records prepared under Sub- section (1) and Sub- section (3). "Impound" means to keep in custody of the law. There trust be some distinct action which will show that documents or things have been impounded. According to the Oxford Dictionary "impound" means to take legal or formal possession. In the present case, the passport of the appellant is in possession of CBI right from the date it has been seized by the CBI. When we read Section 104 of Cr.P.C. and Section 10 of the Act together, under Cr.P.C., the Court is empowered to impound any document or thing produced before it whereas the Act speaks specifically of impounding of the passport.

8. Thus, the Act is a special Act relating to a matter of passport, whereas Section 104 of the Cr.P.C. authorizes the Court to impound document or thing produced before it. Where there is a special Act dealing with specific subject, resort should be had to that Act instead of general Act providing for the matter connected with the specific Act. As the Passports Act is a special act, the rule that "general provision should yield to the specific provision" is to be applied. See: Dam Vaiaji Shah and Anr. v. Life Corporation of India and Ors. AIR 1966 SC 1351; Gobind Sugar Mills Ltd. v. State of Bihar and Ors. MANU/SC/0486/1999 : AIR1999SC3097 ; and Belsund Sugar Co. Ltd. v. State of Bihar and Ors. MANU/SC/0457/1999 : AIR1999SC3125 .

9. The Act being a specific Act whereas Section 104 of Cr.P.C. is a general provision for impounding any document or thing, it shall prevail over that Section in the Cr.P.C. as regards the passport. Thus, by necessary implication, the power of Court to impound any document or thing produced before it would exclude passport.

10. In the present case, no steps have been taken under Section 10 of the Act which provides for variation, impounding and revocation of the passports and travel documents. Section 10A of the Act which provides for an order to suspend with immediate effect any passport or travel document; such other appropriate order which may have the effect of rendering any passport or travel document invalid, for a period not exceeding four weeks, if the Central Government or any designated officer on its satisfaction holds that it is necessary in public interest to do without prejudice to the generality of the provisions contained in Section 10 by approaching the Central Government or any designated officer. Therefore, it appears that the passport of the appellant cannot be impounded except by the Passport Authority in accordance with law. The retention of the passport by the respondent (CBI) has not been done in conformity with the provisions of law as there is no order of the passport authorities under Section 10(3)(e) or by the Central

Government or any designated officer under Section 10A of the Act to impound the passport by the respondent exercising the powers vested under the act.

11. Learned Additional Solicitor General has submitted that the police has power to seize a passport in view of Section 102(1) of the Cr.P.C. which states:

Power of police officer to seize certain property; (1) Any police officer may seize any property which may be alleged or suspected to have seen stolen, or which may be found under circumstances which create suspicion of the commission of any offence.

In our opinion, while the police may have the power to seize a passport under Section 102(1) Cr.P.C, it does not have the power to impound the same. Impounding of a passport can only be done by the passport authority under Section 10(3) of the Passports Act, 1967.

12. It may be mentioned that there is a difference between seizing of a document and impounding a document. a seizure is made e at a particular moment when a person or authority taxes into his possession some property which was earlier not in his possession. Thus, seizure is done at a particular moment of time. However, if after seizing of a property or document the said property or document is retained for some period of time, then such retention amounts to impounding of the property/or document. In the Law Lexicon by P. Ramanatha Aiyar (2nd Edition), the word "impound" has been defined to mean "to take possession of a document or thing for being held in custody in accordance with law". Thus, the word 'impounding" really means retention of possession of a good or a document which has been seized.

13. Hence, while the police may have power to seize a passport under Section 102 Cr.P.C. if it is permissible within the authority given under Section 102 of Cr.P.C. it does not have power to retain or impound the same, because that can only be done by the passport authority under Section 10(3) of the Passports Act. Hence, if the police seizes a passport (which it has power to do under Section 102 Cr.P.C.), thereafter the police must send it along with a letter to the passport authority clearly stating that the seized passport deserves to be impounded for one of the reasons mentioned in Section 10(3) of the Act. It is thereafter the passport authority to decide whether to impound the passport or not. Since impounding of a passport has civil consequences, the passport authority must give an opportunity of hearing to the person concerned before impounding his passport. It is well settled that any order which has civil consequences must be passed after giving opportunity of hearing to a party vide State of Orissa v. Binapani Dei MANU/SC/0332/1967 : (1967)IILLJ266SC .

14. In the present case, neither the passport authority passed any order of impounding nor was any opportunity of hearing given to the appellant by the passport authority for impounding the document. It was only the CBI authority which has retained possession of the passport (which in substance amounts to impounding it) from October, 2006. In our opinion, this was clearly illegal.

Under Section 10A of the Act retention by the Central Government can only be for four weeks. Thereafter it can only be retained by an order of the Passport authority under Section 10(3).

15. In our opinion, even the Court cannot impound a passport. Though, no doubt. Section 104 Cr.P.C. states that the Court may, if it thinks fit, impound any document or thing produced before it, in our opinion, this provision will only enable the Court to impound any document or thing other than a passport. This is because impounding a "passport" is provided for in Section 10(3) of the Passports Act. The Passports Act is a special law while the Cr.P.C. is a general law. It is well settled that the special law prevails over the general law vide G.P. Singh's Principles of Statutory Interpretation (9th Edition pg, 133). This principle is expressed in the maxim "Generalia specialibus non derogant", Hence, impounding of a passport cannot be done by the Court under Section 104 Cr.P.C. though it can impound any other document or thing.

16. For the aforesaid reasons, we set aside the impugned order of the High Court and direct the respondent to hand over the passport to the appellant within a week from today. However, it shall be open to the respondent to approach the Passport Authorities under Section 10 or the authorities under Section 10A of the Act for impounding the passport of the appellant in accordance with law.

17. We, however, make it clear that we are not expressing any opinion on the merits of the case and are not deciding whether the passport can be impounded as a condition for grant of bail.

The appeal stands disposed of accordingly.

MANU/SC/0194/1985

Back to Section 125 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 103 of 1981

Decided On: 23.04.1985

Mohd. Ahmed Khan Vs. Shah Bano Begum and Ors.

Hon'ble Judges/Coram:

Y.V. Chandrachud, C.J., D.A. Desai, E.S. Venkataramiah, O. Chinnappa Reddy and Ranganath Misra, JJ.

JUDGMENT

1. This appeal does not involve any question of constitutional importance but, that is not to say that it does not involve any question of importance. Some questions which arise under the ordinary civil and criminal law are of a far- reaching significance to large segments of society which have been traditionally subjected to unjust treatment. Women are one such segment. ' Na stree swatantramarhati" said Manu, the Law giver : The woman does not deserve independence. And, it is alleged that the 'fatal point in Islam is the 'degradation of woman' 'Selections from Kuran' Edward William Lane 1843, Reprint 1982, page xc (Introduction). To the Prophet is ascribed the statement, hopefully wrongly, that 'Woman was made from a crooked rib, and if you try to bend it straight, it will break ; therefore treat your wives kindly.

2. This appeal, arising out of an application filed by a divorced Muslim woman for maintenance under Section 125 of the CrPC, raises a straightforward issue which is of common interest not only to Muslim women, not only to women generally but, to all those who, aspiring to create an equal society of men and women, lure themselves into the belief that mankind has achieved a remarkable decree of progress in that direction. The appellant, who is an advocate by profession, was married to the respondent in 1932. Three sons and two daughters wire born of that marriage. In 1975 the appellant drove the respondent out of the matrimonial home, la April 1978, the respondent filed a petition against the appellant under Section 125 of the Code in the court of the learned Judicial Magistrate (First Class), Indore asking for maintenance at the rate of Rs. 500 per month. On November 6, 1978 the appellant divorced the respondent by an irrevocable talaq. His defence to the respondent's petition for maintenance was that she had ceased to be his wife by reason of the divorce granted by him, to provide that he was therefore under no obligation maintenance for her, that he had already paid maintenance to her at the rate of Rs. 200 per month for about two years and that, he had deposited a sum of Rs. 3000 in the court by way of dower during the period the of iddat. In August, 1979 the learned Magistrate directed appellant to pay a princely sum of Rs. 25 per month to the respondent by way of maintenance. It may be mentioned that the respondent had alleged that the appellant earns a professional income of about Rs. 60,000 per year. In July, 1980 in a revisional application filed by the respondent, the High court of

Madhya Pradesh enhanced the amount of maintenance to Rs. 179.20 per month. The husband is before us by special leave.

3. Does the Muslim Personal Law impose no obligation upon the husband to provide for the maintenance of his divorced wife? Undoubtedly, the Muslim husband enjoys the privilege of being able to discard his wife whenever he chooses to do so, for reasons good, bad or indifferent. Indeed, for no reason at all. But, is the only price of that privilege the dole of a pittance during the period of iddat? And, is the law so ruthless in its inequality that, no matter how much the husband pays for the maintenance of his divorced wife during the period of iddat, the mere fact that he has paid something, no matter how little, absolves him for ever from the duty B of paying adequately so as to enable her to keep her body and soul together ? Then again, is there any provision in the Muslim Personal Law under which a sun is payable to the wife 'on divorce' ? These are some of the important, though agonising, questions which arise for our decision.

4. The question as to whether Section 125 of the Code applies to Muslims also is concluded by two decisions of this Court which are reported in Bai Tahira Ali Hussain Fidaalli Chothia MANU/SC/0402/1978 : 1979CriLJ151 and Fuzlunbi v. K. Khader Vali MANU/SC/0508/1980 : 1980CriLJ1249 . Those decisions took the view that the divorced Muslim wife is entitled to apply for maintenance nice under Section 125. But, a Bench consisting of our learned Brethren, Murtaza Fazal Ali and A. Varadarajan, JJ. were inclined to the view that those cases are not correctly decided. Therefore, they referred this appeal to a larger Bench by an order dated February 3, 1981, which reads thus :

As this case involves substantial questions of law of far- reaching consequences, we feel that the decisions of this Court in Bai Tahira v. Ali Hussain Fidaalli Chothia and Anr. and Fuzlunbi v. K. Khader Vali and Anr. require reconsideration because, in our opinion, they are not only in direct contravention of the plain and an unambiguous language of Section 127(3)(b) of the CrPC, 1973 which far from overriding the Muslim Law on the subject protects and applies the same in case where a wife has been divorced by the husband and the dower specified has been paid and the period of iddat has been observed. The decision also appear to us to be against the fundamental concept of divorce by the husband and its consequences under the Muslim law which has been expressly protected by Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937- :in Act which was not noticed by the aforesaid decisions. We, therefore, direct that the matter may be placed before the Hon'ble Chief Justice for being heard by a larger Bench consisting of more than three Judges.

5. Section 125 of the CrPC which deals with the right of maintenance reads thus :

Order for maintenance of wives, children and parents

125. (1) If any person having sufficient means neglects or refuses to maintain -

(a) his wife, unable to maintain herself,

(b)....

(c)....

(d)....

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife ..., at such monthly rate not exceeding five hundred rupees in the whole as such Magistrate think fit....

Explanation For the purposes of this Chapter,-

(a)....

(b) "Wife" includes a woman who has been divorced by, or has obtained a divorce from, her not remarried.

(2) ....

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the older, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made :

Provided....

Provided further that if such person offers to maintain his wife on condition of her living with him and she refuses to live with him, such Magistrate may consider any grounds of refusal stated

by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation - If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

6. Section 127(3)(b), on which the appellant has built up the edifice of his defence reads thus:

Alteration in allowance

127. (1) ....

(2) ....

(3) Where any order has been made under Section 125 in favour of a woman who has been divorced by, or has obtained a divorce from her husband, the Magistrate shall, if he is satisfied that-

(a) ....

(b) the woman has been divorced by her husband and that she has received, whether before or after the date o the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order,

(i) in the case where such sum was paid before such order, from the date on which such order was made.

(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman.

7. Under Section 125(1)(a), a person who, having sufficient means, neglects or refuses to maintain his wife who is unable to maintain herself, can be asked by the court to pay a monthly maintenance to her at a rate not exceeding Five Hundred rupees. By Clause (b) of the Explanation to Section 125(1), 'wife' includes a divorced woman who has not remarried. These provisions are

too clear and precise to admit of any doubt or refinement. The religion professed by a spouse or by the spouses has no place in the scheme of these provisions Whether the spouses are Hindus or Muslims, Christians or Parsis, pagans or heathens is wholly irrelevant in the application of these provision. The reason for this is axiomatic, in the sense that Section 125 is a part of the code of Criminal Procedure, not of the Civil Laws which define and govern the right and obligations of the parties belonging to particular religions, like the Hindu Adoptions and Maintenance Act, the Shariat, or the Parsi Matrimonial Act. Section 125 was enacted in order to provide a quick and summary remedy to a class of persons who are unable to maintain themselves. What difference would it then make as to what is the religion professed by the neglected wife, child or parent ?Neglect by a person of sufficient means to maintain these and the inability of these persons to maintain themselves are the objective are the objective criteria which determine the applicability of Section 125. Such provisions, which are essentially of a prophylactic nature, across the barriers of religion. True that they do not supplant the personal law of the parties or the state of the personal law y which they are governed, cannot have any repercussion on the applicability of such laws unless, within the framework of the Constitution, their application is restricted to a defined category of religious groups or classes. The liability imposed by Section 125 to maintain close relatives who are indigent is founded upon individual's obligation to the society to prevent vagrancy and destitution. That is the moral edict of the law and morality cannot be clubbed with religion. Clause (b) of the Explanation to Section 125(1), which defines 'wife' as including a divorced wife, contains no words of limitation to justify the exclusion of Muslim women from its scope. Section 125 is truly secular in character.

8. Sir James Fitz James Stephen who piloted the CrPC, 1872 as a Legal Member of the Viceroy's Council, described the precursor of Chapter IX of the Code in which Section 125 occurs, as 'a mode of preventing vagrancy or at least of preventing its consequences. In Jagir kaur v. Jaswant Singh MANU/SC/0242/1963 : [1964]2SCR73 , 84 Subba Rao, J. speaking for the Court said that Chapter XXXVI of the Code of 1898 which contained Section 488, corresponding to Section 125, "intends to serve a social purpose". In Nanak Chand v. Shri Chandra Kishore Agarwala MANU/SC/0481/1969 : 1970CriLJ522 Sikri, J., while pointing out that the scope of the Hindu Adoptions and Maintenance Act. 1956 and that of Section 488 was different, said that Section 488 was "applicable to all persons belonging to all religions and has no relationship with the personal law of the parties".

9. Under Section 488 of the Code of 1898, the wife's right to maintenance depended upon the continuance of her married status. Therefore, that right could be defeated by the husband by divorcing her unilaterally as under the Muslim Personal Law, or by obtaining a decree of divorce against her under the other systems of law. It was in order to remove this hardship that the Joint Committee recommended that the benefit of the provisions regarding maintenance should be extended to a divorced woman, so long as she has not remarried after the divorce. That is the genesis of Clause (b) of the Explanation to Section 125(1), which provides that 'wife' includes a woman who has been divorced by, or has obtained a divorce from her husband and has not remarried. Even in the absence of this provision, the courts had held under the Code of 1898 that the provisions regarding maintenance were independent of the personal law governing the parties. The induction of the definition of 'wife, so as to include a divorced woman lends even greater weight to that conclusion. 'Wife' means a wife as defined, irrespective of the religion

professed by her or by her husband. Therefore, a divorced Muslim woman, so long as she has not remarried, is a 'wife' for the purpose of Section 125. The statutory right available to her under that section is unaffected by the provisions of the personal law applicable to her.

10. The conclusion that the right conferred by Section 125 can be exercised irrespective of the personal law of the parties is fortified, especially in regard to Muslims, by the provision contained in the Explanation to the second proviso to Section 125(3) of the Code. That proviso says that if the husband offers to maintain his wife on condition that she should live with him, and she refuses to live with him, the Magistrate may consider any grounds of refusal stated by her, and may make an order of maintenance notwithstanding the offer of the husband, if he is satisfied that there is a just ground for passing such an order.

According to the Explanation to the proviso :

If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

11. It is too well- known that "A. Mahomedan may have as many as four wives at the same time but not more. If he marries a fifth wife when he has already four, the marriage is not void, but merely irregular". (See Mulla's Mahomedan Law, 18th Edition, paragraph 255, page 285, quoting Baillie's Digest of Moohummudan Law; and Ameer Ali's Mahomedan Law, 5th Edition, Vol. II, page 280). The explanation confers upon the wife the right to refuse to live with her husband if he contracts another marriage, leave alone 3 or 4 other marriages. It shows, unmistakably, that Section 125 overrides the personal law, if is any there conflict between the two.

12. The whole of this discussion as to whether the right conferred by Section 125 prevails over the personal law of the parties, has proceeded on the assumption that there is a conflict between the provisions of that section and those of the Muslim Personal Law. The argument that by reason of Section 2 of the Shariat Act, XXVI of 1937, the rule of decision in matters relating, inter alia, to maintenance "shall be the Muslim Persona" Law" also proceed upon a similar assumption. We embarked upon the decision of the question of priority between the Code and the Muslim Personal Law on the assumption the it there was a conflict between the two because, in so far as it lies in our power, we wanted to set at rest, once for all, the question whether Section 125 would prevail over the personal law of the parties, in cases where they are in conflict.

13. The next logical step to take is to examine the question, on which considerable argument has been advanced before us, whether there is any conflict between the provisions of Section 125 and those of the Muslim Personal Law on the liability of the Muslim husband to provide for the maintenance of his divorced wife.

14. The contention of the husband and of the interveners who support him is that, under the Muslim Personal Law, the liability of the husband to maintain a divorced wife is limited to the

period of iddat in support of this proposition, they rely upon the statement of law on the point contained in certain text books. In Mulla's Mahomedan Law (18th Edition, para 279, page 301), there is a statement to the effect that, "After divorce, the wife is entitled to maintenance during the period of iddat". At page 302, the learned author says :

Where an order is made for the maintenance of a wife under Section 488 of the Criminal Procedure Code and the wife is afterwards divorced, the order ceases to operate on the expiration of the period of iddat. The result is that a Mahomedan may defeat an order made against him under Section 488 by divorcing his wife immediately after the order is made. His obligation to maintain his wife will cease in that case on the completion of her iddat.

15. Tyabji's Muslim law (4th Edition, para 304, pages 268- 269) contains the statement that :

On the expiration of the iddat after talaq, the wife's right to maintenance ceases, whether based on the Muslim Law, or on an order under the Criminal Procedure Code.

According to Dr Paras Diwan :

When a marriage is dissolved by divorce the wife is entitled to maintenance during the period of iddat.... On the expiration of the period of iddat, the wife is not entitled to any maintenance under any circumstances. Muslim Law does not recognise any obligation on the part of a man to maintain a wife whom he had divorced.

(Muslim Law in Modern India, 1982 Edition, page 130)

16. These statements in the text book are inadequate to establish the proposition that the Muslim husband is not under an obligation to provide for the maintenance of his divorced wife, who is unable to maintain herself. One must have regard to the entire conspectus of the Muslim Personal Law in order to determine the extent both, in quantum and in duration, of the husband's liability to provide for the maintenance of an indigent wife who has been divorced by him. Under that law, the husband is bound to pay Mahr to the wife as a mark of respect to her. True, that he may settle any amount he likes by way of dower upon his wife, which cannot be less than 10 Dirhams, which is equivalent to three or four rupees (Mulla's Mahomedan Law, 18th Edition, para 286, page 308). But, one must have regard to the realities of life Mahr is a mark of respect to the wife. The sum settled by way of Main is generally expected to take care of the ordinary requirements of the wife, during the marriage and after. Hut these provisions of the Muslim Personal Law do not countenance cases in which the wife is unable to maintain herself after the divorce. We consider it not only incorrect but unjust, to extend the scope of the statements extracted above to cases in which a divorced wife is unable to maintain herself. We are of the opinion that the application of those statements of law must be restricted to that class of cases, in which there is no possibility of vagrancy or destitution arising out of the indigence of the divorced wife.

We are not concerned here with the broad and general question whether a husband is liable to maintain his wife, which includes a divorced wife, in all circumstances and at all events. That is not the subject matter of Section 125. That section deals with cases in which, a person who is possessed of sufficient means neglects or refuses to maintain, amongst others, his wife who is unable to maintain herself. Since the Muslim Personal Law, which limits the husband's liability to provide for the maintenance of the divorced wife to the period of iddat, does not contemplate or countenance the situation envisaged by Section 125, it would be wrong to hold that the Muslim husband, according to his personal law, is not under an obligation to provide maintenance, beyond the period of iddat, to his divorced wife who is unable to maintain herself. The argument of the appellant that, according to the Muslim Persona! Law, his liability to provide for the maintenance of his divorced wife is limited to the period of iddat despite the fact she is unable to maintain herself, has therefore to be rejected. The true position is that, if the divorced wife is able to maintain herself, the husband's liability to provide maintenance for her ceases with the expiration of the period of iddat. If she is unable to maintain herself, she is entitled to take recourse to Section 125 of the Code. The outcome of this discussion is that there is no conflict between the provisions of Section 125 and those of the Muslim Personal Law on the question of the Muslim husband's obligation to provide maintenance for a divorced wife who is unable to maintain herself.

17. There can be no greater authority on this question than the Holy Quran, "The Quran, the Sacred Book of Islam, comprises in its 114 Suras or chapters, the total of revelations believed to have been communicated to Prophet Muhammed, as a final expression of God's will". (The Quran Interpreted by Arthur J. Arberry). Verses (Aiyats) 241 and 242 of the Quran show that according to the Prophet, there is an obligation on Muslim husbands to provide for their divorced wives. The Arabic version of those Aiyats and their English translation are reproduced below :

(See 'The Holy Quran' by Yusuf Ali, Page 96).

18. The correctness of the translation of these Aiyats is not in dispute except that, the contention of the appellant is that the word 'Mata' in Aiyat No. 241 means 'provision' and not 'maintenance'. That is a distinction without a difference. Nor are we impressed by the shuffling plea of the All India Muslim Personal Law Board that, in Aiyat 241, the exhortation is to the 'Mutta Queena', that is, to the more pious and the more God- fearing, not to the general run of the Muslims, the 'Muslminin'. In Aiyat 242, the Quran says : "It is expected that you will use your commonsense".

19. The English version of the two Aiyats in Muhammad Zafrullah Khan's 'The Quran' (page 38) reads thus :

For divorced women also there shall be provision according to what is fair. This is an obligation binding on the righteous. Thus does Allah make His commandments clear to you that you may understand.

20. The translation of Aiyats 240 to 242 in 'The Meaning of the Quran' (Vol. I, published by the Board of Islamic Publications, Delhi) reads thus.

240- 241.

Those of you, who shall die and leave wives behind them, should make a will to the effect that they should be provided with a year's maintenance and should not be turned out of their homes. But if they leave their homes of their own accord, you shall not be answerable for whatever they choose for themselves in a fair way ; Allah is All- Powerful, All- wise. Likewise, the divorced women should also be given something in accordance with the known fair standard. This is an obligation upon the God- fearing people.

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Thus Allah makes clear His commandments for you :

It is expected that you will use your commonsense.

21. In "The Running Commentary of The Holy Quran" (1964 Edition) by Dr. Allamah Khadim Rahmani Nuri, Aiyat No. 241 is translated thus :

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And for the divorced woman (also) a provision (should be made) with fairness (in addition to her dower) ; (This is) a duty (incumbent) on the reverent.

22. In "The Meaning of the Glorious Quran, Text and Explanatory Translation", by Marmaduke Pickthall, (Taj Company Ltd., karachi), Aiyat 241 is translated thus :

241.

For divorced women a provision in kindness : A duty for those who ward oil (evil).

23. Finally, in "The Quran Interpreted" by Arthur J. Arberry. Aiyat 241 is translated thus :

241.

There shall be for divorced women provision honourable an obligation on the god fearing ."

So God makes clear His signs for you : Happily you will understand.

24. Dr. K.R. Nuri in his book quoted above : 'The Running Commentary of the Holy Quran", says in the preface :

Belief in Islam does not mean mere confession of the existence of something. It really means the translation of the faith into action. Words without deeds carry no meaning in Islam. Therefore the term "believe and do good" has been used like a phrase all over the Quran. Belief in something means that man should inculcate the qualities or carry out the promptings or guidance of that thing in his action. Belief in Allah means that besides acknowledging the existence of the Author of the Universe, we are to show obedience to His commandments....

25. These Aiyats leave no doubt that the Quran imposes an obligation on the Muslim husband to make provision for or to provide maintenance to the divorced wife. The contrary argument does less than justice to the teaching of the Quran, As observed by Mr. M. Hidayatullah in his introduction to Mulla's Mahomedan Law, the Quran is Al- furqan' that is one showing truth from falsehood and right from wrong.

26. The second plank of the appellant's argument is that the respondent's application under Section 125 is liable to be dismissed because of the provision contained in Section 127(3)(b). That section provides, to the extent material, that the Magistrate shall cancel the order of maintenance, if the wife is divorced by the husband and, she has received "the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce". That raises the question as to whether, under the Muslim Personal Law, any sum is payable to the wife 'on divorce'. We do not have to grope in the dark and speculate as to which kind of a sum this can be because, the only argument advanced before us on behalf of the appellant and by the interveners supporting him, is that Mahr is the amount payable by the husband to the wife on divorce. We find it impossible to accept this argument.

27. In Mulla's principles of Mahomedan Law (18th Edition, page 308), Mahr or Dower is defined in paragraph 285 as "a sum of money or other property which the wife is entitled to receive from the husband in consideration of the marriage." Dr. Paras Diwan in his book, "Muslim Law in Modern India" (1982 Edition, page 60), criticises this definition on the ground that Mahr is not payable "in consideration of marriage" but is an obligation imposed by law on the husband as a mark of respect for the wife, as is evident from the fact that non- specification of Mahr at the time

of marriage does not affect the validity of the marriage. We sued not enter into this controversy and indeed, Mulla's book itself contains the further statement at page 308 that the word 'consideration' is not used in the sense in which it is used in the Contract Act and that under the Mohammedan Law, Dower is m obligation imposed upon the husband as a mark of respect for the wife. We are concerned to find whether Mahr is an amount payable by the husband to the wife on divorce. Some confusion is caused by the fact that, under the Muslim Personal Law, the amount of Mahr is usually split into two parts, one of which is called "prompt", which is payable on demand, and the other is called "deferred", which is payable on the dissolution of the marriage by death or by divorce. But, the fact that deferred Mahr is payable at the time of the dissolution of marriage, cannot justify the conclusion that it is payable 'on divorcel. Even assuming that, in a given case, the entire amount of Mahr is of the deferred variety payable on the dissolution of marriage by divorce, it cannot be said that it is an amount which is payable on divorce. Divorce maybe a convenient or identifiable point of time at which the deferred amount has to be paid by the husband to the wife. But, the payment of the amount is not occasioned by the divorce, which is what is meant by the expression 'on divorce', which occurs in Section 127(3)(b) of the Code. If Mahr is an amount which the wife is entitled to receive from the husband in consideration of the marriage, that is the very opposite of the amount being payable in consideration of divorce. Divorce dissolves the Marriage. Therefore no amount which is payable in consideration of the marriage can possibly be described as an amount payable in consideration of divorce. The alternative premise that Mahr is an obligation imposed upon the husband as a mark of respect for the wife, is wholly detrimental to the stance that it is an amount payable to the wife on divorce. A man may marry a woman for love, looks, learning or nothing at all. And he may settle a sum upon her as a mark of respect for her. But he does not divorce her as a mark of respect. Therefore, a sum payable to the wife out of respect cannot be a sum payable 'on divorce'.

28. In an appeal from a Full Bench decision of the Allahabad High Court, the Privy Council in Hamira Bibi v. Zubaide Bibi 43 I. A. 294 summed up the nature and character of Mahr in these words :

Dower is an essential incident under the Muslim Law to the status of marriage; to such an extent that is so that when it is unspecified at the time the marriage is contracted, the law declares that it must be adjudged on definite principles. Regarded as a consideration for the marriage, it is, in theory, payable before consummation; but the law allows its division into two parts, one of which is called "prompt" payable before the wife can be called upon to enter the conjugal domicile ; the other "deferred", payable on the dissolution of the contract by the death of either of the parties or by divorce.

29. This statement of law was adopted in another decision of the Privy Council in Syed Sabir Husain v. Farzand Hasan 65 I. A. 119. It is not quite appropriate and seems invidious to describe any particular Bench of a court as "strong" but, we cannot resist the temptation of mentioning that Mr. Syed Ameer Ali was a party to the decision in Hamira Bibi while Sir Shadi Lal was a party to the decision in Syed Sabir Husain. These decisions show that the payment of dower may be deferred to a future date as, for example, death or divorce. But, that does not mean that the payment of the deferred dower is occasioned by these events.

30. It is contended on behalf of the appellant that the proceedings of the Rajya Sabha dated December 18, 1973 (volume 86, column 186), when the bill which led to the Code of 1973 was on the anvil, would show that the intention of the Parliament was to leave the provisions of the Muslim Personal Law untouched. In this behalf, reliance is placed on the following statement made by Shri Ram Niwas Mirdha, the then Minister of State, Home Affairs :

Dr. Vyas very learnedly made certain observations that a divorced wife under the Muslim law deserves to be treated justly and she should get what is her equitable or legal due. Well, I will not go into this, but say that we would not like to interfere with the customary law of the Muslims through the Criminal Procedure Code. If there is a demand for change in the Muslim Personal Law, it should actually come from the Muslim Community itself and we should wait for the Muslim public opinion on these matters to crystalise before we try to change this customary right or make changes in their personal law. Above all, this is hardly, the place where we could do so. But as I tried to explain, the provision in the Bill is an advance over the previous situation. Divorced women have been included and brought within the admit of Clause 125, but a limitation is being imposed by this amendment to Clause 127, namely, that the maintenance orders would ceases to operate after the amounts due to her under the personal law are paid to her. This is a healthy compromise between what has been termed a conservative interpretation of law or a concession to conservative public opinion and liberal approach to the problem. We have made an advance and not tried to transgress what are the personal rights of Muslim women. So this, I think, should satisfy Hon. Members that whatever advance we have made is in the right direction and it should be welcomed.

31. It does appear from this speech that the Government did not desire to interfere with the personal law of the Muslim through the Criminal Procedure Code. It wanted the Muslim community to take the lead and the Muslim public opinion to crystalise on the reforms in their personal law. However, we do not concerned with the question whether the Government did or did not desire to bring about changes in the Muslim Personal Law by enacting Sections 125 and 127 of the Code. As we have said earlier and, as admitted by the Minister, the Government did introduce such a change by defining the expression 'wife' to include a divorced wife. It also introduced another significant change by providing that the fact that the husband has contracted marriage with another woman is a just ground for the wife's refusal to live with him. The provision contained in Section 127(3)(b) may have been introduces because of the misconception that dower is an amount payable "on divorce". But, that cannot convert an amount payable as a mark of respect for the wife into an amount payable on divorce.

32. It must follow from this discussion, unavoidably a little too long, that the judgments of this Court in Bui Tahira (Krishna Iyer J., Tulzapurkar J. and Pathak J.) and fazlunbi (Krishna Iyer, J.,) one of us, Chinnappa Reddy J. and A. P. Sen J.) are correct. Justice Krishna Iyer who spoke for the Court in both these cases, relied greatly on the teleological and schematic method of interpretation so as to advance the purpose of the law. These constructional techniques have their own importance in the interpretation of statutes meant to ameliorate the conditions of suffering sections of the society. We have attempted to show that taking the language of the statute as one

finds it, there is no escape from the conclusion that a divorced Muslim wife is entitled to apply for maintenance under Section 125 and that, Mahr is not a sum which, under the Muslim Personal Law, is payable on divorce.

33. Though Bai Tahira was correctly decided, we would like, respectfully, to draw attention to an error which has crept in the judgment There is a statement at page 80 of the report, in the context of Section 127(3)(b), that "payment of Mahr money, as a customary discharge, is with in the cognizance of that provision". We have taken the view that Mahr, not being payable on divorce, does not fall within the meaning of that provision.

34. It is a matter of deep regret that some of the interveners who supported the appellant, took up an extreme position by displaying an unwarranted zeal to defeat the right to maintenance of women who are unable to maintain themselves. The written submissions of the All India Muslim Personal Law Board have gone to the length of asserting that it is irrelevant to inquire as to how a Muslim divorce should maintain herself. The facile answer of the Board is (that the Personal Law has devised the system of Mahr to meet the requirements of women and if a woman is indigent, she must look to her relations, including nephew and cousins, to support her. This is a most unreasonable view of law as well as life. We appreciate that Begum Temur Jehan, a social worker who has been working in association with the Delhi City Women's Association for the uplift of Muslim women, intervened to support Mr. Daniel Latifi who appeared on behalf of the wife.

35. It is also a matter of regret that Article 44 of our Constitution has remained a dead letter It provides that "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India". There is no evidence of any official activity for framing a common civil code for the country. A belief seems to have gained ground that it is for the Muslim community to take a lead in the matter of reforms of their persona law. A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue. It is the State which is charged with the duty of securing a uniform civil code for the citizens of the country and, unquestionably, it has the legislative competence to do so. A counsel in the case whispered, somewhat audibly, that legislative competence is one thing, the political courage to use that competence is quite another. We understand the difficulties involved in bringing persons of different faiths and persuasions on a common platform. But, a beginning has to be made if the Constitution is to have any meaning. Inevitably, the role of the reformer has to be assumed by the courts because, it is beyond the endurance of sensitive minds to allow injustice to be suffered when it is so palpable. But piecemeal attempts of courts to bridge the gap between personal laws cannot take the place of a common Civil Code. Justice to all is a far more satisfactory way of dispensing justice than justice from case to case.

36. Dr. Tahir Mahmood in his book 'Muslim Personal Law' (1977 Edition, pages 200- 202), has made a powerful plea for framing a uniform Civil Code for all citizens of India. He say: "In

pursuance of the goal of secularism, the State must stop administering religion- based personal laws". He wants the lead to come from the majority community but, we should have, thought that, lead or no lead, the State must act. It would be useful to quote the appeal made by the author to the Muslim community :

Instead of wasting their energies in exerting theological and political pressure in order to secure an "immunity" for their traditional personal law from the stated legislative jurisdiction, the Muslim will do well to begin exploring and demonstrating how the true Islamic laws, purged of their time- worn and anachronistic interpretations, can enrich the common civil code of India.

37. At a Seminar held on October 18, 1980 under the auspices of the Department of Islamic and Comparative Law, Indian Institute of Islamic Studies New Delhi he also made and appeal to the Muslim community to display by their conduct a correct understanding of Islamic concepts on marriage and divorce (See Islam and Comparative Law Quarterly, April- June, 1981, page 146).

38. Before we conclude, we would like to draw attention to the Report of the Commission on marriage and Family Laws, which was appointed by the Government of Pakistan by a Resolution dated August 4, 1955. The answer of the Commission to Question No. 5 (page 1215 of the Report) is that

a large number of middle- aged women who are being divorced without rhyme or reason should not be thrown on the streets without a roof over their heads and without any mean; of sustaining themselves and their children.

39. The Report concludes thus :

In the words of Allama Iqbal, "the question which is likely to confront Muslim countries in the near future, is whether the law of Islam is capable of evolution- a question which will require great intellectual effort, and is sure to be answered in the affirmative.

40. For these reasons, we dismiss the appeal and confirm the judgment of the High Court. The appellant will pay the costs of the appeal to respondent 1, which we quantify at rupees ten thousand. It is needless to add that it would be open to the respondent to make an application under Section 127(1) of the Code for increasing the allowance of maintenance granted to her on proof of a change in the circumstances as envisaged by that section.

MANU/SC/0402/1978

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 332 of 1977

Decided On: 06.10.1978

Bai Tahira Vs. Ali Hussain Fidaalli Chothia and Ors.

Back to Section 125 of Code of Criminal Procedure, 1973

Back to Section 127 of Code of Criminal Procedure, 1973

Hon'ble Judges/Coram:

R.S. Pathak, V.D. Tulzapurkar and V.R. Krishna Iyer, JJ.

JUDGMENT

V.R. Krishna Iyer, J.

1. In this appeal, by special leave, we are called upon to interpret a benign provision enacted to ameliorate the economic condition of neglected wives and discarded divorcees, namely, Section 125, Cr.P.C.

2. Welfare laws must be so read as to be effective delivery systems of the salutary objects sought to be served by the Legislature and when the beneficiaries are the weaker sections, like destitute women, the spirit of Article 15(3) of the Constitution must be light the meaning of the Section. The Constitution is a pervasive omnipresence brooding over the meaning and transforming the values of every measure. So, Section 125 and sister clauses must receive a compassionate expansion of sense that the words used permit.

The Brief Facts

3. The respondent (husband) married the appellant (wife) as a second wife, way back in 1956, and a few years later had a son by her. The initial warmth vanished and the jealousies of a triangular situation erupted, marring mutual affection. The respondent divorced the appellant around July 1962. A suit relating to a flat in which the husband had housed the wife resulted in a consent decree which also settled the marital disputes. For instance, it recited that the respondent had transferred the suit premises, namely, a flat in Bombay, to the appellant and also the shares of the Cooperative Housing Society which built the flat concerned. There was a reference to mehar money (Rs. 5,000/- and 'iddat' money, Rs. 180/-) which was also stated to have been adjusted by the compromise terms.

4. There was a clause in the compromise :

The plaintiff declares that she has now no claim or right whatsoever against the defendant or against the estate and the properties of the defendant.

And another term in the settlement was that the appellant had by virtue of the compromise become the absolute owner of the flat and various deposits in respect of the said flat made with the cooperative housing society.

5. For some time there was flickering improvement in the relations between the quondam husband and the quondam wife and they lived together. Thereafter, again they separated, became entranged. The appellant, finding herself in financial straits and unable to maintain herself, moved the magistrate under Section 125 of the Criminal Procedure Code, 1973, for a monthly allowance for the maintenance of herself and her child. She proceeded on the footing that she was still a wife while the respondent rejected this status and asserted that she was a divorce and therefore ineligible for maintenance. The Magistrate who tried the petition for maintenance held that the appellant was a subsisting wife and awarded monthly maintenance of Rs. 300/- for the son and Rs. 400/- for the mother for their subsistence, taking due note of the fact that the cost of living in Bombay, where the parties lived, was high, and that the respondent had provided residential accommodation to the appellant.

6. This order was challenged before the sessions Judge by the aggrieved husband, who on a strange view of the law that the court, under Section 125, had no jurisdiction to consider whether the applicant was a wife, dismissed the petition in allowance of the appeal. The High Court deigned to bestow little attention on the matter and summarily dismissed a revision petition. This protracted and fluctuating litigation misfortune has led to the appeal, by special leave, before this Court.

The Questions Mooted

7. Shri Bhandare appearing for the appellant contended that the Courts below had surprisingly forgotten the plain provision in the Explanation (b) to Section 125(1) of the Code, which reads :

"wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

8. On this foundation, he urged that accepting the contention of the respondent that the appellant was a divorcee, his client was still entitled to an allowance. This is obviously beyond dispute on a simple reading of the sub- section and it is curious how this innovative and sensitive provision with a benignant disposition towards destitute divorcees has been overlooked by all the courts below. We hold that every divorce otherwise eligible, is entitled to the benefit of maintenance

allowance and the dissolution of the marriage makes no difference to this right under the current Code. In the normal course, an order for maintenance must follow, the quantum having been determined by the learned Magistrate at the trial level.

9. However, Shri Sanghi, appearing for the respondent, sought to sustain the order in his favour on three grounds. They are of public importance since the affected party in such a fact- situation is the neglected divorcee. He first argued that Section 125(4) would apply in the absence of proof that the lady was not living separately by mutual consent. His next plea was that there must be proof of neglect to maintain to attract Section 125 and his third contention was that there was a settlement by consent decree in 1962 whereby the mehar money had been paid and all claims adjusted, and so no claim for maintenance could survive. The third contention is apparently based upon a contractual arrangement in the consent decree read with Section 127(3)(b) which reads :

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order, -

(i) in the case where such sum was paid before such order, from the date on which such order was made.

(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman;

We must state, however, that there was no specific plea, based upon the latter provision, set up anywhere in the courts below or urged before us. But if one were to locate a legal ground to raise the contention that the liability to pay maintenance had ceased on account of the payment of mehar, it is Section 127(3) of the Code. So we must deal with the dual sub- heads of the third ground.

10. The meaning of meanings is derived from values in a given society and its legal system. Article 15(3) has compelling, compassionate relevance in the context of Section 125 and the benefit of doubt, if any in statutory interpretation belongs to the ill- used wife and the derelict divorcee. This social perspective granted, the resolution of all the disputes projected is easy. Surely, Parliament, in keeping with Article 15(3) and deliberate by design, made a special provision to help women in distress cast away by divorce. Protection against moral and material abandonment manifest in Article 39 is part of social and economic justice, specificated in Article 38, fulfilment of which is fundamental to the governance of the country (Article 37). From this coign of vantage we must view the printed text of the particular Code.

11. Section 125 requires, as a sine qua non for its application, neglect by husband or father. The magistrate's order proceeds on neglect to maintain; the sessions judge has spoken nothing to the contrary; and the High Court has not spoken at all. Moreover, the husband has not examined himself to prove that he has been giving allowances to the divorced wife. His case, on the contrary, is that she has forfeited her claim because of divorce and the consent decree. Obviously, he has no case of non- neglect. His plea is his right to ignore. So the basic condition of neglect to maintain is satisfied. In this generous jurisdiction, a broader perception and appreciation of the facts and their bearing must govern the verdict not chopping little logic or tinkering with burden of proof.

12. The next submission is that the absence of mutual consent to live separately must be made out if the hurdle of Section 125(4) is to be overcome. We see hardly any force in this plea. The compulsive conclusion from a divorce by a husband and his provision of a separate residence as evidenced by the consent decree fills the bill. Do divorcees have to prove mutual consent to live apart? Divorce painfully implies that the husband orders her out of the conjugal home. If law has nexus with life this argument is still- born.

13. The last defence, based on mehar payment, merits more serious attention. The contractual limb of the contention must easily fail. The consent decree of 1962 resolved all disputes and settled all claims then available. But here is a new statutory right created as a projection of public policy by the Code of 1973, which could not have been in the contemplation of the parties when in 1962, they entered into a contract to adjust their then mutual rights. No settlement of claims which does not have the special statutory right of the divorcee under Section 125 can operate to negate that claim.

14. Nor can Section 127 rescue the respondent from his obligation. Payment of mehar money, as a customary discharge, is within the cognisance of that provision. But what was the amount of mehar ? Rs. 5000/- , interest from which could not keep the woman's body and soul together for a day, even in that city where 40% of the population are reported to live on pavements, unless she was ready to sell her body and give up her soul? The point must be clearly understood that the scheme of the complex of provisions in Chapter IX has a social purpose. Ill- used wives and desperate divorcees shall not be driven to material and moral dereliction to seek sanctuary in the streets. This traumatic horror animates the amplitude of Section 127. Where the husband, by customary payment at the time of divorce, has adequately provided for the divorce, a subsequent series of recurrent doles is contra- indicated and the husband liberated. This is the teleological interpretation, the sociological decoding of the text of Section 127. The keynote thought is adequacy of payment which will take reasonable care of her maintenance.

15. The payment of illusory amounts by way of customary or personal law requirement will be considered in the reduction of maintenance rate but cannot annihilate that rate unless it is a reasonable substitute. The legal sanctity of the payment is certified by the fulfilment of the social obligation, not by a ritual exercise rooted in custom. No construction which leads to frustration

of the statutory project can secure validation if the court is to pay true homage to the Constitution. The only just construction of the section is that Parliament intended divorcees should not derive a double benefit. If the first payment by way of mehar or ordained by custom has a reasonable relation to the object and is a capitalised substitute for the order under Section 125 not mathematically but fairly- then Section 127(3)(b) subserves the goal and relieves the obligor, not pro tanto but wholly. The purpose of the payment 'under any customary or personal law' must be to obviate destitution of the divorcee and to provide her with wherewithal to maintain herself. The whole scheme of Section 127(3)(b) is manifestly to recognise the substitute maintenance arrangement by lump sum payment organised by the custom of the community or the personal law of the parties. There must be a rational relation between the sum so paid and its potential as provision for maintenance. To interpret otherwise is to stultify the project. Law is dynamic and its meaning cannot be pedantic but purposeful. The proposition, therefore, is that no husband can claim under Section 127(3)(b) absolution from this obligation under Section 125 towards a divorced wife except on proof of payment of a sum stipulated by customary or personal law whose quantum is more or less sufficient to do duty for maintenance allowance.

16. The conclusion that we therefore reach is that the appeal should be allowed and it is hereby allowed, and the order of the trial court restored.

MANU/SC/0066/1978

IN THE SUPREME COURT OF INDIA

Review Petition No. 95 of 1978

Decided On: 13.11.1978

Bhupinder Singh Vs. Daljit Kaur

Back to Section 125 of Code of Criminal Procedure, 1973

Back to Section 127 of Code of Criminal Procedure, 1973

Hon'ble Judges/Coram:

A.P. Sen, P.N. Shinghal and V.R. Krishna Iyer, JJ.

ORDER

V.R. Krishna Iyer, J.

1. A short narrative of the facts is necessary to explore and explode the submission that a substantial question of law arises, which merits grant of leave under Article 136 of the Constitution. The respondent is the wife of the petitioner. She moved the Magistrate, having jurisdiction over the subject- matter, for grant of maintenance under Section 125 of the Criminal Procedure Code. The Court awarded maintenance in a sum of Rs. 250/- per mensem but the order was made ex parte since the petitioner did not appear in court. The motion for setting aside the ex parte order was dismissed whereupon a criminal revision was filed by the husband before the High Court. During the pendency of the said petition a compromise was entered into between the parties as a result of which the wife resumed cohabitation with the husband. This resumption of conjugal life was followed by an application by the wife (respondent) praying that her application for maintenance be dismissed and the execution proceedings for recovery of arrears of maintenance be withdrawn. Apparently, on this basis the trial court did not proceed to recover arrears of maintenance. But as the record now stands, the order for maintenance remains. That has not been set aside and must be treated as subsisting. The High Court apparently dismissed the revision petition on the score that the parties had compromised the dispute.

2. Later developments were not as smooth as expected. The wife was betrayed, because her allegation is that her husband is keeping a mistress making it impossible for her to live in the conjugal home. Naturally, she proceeded to enforce the order for maintenance. This was resisted by the petitioner (husband) on the ground that resumption of cohabitation, after the original order for maintenance, revoked the said order. This plea having been rejected right through, the petitioner has come up to this Court seeking leave to appeal. The short question of law pressed before us is that the order for maintenance under Section 125 of the Code is superseded by the subsequent living of the wife with the husband and is unavailable for enforcement.

3. Counsel has relied on a ruling of the Madras High Court in MANU/TN/0169/1960 : AIR1960Mad515 . The holding in that case is that resumption of cohabitation puts an end to the order of maintenance. The learned Judge observed;

On the authority of the above decisions I must hold in this case that there was a reunion for some time and that put an end to the order under Section 488 Cr.P.C. If the wife separated again from the husband, then she must file another petition, a fresh cause of action, and obtain an order if she satisfied the Court that there is sufficient reason to leave her husband and that he neglected to maintain her.

4. To the same effect is the decision of the Andhra High Court reported in 1955 Andhra Law Times Reports (Criminal) Page 244. The head note there reads :

If a wife who has obtained an order of maintenance under Section 488 rejoins her husband and lives with him, the order is revoked and cannot be enforced subsequently, if they fall out again. If there are fresh grounds, such as would entitle her to obtain maintenance under Section 488, it is open to her to invoke the jurisdiction of court once again for the same relief.

5. An earlier Rangoon case MANU/RA/0120/1930 : (A.I.R. 1931 Rangoon 89) as lends support to this proposition.

6. A contrary position has found favour with the Lahore High Court reported in MANU/LA/0070/1931 : A.I.R. 1932 Lah.115. The facts of that case have close similarity to the present one and the head- note brings out the ratio with sufficient clarity. It reads :

7. Shadi Lal, C.J. observed :

Now in the present case the compromise, as pointed out above, was made out of Court and no order under Section 488, Criminal P.C. was made in pursuance of that compromise, Indeed, the order of the Magistrate allowing maintenance at the rate of Rs. 10 per mensem was neither rescinded nor modified, and no ground has been shown why that order should not be enforced. If the husband places his reliance upon the terms of the compromise, he may have recourse to such remedy in a civil Court as may be open to him. The criminal Court cannot however take cognizance of the compromise and refuse to enforce the order made by it.

This reasoning of the learned Chief Justice appeals to us.

8. We are concerned with a Code which is complete on the topic and any defence against an order passed under Section 125 Crl. P.C. must be founded on a provision in the Code. Section 125 is a provision to protect the weaker of the two parties, namely, the neglected wife. If an order for maintenance has been made against the deserter it will operate until vacated or altered in terms

of the provisions of the Code itself. If the husband has a case under Section 125(4)(5) or Section 127 of the Code it is open to him to initiate appropriate proceedings. But until the original order for maintenance is modified or cancelled by a higher court or is varied or vacated in terms of Section 125(4) or (5) or Section 127, its validity survives. It is enforceable and no plea that there has been cohabitation in the interregnum or that there has been a compromise between the parties can hold good as a valid defence. In this view, we hold that the decisions cited before us in favour of the proposition contended for by the petitioner are not good law and that the view taken by Sir Shadi Lal Chief Justice is sound.

9. A statutory order can ordinarily be demolished only in terms of the statute. That being absent in the present case the Magistrate will execute the order for maintenance. Our order does not and shall not be deemed to prejudice the petitioner in any proceedings under the law which he may start to vacate or vary the order for maintenance.

MANU/SC/0807/2010

Back to Section 125 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Decided On: 07.10.2010

Civil Appeal No. ... of 2010 (Arising out of SLP (C) No. 15071 of 2009)

Chanmuniya Vs. Chanmuniya Virendra Kumar Singh Kushwaha and Ors.

Hon'ble Judges/Coram:

G.S. Singhvi and A.K. Ganguly, JJ.

JUDGMENT

A.K. Ganguly, J.

1. Leave granted.

2. One Sarju Singh Kushwaha had two sons, Ram Saran (elder son) and Virendra Kumar Singh Kushwaha (younger son and the first respondent). The appellant, Chanmuniya, was married to Ram Saran and had 2 daughters- Asha, the first one, was born in 1988 and Usha, the second daughter, was born in 1990. Ram Saran died on 7.03.1992.

3. Thereafter, the appellant contended that she was married off to the first respondent as per the customs and usages prevalent in the Kushwaha community in 1996. The custom allegedly was that after the death of the husband, the widow was married off to the younger brother of the husband. The appellant was married off in accordance with the local custom of Katha and Sindur. The appellant contended that she and the first respondent were living together as husband and wife and had discharged all marital obligations towards each other. The appellant further contended that after some time the first respondent started harassing and torturing the appellant, stopped her maintenance and also refused to discharge his marital obligations towards her.

4. As a result, she initiated proceedings under Section 125 of the Cr.P.C. for maintenance (No. 20/1997) before the 1st Additional Civil Judge, Mohamadabad, Ghazipur. This proceeding is pending.

5. She also filed a suit (No. 42/1998) for the restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955 in the Court of 1st Additional District Judge, Ghazipur.

6. The Trial Court decreed the suit for restitution of conjugal rights in favour of the appellant on 3.1.2004 as it was of the opinion that the appellant had remarried the first respondent after the death of Ram Saran, and the first respondent had deserted the appellant thereafter. Thus, it directed the first respondent to live with the appellant and perform his marital duties.

7. Hence, the first respondent preferred a first appeal (No. 110/2004) under Section 28 of the Hindu Marriage Act. The main issue in appeal was whether there was any evidence on record to prove that the appellant was the legally wedded wife of the first respondent. The High Court in its judgment dated 28.11.2007 was of the opinion that the essentials of a valid Hindu marriage, as required under Section 7 of the Hindu Marriage Act, had not been performed between the first respondent and the appellant and held that the first respondent was not the husband of the appellant and thus reversed the findings of the Trial Court.

8. Aggrieved by the aforesaid judgment of the High Court, the appellant sought a review of the order dated 28.11.2007. The review petition was dismissed on 23.01.2009 on the ground that there was no error apparent on the face of the record of the judgment dated 28.11.2007.

9. Hence, the appellant approached this Court by way of a special leave petition against the impugned orders dated 28.11.2007 and 23.01.2009.

10. One of the major issues which cropped up in the present case is whether or not presumption of a marriage arises when parties live together for a long time, thus giving rise to a claim of maintenance under Section 125 Cr.P.C. In other words, the question is what is meant by 'wife' under Section 125 of Criminal Procedure Code especially having regard to explanation under Clause (b) of the Section.

11. Thus, the question that arises is whether a man and woman living together for a long time, even without a valid marriage, would raise as in the present case, a presumption of a valid marriage entitling such a woman to maintenance.

12. On the question of presumption of marriage, we may usefully refer to a decision of the House of Lords rendered in the case of Lousia Adelaide Piers and Florence A.M. De Kerriguen v. Sir Henry Samuel Piers (1849) II HLC 331, in which their Lordships observed that the question of validity of a marriage cannot be tried like any other issue of fact independent of presumption. The Court held that law will presume in favour of marriage and such presumption could only be rebutted by strong and satisfactory evidence.

13. In Lieutenant C.W. Campbell v. John A.G. Campbell (1867) Law Rep. 2 HL 269, also known as the Breadalbane case, the House of Lords held that cohabitation, with the required repute, as

husband and wife, was proof that the parties between themselves had mutually contracted the matrimonial relation. A relationship which may be adulterous at the beginning may become matrimonial by consent. This may be evidenced by habit and repute. In the instant case both the appellant and the first respondent were related and lived in the same house and by a social custom were treated as husband and wife. Their marriage was solemnized with Katha and Sindur. Therefore, following the ratio of the decisions of the House of Lords, this Court thinks there is a very strong presumption in favour of marriage. The House of Lords again observed in Captain De Thoren v. The Attorney- General (1876) 1 AC 686, that the presumption of marriage is much stronger than a presumption in regard to other facts.

14. Again in Sastry Velaider Aronegary and his wife v. Sembecutty Viagalie and Ors. (1881) 6 AC 364, it was held that where a 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.

15. In India, the same principles have been followed in the case of A. Dinohamy v. W.L. Balahamy MANU/PR/0116/1927 : AIR 1927 P.C. 185, in which the Privy Council laid down the general proposition that where a 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.

16. In Mohabbat Ali Khan v. Muhammad Ibrahim Khan and Ors. MANU/PR/0068/1929 : AIR 1929 PC 135, the Privy Council has laid down that the law presumes in favour of marriage and against concubinage when a man and woman have cohabited continuously for number of years.

17. In the case of Gokal Chand v. Parvin Kumari MANU/SC/0077/1952 : AIR 1952 SC 231, this Court held that continuous co- habitation of man and woman as husband and wife may raise the presumption of marriage, but the presumption which may be drawn from long co- habitation is rebuttable and if there are circumstances which weaken and destroy that presumption, the Court cannot ignore them.

18. Further, in the case of Badri Prasad v. Dy. Director of Consolidation and Ors. MANU/SC/0004/1978 : (1978) 3 SCC 527, the Supreme Court held that a strong presumption arises in favour of wedlock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of legal origin.

19. Again, in Tulsa and Ors. v. Durghatiya and Ors. MANU/SC/0424/2008 : 2008 (4) SCC 520, this Court held that where the partners lived together for a long spell as husband and wife, a presumption would arise in favour of a valid wedlock.

20. Sir James Fitz Stephen, who piloted the Criminal Procedure Code of 1872, a legal member of Viceroy's Council, described the object of Section 125 of the Code (it was Section 536 in 1872 Code) as a mode of preventing vagrancy or at least preventing its consequences.

21. Then came the 1898 Code in which the same provision was in Chapter XXXVI Section 488 of the Code. The exact provision of Section 488(1) of the 1898 Code runs as follows:

488. (1) If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Sub- divisional Magistrate or a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding five hundred rupees in the whole as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs.

22. In Jagir Kaur and Anr. v. Jaswant Singh MANU/SC/0242/1963 : AIR 1963 SC 1521, the Supreme Court observed with respect to Chapter XXXVI of Cr.P.C. of 1898 that provisions for maintenance of wives and children intend to serve a social purpose. Section 488 prescribes forums for a proceeding to enable a deserted wife or a helpless child, legitimate or illegitimate, to get urgent relief.

23. In Nanak Chand v. Chandra Kishore Aggarwal and Ors. MANU/SC/0481/1969 : 1969 (3) SCC 802, the Supreme Court, discussing Section 488 of the older Cr.P.C, virtually came to the same conclusion that Section 488 provides a summary remedy and is applicable to all persons belonging to any religion and has no relationship with the personal law of the parties.

24. In Captain Ramesh Chander Kaushal v. Veena Kaushal and Ors. MANU/SC/0067/1978 : AIR 1978 SC 1807, this Court held that Section 125 is a reincarnation of Section 488 of the Cr.P.C. of 1898 except for the fact that parents have also been brought into the category of persons entitled for maintenance. It observed that this provision is a measure of social justice specially enacted to protect, and inhibit neglect of women, children, old and infirm and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. Speaking for the Bench Justice Krishna Iyer observed that- "We have no doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfill. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it is to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advance the cause- the cause of the derelicts." (Para 9 on pages 1809- 10)

25. Again in Vimala (K) v. Veeraswamy (K) MANU/SC/0719/1991 : (1991) 2 SCC 375, a three-Judge Bench of this Court held that Section 125 of the Code of 1973 is meant to achieve a social purpose and the object is to prevent vagrancy and destitution. Explaining the meaning of the word 'wife' the Court held:

...The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. When an attempt is made by the husband to negative the claim of the neglected wife depicting her as a kept- mistress on the specious plea that he was already married, the court would insist on strict proof of the earlier marriage. The term 'wife' in Section 125 of the Code of Criminal Procedure, includes a woman who has been divorced by a husband or who has obtained a divorce from her husband and has not remarried. The woman not having the legal status of a wife is thus brought within the inclusive definition of the term 'wife' consistent with the objective....

26. Thus, in those cases where a man, who lived with a woman for a long time and even though they may not have undergone legal necessities of a valid marriage, should be made liable to pay the woman maintenance if he deserts her. The man should not be allowed to benefit from the legal loopholes by enjoying the advantages of a de facto marriage without undertaking the duties and obligations. Any other interpretation would lead the woman to vagrancy and destitution, which the provision of maintenance in Section 125 is meant to prevent.

27. The Committee on Reforms of Criminal Justice System, headed by Dr. Justice V.S. Malimath, in its report of 2003 opined that evidence regarding a man and woman living together for a reasonably long period should be sufficient to draw the presumption that the marriage was performed according to the customary rites of the parties. Thus, it recommended that the word 'wife' in Section 125 Cr.P.C. should be amended to include a woman who was living with the man like his wife for a reasonably long period.

28. The Constitution Bench of this Court in Mohammad Ahmed Khan v. Shah Bano Begum and Ors. reported in MANU/SC/0194/1985 : (1985) 2 SCC 556, considering the provision of Section 125 of the 1973 Code, opined that the said provision is truly secular in character and is different from the personal law of the parties. The Court further held that such provisions are essentially of a prophylactic character and cut across the barriers of religion. The Court further held that the liability imposed by Section 125 to maintain close relatives, who are indigent, is founded upon the individual's obligation to the society to prevent vagrancy and destitution.

29. In a subsequent decision, in Dwarika Prasad Satpathy v. Bidyut Prava Dixit and Anr. MANU/SC/0673/1999 : (1999) 7 SCC 675, this Court held that the standard of proof of marriage in a Section 125 proceeding is not as strict as is required in a trial for an offence under Section 494 of IPC. The learned Judges explained the reason for the aforesaid finding by holding that an order passed in an application under Section 125 does not really determine the rights and obligations of parties as the section is enacted with a view to provide a summary remedy to neglected wives

to obtain maintenance. The learned Judges held that maintenance cannot be denied where there was some evidence on which conclusions of living together could be reached. (See para 9)

30. However, striking a different note, in Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav and Anr. reported in MANU/SC/0579/1988 : AIR 1988 SC 644, a two- Judge Bench of this Court held that an attempt to exclude altogether personal law of the parties in proceedings under Section 125 is improper. (See para 6). The learned Judges also held (paras 4 & 8) that the expression 'wife' in Section 125 of the Code should be interpreted to mean only a legally wedded wife.

31. Again in a subsequent decision of this Court in Savitaben Somabhat Bhatiya v. State of Gujarat and Ors. reported in MANU/SC/0193/2005 : AIR 2005 SC 1809, this Court held however desirable it may be to take note of plight of an unfortunate woman, who unwittingly enters into wedlock with a married man, there is no scope to include a woman not lawfully married within the expression of 'wife'. The Bench held that this inadequacy in law can be amended only by the Legislature. While coming to the aforesaid finding, the learned Judges relied on the decision in the Yamunabai case (supra).

32. It is, therefore, clear from what has been discussed above that there is a divergence of judicial opinion on the interpretation of the word 'wife' in Section 125.

33. We are inclined to take a broad view of the definition of 'wife' having regard to the social object of Section 125 in the Code of 1973. However, sitting in a two- Judge Bench, we cannot, we are afraid, take a view contrary to the views expressed in the abovementioned two cases.

34. However, law in America has proceeded on a slightly different basis. The social obligation of a man entering into a live- in relationship with another woman, without the formalities of a marriage, came up for consideration in the American courts in the leading case of Marvin v. Marvin (1976) 18 Cal. 660. In that context, a new expression of 'palimony' has been coined, which is a combination of 'pal' and 'alimony', by the famous divorce lawyer in the said case, Mr. Marvin Mitchelson.

35. In the Marvin case (supra), the plaintiff, Michelle Marvin, alleged that she and Lee Marvin entered into an oral agreement which provided that while "the parties lived together they would combine their efforts and earnings and would share equally any and all property accumulated as a result of their efforts whether individual or combined." The parties allegedly further agreed that Michelle would "render her services as a companion, homemaker, housekeeper and cook." Michelle sought a judicial declaration of her contract and property rights, and sought to impose a constructive trust upon one half of the property acquired during the course of the relationship. The Supreme Court of California held as follows:

(1) The provisions of the Family Law Act do not govern the distribution of property acquired during a non- marital relationship; such a relationship remains subject solely to judicial decision.

(2) The courts should enforce express contracts between non- marital partners except to the extent that the contract is explicitly founded on the consideration of meretricious sexual services.

(3) In the absence of an express contract, the courts should inquire into the conduct of the parties to determine whether that conduct demonstrates an implied contract, agreement of partnership or joint venture, or some other tacit understanding between the parties. The courts may also employ the doctrine of quantum meruit, or equitable remedies such as constructive or resulting trusts, when warranted by the facts of the case.

36. Though in our country, law has not developed on the lines of the Marvin case (supra), but our social context also is fast changing, of which cognizance has to be taken by Courts in interpreting a statutory provision which has a pronounced social content like Section 125 of the Code of 1973.

37. We think the larger Bench may consider also the provisions of the Protection of Women from Domestic Violence Act, 2005. This Act assigns a very broad and expansive definition to the term 'domestic abuse' to include within its purview even economic abuse. 'Economic abuse' has been defined very broadly in sub- explanation (iv) to explanation I of Section 3 of the said Act to include deprivation of financial and economic resources.

38. Further, Section 20 of the Act allows the Magistrate to direct the respondent to pay monetary relief to the aggrieved person, who is the harassed woman, for expenses incurred and losses suffered by her, which may include, but is not limited to, maintenance under Section 125 Cr.P.C. [Section 20(1)(d)].

39. Section 22 of the Act confers upon the Magistrate, the power to award compensation to the aggrieved person, in addition to other reliefs granted under the Act.

40. In terms of Section 26 of the Act, these reliefs mentioned above can be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent.

41. Most significantly, the Act gives a very wide interpretation to the term 'domestic relationship' as to take it outside the confines of a marital relationship, and even includes live- in relationships in the nature of marriage within the definition of 'domestic relationship' under Section 2(f) of the Act.

42. Therefore, women in live- in relationships are also entitled to all the reliefs given in the said Act.

43. We are thus of the opinion that if the abovementioned monetary relief and compensation can be awarded in cases of live- in relationships under the Act of 2005, they should also be allowed in a proceedings under Section 125 of Cr.P.C. It seems to us that the same view is confirmed by Section 26 of the said Act of 2005.

44. We believe that in light of the constant change in social attitudes and values, which have been incorporated into the forward- looking Act of 2005, the same needs to be considered with respect to Section 125 of Cr.P.C. and accordingly, a broad interpretation of the same should be taken.

45. We, therefore, request the Hon'ble Chief Justice to refer the following, amongst other, questions to be decided by a larger Bench. According to us, the questions are:

1. Whether the living together of a man and woman as husband and wife for a considerable period of time would raise the presumption of a valid marriage between them and whether such a presumption would entitle the woman to maintenance under Section 125 Cr.P.C?

2. Whether strict proof of marriage is essential for a claim of maintenance under Section 125 Cr.P.C. having regard to the provisions of Domestic Violence Act, 2005?

3. Whether a marriage performed according to customary rites and ceremonies, without strictly fulfilling the requisites of Section 7(1) of the Hindu Marriage Act, 1955, or any other personal law would entitle the woman to maintenance under Section 125 Cr.P.C.?

46. We are of the opinion that a broad and expansive interpretation should be given to the term 'wife' to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time, and strict proof of marriage should not be a pre-condition for maintenance under Section 125 of the Cr.P.C., so as to fulfil the true spirit and essence of the beneficial provision of maintenance under Section 125.

47. We also believe that such an interpretation would be a just application of the principles enshrined in the Preamble to our Constitution, namely, social justice and upholding the dignity of the individual.

MANU/UP/0008/1914

IN THE HIGH COURT OF ALLAHABAD

Decided On: 08.08.1914

Farzand Ali Vs. Hakim Ali

Back to Section 133 of Code of Criminal Procedure, 1973

JUDGMENT

Theodore Caro Pigott, J.

1. This is an application in revision in respect of certain proceedings taken by Magistrate under Section 133 and the succeeding sections of the Code of Criminal Procedure. The matter appears to have been brought to the notice of the Magistrate by a petition presented by a person of the name of **Hakim Ali**. That petition stated in substance that **Farzand Ali**, who is the applicant now before me, had recently enlarged his dwelling- house by making certain constructions which had the effect of obstructing a portion of a public way used by the residents of two villages, and that serious inconvenience was thereby being caused to the petitioner and other residents of the neighbourhood. After notice had issued to **Farzand Ali**, the latter applied in accordance with law for the appointment of a jury to try the question whether the conditional order issued by the Magistrate for the removal of the alleged obstruction was a reasonable and proper order. **Farzand Ali**, as he was entitled to do, nominated two jurymen. I note that he nominated two co- religionists of his own. The Magistrate appears to have inquired from **Hakim Ali** whether he could suggest the names of two other suitable persons to serve on the jury, and thereupon **Hakim Ali** presented a petition suggesting the names of two Hindu residents of another village The Magistrate then proceeded to nominate a foreman. It has been brought to my notice in the course of argument that the foreman originally nominated by the Magistrate declined to serve, that the Magistrate thereupon nominated another gentleman, a Muhammadan, and that this nomination was objected to on behalf of **Farzand Ali**. I have not pursued the history of this objection further because no plea is taken in the petition before me with regard to the appointment of the foreman. After the majority of the jury had decided the question referred to them in a sense unfavourable to **Farzand Ali**, the Magistrate proceeded to make his order absolute in accordance with law. Objection is now taken before this Court that the entire proceedings before the Magistrate, from the date of the order constituting the jury, are illegal and void, by reason of the fact that two of the jurors were appointed on the suggestion of the petitioner **Hakim Ali** There is authority for this proposition in the cases of Upendra Nath Bhuttacharjee v. Khitish Chandra Bhuttacharjee I.L.R. (1896) Cal. 499, Kailash Chandra Sen v. Ram Lall Mittra I.L.R. (1893) Cal. 869 in some older cases of the same court referred to in the above decisions, and I have also been referred to the case of Mir Imam Abdul Aziz v. Queen Empress Punj. Rec. 1897 Cri. L.J. 4. Now it is certainly expedient that in all proceedings initiated under Section 133 of the Code of Criminal Procedure the Magistrate should bear in mind that he is supposed to be acting purely in the interests of the public, and should be on his guard against any tendency to use this section as substitute for litigation in the Civil Courts in order to the settlement of a private dispute. In the present case the question before the Magistrate was whether there had been an obstruction to a public way, to the injury or inconvenience of members of the public entitled to use the same. **Hakim Ali** had no locus standi in the matter, once he had performed what was perhaps his duty as a good citizen in calling the attention of the Magistrate

to the existence of the nuisance. In so far, therefore, as the rulings to which I have been referred lay down the principle that it is expedient that Magistrates should be on their guard against fallowing a proceeding of this sort to assume the character of a private litigation and allowing it to be treated as a dispute to which two private individuals representing opposite interests are the parties, I am in entire accord with the same. I still more emphatically approve of the principle laid down in the Punjab case above referred to, that it would be highly improper on the part of the Magistrate to appoint to serve on a jury of this sort, the friends or supporters of the person at whose instance the proceedings under Chapter X of the Code of Criminal Procedure are being taken. At the same time, it must be remembered that it is often not an easy matter for a Magistrate to secure the services of a foreman and two independent jurymen to undertake in the public interests an inquiry of this sort, it may be in some village distant from head quarters. If the rulings to which I have been referred are supposed to lay down the principle that it is illegal for a Magistrate to address any inquiry t) the person who first came forward to draw his attention to the existence of the alleged public nuisance, with a view to ascertaining the names of respectable and independent residents of the neighbourhood who would be willing to serve on the jury, then lam unable to concur in any such principle. It clearly goes beyond anything, which is to be found in the provisions of the Code of Criminal Procedure itself, and it also goes beyond the requirements of the effective and impartial administration of justice. The criterion, therefore, which I would apply to a case of this sort, is whether the person at whose instance the proceedings were instituted was allowed to exercise rights not conferred upon him by law, as if he were a party to the litigation, and whether as a matter of fact the jurors nominated by the Magistrate could rightly be described as friends or supporters of the aforesaid person. Even in the cases to which I have been referred it is sufficiently clear that the underlying principle, that the revisional jurisdiction of this Court should be exercised only to correct a manifest failure of justice, was clearly recognized. The record before me does not show that **Farzand Ali** at any time objected in the court below to the two Hindu jurors who were nominated at the suggestion of **Hakim Ali**. Even in his petition to this Court he has not suggested, much less proved by affidavit, that these persons could be regarded as friends or supporters of **Hakim Ali**. I have, therefore, no materials before me which would justify the conclusion that these Hindu jurors were other than respectable and impartial residents of the neighbourhood and suitable persons to have been called upon to act as such; on the contrary, the silence of the applicant in revision justifies the opposite presumption. So far therefore from being prepared to hold that the Magistrate's proceedings were illegal or void, I do not find them to be vitiated by an such impropriety or irregularity as would justify the interference of this Court. The application is therefore dismissed.

MANU/SC/0050/1983

Back to Section 144 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Writ Petition Nos. 6890 and 7204 of 1982 and 3491 of 1983

Decided On: 20.10.1983

Acharya Jagdishwaranand Avadhuta and Ors. Vs. Commissioner of Police, Calcutta and Ors.

Hon'ble Judges/Coram:

A.N. Sen, P.N. Bhagwati and Ranganath Mishra, JJ.

JUDGMENT

Ranganath Misra, J.

1. The petitioner in Writ Petition No. 6890/82 a monk of the Ananda Marga and currently General Secretary, Public Relations Department of the Ananda Marga Pracharak Sangh, has filed this petition under Article 32 of the Constitution for a direction to the **Commissioner** of **Police Calcutta** and the State of West Bengal to allow processions to be carried in the public streets and meetings to be held in public places by the followers of the Ananda Marga cult accompanied by the performance of Tandava dance within the State of West Bengal. There are two connected writ petitions being Writ Petition Nos. 7204/82 and 3491/83 by the Diocese Secretary of West Bengal Region and another follower of Ananda Marga. All these Petitions raise this common question and have been heard at a time. For convenience the petition by the General Secretary, Public Relations Department of the Ananda Marga Pracharak Sangh has been treated as the main petition and references in the Judgment have been confined to it.

2. In the original petition certain factual assertions have been made and after counter affidavits were filed several further affidavits have been placed before the Court on behalf of the petitioner and counter affidavits too have been filed. Shorn of unnecessary details, the averments on behalf of the respective contenders are as follows :

3. Shri Pravat Ranjan Sarkar otherwise known as Shri Ananda Murti, founded a socio- spiritual organisation claimed to have been dedicated to the service of humanity in different spheres of life such as physical mental and spiritual irrespective of caste, creed or colour, in the year 1955. In the initial period the Headquarters of this organisation was located near Ranchi in the State of Bihar but later it has been shifted to a place within the City of **Calcutta** in West Bengal. It has been pleaded that Ananda Marga contains no dogmatic beliefs and teaches the yogic and spiritual science to every aspirant. In order to realise the Supreme, Ananda Marga does not believe that it is necessary to abandon home profession or occupation and spiritual sadhana is possible at any place and concurrently with fulfilling all duties and responsibilities of family life. It has been pleaded that Ananda Marga shows the way and explains the methods for spiritual advancement and this helps man to practice his dharma. According to the petitioner Lord Shiva had performed Tandava Dance in 108 forms but Shaivite literature has given details of 64 kinds only. Seven forms out of these 64 appear to have been commonly accepted and they are called Kalika, Gouri,

Sandhya, Sambhara, Tripura, Urdhava and Ananda. The first of these forms elaborates the main aspects of shiva while the seventh, i.e. the Ananda Tandava portrays all the manifold responsibilities of the Lord. Ananda Tandava is claimed to have taken place at Tillai, the ancient name of Chidambaram now situated in the State of Tamil Nadu. It is the petitioner's stand that the word Tandava is derived from the root Tandu which means to jump about and Shiva was the originator of Tandava about 6500 years ago. Ananda Murtiji as the petitioner maintains, is the Supreme Father of the Ananda Margis. It is custody mary for every Ananda Margi after being duly initiated to describe Ananda Murtiji as his father. One of the prescriptions of religious rites to be daily performed by an Ananda Margi is Tandava Dance and this is claimed to have been so introduced from the year 1966 by the preceptor. This dance is to be performed with a skull, a small, symbolic knife and a Trishul. ' It is also customary to hold a lathi and a damroo. It is explained that the knife or the sword symbolises the force which cuts through the fetters of the mundane world and allows human beings to transcend towards perfection; the trishul or the trident symbolises the fight against static forces in the three different spheres of human existence - spiritual, mental and physical; the lathi which is said to be a straight stick stands out as the symbol of straightforwardness or simplicity; the damroo is the symbol to bring out rhythmic harmony between eternal universal music and the entitative sound; and the skull is the symbol of death reminding every man that life is short and therefore, every moment of life should be utilised in the service of mankind and salvation should be sought. The petitioner has further maintained that Ananda Margis greet their spiritual preceptor Shri Ananda Murti with a dance of Tandava wherein one or two followers use the skull and the symbolic knife and dance for two or three minutes. At intervals processions are intended to be taken out in public places accompanied by the Tandava dance as a religious practice.

4. Though in subsequent affidavits and in the course of argument an attempt was made by Mr. Tarkunde to assert that Ananda Marga is a new religious order; we do" not think there is any justification to accept such a contention when it runs counter to the pleadings in paragraphs 4 and 17 of the writ petition. In paragraph 4 it was specifically pleaded that "Ananda Marga is more a denomination than an institutionalised religion", and in paragraph 17 it was pleaded that "Ananda Margis are Shaivites ... " We shall, therefore, proceed to deal with this petition on the footing that, as pleaded by the petitioner, Ananda Marga is a religious denomination of the Shaivite order which is a well known segment of Hindu religion.

5. Though the petitioner had pleaded that Tandava dance has been practiced and performed by every Ananda Margi for more than three decades, it has been conceded in the course of the hearing that Tandava Dance was introduced for the first time as a religious rite for Ananda Margis in or around 1966. Therefore, by the time of institution of this writ petition the practice was at best prevalent for about 16 years.

6. The **Commissioner** of **Police**, respondent 1 before us is alleged to have made repetitive orders Under Section 144 of the CrPC, 1973 ('Code' for short) from August 1979 directing that "no member of a procession or assembly of five or more persons should carry any fire arms, explosives, swords, spears, knives, tridents, lathis or any article which may be used as weapon of offence or any article likely to cause annoyance to the public for example skulls...." A petition was filed before the **Calcutta** High Court under Article 226 of the Constitution by the General Secretary of Ananda Marga for a writ of mandamus against the respondents for a direction not to Interfere with or place restraints on the freedom of conscience and free profession, practice and

propagation of their religion, including Tandava Dance in matter No. 903 of 1980. The **Calcutta** High Court rejected the said petition on September 23, 1980 and observed:

It is open to any one in this country to practice any religion but the religious practice must not be inconsistent with the susceptibility or sensibility or fairness or public order. Tandava dance as such may not be objectionable. In the streets of **Calcutta** all kinds of demonstrations and procession are being held every day which may on many occasions cause disturbance to others and interrupt the free flow of traffic. In spite of the same such demonstrations and processions are allowed to take place particularly every day by the authority concerned. If the petitioners or any member of their group want to hold a procession or reception or demonstration accompanied by any dance or music, that by itself may not be objectionable. However, brandishing fire torches or skulls or daggers in the public places including streets cannot come under ' the same category. Here other things are involved. The interests of other members of the public are involved, the sense of security of the others is also involved. The authorities concerned have to keep in mind the question of the feelings of other members of the public and the question of the possibility of any attempt to retaliate or counter- act to the same are also to be considered. Taking into consideration all these factors I am of the opinion that the petitioners do not have any legal right and they have not established any legal right to carry fire torches, skulls and daggers in public places or public streets and do not intend to pass any order entitling the petitioners to do so. However, the petitioners shall be entitled to go in procession or hold any demonstration without any such fire tourches, daggers or skulls. However, this would be subject to prevailing law of the land in the particular area. For example, in the High Court, Dalhousie Square and Assembly order Under Section 144 of the Criminal Procedure Code is promulgated from time to time. This order would not entitle the petitioners to hold any such procession demonstration in violation of such promulgation if any. This order would also not entitle the petitioners to hold any procession or demonstration without the permission of the authority concerned when such permission is required for such purposes under any existing law.

On March 29, 1982, respondent 1 made a fresh order Under Section 144 of the Code wherein the same restraints as mentioned in the earlier order were imposed. An application for permission to take out a procession on the public street accompanied with Tandava dance was rejected and that led to the filing of this petition.

7. The petitioner asserts that tandava dance is an essential part of the religious rites of the Ananda Margis and that they are entitled to practise the same both in private as also in public places and interference by the respondents is opposed to the fundamental rights guaranteed under Articles 25 and 26 of the Constitution. The order Under Section 144 of the Code has been assailed mainly on the ground that it does not state the material facts of the case though the statute requires such statement as a condition precedent to the making of the order. Repetitive orders Under Section 144 of the Code, it has been contended, are not contemplated by the Code and, therefore, making of such orders is an abuse of the law and should not be countenanced.

8. Two separate returns have been made to the rule nisi. Respondent 1 has filed a counter affidavit alleging that Ananda Marga is an organisation which believes in violence and if Ananda Margis are permitted to carry open swords or daggers in public processions it is bound or likely, to disturb public peace and tranquillity and is fraught with the likelihood of breach of public order and would affect public morality. Carrying of human skulls and indulging in provocative dances with human skulls is not only repulsive to public taste and morality, but is bound, and is likely, to raise fears in the minds of the people particularly children thereby affecting public order,

morality, peace and tranquility. It has been further pleaded that the petitioner, or for the matter of that, Ananda Margis can have no fundamental right to carry weapons in the public, in procession or otherwise, nor have they any right to perform tandava dance with daggers and human skulls. It is stated that Ananda Marga is a politico- religious organisation started in 1961 by Shri Pravat Ranjan Sarkar alias Sri Ananda Murti, who is a self- styled tantrik yogi. Reference has been made to an incident of 1971 which led to prosecution of Sri Ananda Murti and some of his followers. It is stated that militancy continues to be the main feature of the organisation. Prior to promulgation of the prohibitory orders, it has been pleaded, Ananda Margis took out processions carrying lethal weapons like tridents lathis as well as human skulls and knives from time to time and caused much annoyance to the public in general and onlookers in particular, and this tended to disturb public peace, tranquillity and public order. In spite of the prohibitory orders in force from August 10, 1979, a procession was taken out on the following day within the city of **Calcutta** by Ananda Margis with lathis, tridents, knives, skulls, and the procession became violent. The assembly was declared unlawful and the **police** force was obliged to intervene. The **police** personnel on duty including a Deputy **Commissioner** of **Police** received injuries. Reference to several other incidents has also been made in the counter- affidavit of the **Police Commissioner**. The State Government has supported the stand of the **Police Commissioner** in its separate affidavit.

9. We have already indicated that the claim that Ananda Marga is a separate religion is not acceptable in view of the clear assertion that is was not an institutionalised religion but was a religious denomination. The principle indicated by Gajendragadkar, CJ, while speaking for the Court in Sastri Yagnapurushadji and **Ors**. v. Muldas Bhudardos Vaishya and Anr. MANU/SC/0040/1966: [1966]3SCR242 also supports the conclusion that Ananda Marga cannot be a separate religion by itself. In that case the question for consideration was whether the followers of Swaminarayan belonged to a religion different from that of Hinduism. The learned Chief Justice observed :

Even a cursory study of the growth and development of Hindu religion through the ages shows that whenever a saint or a religious reformer attempted the task of reforming Hindu religion and fighting irrational or corrupt practices which had crept into it, a sect was born which was governed by its own tenets but which basically subscribed to the fundamental notions of Hindu religion and Hindu philosophy.

The averments in the writ petition would seem to indicate a situation of this type. We have also taken into consideration the writings of Shri Ananda Murti in books like Carya- Carya, Namah Shivaya Shantaya, A Guide to Human Conduct, and Ananda Vachanamritam. These writings by Shri Ananda Murti are essentially founded upon the essence of Hindu philosophy. The test indicated by the learned Chief Justice in the case referred to above and the admission in paragraph 17 of the writ petition that Ananda Margis belong to the Shaivite order lead to the clear conclusion that Ananda Margis belong to the Hindu religion. Mr. Tarkunde for the petitioner had claimed protection of Article 25 of the Constitution but in view of our finding that Ananda Marga is not a separate religion, application of Article 25 is not attracted.

10. The next aspect for consideration is whether Ananda Marga can be accepted to be a religious denomination. In The **Commissioner** Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt MANU/SC/0136/1954: [1954]1SCR1005 Mukherjee, J. (as the learned Judge then was), spoke for the Court thus:

As regards Article 26, the first question is, what is the precise meaning or connotation of the expression 'religious denomination' and whether a Math could come within this expression. The word 'denomination' has been defined in the Oxford Dictionary to mean 'a collection of individuals classed together under the same name : a religious sect or body having a common faith and organisation and designated by a distinctive name'.

This test has been followed in The Durgah Committee, Ajmer and Anr. v, Syed Hussain Ali and **Ors**. MANU/SC/0063/1961 : [1962]1SCR383 . In the majority judgment in S. P. Mittal etc. v. Union of India and **Ors**. [1933] 1 S.C.R. 729 reference to this aspect has also been made and it has been stated :

The words 'religious denomination' in Article 26 of the Constitution must take their colour from the word 'religion' and if this be so, the expression 'religious denomination' must also satisfy three conditions :

(1) It must be a collection of individuals who have a system of beliefs or doctrines which they regard as conducive to their spiritual well- being, that is, a common faith;

(2) common organisation; and

(3) designation by a distinctive name.

11. Ananda Marga appears to satisfy all the three conditions, viz., it is a collection of individuals who have a system of beliefs which they regard as conducive to their spiritual well- being; they have a common organisation and the collection of these individuals has a distinctive name. Ananda Marga, therefore, can be appropriately treated as a religious denomination, within the Hindu religion. Article 26 of the Constitution provides that subject to public order morality and health, every religious denomination or any section thereof shall have the right to manage its own affairs in matters of religion. Mukherjea, J. in Lakshmindra Thirtha Swamiar's case (supra) adverted to the question as to what were the matters of religion and stated:

What then are matters of religion ! The word 'religion' has not been defined in the Constitution and it is a term which is hardly susceptible of any rigid definition. In an American case (Davie v. Benson 133 US 333), it has been said "that the term 'religion' has reference to one's views of his relation to his Creator and to the obligations they impose of reverence for His Being and Character and of obedience to His will. It is often "confounded with cults of form or worship of a particular sect, but is distinguishable from the latter". We do not think that the above definition can be regarded as either precise or adequate. Articles 25 and 26 of our Constitution are based for the most part upon Article 44(2) of the Constitution of Eire and we have great doubt whether a definition of 'religion' as given above could have been in the minds of our Constitution makers when they framed the Constitution. Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it would not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress...

Restrictions "by the State upon free exercise of religion are permitted both under Articles 25 and 26 on grounds of public order morality and health. Clause (2) (a) of Article 25 reserved the right of the State to regulate or restrict any economic, financial, political and other secular activities which may be associated with religious practice and there is a further right given to the State by Sub- clause (b) under which the State can legislate for social welfare and reform even though by So doing it might interfere with religious practices....

The contention formulated in such broad terms cannot, we think, be supported. In the first place, what constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself. It the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or oblations to the sacred fire, all these would be regarded as parts of religion and the mere fact that they involve expenditure of money or employment of priests and servants or the use of marketable commodities would not make them secular activities partaking of a commercial or economic character; all of them are religious practices and should be regarded as matters of religion within the meaning of Article 26(b)....

12. Courts have the power to determine whether a particular rite of observance is regarded as essential by the tenets of a particular religion. In Laxshmindra Thirtha Swamiar's case, Mukherjea, J. observed :

This difference in judicial opinion brings out forcibly the difficult task which a Court has to perform in cases of this type where the freedom" of religious convictions genuinely entertained by men come into conflict with the proper Political attitude which is expected from citizens in matters of unity and solidarity of the State organization.

13. The same question arose in the case of Ratilal Panachand Gandhi v. State of Bombay and **Ors**. MANU/SC/0138/1954 : [1954]1SCR1055 . The Court did go into the question whether certain matters appertained to religion and concluded by saying that "these are certainly not matters of religion and the objection raised with regard to the validity of these provisions seems to be altogether baseless." In Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan and **Ors**. MANU/SC/0028/1963 : [1964]1SCR561 this Court went into the question as to whether the tenets of the Vallabh denomination and its religious practices require that the worship by the devotees should be performed at the private temples and therefore, the existence of public temples was inconsistent with the said tenets and practices, and on an examination of this question, negatived the plea.

14. The question for consideration now, therefore, is whether performance of Tandava dance is a religious rite or practice essential to the tenets of the religious faith of the Ananda Margis. We have already indicated that tandava dance was not accepted as an essential religious rite of Ananda Margis when in 1955 . the Ananda Marga order was first established It is the specific case of the petitioner that Shri Ananda Murti introduced tandava as a part of religious rites of Ananda Margis later in 1966. Ananda Marga as a religious order is of recent origin and tandava dance as a part of religious rites of that order is still more recent. It is doubtful as to whether in such circumstances tandava dance can be taken as an essential religious rite of the Ananda Margis. Even conceding that it is so, it is difficult to accept Mr. Tarkunde's argument that taking out religious processions with tandava dance is an essential religious rite of Ananda Margis. In paragraph 17 of the writ petition the petitioner pleaded that "Tandava Dance lasts for a few

minutes where two or three persons dance by lifting one leg to the level of the chest, bringing it down and lifting the other." In paragraph 18 it has been pleaded that "when the Ananda Margis greet their spiritual preceptor , at the airport, etc. they arrange for a brief welcome dance of tandava wherein one or two persons use the skull and symbolic knife and dance for two or three minutes." In paragraph 26 it has been pleaded that "Tandava is a custom among the sect members and it is a customary performance and its origin is over four thousand years old, hence it is not a new invention of Ananda Margis." On the basis of the literature of the Ananda Marga denomination it has been contended that there is prescription of the performance of tandava dance by every follower of Ananda Marga. Even conceding that tandava dance has been prescribed as a religious rite for every follower of the Ananda Marg it does not follow as a necessary corollary that tandava dance to be performed in the public is a matter of religious rite. In fact, there is no justification in any of the writings of Shri Ananda Murti that tandava dance must be performed in public. Atleast none could be shown to us by Mr. Tarkunde despite an enquiry by us in that behalf. We are, therefore, not in a position to accept the contention of Mr. Tarkunde that performance of tandava dance in a procession or at public places is an essential religious rite to be performed by every Ananda Margi.

15. One we reach this conclusion, the claim that the petitioner has a fundamental right within the meaning of Articles 25 or 26 to perform tandava dance in public streets and public places has to be rejected. In view of this finding it is no more necessary to consider whether the prohibitory order was justified in the interest of public order as provided in Article 25.

16. It is the petitioner's definite case that the prohibitory orders Under Section 144 of the Code are being repeated at regular intervals from August 1979. Copies of several prohibitory orders made from time to time have been produced before us and it is not the case of the respondents that such repetitive prohibitory orders have not been made. The order Under Section 144 of the Code made in March 1982 has also been challenged on the ground that the material facts of the case have not been stated. Section 144 of the Code, as far as relevant, provides: "(1) In cases where in the opinion of a District Magistrate,' a Sub- Divisional Magistrate, or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may ,by a written order stating the material facts of the case and served in the manner provided by Section 134, direct..." It has been the contention of Mr. Tarkunde that the right to make the order is conditioned upon it being a written one and the material facts of the case being stated. Some High Courts have taken the view that this is a positive requirement and the validity of the order depends upon compliance of this provision. In our opinion it is not necessary to go into this question as counsel for the respondents conceded that this is one of the requirements of the provision and if the power has to be exercised it should be exercised in the manner provided on pain of invalidating for non- compliance. There is currently in force a prohibitory order in the same terms and hence the question cannot be said to be academic. The other aspect, viz., the propriety of repetitive prohibitory orders is, however, to our mind a serious matter and since long arguments have been advanced , we propose to deal with it. In this case as fact from October 1979 till 1982 at the interval of almost two months orders Under Section 144(1) of the Code have been made from time to time. It is not disputed before us that the power conferred under this section is intended for immediate prevention of breach of peace or speedy remedy. An order made under this section is to remain valid for two months from the date of its making as provided in Sub- section (4) of Section 144. The proviso to Sub- section (4) authorises the State Government in case it considers it necessary so to do for preventing danger to human life, health

or safety, or for preventing a riot or any affray, to direct by notification that an order made by a Magistrate may remain in force for a further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired. The effect of the proviso, therefore, is that the State Government would be entitled to give the prohibitory order an additional term of life but that would be limited to six months Beyond the two months' period in terms of Sub- section (4) of Section 144 of the Code. Several decisions of different High Courts have rightly taken the view that it is not legitimate to go on making successive orders after earlier orders have lapsed by efflux of time. A Full Bench consisting of the entire Court of 12 Judges in Gopi Mohun Mullick v. Taramoni Chowdhrani ILR 5 Cal. 7 examining the provisions of Section 518 of the Code of 1861 (corresponding to present Section 144) took the view that such an action was beyond the Magistrate's powers. Making of successive orders was disapproved by the Division Bench of the **Calcutta** High Court in Bishessur Chuckerbutty and Anr. v. Emperor AIR 1916 Cal. 47. Similar view was taken in Swaminatha Mudaliar v. Gopalakrishna Naidu; AIR 1916 Mad. 1106 Taturam Sahu v. The State of Orissa MANU/OR/0039/1953 : AIR1953Ori96 Ram Das Gaur v. The City Magistrate, Varanasi MANU/UP/0096/1960 : AIR1960All397 and Ram Naraain Sah and Anr. v. Parmeshwar Prasad Sah and **Ors**. MANU/BH/0136/1942 : AIR1942Pat414 . We have no doubt that the ratio of these, decisions represents a correct statement of the legal position. The proviso to Sub- section (4) of Section 144 which gives the State Government jurisdiction to extend the prohibitory order for a maximum period of six months beyond the life of the order made by the Magistrate is clearly indicative of the position that Parliament never intended the life of an order Under Section 144 of the Code to remain in force beyond two months when made by a Magistrate. The scheme of that section does not contemplate repetitive orders and in case the situation so warrants steps have to be taken under other provisions of the law such as Section 107 or Section 145 of the Code when individual disputes are raised and to meet a situation such as here, there are provisions to be found in the **Police** Act. If repetitive orders are made it would clearly amount to abuse of the power conferred by Section 144 of the Code. If is relevant to advert to the decision of this Court in Babulal Parate v. State of Maharashtra and **Ors**. MANU/SC/0155/1961 : 1961CriLJ16 where the vires of Section 144 of the Code was challenged. Upholding the provision, this Court observed :

Public order has to be maintained in advance in order to ensure it and, therefore it is competent to a legislature to pass a law permitting an appropriate authority to take anticipatory action or place anticipatory restrictions upon particular kinds of acts in an emergency for the purpose of maintaining public order....

17. It was again emphasized :

But it is difficult to say that an anticipatory action taken by such an authority in an emergency where danger to public order is genuinely apprehended is anything other than an action done in the discharge of the duty to maintain order....

This Court had, therefore, appropriately stressed upon the feature that the provision of Section 144 of the code was intended to meet an emergency. This postulates a situation temporary in character and, therefore, the duration of an order Under Section 144 of the Code could never have been intended to be semi- permanent in character.

18. Similar view was expressed by this Court in Gulam Abbas and **Ors**. v. State of U.P. and **Ors**. [1981] 2 Cr. L.J. 1835 where it was said that "the entire basis of action Under Section 144 is provided by the urgency of the situation and the power thereunder is intended to be availed of

for preventing disorders, obstructions and annoyances with a view to secure the public weal by maintaining public peace and tranquillity...." Certain observations in Gulam Abbas's decision regarding the nature of the order Under Section 144 of the Code - judicial or executive - to the extent they run counter to the decision of the Constitution Bench in Babulal Parat's case, may require reconsideration but we agree that the nature of the order Under Section 144 of the Code is intended to meet emergent situation. Thus the clear and definite view of this Court is that an order Under Section 144 of the Code is not intended to be either permanent or semi- permanent in character. The consensus of judicial opinion in the High Courts of the country is thus in accord with the view expressed by this Court. It is not necessary on that ground to quash the impugned order of March 1982 as by efflux of time k has already ceased to be effective.

19. It is appropriate to take note of the fact that the impugned order Under Section 144 of the Code did not ban processions or gatherings at public places even by Ananda Margis. The prohibition was with reference to the carrying of daggers, trishuls and skulls. Even performance of tandava dance in public places, which we have held is not an essential part of religious rites to be observed by Ananda Margis, without these, has not been prohibited.

20. The writ petitions have to fail on our finding that performance of tandava dance in procession in the public streets or in gatherings in public places is not an essential religious rite of the followers of Ananda Marga. In the circumstance there will be no order as to costs.

MANU/SC/0200/1980

Back to Section 145 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 474 of 1980

Decided On: 28.07.1980

Rajpati Vs. Bachan and Ors.

Hon'ble Judges/Coram:

A.P. Sen and S. Murtaza Fazal Ali, JJ.

JUDGMENT

S. Murtaza Fazal Ali, J.

1. This appeal by special leave involves a short point of law. Proceedings under Section 145 was started by the Magistrate against the respondents on the basis of a police report. After passing a preliminary order on the 29th July, 1976 (wherein the Magistrate had recorded reasons for his being satisfied that a breach of the peace existed), the Magistrate called upon the parties to file their written statements and then after a full enquiry as provided by Section 145 the Magistrate passed the final order on 17th July, 1978 declaring the appellant to be in possession of the land in dispute. Against this order, the respondents moved the High Court under Section 482 Cr.P.C. for quashing the order of the Magistrate. The High Court found that as there was no clear finding by the Magistrate in the final order that there was an apprehension of breach of the peace, therefore, the final order was bad and the High Court accordingly allowed the petition and remitted the case to the Magistrate.

2. We have heard counsel for the parties and in our opinion the High Court erred in holding that the final order of the Magistrate was vitiated in absence of a finding that breach of the peace existed at the time the order was passed. It is not disputed that in the preliminary order there was a clear finding by the Magistrate that apprehension of breach of the peace did exist which was sufficient to give jurisdiction to the Magistrate to initiate the proceedings. When the parties filed their written statements, they did not state that no dispute between the parties existed but whereas one party said that there was no apprehension of breach from their side, the other side took the stand that there was an apprehension of breach of the peace.

3. Thus, the stand taken by the two parties was contradictory; hence it must be taken for granted that the apprehension of breach of peace continued to exist and it was not a case where it could be said that no dispute existed, as contemplated under Section 145(5) Cr.P.C.

4. After considering the record and evidence produced by the parties, the Magistrate passed the final order in favour of the appellant.

5. The High Court thought that it was absolutely essential for the Magistrate to give a finding that a breach of peace existed even in the final order. It may have been proper if the Magistrate had given a finding on this aspect of the matter also but in the circumstances, it can be safely presumed that apprehension of breach of peace existed and such a finding was implicit in the final order passed by the Magistrate so it was not necessary for the Magistrate to repeat what he had said in the preliminary order in the final order also. Moreover, mere absence of finding by the Magistrate in the final order in the circumstances as mentioned above cannot be such a manifest defect so as to attract the extraordinary jurisdiction of the High Court under Section 482 of Cr.P.C.

6. It is, therefore, manifest that a finding of existence of breach of the peace is not necessary at the time when a final order is passed nor is there any provision in the CrPC requiring such a finding in the final order. Once a preliminary order drawn up by the Magistrate sets out the reasons for holding that a breach of the peace exists, it is not necessary that the breach of peace should continue at every stage of the proceedings unless there is clear evidence to show that the dispute has ceased to exist so as to bring the case within the ambit of Sub- section (5) of Section 145 of the CrPC. Unless such a contingency arises the proceedings have to be carried to their logical end culminating in the final order under Sub- section (6) of Section 145. As already indicated the contradictory stands taken by the parties clearly show that there was no question of the dispute having ended so as to lead to cancellation of the order under Sub- section (5) of Section 145 nor was such a case set up by any party before the Magistrate or before the High Court. Further, it is well settled that under Section 145 it is for the Magistrate to be satisfied regarding the existence of a breach of the peace and once he records his satisfaction in the preliminary order, the High Court in revision cannot go into the sufficiency or otherwise of the materials on the basis of which the satisfaction of the Magistrate is based. In R.H. Bhutani v. Miss Mani J. Desai and Ors. MANU/SC/0343/1968 : 1969CriLJ13 , this Court pointed out as follows:

The section requires that the Magistrate must be satisfied before initiating proceedings that a dispute regarding an immovable property exists and that such dispute is likely to cause breach of peace. But once he is satisfied on these two conditions, the section requires him to pass a preliminary order under Sub- section (1) and thereafter to make an enquiry under Sub- section, (4) and pass a final order under Sub- section (6). It is not necessary that at the time of passing the final order the apprehension of breach of peace should continue or exist. The enquiry under Section 145 is limited to the question to who was in actual possession on the date of the preliminary order irrespective of the rights of the parties....

The High Court, in the exercise of its revisional jurisdiction, would not go into the question of sufficiency of material which has satisfied the Magistrate.

(Emphasisours)

7. In Hari Ram and Ors. v. Banwari Lal and Ors. A.I.R.1967 Punj. 378 it was held that once a Magistrate finds that there is a breach of peace it is not necessary that the dispute should continue to exist at other stages of the proceedings also. In this connection, the High Court observed as follows:

Of course, Magistrate can under Sub- section (1) of Section 145, Criminal Procedure Code, assume jurisdiction only if he is satisfied that at the time of passing the preliminary order a dispute likely to cause a breach of the peace exists concerning any land etc. Once that is done the Magistrate is thereafter expected to call upon the parties concerned in such dispute to attend his court in person or by pleader and put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute. The enquiry, therefore, after the initial satisfaction of the Magistrate and after the assumption of jurisdiction by him, has to be directed only as respects the fact of actual possession. At that time he has not to record a finding again about the existence of a dispute likely to cause a breach of the peace.

(Emphasisours)

8. To the same effect is a decision of the Hyderabad High Court in Ramarao v. Shivram and Ors. A.I.R.1954 Hyd 93 where Srinivasachari J. observed as follows :-

As regards this contention I am of opinion that once the Magistrate has given a finding to the effect that there is apprehension of breach of peace and that he has jurisdiction to take proceedings under Section 145, Cr.P.C., he can continue the proceedings. It is not necessary that at each stage he should be satisfied that there exists an imminent apprehension of breach of peace

(Emphasisours)

9. We find ourselves in complete agreement with the observations made by the Punjab and Hyderabad High Courts, extracted above, which lay down the correct law on the subject.

10. Assuming, however, that there was an omission on the part of the Magistrate to mention in his final order that there was breach of the peace, that being an error of procedure would clearly fall within the domain of a curable irregularity which is not sufficient to vitiate the order passed by the Magistrate, particularly when there is nothing to show in the instant case that any prejudice was caused to any of the parties who had the full opportunity to produce their evidence before the Court. It was therefore not correct on the part of the High Court to have interfered with the

order of the Magistrate on a purely technical ground when the aggrieved party had a clear remedy in the civil court.

11. For these reasons therefore, we are satisfied that the order passed by the High Court is legally erroneous and cannot be allowed to stand. The appeal is accordingly allowed, The order of the High Court is set aside and the order of the Magistrate is confirmed.

MANU/SC/0343/1968

Back to Section 145 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 17 of 1968

Decided On: 23.04.1968

R.H. Bhutani Vs. Man J. Desai and Ors.

Hon'ble Judges/Coram:

S.M. Sikri, J.M. Shelat and Vashishtha Bhargava, JJ.

JUDGMENT

J.M. Shelat, J.

1. At all material times respondent 1 had her office premises in Nawab Building, Fort, Bombay, which consisted of two cabins. On July 10, 1964, she entered into an agreement with the appellant permitting him to occupy one of the cabins on leave and licence for a period of eleven months. On June 9, 1965, the agreement was extended for a period of eleven months. The appellant's case was that it was further extended for another eleven months as from May, 10, 1966 and respondent 1 accordingly accepted Rs. 450 as compensation for May 1966. Respondent 1 thereafter demanded higher compensation which he refused to pay and thereupon respondent 1 refused to execute the renewal and threatened to eject him forcibly if he did not vacate. His case further was that in the morning of June 11, 1966 respondent 1 broke open the staple of the cabin, removed the door from its hinges, removed all his belongings lying in the cabin and dumped them in the passage outside. She then handed over possession of the cabin to respondents 2 and 3 purporting to do so under an agreement of licence dated June 1, 1966. When he went to the cabin he found the cabin occupied by respondents 2 and 3. On his asking them to place back his belongings and to restore possession to him, the respondents threatened him with dire consequences. He, therefore, went to the police station but the police refused to take action and only recorded his N. C. complaint. From the police station he and his friend, Mahomed Salim returned to the cabin when, on their demanding possession of the cabin, the respondents attacked them. In the course of that attack, the said Salim received injuries. He and the said Salim once again went to the police station but the police again refused to take action and recorded another N. C. complaint and sent Salim to the hospital for examination. Due to the persistent refusal by the police to help him to get back the cabin, the appellant approached higher authorities in consequence of which the police at last recorded a case of assault against respondent 1. They then arrested respondent 1 but released her on bail. Respondent 1, however, kept some persons near the cabin to prevent the appellant from recovering possession. There was, therefore, every likelihood of a breach of the peace had he gone to the cabin to regain possession. In these circumstances he filed an application before the Additional Chief Presidency Magistrate under Section 145 of the Code of Criminal Procedure.

2. The Magistrate then directed the parties to file affidavits and to adduce such further evidence as they desired. Accordingly, the parties filed affidavits of various persons who had their offices in the same building. The appellant, besides other affidavits, also filed an affidavit of one Nathani, the Manager of his company at whose instance, it was the case of respondent 1, the appellant had agreed to hand over and actually did hand over possession of the cabin in the morning of June 11, 1966. That affidavit, however, did not support respondent 1 but, on the contrary, denied that Nathani had agreed that the appellant would vacate or that the appellant at his instance had agreed to do so.

3. In her written statement, respondent 1 denied that the said licence was renewed a second time in May 1966. Her case was that at the request of the appellant she had permitted him to continue in possession till May 1966 on his promising to vacate by the end of that month, that on June 11, 1966, the appellant vacated the cabin, kept his belongings in the passage and thereupon she permitted respondents 2 and 3 to occupy it as, relying on the appellant's promise that he would vacate by the end of May 1966, she had already entered into an agreement of licence on June 1, 1966 with respondent 3. She denied that any incident, as alleged by the appellant, had occurred on that day or that the appellant or the said Salim was assaulted by her or by respondent 2 or 3. She, therefore, denied that any dispute existed on that day or that there was any likelihood of a breach of the peace. Respondents 2 and 3 also filed their written statements on the lines taken by respondent 1. But after filing them, they did not participate any more in the proceedings as they had since then vacated the said cabin. Possession, therefore, of the cabin since then remained with respondent 1. Respondent 1 in the meantime filed a suit in the City Civil Court and took out a notice of motion for restraining the appellant from interfering with her possession of the cabin. The Court dismissed the notice of motion refusing to rely on the said agreement.

4. In the proceedings before the Magistrate the main question was whether the appellant was in actual possession on June 11, 1966 and whether he was forcibly and wrongfully dispossessed by respondent 1 or whether he had vacated and surrendered the cabin to respondent 1. After considering the affidavits and the evidence led by the parties, the Magistrate reached the following findings: (1) that respondent 1 started harassing the appellant from the beginning of June 1966 and gave threats to forcibly dispossess him if he did not vacate: (2) that the appellant's version that the respondent had forcibly and wrongfully taken possession of the cabin in the morning of June 11, 1966 was true and (3) that when the appellant and the said Salim went to the cabin, the respondents manhandled them as a result of which Salim received injuries.

5. On these findings he held that the appellant was in actual possession on June 11, 1966 and that under the second proviso to Section 145 (4), though he had been dispossessed on June 11, he must be deemed to be in possession on June 20, 1966 when the Magistrate passed his preliminary order. By his final order dated June 22, 1967 passed under Sub- section (6), the Magistrate directed restoration of possession to the appellant till he would be evicted in due course of law and prohibited the respondents from interfering with his possession till then.

6. In the revision before the High Court, the respondents raised two contentions: (1) that the Magistrate, in entertaining the said application and passing the said preliminary order, misconceived the scope of proceedings under Section 145, and (2) that he had no jurisdiction to pass the said preliminary order as in the events that had happened there was no existing dispute likely to result in a breach of the peace. The High Court accepted these contentions and set aside the order of the Magistrate. In doing so, it observed that the object of Section 145 was to preserve peace and to provide a speedy remedy against a likely breach of peace where there is an existing dispute regarding possession of an immovable property until such dispute is adjudicated upon by a proper tribunal. That section, therefore can be invoked where these two conditions exist, namely an existing dispute and an apprehension of breach of peace. The Magistrate, therefore, had to be satisfied as to the existence of these two conditions when he passed the preliminary order. The High Court then observed that assuming that the appellant was forcibly and wrongfully dispossessed and the said Salim was assaulted by respondent 1 and her men, it could not even then necessarily mean that there was an existing dispute relating to possession of the cabin which was likely to cause breach of peace on June 20, 1966 when the Magistrate passed his preliminary order. The acts of respondent 1 might constitute an offence for which the appellant had filed a complaint under Section 341 of the Penal Code and the police had arrested respondent 1 and released her on bail. In the light of these facts the Magistrate ought to have held that on that day there did not any longer exist any dispute regarding possession of the said cabin which was likely to lead to a breach of the peace. The High Court, further, observed that the preliminary order did not also record the reasons for the Magistrate's satisfaction as to the two conditions and that all that it stated was that on the facts stated in the said application he was satisfied that there was a dispute which was likely to cause breach of the peace. The High Court also observed that all that the application showed was that there was forcible dispossession and an attempted assault; that from these two facts it was difficult to see how, without any further enquiry, the Magistrate could come to the conclusion that there was likelihood of breach of peace unless it was assumed that in every case of a dispute over possession of an immovable property and forcible dispossession there would be continuous possibility of breach of peace. The High Court complained that the Magistrate did not call for a police report and simply relied on the bare allegations of an interested party. On this reasoning it held that the Magistrate had misconceived the scope of proceedings under Section 145 and passed the preliminary order as if it was a process issued by him in a non- cognisable case. The High Court also noted that respondent 1 had placed respondent 3 in possession, that respondent 3 had remained in possession for nearly a year by the time the Magistrate passed his final order, that the final order would, therefore, affect his vested rights, and that this fact coupled with the fact of the appellant's complaint under Section 341 of the Penal Code on June 13, 1966 ought to have been considered by the Magistrate before passing the final order. As aforesaid, the High Court set aside the Magistrate's order whereupon the appellant obtained special leave and filed this appeal challenging the correctness of the High Court's order.

7. Before proceeding further, we may mention that respondents 2 and 3 had vacated the premises long before the Magistrate passed the final order. There was, therefore, no question of the Magistrate having to consider the question of their having been in possession for about a year or their having any vested rights under the agreement dated June 1, 1966, It may also be recalled that the City Civil Court had refused to rely on the said agreement and to pass an interim injunction restraining the appellant from disturbing the possession of respondent 1.

8. The object of Section 145, no doubt is to prevent breach of peace and for that end to provide a speedy remedy by bringing the parties before the court and ascertaining who of them was in actual possession and to maintain status quo until their rights are determined by a competent court. The section requires that the Magistrate must be satisfied before initiating proceedings that a dispute regarding an immovable property exists and that such dispute is likely to cause breach of peace. But once he is satisfied of these two conditions, the section requires him to pass a preliminary order under Sub- section (1) and thereafter to make an enquiry under Sub- section (4) and pass a final order under Sub- section (6). It is not necessary that at the time of passing the final order the apprehension of breach of peace should continue or exist. The enquiry under Section 145 is limited to the question as to who was in actual possession on the date of the preliminary order irrespective of the rights of the parties.

Under the second proviso, the party who is found to have been forcibly and wrongfully dispossessed within two mouths next preceding the date of the preliminary order may for the purpose of the enquiry be deemed to have been in possession on the date of that order. The opposite party may of course prove that dispossession took place more than two months next preceding the date of that order and in that case the Magistrate would have to cancel his preliminary order. On the other hand, if he is satisfied that dispossession was both forcible and wrongful and took place within the prescribed period, the party dispossessed would be deemed to be in actual possession on the date of the preliminary order and the Magistrate would then proceed to make his final order directing the dispossessor to restore possession and prohibit him from interfering with that possession until the applicant is evicted in due course of law. This is broadly the scheme of Section 145.

9. The satisfaction under Sub- section (1) is of the Magistrate. The question whether on the materials before him, he should initiate proceedings or not is, therefore, in his discretion which, no doubt, has to be exercised in accordance with the well recognised rules of law in that behalf. No hard and fast rule can, therefore, be laid down as to the sufficiency of material for his satisfaction. The language of the sub- section is clear and unambiguous that he can arrive at his satisfaction both from the police report or "from other information" which must include an application by the party dispossessed. The High Court, in the exercise of its revisional jurisdiction, would not go into the question of sufficiency of material which has satisfied the Magistrate.

10. The question is whether the preliminary order passed by the Magistrate was in breach of Section 145 (1), that is, in the absence of either of the two conditions precedent. One of the grounds on which the High Court interfered was that the Magistrate failed to record in his preliminary order the reasons for his satisfaction. The section, no doubt, requires him to record reasons. The Magistrate has expressed his satisfaction on the basis of the facts set out in the application before him and after he had examined the appellant on oath. That means that those fads were prima facie sufficient and were the reasons leading to his satisfaction.

11. The other reason which, according to the High Court, vitiated the order was that the Magistrate acted only on the allegations in the appellant's application without making any further enquiry and issued the order as if he was issuing a process in a N. C. case. But counsel for the respondents conceded that before passing the order the Magistrate had examined the appellant on oath and it was then only that he made the order recording his satisfaction. But apart from the allegations in the application as to his forcible and wrongful dispossession and assault, there was the fact that on June 11, 1966 the appellant had gone twice to the police station, requested the police to take action and had lodged two N.C. complaints. This material being before the Magistrate, it was hardly fair to blame the Magistrate that he had passed his preliminary order lightly or without being satisfied as to the existence of the two conditions required by the sub-section.

12. Was the High Court next justified in observing that the Magistrate ought to have got a police report on the allegations made in the application before he passed his said order? Such a view has been taken in some decisions. In Emperor v. Phutanja, 25 Cri LJ 1109: MANU/NA/0062/1924 : AIR 1925 Nag 142 the view taken was that it was a safe general rule for a Magistrate to refuse to take action under Section 145 except on a police report and that the absence of such a report is almost conclusive indication of the absence of any likelihood of breach of peace. A similar opinion has also been expressed in Ganesh v. Venkateswara, 1964 2 Cri LJ 100 where, relying on Raja of Karvetnagar v. Sowcar Lodd Govind Doss, MANU/TN/0106/1906 : ILR (1906) 29 Mad 561, the Mysore High Court observed that law and order being the concern of the police it is but natural that the Magistrate should either be moved by the police or if moved by a private party he should call for a police report regarding the likelihood of breach of peace. But the High Court of Madras in the case of Raja of Karvetnagar, MANU/TN/0106/1906 : ILR (1906) 29 Mad 561 , did not lay down any such proposition but merely sounded a note of caution that in the absence of a police report the statements of an interested party should not be relied on without caution and without corroboration. The proposition that the Magistrate before proceeding under Section 145 (1) must, as a rule, call for a police report where be is moved by a private party or that the absence of a police report is a sure indication of the absence of possibility of breach of peace is not warranted by the clear language of the section which permits the Magistrate initiate proceedings either on the police report or "on other information". The words "other information" are wide enough to include an application by a private party. The jurisdiction under Section 145 being, no doubt, of an emergency nature, the Magistrate must act with caution but that does not mean that where on an application by one of the parties to the dispute he is satisfied that the requirements of the section are existent, he cannot initiate proceedings without a police report. The view taken in the aforesaid two decisions unnecessarily and without any warrant from the language of Sub- section (1) limits the discretion of the Magistrate and renders the words "other information" either superfluous or qualifies them to mean other information verified by the police. In our view, once the Magistrate, having examined the applicant on oath, was satisfied that his application disclosed the existence of the dispute and the likelihood of breach of peace, there was no bar against his acting under Section 145 (1).

13. The next ground for the High Court's interference was that assuming that the appellant was forcibly and wrongfully dispossessed and the said Salim was assaulted, the said dispossession was completed, a complaint of assault was lodged and the police had already taken action before

the preliminary order was passed on June 20, 1966. Therefore, it was said, there was no longer any dispute on the date of the order likely to lead to breach of peace and consequently the order did not corn- ply with the requirements of Section 145 (1) and was without jurisdiction. This reasoning would mean that if a party takes the law into his hands and deprives forcibly and wrongfully the other party of his possession and completes his act of dispossession, the party so dispossessed cannot have the benefit of Section 145, as by the time he files his application and the Magistrate passes his order, the dispossession would be complete and, therefore, there would be no existing dispute likely to cause breach of peace. Such a construction of Section 145, in our view, is not correct for it does not take into consideration the second proviso to subsection (4) which was introduced precisely to meet such cases. The Magistrate has first to decide who is in actual possession at the date of his preliminary order. If, however, the party in de facto possession is found to have obtained possession by forcibly and wrongfully dispossessing the other party within two months next preceding the date of his order, the Magistrate can treat the dispossessed party as if he was in possession on such date, restore possession to him and prohibit the dispossessor from interfering with that possession until eviction of that person in due course of law. The proviso is founded on the principle that forcible and wrongful dispossession is not to be recognised under the criminal law. So that it is not possible to say that such an act of dispossession was completed before the date of the order. To say otherwise would mean that if a party who is forcibly and wrongfully dispossessed does not in retaliation take the law into his hands, he should be at disadvantage and cannot have the benefit of Section 145.

14. The word "dispossessed" in the second proviso means to be out of possession, removed from the premises, ousted, ejected or excluded. Even where a person has a right to possession but taking the law into his hands makes a forcible entry otherwise than in due course of law, it would be a case of both forcible and wrongful dispossession: [cf. Edwick v. Hawkes, (1881) 18 Ch D 199 and Jiba v. Chandulal, MANU/MH/0149/1925 : AIR 1926 Bom 91]. Sub- section (6) of Section 145 in such a case permits the Magistrate to direct restoration of possession with the legal effect that is valid until eviction in due course of law. In AIR 1926 Bom 9 the High Court of Bombay held that it would be unfair to allow the other party the advantages of his forcible and wrongful possession and the fact that time has elapsed since such dispossession and that the dispossessor has since then been in possession or has filed a suit for a declaration of title and for injunction restraining disturbance of his possession is no ground for the Magistrate to refuse to pass an order for restoration of possession once he is satisfied that the dispossessed party was in actual or deemed possession under the second proviso. Similarly, in A.N. Shah v. Nageswara Rao, MANU/TN/0094/1946 : AIR 1947 Mad 133, it was held that merely because there has been no further violence after one of the parties had wrongfully and forcibly dispossessed the other it cannot be said that there cannot be breach of peace and that, therefore, proceedings under Section 145 should be dropped. It may be that a party may not take the law in his hands in reply to the other party forcibly and wrongfully dispossessing him. That does not mean that he is not to have the benefit of the remedy under Section 145. The second proviso to subsection (4) and Sub- section (6) contemplate not a fugitive act of trespass or interference with the possession of the applicant, the dispossession there referred to is one that amounts to a completed act of forcible and wrongful driving out a party from his possession: [of. Subarna Sunami v. Kartika Kudal, MANU/OR/0054/1954 : AIR1954Ori183]. It is thus fairly clear that the fact that dispossession of the appellant was a completed act and the appellant had filed a criminal complaint and the police

had taken action thereunder do not mean that the Magistrate could not proceed under Section 145 and give directions permissible under Sub- section (6).

15. In our view, the High Court erred in holding that merely because dispossession of the appellant was complete before June 20, 1966, there was no dispute existing on that day which was likely to lead to breach of peace or that the Magistrate was, therefore, prevented from passing his preliminary order and proceeding thence to continue the enquiry and pass his final order. In our view, reading Section 145 as a whole, it is clear that even though respondent 1 had taken over possession of the said cabin, since that incident took place within the prescribed period of two months next before the date of the preliminary order, the appellant was deemed to be in possession on the date of that order and the Magistrate was competent to pass the final order directing restoration of possession and restraining respondent 1 from interfering with that possession until the appellant's eviction in due course of law.

16. We, therefore, allow the appeal, set aside the High Court's order and restore that of the Trial Magistrate.

MANU/SC/0173/1979

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 10 of 1979

Decided On: 13.09.1979

Mathuralal Vs. Bhanwarlal and Ors.

Back to Section 145 of Code of Criminal Procedure, 1973

Back to Section 146 of Code of Criminal Procedure, 1973

Hon'ble Judges/Coram

D.A. Desai and O. Chinnappa Reddy, JJ.

JUDGMENT

O. Chinnappa Reddy, J.

1. On the report of the Station House Officer, Manak Chowk, Ratlam, that there was a dispute between Mathuralal and Bhanwarlal concerning a house situated in Kambalpatti, Ghas Bazar, Ratlam, which was likely to cause a breach of the peace, the Sub Divisional Magistrate, Ratlam, passed a preliminary order under Section 145(1) of the CrPC 1973, on 1st March, 1978. On 2nd March, 1978, the learned Magistrate attached the subject of dispute under Section 145(1) Criminal Procedure Code considering the case to be one of emergency. Thereafter, when the learned Magistrate wanted to proceed with the enquiry under Section 145 Criminal Procedure Code, an objection was raised by Mathuralal that such an enquiry was incompetent once the subject of the dispute had been attached under Section 146 Criminal Procedure Code. The objection was overruled by the learned Magistrate. Successive Revisions taken before the Sessions Judge and the High Court having borne no fruit, Mathuralat has filed the present appeal by special leave of this Court. The High Court, we may mention here, thought that the matter was concluded against the appellant by the decision of this Court in Chandu Naik and Ors. v. Sitaram B. Naik and Anr. MANU/SC/0382/1977 : 1978CriLJ356

2. Shri Mukherji, learned Counsel for the appellant urged that under Section 146 of the Criminal Procedure Code of 1973, an attachment of the subject of dispute could be effected in three situations : (i) if the Magistrate at any time after making the order under Section 145(1) considered the case to be one of emergency, or (ii) if he decided that none of the parties was then in such possession as was referred to in Section 145, or (iii) if he was unable to satisfy himself as to which of them was then in such possession of the subject of dispute. The attachment so effected, regardless of the situation consequent upon which it was effected, was to subsist until a competent Court determined the rights of the parties with regard to the person entitled to possession. This, he urged, clearly indicated that after an attachment was effected it was the Civil Court and not the Magistrate that was to have further jurisdiction in the matter. He contrasted the provisions of Section 146(1) of the present code with the provisions of Section 146(1) and the third proviso to Section 145(4) of the Criminal Procedure Code of 1898 as amended by Act 26 of 1955. He drew our attention to the circumstance that the third proviso to Section 145(4) of the old Code empowered the Magistrate, if he considered the case one of emergency, to attach the subject of dispute pending his decision under that Section, while Section 146(1) of the previous Code

empowered the Magistrate to attach the subject of dispute if the Magistrate was of the opinion that none of the parties was then in possession or if the Magistrate was unable to decide as to which of them was in such possession and thereafter to refer to the Civil Court for decision the question whether any and which of the parties was in possession of the subject of dispute. Therefore, he said, under the previous Code, in the case of attachment because of emergency the Magistrate was himself competent to decide the question of possession and in the other two cases he was to refer the dispute to the Civil Court, whereas, under the present Code, in all the three situations the Magistrate was to leave the matter for adjudication by the Civil Court. Thus, the submission of Shri Mukherji was that while under the previous Code it was permissible to attach the subject of dispute pending enquiry by the Magistrate as contemplated by Section 145, such attachment pending decision by the Magistrate was not permissible under the provisions of the present Code. According to him so soon as the Magistrate effected an attachment he had nothing further to do except await the decision or the directions of the Civil Court.

3. Though at first blush there appeared to be force in the submissions of Shri Mukherji, a closer scrutiny of the provisions of Sections 145 and 146 exposes their unsoundness. It may perhaps be desirable, at this stage to extract the provisions of Sections 145 and 146, to the extent that they are relevant, in the Code of 1898 before it was amended in 1955, in the Code of 1898 after it was amended in 1955 and in the Code, of 1973 :

(Their Lordships then quoted Secs. 145 and 146 as they stood prior to amendment in 1955; after the amendment of 1955 and of the Code of 1973 and proceeded on to observe- - Editor)

4. Quite obviously, Sections 145 and 146 of the Criminal Procedure Code together constitute a scheme for the resolution of a situation where there is a likelihood of a breach of the peace because of a dispute concerning any land or water or their boundaries. If Section 146 is torn out of its setting and read independently of Section 145, it is capable of being construed to mean that once an attachment is effected in any of the three situations mentioned therein, the dispute can only be resolved by a competent Court and not by the Magistrate effecting the attachment. But Section 146 cannot be so separated from Section 145. It can only be read in the context of Section 145. Contextual construction must surely prevail over isolationist construction. Otherwise, it may mislead. That is one of the first principles of construction. Let us therefore look at Section 145 and consider Section 146 in that context. Section 145 contemplates, first, the satisfaction of the Magistrate that a dispute likely to cause a breach of the peace exists concerning any land or water or their boundaries, and, next, the issuance of an order, known to lawyers practising in the Criminal Courts as a preliminary order, stating the grounds of his satisfaction and requiring the parties concerned to attend his Court and to put in written statements of their respective claims as regards the fact of actual possession of the subject of dispute. A preliminary order is considered so basic to a proceeding under Section 145 that a failure to draw up a preliminary order has been held by several High Courts to vitiate all the subsequent proceedings. It is by making a preliminary order that the Magistrate assumes jurisdiction to proceed under Sections 145 and 146. In fact, the first of the situations in which an attachment may be effected under Section 146 of the 1973 Code has to be "at any time after making the order under Sub-section (1) of Section 145" while the other two situations have, necessarily, to be at the final stage of the proceeding initiated by the preliminary order. Now, the preliminary order is required to enjoin the parties not only to appear before the Magistrate on a specified date but also to put in their written statements. Sub- section (3) of Section 145 prescribes the mode of service of the preliminary order on the parties. Sub- section (4) casts a duty on the Magistrate to peruse the

written statements of the parties, to receive the evidence adduced by them, to take further evidence if necessary and, if possible, to decide which of the parties was in possession on the date of the preliminary order. If the Magistrate decides that one of the parties was in possession he is to make a final order in the manner provided by Sub- section (6). Provision for the two situations where the Magistrate is unable to decide which of the parties was in possession of where he is of the view that neither of them was in possession is made in Section 146 under which he may attach the subject of dispute until the determination of the rights of parties by a competent Court. The scheme of Sections 145 and 146 is that the Magistrate, on being satisfied about the existence of a dispute likely to cause a breach of the peace, issues a preliminary order stating the grounds of his satisfaction and calling upon the parties to appear before him and submit their written statements. Then he proceeds to peruse the statements, to receive and to take evidence and to decide which of the parties was in possession on the date of the preliminary order. On the other hand if he is unable to decide who was in such possession or if he is of the view that none of the parties was in such possession he may say so. If he decides that one of the parties was in possession, he declares the possession of such party. In the other two situations he attaches the property. Thus a proceeding begun with a preliminary order must be followed up by an enquiry and end with the Magistrate deciding in one of three ways and making consequential orders. There is no half way house, there is no question of stopping in the middle and leaving the parties to go to the Civil Court. Proceeding may however be stopped at any time if one or other of the parties satisfies the magistrate that there has never been or there is no longer any dispute likely to cause a breach of the peace. If there is no dispute likely to cause a breach of the peace, the foundation for the jurisdiction of the magistrate disappears. The magistrate then cancels the preliminary order. This is provided by Section 145 Sub- section (5). Except for the reason that there is no dispute likely to cause a breach of the peace and as provided by Section 145(5), a proceeding initiated by a preliminary order under Section 145(1) must run its full course. Now, in a case of emergency, a magistrate may attach the property, at any time after making the preliminary order. This is the first of the situations provided in Section 146(1) in which an attachment may be effected. There is no express stipulation in Section 146 that the jurisdiction of the magistrate ends with the attachment. Nor is it implied. Far from it. The obligation to proceed with the enquiry as prescribed by Section 145 Sub- section 4 is against any such implication. Suppose a magistrate draws up a preliminary order under Section 145(1) and immediately follows it up with an attachment under Section 146(1), the whole exercise of stating the grounds of his satisfaction and calling upon the parties to appear before him and submit their written statements becomes futile if he is to have no further jurisdiction in the matter. And yet he cannot make an order of attachment under Section 146(1) on the ground of emergency without first making a preliminary order in the manner prescribed by Section 145(1). There is no reason why we should adopt a construction which will lead to such inevitable contradictions. We mentioned a little earlier that the only provision for stopping the proceeding and cancelling the preliminary order is to be found in Section 145(5) and it can only be on the ground that there is no longer any dispute likely to cause a breach of the peace. An emergency is the basis of attachment under the first limb of Section 146(1) and if there is an emergency, no one can say that there is no dispute likely to cause a breach of the peace.

5. Let us examine if a comparative study of the provisions as they stood, before 1955 and after 1955 under the old Code and as they now stand under the 1973 Code lead us to a conclusion other than that indicated in the preceding paragraph. From the comparative table of the provisions, it is seen that there were two principal changes made by the 1955 amendment. The first was that

the preliminary order was also to require the parties to put in documents and the affidavits of such persons as they intended to rely upon in support of their claims. The magistrate was to decide the case on a consideration of the written statements the documents and the affidavits put in by the parties and after hearing them. The position earlier was that the parties had the right to adduce evidence and the magistrate could take further evidence if he so desired. The second change was that in the two situations where he was unable to satisfy himself as to which of the parties was in possession or where he decided that none of the parties was in possession, after attaching the property, the magistrate was himself to refer the dispute to the Civil Court instead of leaving it to the parties to go to the Civil Court. He was to obtain the finding of the Civil Court and thereafter conclude the proceeding under Section 145 Criminal Procedure Code in conformity with the decision of the Civil Court. The revised procedure introduced by the 1955 amendment was not found to work satisfactorily and, therefore, it was, apparently, thought desirable to revert to the old procedure. The provisions of Sections 145 and 146 of the 1973 Code are substantially the same as the corresponding provisions before the 1955 amendment. The only noticeable change is that the second proviso to Section 145(4) (as it stood before the 1955 amendment) has now been transposed to Section 146 but without the words "pending his decision under this Section" and with the words "at any time after making the order under Section 145(1)" super- added. The change, clearly, is in the interests of convenient draftsmanship. All situations in which an attachment may be made are now mentioned together in Section 146. The words "pending his decision under this section" have apparently been omitted as unnecessary since Section 145 provides how the proceeding initiated by a preliminary order must proceed and end and therefore an attachment made at any time after making under Section 145(1)' can only continue until the termination of the proceeding. At the termination of the proceeding, if he finds one of the parties was in possession as stipulated, the magistrate must make an order as provided in Section 145(6) and withdraw the attachment as provided in Section 146(1) since there can be no dispute likely to cause a breach of the peace once an order in terms of Section 145(6) is made.

6. In our view, it is wrong to hold that the magistrate's Jurisdiction ends as soon as an attachment is made on the ground of emergency. A large number of cases decided by several High Courts some taking one view and the other a different view were read to us, We do not consider it necessary to refer to them except to acknowledge that we derived considerable assistance from the judgment of Lahiri, J., in Kshetra Mohan Sarkar v. Paran Chandra Mandal(l), in arriving at our conclusion. We may also add that the question now at issue did not arise for consideration in Chandu Naik and Ors. v. Sitaram B. Naik and Anr. (supra). What was decided there was that a proceeding under Section 145 Criminal Procedure Code did not abate because of Section 8 of the Maharashtra Vacant Land (Prohibition of unauthorised Occupation and Summary Eviction) Act, 1975. In the result the appeal is dismissed.

MANU/PH/0338/1980

IN THE HIGH COURT OF PUNJAB AND HARYANA

FULL BENCH

Decided On: 23.05.1980

Joginder Singh Vs. The State of Punjab

Back to Section 154 of Code of Criminal Procedure, 1973

Back to Section 360 of Code of Criminal Procedure, 1973

Back to Section 361 of Code of Criminal Procedure, 1973

Hon'ble Judges/Coram:

S.S. Sandhawalia, C.J., Satish Chandra Mittal and Ajit Singh Bains, JJ.

JUDGMENT

Authored By : S.S. Sandhawalia, Satish Chandra Mittal, Ajit Singh Bains

S.S. Sandhawalia, C. J.

1. Whether the prescription of a minimum sentence of imprisonment in Section 61(1)(c) of the Punjab Excise Act, 1914 would operate as an absolute bar against the application of Sections 360 and 361 of the Criminal Procedure Code, 1973 or of Sections 4 and 6 of the Probation of Offenders Act, 1958 ?- is the somewhat meaningful question which is before the Full Bench in two references, which would be disposed of by this judgment.

2. It is manifest from the above that the question here is pristinely legal and the individual facts of the two cases before us would be of no great relevance. It would, therefore, suffice to mention that in Joginder Singh's case, the petitioner was convicted under Section 61(1)(c) of the Punjab Excise Act, 1914 for having been found in possession of a working still and sentenced to the statutory minimum sentence of one year's rigorous imprisonment and a fine of Rs. 1000/- . On appeal, the learned Sessions Judge upheld the conviction and the sentence. Apparently finding no sub- stance on the merits of the case, the admission of the revision petition was expressly confined to the issue of sentence only by the learned Judge admitting the same. The question posed at the outset was first raised before J.V. Gupta, J. who referred it for decision to a Division Bench which in turn has directed it to be placed before a Full Bench, in view of the earlier reference in Khazan Singh's case.

3. In Khazan Singh's case, the petitioner was convicted under Section 61(1)(c) of the Punjab Excise Act and sentenced to l1/2 year's rigorous imprisonment and a fine of Rs. 5,000/- . On appeal, the learned Additional Sessions Judge, Hoshiarpur dismissed the case on merits, but reduced the

sentence to the statutory minimum of one year's rigorous imprisonment and Rs. 5,000/- only as fine. At the motion stage, C.S. Tiwana, J., whilst admitting the petition, confined it expressly to the question of sentence in the context of the issue, whether the benefit of Section 360 of the Criminal Procedure Code, 1973 could be granted to the petitioner.

4. Perhaps, at the very outset, it may be pointedly noticed that within this jurisdiction, judicial opinion has so far been uniform that the mere prescription of a minimum sentence under Section 61(1)(c) of the Punjab Excise Act, 1914, does not totally bar the discretion of the court to grant probation to the convict either under the Criminal Procedure Code itself or expressly under the relevant sections of the Probation of Offenders Act, 1958. In the State of Haryana v. Ramji Lal Devi Sahai MANU/PH/0249/1971, the Division Bench after a lucid examination of the question held that in an appropriate case, it was open to the court to take resort to the provisions of Section 4 of the Probation of Offenders Act 1958, even with regard to a conviction under Section 61(1)(c) of the Punjab Excise Act, 1914. Reliance therein was specifically placed on an early unreported Division Bench judgment of this Court in Prita v. State, Criminal Revn. No. 754 of 1962 decided on 23- 10- 1963 wherein also a Division Bench had ruled that there was no legal bar to the application of Section 562 of the old Criminal Procedure Code, to a case in which conviction had been recorded under Section 61(1)(c) of the Punjab Excise Act, 1914. There is, however, no gainsaying the fact that in the exhaustive reference order in Khazan Singh's case, C.S. Tiwana, J. has tended to take a view contrary to the aforesaid decisions and has sought to project the matter from a different angle by reference to Section 4 of the Criminal Procedure Code, 1973, placing particular emphasis on Sub- section (2) thereof. This aspect of the case would be adverted to in detail later.

5. Before entering into the examination of the question before us, I may first dispose of an issue on which there was little or no controversy. On behalf of the petitioners, it was contended that the provisions of Sections 300 and 361 of the Criminal Procedure Code, 1973 (hereinafter referred to as 'the Code') are mandatory in nature. This appears to us as too well settled to deserve any elaboration. In Surendra Kumar v. State of Rajasthan MANU/SC/0271/1979 : 1979CriLJ907 their lordships assumed Section 360 of the Code to be mandatory in nature and gave the benefit thereof to the appellant in a short judgment. The same view has been reiterated in Bishnu Deo Shaw v. State of West Bengal MANU/SC/0089/1979 : 1979CriLJ841 . Lastly, apparently on a concession, Bhagwati, J. sitting singly seems to have taken the same view in Nirmal Singh v. State of PunjabMANU/SC/0680/1977 : (1977) 79 PLR 580(SC).

6. Apart from precedent, it deserves notice that Section 361 of the Code prescribes that where in any case the court could have dealt with an accused person under Section 360 of the Code, but has not done so, it shall record in its judgment special reasons for not having done so, which again would be a pointer to' the mandatory nature of the provision. I would, therefore, hold the provisions of Section 360 of the Code are mandatory in nature.

7. Having held so, one may proceed to examine the matter with reference to the language of Section 360 of the Code itself. The argument that the prescription of a minimum sentence of imprisonment would ipso facto exclude the applicability of this Section, cannot easily hold water. It deserves highlighting that the provisions of Section 360 of the Code in itself laid down the limitation within which it is to operate. It is attracted as regards persons above 21 years of age only when the conviction is for an offence punishable with fine only or with imprisonment for a term of seven years or less. As regards persons below 21 years of age or any woman, the provision is a little more liberal, and can be applied even for conviction of an offence not punishable with death or imprisonment for life, if no previous conviction is proved against the offender. It would, therefore, be evident that Section 360 of the Code itself refers only to the maximum sentences provided for the offence for which an accused person may be convicted with regard to its applicability. Its provisions do not lay down anywhere that in the case of the prescription of minimum sentence, Section 360 of the Code would not be applicable. It may, therefore, be inapt to impose such a bar by a process of interpretation, when the provisions of the section whilst prescribing its applicability, have laid down no such limitation.

8. The aforesaid argument is further strengthened when reference is made to the recent insertion of Section 20AA of the Prevention of Food Adulteration Act, 1954. It deserves recalling that under Section 16 of the said Act, a minimum sentence had been provided since long. This was apparently never construed by the courts as a legal bar to the application of either the Probation of Offenders- Act or of Section 360 of the Code. Therefore, it was only by an express intendment that a legal bar was created by virtue of Section 20AA of the Prevention of Food Adulteration Act, 1954, which was enacted in 1976. This is in the following terms:

20AA. Application of the Probation of Offenders Act, 1958 and Section 360 of the Code of Criminal Procedure, 1973.- Nothing contained in the Probation of Offenders Act, 1958 (20 of 1958), or Section 360 of the Code of Criminal Procedure Code, 1973 (2 of 1974) shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age.

It would follow by necessary implication that before the enactment of the aforesaid provision inevitably both Section 360 of the Code and the Probation of Offenders Act, 1958, were attracted to offences under Section 16 despite the fact that it prescribed a minimum sentence therefor.

9. Reference may again be made to Section 18 of the Probation of Offenders Act which is in the following terms:

Saving of operation of certain enactments- Nothing in this Act shall affect the provisions of Section 31 of the Reformatory Schools Act, 1887, or Sub- section (2) of Section 5 of the Prevention of Corruption Act, 1947, or the Suppression of Immoral Traffic in Women and Girls Act, 1956, or of any law in force in any State relating to juvenile offenders or borstal schools.

It is evident from the above that specific mention is made herein of Sub- section (2) of Section 5 of the Prevention of Corruption Act, 1947. For facility of reference this may also be set down:

5. "Criminal misconduct in discharge of official duty.-

(1) A public servant is said to commit the offence of criminal misconduct-

x x x x x x x x x

(2) Any public servant who commits criminal misconduct (* * *), shall be punishable with imprisonment for a term which shall not be less then one year but which may extend to seven years and shall also be liable to fine:

Provided that the Court may, for any special reasons recorded in writing, impose a sentence of imprisonment of less then one year.

x x x x x x x x x

Plainly this provision provides for a minimum sentence which can be deviated from only for special reasons. Now if the legislature had either assumed or intended that probationary provisions are not to be at all applied to cases where a minimum sentence of imprisonment is prescribed, there would be no rationale in specifying Section 5(2) of the Prevention of Corruption Act, 1947 in Section 18 of the Probation of Offenders Act, 1958. There is no dearth of statutory provisions which now provide for minimum sentences of imprisonment. The fact that out of all of them, Section 5(2) of the Prevention of Corruption Act, 1947 was incorporated in Section 18 of the Probation of Offenders Act, 1958, would clearly indicate that as regards other offences for which the minimum sentence is prescribed, the provisions of the Probation of Offenders Act can possibly be invoked. It follows that if one mere prescription of a minimum sentence alone were to automatically exclude the probationary provisions, then no express specification of Section 5(2) of the Prevention of Corruption Act, 1947 was necessary in Section 18 of the Probation of Offenders Act, 1958.

10. Now apart from rationale and statutory provisions, it appears to me that the issue before us is so completely covered by way of analogy by the binding precedents of the final Court that it would preclude any further elaboration Undoubtedly, Section 16 of the Prevention of Food Adulteration Act, 1954 again provides for a minimum sentence of imprisonment. Equally, undeniable it is, that this statute is a Special Act which does not in itself provide for the procedure of criminal trials for offences committed thereunder and Section 4(2) of the Code of Criminal Procedure, 1973 is plainly applicable to it. The position is identical as regards Section 61(1)(c) of the Punjab Excise Act, 1914. This again provides a minimum sentence and the Excise Act is a special statute not prescribing the procedure for trials thereunder and is squarely within the ambit of Section 4(2) of the Code of Criminal Procedure, 1973 with regard thereto. Therefore, it is plain that the position as regards offences under Section 16 of the Prevention of Food Adulteration Act, 1954 and Section 61(1)(c) of the Punjab Excise Act, 1914, is one of total identity. This being so, the issue arose virtually in similar analogous terms before their lordships under Section 16 of the Prevention of Food Adulteration Act, 1954. In Isher Dass v. State of Punjab MANU/SC/0136/1972 : 1972CriLJ874 , Khanna, J. speaking for the Bench posed the question in the following terms:

The question which arises for determination is whether despite the fact that a minimum sentence of imprisonment for a term of six months and a fine of rupees one thousand has been prescribed by the legislature for a person found guilty of the offence under the Prevention of Food Adulteration Act, the Court can resort to the provisions of the Probation of Offenders Act....

And, after a detailed discussion on principle and the relevant statutory provisions, returned the following answer:

"The provisions of Probation of Offenders Act, in our opinion, point to the conclusion that their operation is not excluded in the case of persons found guilty of offences under the Prevention of Food Adulteration Act. Assuming that there was reasonable doubt or ambiguity, the principle to be applied in construing a penal act is that such doubt or ambiguity should be resolved in favour of the person who would be liable to the penalty (see Maxwell on Interpretation of Statutes P. 239 (12th Edition). It has also to be borne in mind that the Probation of Offenders Act was enacted in 1958 sub- sequent to the enactment in 1954 of the Prevention of Food Adulteration Act. As the legislature enacted the Probation of Offenders Act despite the existence on the statute book of the Prevention of Food Adulteration Act, the operation of the provisions of Probation of Offenders Act cannot be whittled down or circumscribed because of the provisions of the earlier enactment, viz, Prevention of Food Adulteration Act. Indeed as mentioned earlier, the non obstante clause in Section 4 of the Probation of Offenders Act is a clear manifestation of the intention of the legislature that the provisions of the Probation of Offenders Act would have effect notwithstanding any other law for the time being in force..." In the light of the aforesaid observations, it may perhaps also be noticed that both the provisions of Sections 360 and 361 of the Criminal Procedure Code, 1973 and the Probation of Offenders Act were enacted long after the Punjab Excise Act. 1914 and the relevant amendments thereto.

11. It would inevitably, follow from the above that in view of the aforementioned precedent of the final Court, the provisions of Sections 4 and 6 of the Probation of Offenders Act would in strictness be applicable to offence under Section 61(1)(c) of the Punjab Excise Act, 1914 as well. Once that is so, one fails to see as to how the position under Sections 360 and 361 of the Criminal Procedure Code 1973 can in any way be different and as to why these would not also be applicable within the limitations prescribed thereunder;-

12. As already stands noticed earlier, the position within this Court again is not different. A bare look at Section 562 of the old Criminal Procedure Code, 1898 and the provisions of Section 360 of the new Code would make it manifest that the two provisions, if not in pari materia, are practically the same. In Prita v. The State, Cri. Revn. No. 754 of 1962 decided on 23- 10- 1963 (Punj.) the question was raised before the Division Bench that there was a legal bar to the application of Section 562 of the old Code of Criminal Procedure, 1898 to a case in which conviction had been recorded under Section 61(1)(c) of the Punjab Excise Act, 1914, because of the prescription of a minimum sentence therein. Repelling this contention, the Bench held as follows:

The answer to the legal point referred to the Bench, therefore, is that there is no legal bar to the application of Section 562 of the Code to a case in which conviction has been registered under Section 61(1)(c) of the Punjab Excise Act....

An analogous, if not identical issue was again raised before the Division Bench in State of Haryana v. Ramji Lal Devi SahaiMANU/PH/0249/1971, that the provisions of Section 4 of the Probation of Offenders Act could not be applied to a conviction under Section 61(1)(c) of the Punjab Excise Act, 1914 in view of the prescription of a minimum sentence therein as also because of Part III Chapter XXI, Volume III of the Rules and Orders of the Punjab High Court. Negativing the argument, it was concluded as follows:

For the reasons recorded above we hold that, in an appropriate case, it is, open to the Court to take resort to the provisions of Section 4 of the Probation of Offenders Act, 1958 and keep in abeyance the imposition of punishment envisaged under Section 61(1)(c) of the Punjab Excise Act, 1914....

It may be pointedly noticed that not a hint of criticism was offered on behalf of the respondent-State to the correctness of the aforesaid judgments of this Court. We are inclined to unreservedly affirm their ratio.

13. Even though, there is an unbroken line of precedent without a hint of dissent on the point, it nevertheless becomes necessary to examine the view projected by C.S. Tiwana, J in his detailed order of reference in Khazan Singh's case (supra). The tenor of the same would indicate that the learned Judge is inclined to take a contrary view and has presented the issue in a refreshing manner from an altogether different angle. Primary reliance has been placed therein on Section 4(2) of the Code of Criminal Procedure, 1973, which may be quoted for facility of reference:

(1) All offences under the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences." It would be evident from the above that the Code of Criminal Procedure would be generally attracted to the investigation and trial of offences under the special statutes including the Punjab Excise Act, 1914, but subject to the provisions of the said Act. However, no special procedural provisions have been laid therein. Holding that the imposition of sentence was part of the trial, the learned Judge seems to opine that the provision of sentence under Section 61(1)(c) of the Punjab Excise Act, 1914 was a special procedural provision which would exclude or override Sections 360 and 361 of the Criminal Procedure Code, 1973.

14. Apparently, to escape the ambit of the aforesaid reference order (Khazan Singh's case), Mr. H.S. Brar, learned Counsel for the petitioner had attempted to urge that the imposition of a sentence was not a part of a trial at all which according to him stands concluded by the rendering of a judgment of conviction or acquittal. A reference was made by him to Sections 435(2), 353 and 437(7) of the Criminal Procedure Code, 1973, for seeking some sketchy support for the aforesaid contention. Counsel also fell back on a few passing observations in Public Prosecutor v. Chockalinga MANU/TN/0159/1928made in the context of the transfer of cases under Section 526 of the old Code of Criminal Procedure, 1898. Reliance was also placed on In re China Somayya MANU/TN/0257/1932 : AIR 1933 Mad 251 : 34 Cri LJ 117, wherein with regard to the pronouncing of a judgment by a successor Magistrate it was held that the same was not illegal.

15. I am of the view that it is not at all possible to sub- scribe to the hyper- technical argument that the imposition of a sentence is not part of a criminal trial. Indeed it appears to me on principle as an integral part thereof and indeed the final culmination of a trial. Now it seems that the foothold for the tenuous argument raised by Mr. Brar can be easily explained away by the history of the legislation. It would perhaps be undeniable that under the prior Code of Criminal Procedure, 1898, the findings of conviction and sentence were part and parcel of the same judgment and indeed indivisible from each other. Under that Code, it would obviously be impossible to draw any line between the order of conviction and the sentence imposed thereunder. that Code prescribed the mode in which judgment was to be rendered and in a case of conviction inevitably, the sentence therefore must follow and be the culminating or the concluding part of the judgment. It was only later in the Criminal Procedure Code, 1973 that in view of the desirability of giving a convict a specific opportunity for a hearing on the point of sentence that a thin line was drawn betwixt a conviction simpliciter and the imposition of the sentence later. This, however, to my mind would in no way lead to the untenable inference that whilst rendering of the judgment of conviction is part of the trial, the hearing provided now on the point of sentence and the imposition thereof is something extraneous or alien to the same criminal trial. On principle, therefore, there is no option but to hold that the sentencing process is as much a part of the criminal trial as the necessary preceding steps thereto.

16. What appears to be plain on principle and rationale seems to be equally evident by the provisions of Sections 247 and 248 of the present Code.

"247. The accused shall then be called upon to enter upon his defence and produce his evidence; and the provisions of Section 243 shall apply to the case.

C.- Conclusion of trial.

"248. (1) If, in any case under this Chapter in which a charge has been framed, the Magistrate finds the accused not guilty, he shall record an order bf acquittal.

(2) Where in any case under this Chapter the Magistrate finds the accused guilty, but does not proceed in accordance with the provisions of Section 325 or Section 360 he shall, after hearing the accused on the question of sentence, pass sentence upon him according to law.

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The very language of the aforesaid provisions, the detailed reference to the sentencing process and the heading of the Section would show that in fact the imposition of sentence is the finale or the conclusion of a criminal trial and therefore must be construed as an integral part thereof.

17. On this point, apart from principle and the specific statutory provisions, the position appears to be equally plain on precedent. A plethora of judgments have held to the same effect and it would be instructive in this connection to refer to Rex v. Grant. (1951) 1 KB 500; Basil Ranger Lawrence v. Emperor MANU/PR/0103/1933; The State v. Naramuddin Ahmed MANU/GH/0024/1954and Queen Empress v. McCarthy MANU/UP/0025/1887 : ILR (1887) All 420.

18. In fairness to Mr. Brar, I may mention that the statutory provisions relied upon by him are no warrant for holding that the imposition of sentence is not part of a trial. Similarly the two Madras judgments MANU/TN/0159/1928 : AIR 1929 Mad 201 : 30 Cri LJ 908 and MANU/TN/0257/1932(supra), which were relied upon by him, appear to be distinguishable. In Public Prosecutor v. Chockalinga Ambalam MANU/TN/0159/1928the observation was made in the context of transfer of a case under Section 526(8) of the old Code of Criminal Procedure, 1898, whilst in China Somayya v. Emperor MANU/TN/0257/1932 : AIR 1933 Mad 251: 34 Cri LJ 117 the case related to the validity of a judgment pronounced by the successor magistrate. The question was not directly and pointedly raised in the said cases and if they are to be viewed as authorities for the proposition that even the rendering of a judgment is not part of a criminal trial, then I would respectfully dissent from the same.

19. Even though I hold that the sentencing process is an integral part of the trial, with respect, I am unable to agree that this would in any way affect the issue of the applicability of Sections 360 and 361 of the Code of Criminal Procedure, 1973 to the sentencing process. Indeed, it may be said that if sentencing is an integral part of the trial then the Code which governs it would inevitably be applicable to this part also with the same force as it is to the other parts of the trial. Consequently, the provisions of Sections 360 and 361 of the Criminal Procedure Code, 1973 would be as much attracted as the other provisions of the Code to a sentence under a special statute. What perhaps deserves highlighting is the fact that Sections 360 and 361 of the 1973 Code do not prescribe any sentence for any offence. They inevitably come into play in a situation where the sentence is prescribed by any other statute be it the Indian Penal Code or any other special penal statute. Therefore, Sections 360 and 361 of the Code are in no way in conflict with or in sub-stitution of any section of a special statute which prescribes the sentence for an offence. To my

mind, they are plainly supplementary to the sentencing provision whether spelled out in the basic penal law; namely Indian Penal Code or other special statute like the Punjab Excise Act to which by virtue of Section 4, the provisions of the Criminal Procedure Code would be applicable. Therefore, even though a Special Act may provide the sentence for an offence whether fixing a minimum therefore or otherwise, this would be no reason for saying that these provisions would be excluded or be inapplicable. I am unable to sub- scribe to the view that a sentencing provision like Section 61(1)(c) of the Punjab Excise Act, 1914 is a special procedural provision which would, override Sections 360 and 361 of the Code of Criminal Procedure, 1973.

20. In the above context, it may particularly be noticed that Section 397 of the Indian Penal Code provides a minimum sentence in cases not punishable with death or life imprisonment. If the prescription of the minimum sentence alone were to operate as a bar to the application of Sections 360 and 361 of the Criminal Procedure Code, 1973 then even to a sentence under Section 397 of the Indian Penal Code, these provisions will have to be excluded. No judgment or principle could be advanced before us to show as to why the Code of Criminal Procedure, which in its totality would apply to the offences under the Indian Penal Code, would, as regards Sections 360 and 361 of the Criminal Procedure Code, 1973 be inapplicable to a conviction under Section 397 thereof merely because it lays down a minimum sentence therefor. To hold that even as regards offences under the Indian Penal Code. Sections 360 and 361 of the Criminal Procedure Code, 1973 would be inapplicable, seems to me as rather plainly untenable.

21. To conclude on the legal aspect, therefore, it must be held that the mere prescription of the minimum sentence under Section 61(1)(c) of the Punjab Excise Act 1914 is no bar to the applicability of Sections 360 and 361 of the Criminal Procedure Code, 1973 and the same is not a special reason for denying the benefit of probation to a person convicted thereunder. In the alternative it is equally no bar to the applicability of Sections 4 and 6 of the Probation of Offenders Act. The answer to the question posed at the outset is rendered in the negative.

22. Though as a matter of law. the aforesaid answer has been rendered a note of caution must necessarily be sounded as regards the sentencing policy thereunder. Herein again, the observations of the final Court appear to me as conclusive. With regard to the Prevention of Food Adulteration Act, their lordships have set their face firmly against any facile application of the Probation of Offenders Act to offences thereunder prior to 1976 when the legislature itself intervened to create a legal bar. Indeed, whilst holding that as a matter of law. probation could be resorted to with regard to offences under the Prevention of Food Adulteration Act. a virtual ban on a resort thereto has been laid in actual practice. In Isher Das v. State of Punjab MANU/SC/0136/1972. it was observed as follows:

Adulteration of food is a menace to public health. The Prevention of Food Adulteration Act has been enacted with the aim of eradicating that anti- social evil and for ensuring purity in the articles of food. In view of the above object of the Act and the intention of the legislature as revealed by a fact that a minimum sentence of imprisonment for a period of six months and a fine

of rupees one thousand has been prescribed, the courts should not lightly resort to the provisions of the Probation of Offenders Act in the case of persons above 21 years of age found guilty of offences under the Prevention of Food Adulteration Act....

Reiterating the aforesaid view, Krishna Iyer,.1. speaking for the constitution Bench in Pyarali K. Tejani v. Mahadeo Ramchandra Dange MANU/SC/0146/1973 : 1974CriLJ313 , seems to take even a stricter view in the following words:

"The kindly application of the probation principle is negatived by the imperatives of social defence and the improbabilities of moral proselytisation. No chances can be taken by society with a man whose anti- social operations, disguised as a respectable trade, imperil numerous innocents. He is a security risk. Secondly, these economic offences committed by white collar criminals are unlikely to be dissuaded by the gentle probationary process. Neither casual pro-vocation nor motive against particular persons but planned profit- making from numbers of consumers furnishes the incentive not easily humanised by the therapeutic probationary measure. It is not without significance that the recent report (47th report) of the Law Commission of India has recommended the exclusion of the Act to social and economic offences by suitable amendments.

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...In the current Indian conditions the probation movement has not yet attained sufficient strength to correct these intractable . May be, under more developed conditions a different approach may have to be made. For the present, we cannot accede to the invitation to let off the accused on probation.

The aforesaid view has been reiterated with force again in Prem Ball ah v. State MANU/SC/0157/1976 : 1977CriLJ12 .

23. It appears to be plain that what has been said above in the context of edible food and economic offences applies with even greater emphasis to the commercial production of illicit liquor illegally by running working stills. The dangers herein are inherent and sometimes more immediately fatal then those under the Prevention of Food Adulteration Act. The spate of deaths resulting from the clandestine imbibing of poisonous illicit liquor, as often reported in the press provides a red- light signal. The legislative trend is again evident in enhancing the minimum sentence under Section 61(1)(c) of the Punjab Excise Act, 1914 to two years' rigorous imprisonment and fine of Rs. 5,000/- by the Amendment Act No. 31 of 1976. The following observations of my learned brother S.C. Mital, J. in Harnam Singh v. State of Punjab MANU/PH/0137/1976are most apposite in this context:

On principle, prescribing of the minimum punishment may not deprive the court of its power to release a person on probation, but the fact remains that by so doing the Legislature has clearly expressed its intention of punishing the offender with deterrent effect. It is common knowledge

that illicit liquor is manufactured not only unscientifically but also under unhygienic conditions. Drinking of such liquor is hazardous to public health. The persons indulging in illicit distillation are motivated by greed of money to such an extent that they have no regard for human life. The other sordid aspect of this trade is that it is carried out by preparing schemes involving active participation of several persons. For the foregoing reasons the release of a person on probation indulging in illicit distillation of liquor has to be for very exceptional reason, which is lacking in this case. In the result it is not at all expedient to release Harnam Singh on probation.

24. It will be plain from the aforesaid catena of authorities that it is only in exceptional circumstances and for specific weighty reasons recorded that the broad policy of declining the benefit of probation to an accused person in these cases can be possibly deviated from.

25. Adverting now to the merits of the two cases before us, it bears repetition that they were admitted on the point of sentence only. Learned Counsel for the' petitioners were wholly unable to point out anything exceptional which could possibly merit the invoking of the beneficent provisions of probations either under Section 360 of the Indian Penal Code or under the Probation of Offenders Act itself. Applying the principle laid above, we do not find the least justification for interfering with the sentences imposed by the courts below. The revision petitions are hereby dismissed.

Satish Chandra Mittal, J.

26. I agree.

Ajit Singh Bains, J.

27. I also agree.

MANU/SC/1166/2013

Back to Section 154 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Writ Petition (Criminal) No. 68 of 2008, Contempt Petition (Civil) No. D26722 of 2008 in Writ Petition (Criminal) No. 68 of 2008, SLP (Crl.) No. 5986 of 2006, SLP (Crl.) No. 5200 of 2009, Criminal Appeal No. 1410 of 2011 and Criminal Appeal No. 1267 of 2007 (Under Article 32 of the Constitution of India)

Decided On: 12.11.2013

Lalita Kumari Vs. Govt. of U.P. and Ors.

Hon'ble Judges/Coram:

P. Sathasivam, C.J.I., B.S. Chauhan, Ranjana Prakash Desai, Ranjan Gogoi and S.A. Bobde, JJ.

JUDGMENT

P. Sathasivam, C.J.I.

1. The important issue which arises for consideration in the referred matter is whether "a police officer is bound to register a First Information Report (FIR) upon receiving any information relating to commission of a cognizable offence under Section 154 of the Code of Criminal Procedure, 1973 (in short 'the Code') or the police officer has the power to conduct a "preliminary inquiry" in order to test the veracity of such information before registering the same?"

2. The present writ petition, under Article 32 of the Constitution, has been filed by one Lalita Kumari (minor) through her father, viz., Shri Bhola Kamat for the issuance of a writ of Habeas Corpus or direction(s) of like nature against the Respondents herein for the protection of his minor daughter who has been kidnapped. The grievance in the said writ petition is that on 11.05.2008, a written report was submitted by the Petitioner before the officer in- charge of the police station concerned who did not take any action on the same. Thereafter, when the Superintendent of Police was moved, an FIR was registered. According to the Petitioner, even thereafter, steps were not taken either for apprehending the accused or for the recovery of the minor girl child.

3. A two- Judge Bench of this Court in, Lalita Kumari v. Government of Uttar Pradesh and Ors. (2008) 7 SCC 164, after noticing the disparity in registration of FIRs by police officers on case to case basis across the country, issued notice to the Union of India, the Chief Secretaries of all the States and Union Territories and Director Generals of Police/Commissioners of Police to the effect that if steps are not taken for registration of FIRs immediately and the copies thereof are not handed over to the complainants, they may move the Magistrates concerned by filing complaint petitions for appropriate direction(s) to the police to register the case immediately and

for apprehending the accused persons, failing which, contempt proceedings must be initiated against such delinquent police officers if no sufficient cause is shown.

4. Pursuant to the above directions, when the matter was heard by the very same Bench in Lalita Kumari v. Government of Uttar Pradesh and Ors. (2008) 14 SCC 337, Mr. S.B. Upadhyay, learned senior counsel for the Petitioner, projected his claim that upon receipt of information by a police officer in- charge of a police station disclosing a cognizable offence, it is imperative for him to register a case under Section 154 of the Code and placed reliance upon two- Judge Bench decisions of this Court in State of Haryana v. Bhajan Lal MANU/SC/0115/1992 : 1992 Supp. (1) SCC 335, Ramesh Kumari v. State (NCT of Delhi) MANU/SC/8037/2006 : (2006) 2 SCC 677 and Parkash Singh Badal v. State of Punjab MANU/SC/5415/2006 : (2007) 1 SCC 1. On the other hand, Mr. Shekhar Naphade, learned senior Counsel for the State of Maharashtra submitted that an officer in- charge of a police station is not obliged under law, upon receipt of information disclosing commission of a cognizable offence, to register a case rather the discretion lies with him, in appropriate cases, to hold some sort of preliminary inquiry in relation to the veracity or otherwise of the accusations made in the report. In support of his submission, he placed reliance upon two-Judge Bench decisions of this Court in P. Sirajuddin v. State of Madras MANU/SC/0158/1970 : (1970) 1 SCC 595, Sevi v. State of Tamil Nadu MANU/SC/0218/1981 : 1981 Supp SCC 43, Shashikant v. Central Bureau of Investigation MANU/SC/8639/2006 : (2007) 1 SCC 630, and Rajinder Singh Katoch v. Chandigarh Admn. MANU/SC/8052/2007 : (2007) 10 SCC 69. In view of the conflicting decisions of this Court on the issue, the said bench, vide order dated 16.09.2008, referred the same to a larger bench.

5. Ensuing compliance to the above direction, the matter pertaining to Lalita Kumari was heard by a Bench of three- Judges in Lalita Kumari v. Government of Uttar Pradesh and Ors. MANU/SC/0157/2012 : (2012) 4 SCC 1 wherein, this Court, after hearing various counsel representing Union of India, States and Union Territories and also after adverting to all the conflicting decisions extensively, referred the matter to a Constitution Bench while concluding as under:

97. We have carefully analysed various judgments delivered by this Court in the last several decades. We clearly discern divergent judicial opinions of this Court on the main issue: whether under Section 154 Code of Criminal Procedure, a police officer is bound to register an FIR when a cognizable offence is made out or he (police officer) has an option, discretion or latitude of conducting some kind of preliminary inquiry before registering the FIR.

98. The learned Counsel appearing for the Union of India and different States have expressed totally divergent views even before this Court. This Court also carved out a special category in the case of medical doctors in the aforementioned cases of Santosh Kumar and Suresh Gupta where preliminary inquiry had been postulated before registering an FIR. Some counsel also submitted that the CBI Manual also envisages some kind of preliminary inquiry before registering the FIR.

99. The issue which has arisen for consideration in these cases is of great public importance. In view of the divergent opinions in a large number of cases decided by this Court, it has become extremely important to have a clear enunciation of law and adjudication by a larger Bench of this Court for the benefit of all concerned- - the courts, the investigating agencies and the citizens.

100. Consequently, we request the Hon'ble the Chief Justice to refer these matters to a Constitution Bench of at least five Judges of this Court for an authoritative judgment.

6. Therefore, the only question before this Constitution Bench relates to the interpretation of Section 154 of the Code and incidentally to consider Sections 156 and 157 also.

7. Heard Mr. S.B. Upadhyay, learned senior counsel for the Petitioner, Mr. K.V. Vishwanathan, learned Additional Solicitor General for the Union of India, Mr. Sidharth Luthra, learned Additional Solicitor General for the State of Chhattisgarh, Mr. Shekhar Naphade, Mr. R.K. Dash, Ms. Vibha Datta Makhija, learned senior counsel for the State of Maharashtra, U.P. and M.P. respectively, Mr. G. Sivabalamurugan, learned Counsel for the accused, Dr. Ashok Dhamija, learned Counsel for the CBI, Mr. Kalyan Bandopodhya, learned senior counsel for the State of West Bengal, Dr. Manish Singhvi, learned AAG for the State of Rajasthan and Mr. Sudarshan Singh Rawat.

8. In order to answer the main issue posed before this Bench, it is useful to refer the following Sections of the Code:

154. Information in cognizable cases.- - (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under Sub- section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in Sub- section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case

himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

156. Police officer's power to investigate cognizable case. (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under Section 190 may order such an investigation as above-mentioned.

157. Procedure for investigation: (1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender:

Provided that-

(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality.

(2) In each of the cases mentioned in Clauses (a) and (b) of the proviso to Sub- section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that subsection, and, in the case mentioned in Clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated.

Contentions:

9. At the foremost, Mr. S.B. Upadhyay, learned senior counsel, while explaining the conditions mentioned in Section 154 submitted that Section 154(1) is mandatory as the use of the word 'shall' is indicative of the statutory intent of the legislature. He also contended that there is no discretion left to the police officer except to register an FIR. In support of the above proposition, he relied on the following decisions, viz., B. Premanand and Ors. v. Mohan Koikal and Ors. MANU/SC/0249/2011 : (2011) 4 SCC 266, M/s. Hiralal Rattanlal Etc. Etc. v. State of U.P. and Anr. Etc. Etc. MANU/SC/0553/1972 : (1973) 1 SCC 216 and Govindlal Chhaganlal Patel v. Agricultural Produce Market Committee, Godhra and Ors. MANU/SC/0125/1975 : (1975) 2 SCC 482.

10. Mr. Upadhyay, by further drawing our attention to the language used in Section 154(1) of the Code, contended that it merely mentions 'information' without prefixing the words 'reasonable' or 'credible'. In order to substantiate this claim, he relied on the following decisions, viz., Bhajan Lal (supra), Ganesh Bhavan Patel and Anr. v. State of Maharashtra MANU/SC/0083/1978 : (1978) 4 SCC 371, Aleque Padamsee and Ors. v. Union of India and Ors. MANU/SC/2975/2007 : (2007) 6 SCC 171, Ramesh Kumari (supra), Ram Lal Narang v. State (Delhi Administration) MANU/SC/0216/1979 : (1979) 2 SCC 322 and Lallan Chaudhary and Ors. v. State of Bihar and Anr. MANU/SC/4524/2006 : (2006) 12 SCC 229. Besides, he also brought to light various adverse impacts of allowing police officers to hold preliminary inquiry before registering an FIR.

11. Mr. K.V. Viswanathan, learned Additional Solicitor General appearing on behalf of Union of India submitted that in all the cases where information is received under Section 154 of the Code, it is mandatory for the police to forthwith enter the same into the register maintained for the said purpose, if the same relates to commission of a cognizable offence. According to learned ASG, the police authorities have no discretion or authority, whatsoever, to ascertain the veracity of such information before deciding to register it. He also pointed out that a police officer, who proceeds to the spot under Sections 156 and 157 of the Code, on the basis of either a cryptic information or source information, or a rumour etc., has to immediately, on gathering information relating to the commission of a cognizable offence, send a report (ruqqa) to the police station so that the same can be registered as FIR. He also highlighted the scheme of the Code relating to the registration of FIR, arrest, various protections provided to the accused and the power of police to close investigation. In support of his claim, he relied on various decisions of this Court viz., Bhajan Lal

(supra), Ramesh Kumari (supra) and Aleque Padamsee (supra). He also deliberated upon the distinguishable judgments in conflict with the mandatory proposition, viz., State of Uttar Pradesh v. Bhagwant Kishore Joshi MANU/SC/0066/1963 : (1964) 3 SCR 71, P. Sirajuddin (supra), Sevi (supra), Shashikant (supra), Rajinder Singh Katoch (supra), Jacob Mathew v. State of Punjab and Anr. MANU/SC/0457/2005 : (2005) 6 SCC 1. He concluded his arguments by saying that if any information disclosing a cognizable offence is led before an officer in- charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information. Further, he emphasized upon various safeguards provided under the Code against filing a false case.

12. Dr. Ashok Dhamija, learned Counsel for the CBI, submitted that the use of the word "shall" under Section 154(1) of the Code clearly mandates that if the information given to a police officer relates to the commission of a cognizable offence, then it is mandatory for him to register the offence. According to learned Counsel, in such circumstances, there is no option or discretion given to the police. He further contended that the word "shall" clearly implies a mandate and is unmistakably indicative of the statutory intent. What is necessary, according to him, is only that the information given to the police must disclose commission of a cognizable offence. He also contended that Section 154 of the Code uses the word "information" simpliciter and does not use the qualified words such as "credible information" or "reasonable complaint". Thus, the intention of the Parliament is unequivocally clear from the language employed that a mere information relating to commission of a cognizable offence is sufficient to register an FIR. He also relied on Bhajan Lal (supra), Ramesh Kumari (supra), Aleque Padamsee (supra), Lallan Chaudhary (supra), Superintendent of Police, CBI v. Tapan Kumar Singh MANU/SC/0299/2003 : (2003) 6 SCC 175, M/s. Hiralal Rattanlal (supra), B. Premanand (supra), Khub Chand v. State of Rajasthan MANU/SC/0015/1966 : AIR 1967 SC 1074, P. Sirajuddin (supra), Rajinder Singh Katoch (supra), Bhagwant Kishore Joshi (supra), State of West Bengal v. Committee for Protection of Democratic Rights, West Bengal MANU/SC/0121/2010 : (2010) 3 SCC 571. He also pointed out various safeguards provided in the Code against filing a false case. In the end, he concluded by reiterating that the registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. Further, he also clarified that the preliminary inquiry conducted by the CBI, under certain situations, as provided under the CBI Crime Manual, stands on a different footing due to the special provisions relating to the CBI contained in the Delhi Special Police Establishment Act, 1946, which is saved under Sections 4(2) and 5 of the Code.

13. Mr. Kalyan Bandopadhyay, learned senior Counsel appearing on behalf of the State of West Bengal, submitted that whenever any information relating to commission of a cognizable offence is received, it is the duty of the officer in- charge of a police station to record the same and a copy of such information, shall be given forthwith, free of cost, to the informant under Section 154(2) of the Code. According to him, a police officer has no other alternative but to record the information in relation to a cognizable offence in the first instance. He also highlighted various subsequent steps to be followed by the police officer pursuant to the registration of an FIR. With regard to the scope of Section 154 of the Code, he relied on H.N. Rishbud and Inder Singh v. State of Delhi MANU/SC/0049/1954 : AIR 1955 SC 196, Bhajan Lal (supra), S.N. Sharma v. Bipen

Kumar Tiwari MANU/SC/0182/1970 : (1970) 1 SCC 653, Union of India v. Prakash P. Hinduja MANU/SC/0446/2003 : (2003) 6 SCC 195, Sheikh Hasib alias Tabarak v. State of Bihar MANU/SC/0180/1971 : (1972) 4 SCC 773, Shashikant (supra), Ashok Kumar Todi v. Kishwar Jahan and Ors. MANU/SC/0162/2011 : (2011) 3 SCC 758, Padma Sundara Rao (Dead) and Ors. v. State of T.N. and Ors. MANU/SC/0182/2002 : (2002) 3 SCC 533, P. Sirajuddin (supra), Rajinder Singh Katoch (supra), Bhagwant Kishore Joshi (supra) and Mannalal Khatic v. The State MANU/WB/0117/1967 : AIR 1967 Cal 478.

14. Dr. Manish Singhvi, learned Additional Advocate General for the State of Rajasthan, submitted that Section 154(1) of the Code mandates compulsory registration of FIR. He also highlighted various safeguards inbuilt in the Code for lodging of false FIRs. He also pointed out that the only exception relates to cases arising under the Prevention of Corruption Act as, in those cases, sanction is necessary before taking cognizance by the Magistrates and the public servants are accorded some kind of protection so that vexatious cases cannot be filed to harass them.

15. Mr. G. Sivabalamurugan, learned Counsel for the Appellant in Criminal Appeal No. 1410 of 2011, after tracing the earlier history, viz., the relevant provisions in the Code of Criminal Procedure of 1861, 1872, 1882 and 1898 stressed as to why the compulsory registration of FIR is mandatory. He also highlighted the recommendations of the Report of the 41st Law Commission and insertion of Section 13 of the Criminal Law (Amendment) Act, 2013 with effect from 03.02.2013.

16. Mr. R.K. Dash, learned senior counsel appearing for the State of Uttar Pradesh, though initially commenced his arguments by asserting that in order to check unnecessary harassment to innocent persons at the behest of unscrupulous complainants, it is desirable that a preliminary inquiry into the allegations should precede with the registration of FIR but subsequently after considering the salient features of the Code, various provisions like Sections 2(4)(h), 156(1), 202(1), 164, various provisions from the U.P. Police Regulations, learned senior counsel contended that in no case recording of FIR should be deferred till verification of its truth or otherwise in case of information relating to a cognizable offence. In addition to the same, he also relied on various pronouncements of this Court, such as, Mohindro v. State of Punjab MANU/SC/1010/2001 : (2001) 9 SCC 581, Ramesh Kumari (supra), Bhajan Lal (supra), Parkash Singh Badal (supra), Munna Lal v. State of Himachal Pradesh MANU/HP/0033/1991 : 1992 Crl. L.J. 1558, Giridhari Lal Kanak v. State and Ors. MANU/MP/0620/2001 : 2002 Crl. L.J. 2113 and Katteri Moideen Kutty Haji v. State of Kerala MANU/KE/0071/2002 : 2002 (2) Crimes 143. Finally, he concluded that when the statutory provisions, as envisaged in Chapter XII of the Code, are clear and unambiguous, it would not be legally permissible to allow the police to make a preliminary inquiry into the allegations before registering an FIR under Section 154 of the Code.

17. Mr. Sidharth Luthra, learned Additional Solicitor General appearing for the State of Chhattisgarh, commenced his arguments by emphasizing the scope of reference before the Constitution Bench. Subsequently, he elaborated on various judgments which held that an

investigating officer, on receiving information of commission of a cognizable offence under Section 154 of the Code, has power to conduct preliminary inquiry before registration of FIR, viz., Bhagwant Kishore Joshi (supra), P. Sirajuddin (supra), Sevi (supra) and Rajinder Singh Katoch (supra). Concurrently, he also brought to our notice the following decisions, viz., Bhajan Lal (supra), Ramesh Kumari (supra), Parkash Singh Badal (supra), and Aleque Padamsee (supra), which held that a police officer is duty bound to register an FIR, upon receipt of information disclosing commission of a cognizable offence and the power of preliminary inquiry does not exist under the mandate of Section 154. Learned ASG has put forth a comparative analysis of Section 154 of the Code of Criminal Procedure of 1898 and of 1973. He also highlighted that every activity which occurs in a police station [Section 2(s)] is entered in a diary maintained at the police station which may be called as the General Diary, Station Diary or Daily Diary. He underlined the relevance of General Diary by referring to various judicial decisions such as Tapan Kumar Singh (supra), Re: Subbaratnam and Ors. AIR 1949 Madras 663. He further pointed out that, presently, throughout the country, in matrimonial, commercial, medical negligence and corruption related offences, there exist provisions for conducting an inquiry or preliminary inquiry by the police, without/before registering an FIR under Section 154 of the Code. He also brought to our notice various police rules prevailing in the States of Punjab, Rajasthan, U.P., Madhya Pradesh, Kolkata, Bombay, etc., for conducting an inquiry before registering an FIR. Besides, he also attempted to draw an inference from the Crime Manual of the CBI to highlight that a preliminary inquiry before registering a case is permissible and legitimate in the eyes of law. Adverting to the above contentions, he concluded by pleading that preliminary inquiry before registration of an FIR should be held permissible. Further, he emphasized that the power to carry out an inquiry or preliminary inquiry by the police, which precedes the registration of FIR will eliminate the misuse of the process, as the registration of FIR serves as an impediment against a person for various important activities like applying for a job or a passport, etc. Learned ASG further requested this Court to frame guidelines for certain category of cases in which preliminary inquiry should be made.

18. Mr. Shekhar Naphade, learned senior counsel appearing on behalf of the State of Maharashtra, submitted that ordinarily the Station House Officer (SHO) should record an FIR upon receiving a complaint disclosing the ingredients of a cognizable offence, but in certain situations, in case of doubt about the correctness or credibility of the information, he should have the discretion of holding a preliminary inquiry and thereafter, if he is satisfied that there is a prima facie case for investigation, register the FIR. A mandatory duty of registering FIR should not be cast upon him. According to him, this interpretation would harmonize two extreme positions, viz., the proposition that the moment the complaint disclosing ingredients of a cognizable offence is lodged, the police officer must register an FIR without any scrutiny whatsoever is an extreme proposition and is contrary to the mandate of Article 21 of the Constitution of India, similarly, the other extreme point of view is that the police officer must investigate the case substantially before registering an FIR. Accordingly, he pointed out that both must be rejected and a middle path must be chosen. He also submitted the following judgments, viz., Bhajan Lal (supra), Ramesh Kumari (supra), Parkash Singh Badal (supra), and Aleque Padamsee (supra) wherein it has been held that if a complaint alleging commission of a cognizable offence is received in the police station, then the SHO has no other option but to register an FIR under Section 154 of the Code. According to learned senior counsel, these verdicts require reconsideration as they have

interpreted Section 154 de hors the other provisions of the Code and have failed to consider the impact of Article 21 on Section 154 of the Code.

19. Alongside, he pointed out the following decisions, viz., Rajinder Singh Katoch (supra), P. Sirajuddin (supra), Bhagwant Kishore Joshi (supra) and Sevi (supra), which hold that before registering an FIR under Section 154 of the Code, it is open to the police officer to hold a preliminary inquiry to ascertain whether there is a prima facie case of commission of a cognizable offence or not. According to learned senior counsel, Section 154 of the Code forms part of a chain of statutory provisions relating to investigation and, therefore, the scheme of provisions of Sections 41, 157, 167, 169, etc., must have a bearing on the interpretation of Section 154. In addition, he emphasized that giving a literal interpretation would reduce the registration of FIR to a mechanical act. Parallelly, he underscored the impact of Article 21 on Section 154 of the Code by referring to Maneka Gandhi v. Union of India MANU/SC/0133/1978 : (1978) 1 SCC 248, wherein this Court has applied Article 21 to several provisions relating to criminal law. This Court has also stated that the expression "law" contained in Article 21 necessarily postulates law which is reasonable and not merely statutory provisions irrespective of its reasonableness or otherwise. Learned senior counsel pleaded that in the light of Article 21, provisions of Section 154 of the Code must be read down to mean that before registering an FIR, the police officer must be satisfied that there is a prima facie case for investigation. He also emphasized that Section 154 contains implied power of the police officer to hold preliminary inquiry if he bona fide possess serious doubts about the credibility of the information given to him. By pointing out Criminal Law (Amendment) Act, 2013, particularly, Section 166A, Mr. Naphade contended that as far as other cognizable offences (apart from those mentioned in Section 166A) are concerned, police has a discretion to hold preliminary inquiry if there is some doubt about the correctness of the information.

20. In case of allegations relating to medical negligence on the part of the doctors, it is pointed out by drawing our attention to some of the decisions of this Court viz., Tapan Kumar Singh (supra), Jacob Mathew (supra) etc., that no medical professional should be prosecuted merely on the basis of the allegations in the complaint. By pointing out various decisions, Mr. Naphade emphasized that in appropriate cases, it would be proper for a police officer, on receipt of a complaint of a cognizable offence, to satisfy himself that at least prima facie allegations levelled against the accused in the complaint are credible. He also contended that no single provision of a statute can be read and interpreted in isolation, but the statute must be read as a whole. Accordingly, he prayed that the provisions of Sections 41, 57, 156, 157, 159, 167, 190, 200 and 202 of the Code must be read together. He also pointed out that Section 154(3) of the Code enables any complainant whose complaint is not registered as an FIR by the officer in- charge of the police station to approach the higher police officer for the purpose of getting his complaint registered as an FIR and in such a case, the higher police officer has all the powers of recording an FIR and directing investigation into the matter. In addition to the remedy available to an aggrieved person of approaching higher police officer, he can also move the concerned Magistrate by making a complaint under Section 190 thereof. He further emphasized that the fact that the legislature has provided adequate remedies against refusal to register FIR and to hold investigation in cognizable offences, is indicative of legislative intent that the police officer is not bound to record FIR merely because the ingredients of a cognizable offence are disclosed in the complaint, if he

has doubts about the veracity of the complaint. He also pointed out that the word "shall" used in the statute does not always mean absence of any discretion in the matter. For the said proposition, he also highlighted that this Court has preferred the rule of purposive interpretation to the rule of literal interpretation for which he relied on Chairman Board of Mining Examination and Chief Inspector of Mines and Anr. v. Ramjee MANU/SC/0061/1977 : (1977) 2 SCC 256, Lalit Mohan Pandey v. Pooran Singh MANU/SC/0422/2004 : (2004) 6 SCC 626, Prativa Bose v. Kumar Rupendra Deb Raikat MANU/SC/0251/1963 : (1964) 4 SCR 69. He further pointed out that it is impossible to put the provisions of Section 154 of the Code in a straightjacket formula. He also prayed for framing of some guidelines as regards registration or non- registration of FIR. Finally, he pointed out that the requirement of Article 21 is that the procedure should be fair and just. According to him, if the police officer has doubts in the matter, it is imperative that he should have the discretion of holding a preliminary inquiry in the matter. If he is debarred from holding such a preliminary inquiry, the procedure would then suffer from the vice of arbitrariness and unreasonableness. Thus, he concluded his arguments by pleading that Section 154 of the Code must be interpreted in the light of Article 21.

21. Ms. Vibha Datta Makhija, learned senior counsel appearing for the State of Madhya Pradesh submitted that a plain reading of Section 154 and other provisions of the Code shows that it may not be mandatory but is absolutely obligatory on the part of the police officer to register an FIR prior to taking any steps or conducting investigation into a cognizable offence. She further pointed out that after receiving the first information of an offence and prior to the registration of the said report (whether oral or written) in the First Information Book maintained at the police station under various State Government Regulations, only some preliminary inquiry or investigative steps are permissible under the statutory framework of the Code to the extent as is justifiable and is within the window of statutory discretion granted strictly for the purpose of ascertaining whether there has been a commission or not of a cognizable offence. Hence, an investigation, culminating into a Final Report under Section 173 of the Code, cannot be called into question and be quashed due to the reason that a part of the inquiry, investigation or steps taken during investigation are conducted after receiving the first information but prior to registering the same unless it is found that the said investigation is unfair, illegal, mala fide and has resulted in grave prejudice to the right of the accused to fair investigation. In support of the above contentions, she traced the earlier provisions of the Code and current statutory framework, viz., Criminal Law (Amendment) Act, 2013 with reference to various decisions of this Court. She concluded that Section 154 of the Code leaves no area of doubt that where a cognizable offence is disclosed, there is no discretion on the part of the police to record or not to record the said information, however, it may differ from case to case.

22. The issues before the Constitution Bench of this Court arise out of two main conflicting areas of concern, viz.,

(i) Whether the immediate non- registration of FIR leads to scope for manipulation by the police which affects the right of the victim/complainant to have a complaint immediately investigated upon allegations being made; and

(ii) Whether in cases where the complaint/information does not clearly disclose the commission of a cognizable offence but the FIR is compulsorily registered then does it infringe the rights of an accused.

Discussion:

23. The FIR is a pertinent document in the criminal law procedure of our country and its main object from the point of view of the informant is to set the criminal law in motion and from the point of view of the investigating authorities is to obtain information about the alleged criminal activity so as to be able to take suitable steps to trace and to bring to book the guilty.

24. Historical experience has thrown up cases from both the sides where the grievance of the victim/informant of non- registration of valid FIRs as well as that of the accused of being unnecessarily harassed and investigated upon false charges have been found to be correct.

25. An example of the first category of cases is found in State of Maharashtra v. Sarangdharsingh Shivdassingh Chavan and Anr. MANU/SC/1055/2010 : (2011) 1 SCC 577 wherein a writ petition was filed challenging the order of the Collector in the District of Buldhana directing not to register any crime against Mr. Gokulchand Sananda, without obtaining clearance from the District Anti-Money Lending Committee and the District Government Pleader. From the record, it was revealed that out of 74 cases, only in seven cases, charge sheets were filed alleging illegal moneylending. This Court found that upon instructions given by the Chief Minister to the District Collector, there was no registration of FIR of the poor farmers. In these circumstances, this Court held the said instructions to be ultra vires and quashed the same. It is argued that cases like above exhibit the mandatory character of Section 154, and if it is held otherwise, it shall lead to grave injustice.

26. In Aleque Padamsee (supra), while dealing with the issue whether it is within the powers of courts to issue a writ directing the police to register a First Information Report in a case where it was alleged that the accused had made speeches likely to disturb communal harmony, this Court held that "the police officials ought to register the FIR whenever facts brought to their notice show that a cognizable offence has been made out. In case the police officials fail to do so, the modalities to be adopted are as set out in Section 190 read with Section 200 of the Code." As such, the Code itself provides several checks for refusal on the part of the police authorities under Section 154 of the Code.

27. However, on the other hand, there are a number of cases which exhibit that there are instances where the power of the police to register an FIR and initiate an investigation thereto are misused

where a cognizable offence is not made out from the contents of the complaint. A significant case in this context is the case of Preeti Gupta v. State of Jharkhand MANU/SC/0592/2010 : (2010) 7 SCC 667 wherein this Court has expressed its anxiety over misuse of Section 498A of the Indian Penal Code, 1860 (in short 'the Indian Penal Code') with respect to which a large number of frivolous reports were lodged. This Court expressed its desire that the legislature must take into consideration the informed public opinion and the pragmatic realities to make necessary changes in law.

28. The above said judgment resulted in the 243rd Report of the Law Commission of India submitted on 30th August, 2012. The Law Commission, in its Report, concluded that though the offence under Section 498A could be made compoundable, however, the extent of misuse was not established by empirical data, and, thus, could not be a ground to denude the provision of its efficacy. The Law Commission also observed that the law on the question whether the registration of FIR could be postponed for a reasonable time is in a state of uncertainty and can be crystallized only upon this Court putting at rest the present controversy.

29. In order to arrive at a conclusion in the light of divergent views on the point and also to answer the above contentions, it is pertinent to have a look at the historical background of the Section and corresponding provisions that existed in the previous enactments of the Code of Criminal Procedure.

Code of Criminal Procedure, 1861

139. Every complaint or information preferred to an officer in charge of a police station, shall be reduced into writing and the substance thereof shall be entered in a diary to be kept by such officer, in such form as shall be prescribed by the local government.

Code of Criminal Procedure, 1872

112. Every complaint preferred to an officer in charge of a police station, shall be reduced into writing, and shall be signed, sealed or marked by the person making it; and the substance thereof shall be entered in a book to be kept by such officer in the form prescribed by the local government.

Code of Criminal Procedure, 1882

154. Every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police station, shall be reduced to writing by him, or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such form as the government may prescribe in this behalf.

Code of Criminal Procedure, 1898

154. Every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Government may prescribe in this behalf.

Code of Criminal Procedure, 1973

154. Information in cognizable cases: 1) Every information relating to the commission of a cognizable offence, it given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

[Provided that if the information is given by the woman against whom an offence under Sections 326A, 326B, 354, 354A, 354B, 354C, 354D, 376, 376A, 376B, 376C, 376D, 376E or Section 509 of the Indian Penal Code is alleged to have been committed or attempted, then such information shall be recorded by a woman police officer or any woman officer:

Provided further that:

(a) in the event that the person against whom an offence under Sections 354, 354A, 354B, 354C, 354D, 376, 376A, 376B, 376C, 376D, 376E or Section 509 of the Indian Penal code is alleged to have been committed or attempted is temporarily or permanently mentally or physically disabled then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

(b) the recording of such information shall be videographed;

(c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under Clause (a) of Sub- section (5A) of Section 164 as soon as possible.]

(Inserted by Section 13 of 'The Criminal Law (Amendment) Act, 2013 w.e.f. 03.02.2013)

(2) A copy of the information as recorded under Sub- section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in Sub- section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

A perusal of the above said provisions manifests the legislative intent in both old codes and the new code for compulsory registration of FIR in a case of cognizable offence without conducting any Preliminary Inquiry.

30. The precursor to the present Code of 1973 is the Code of 1898 wherein substantial changes were made in the powers and procedure of the police to investigate. The starting point of the powers of police was changed from the power of the officer in- charge of a police station to investigate into a cognizable offence without the order of a Magistrate, to the reduction of the first information regarding commission of a cognizable offence, whether received orally or in writing, into writing and into the book separately prescribed by the Provincial government for recording such first information.

31. As such, a significant change that took place by way of the 1898 Code was with respect to the placement of Section 154, i.e., the provision imposing requirement of recording the first information regarding commission of a cognizable offence in the special book prior to Section 156, i.e., the provision empowering the police officer to investigate a cognizable offence. As such, the objective of such placement of provisions was clear which was to ensure that the recording of the first information should be the starting point of any investigation by the police. In the interest of expediency of investigation since there was no safeguard of obtaining permission from the Magistrate to commence an investigation, the said procedure of recording first information in their books along with the signature/seal of the informant, would act as an "extremely valuable safeguard" against the excessive, mala fide and illegal exercise of investigative powers by the police.

32. Provisions contained in Chapter XII of the Code deal with information to the police and their powers to investigate. The said Chapter sets out the procedure to be followed during investigation. The objective to be achieved by the procedure prescribed in the said Chapter is to set the criminal law in motion and to provide for all procedural safeguards so as to ensure that

the investigation is fair and is not mala fide and there is no scope of tampering with the evidence collected during the investigation.

33. In addition, Mr. Shekhar Naphade, learned senior counsel contended that insertion of Section 166A in Indian Penal Code indicates that registration of FIR is not compulsory for all offences other than what is specified in the said Section. By Criminal Law (Amendment) Act 2013, Section 166A was inserted in Indian Penal Code which reads as under:

Section 166A- - Whoever, being a public servant.-

(a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or

(b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or

(c) fails to record any information given to him under Sub- section (1) of Section 154 of the Code of Criminal Procedure, 1973, in relation to cognizable offence punishable under Section 326A, Section 326B, Section 354, Section 354B, Section 370, Section 370A, Section 376, Section 376A, Section 376B, Section 376C, Section 376D, Section 376E, Section 509 shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years and shall also be liable to fine.

Section 166A(c) lays down that if a public servant (Police Officer) fails to record any information given to him under Section 154(1) of the Code in relation to cognizable offences punishable under Sections 326A, 326B, 354, 354B, 370, 370A, 376, 376A, 376B, 376C, 376D, 376E or Section 509, he shall be punished with rigorous imprisonment for a term which shall not be less than six months but may extend to two years and shall also be liable to fine. Thus, it is the stand of learned Counsel that this provision clearly indicates that registration of FIR is imperative and police officer has no discretion in the matter in respect of offences specified in the said section. Therefore, according to him, the legislature accepts that as far as other cognizable offences are concerned, police has discretion to hold a preliminary inquiry if there is doubt about the correctness of the information.

34. Although, the argument is as persuasive as it appears, yet, we doubt whether such a presumption can be drawn in contravention to the unambiguous words employed in the said provision. Hence, insertion of Section 166A in the Indian Penal Code vide Criminal Law (Amendment) Act 2013, must be read in consonance with the provision and not contrary to it. The insertion of Section 166A was in the light of recent unfortunate occurrence of offences against

women. The intention of the legislature in putting forth this amendment was to tighten the already existing provisions to provide enhanced safeguards to women. Therefore, the legislature, after noticing the increasing crimes against women in our country, thought it appropriate to expressly punish the police officers for their failure to register FIRs in these cases. No other meaning than this can be assigned to for the insertion of the same.

35. With this background, let us discuss the submissions in the light of various decisions both in favour and against the referred issue.

Interpretation of Section 154:

36. It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. All that we have to see at the very outset is what does the provision say? As a result, the language employed in Section 154 is the determinative factor of the legislative intent. A plain reading of Section 154(1) of the Code provides that any information relating to the commission of a cognizable offence if given orally to an officer- in- charge of a police station shall be reduced into writing by him or under his direction. There is no ambiguity in the language of Section 154(1) of the Code.

37. At this juncture, it is apposite to refer to the following observations of this Court in M/s. Hiralal Rattanlal (supra) which are as under:

22...In construing a statutory provision, the first and the foremost rule of construction is the literary construction. All that we have to see at the very outset is what does that provision say? If the provision is unambiguous and if from that provision, the legislative intent is clear, we need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislative intention is not clear....

The above decision was followed by this Court in B. Premanand (supra) and after referring the abovesaid observations in the case of Hiralal Rattanlal (supra), this Court observed as under:

9. It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the mischief rule, purposive interpretation, etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule, vide Swedish Match AB v. SEBI MANU/SC/0693/2004 : (2004) 11 SCC 641.

The language of Section 154(1), therefore, admits of no other construction but the literal construction.

38. The legislative intent of Section 154 is vividly elaborated in Bhajan Lal (supra) which is as under:

30. The legal mandate enshrined in Section 154(1) is that every information relating to the commission of a "cognizable offence" (as defined Under Section 2(c) of the Code) if given orally (in which case it is to be reduced into writing) or in writing to "an officer incharge of a police station" (within the meaning of Section 2(o) of the Code) and signed by the informant should be entered in a book to be kept by such officer in such form as the State Government may prescribe which form is commonly called as "First Information Report" and which act of entering the information in the said form is known as registration of a crime or a case.

31. At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) of the Code, the concerned police officer cannot embark upon an inquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered under Section 156 of the Code to investigate, subject to the proviso to Section 157. (As we have proposed to make a detailed discussion about the power of a police officer in the field of investigation of a cognizable offence within the ambit of Sections 156 and 157 of the Code in the ensuing part of this judgment, we do not propose to deal with those sections in extenso in the present context.) In case, an officer in charge of a police station refuses to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by Sub- section (3) of Section 154 of the Code.

32. Be it noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression "information" without qualifying the same as in Section 41(1)(a) or (g) of the Code wherein the expressions, "reasonable complaint" and "credible information" are used. Evidently, the non qualification of the word "information" in Section 154(1) unlike in Section 41(1)(a) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, 'reasonableness' or 'credibility' of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word "information" without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act 25 of 1861) passed by the Legislative Council of India read that

'every complaint or information' preferred to an officer in charge of a police station should be reduced into writing which provision was subsequently modified by Section 112 of the Code of 1872 (Act 10 of 1872) which thereafter read that 'every complaint' preferred to an officer in charge of a police station shall be reduced in writing. The word 'complaint' which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word 'information' was used in the Codes of 1882 and 1898 which word is now used in Sections 154, 155, 157 and 190(c) of the present Code of 1973 (Act 2 of 1974). An overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a first information report is that there must be information and that information must disclose a cognizable offence.

33. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information.

39. Consequently, the condition that is sine qua non for recording an FIR under Section 154 of the Code is that there must be information and that information must disclose a cognizable offence. If any information disclosing a cognizable offence is led before an officer in charge of the police station satisfying the requirement of Section 154(1), the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information. The provision of Section 154 of the Code is mandatory and the concerned officer is duty bound to register the case on the basis of information disclosing a cognizable offence. Thus, the plain words of Section 154(1) of the Code have to be given their literal meaning.

'Shall'

40. The use of the word "shall" in Section 154(1) of the Code clearly shows the legislative intent that it is mandatory to register an FIR if the information given to the police discloses the commission of a cognizable offence.

41. In Khub Chand (supra), this Court observed as under:

7...The term "shall" in its ordinary significance is mandatory and the court shall ordinarily give that interpretation to that term unless such an interpretation leads to some absurd or inconvenient consequence or be at variance with the intent of the legislature, to be collected from other parts of the Act. The construction of the said expression depends on the provisions of a particular Act, the setting in which the expression appears, the object for which the direction is given, the consequences that would flow from the infringement of the direction and such other considerations....

42. It is relevant to mention that the object of using the word "shall" in the context of Section 154(1) of the Code is to ensure that all information relating to all cognizable offences is promptly registered by the police and investigated in accordance with the provisions of law.

43. Investigation of offences and prosecution of offenders are the duties of the State. For "cognizable offences", a duty has been cast upon the police to register FIR and to conduct investigation except as otherwise permitted specifically under Section 157 of the Code. If a discretion, option or latitude is allowed to the police in the matter of registration of FIRs, it can have serious consequences on the public order situation and can also adversely affect the rights of the victims including violating their fundamental right to equality.

44. Therefore, the context in which the word "shall" appears in Section 154(1) of the Code, the object for which it has been used and the consequences that will follow from the infringement of the direction to register FIRs, all these factors clearly show that the word "shall" used in Section 154(1) needs to be given its ordinary meaning of being of "mandatory" character. The provisions of Section 154(1) of the Code, read in the light of the statutory scheme, do not admit of conferring any discretion on the officer in- charge of the police station for embarking upon a preliminary inquiry prior to the registration of an FIR. It is settled position of law that if the provision is unambiguous and the legislative intent is clear, the court need not call into it any other rules of construction.

45. In view of the above, the use of the word 'shall' coupled with the Scheme of the Act lead to the conclusion that the legislators intended that if an information relating to commission of a cognizable offence is given, then it would mandatorily be registered by the officer in- charge of the police station. Reading 'shall' as 'may', as contended by some counsel, would be against the Scheme of the Code. Section 154 of the Code should be strictly construed and the word 'shall' should be given its natural meaning. The golden rule of interpretation can be given a go- by only in cases where the language of the section is ambiguous and/or leads to an absurdity.

46. In view of the above, we are satisfied that Section 154(1) of the Code does not have any ambiguity in this regard and is in clear terms. It is relevant to mention that Section 39 of the Code casts a statutory duty on every person to inform about commission of certain offences which includes offences covered by Sections 121 to 126, 302, 64A, 382, 392 etc., of the Indian Penal Code. It would be incongruous to suggest that though it is the duty of every citizen to inform about commission of an offence, but it is not obligatory on the officer- incharge of a Police Station to register the report. The word 'shall' occurring in Section 39 of the Code has to be given the same meaning as the word 'shall' occurring in Section 154(1) of the Code.

'Book'/'Diary'

47. It is contented by learned ASG appearing for the State of Chhattisgarh that the recording of first information under Section 154 in the 'book' is subsequent to the entry in the General Diary/Station Diary/Daily Diary, which is maintained in police station. Therefore, according to learned ASG, first information is a document at the earliest in the general diary, then if any preliminary inquiry is needed the police officer may conduct the same and thereafter the information will be registered as FIR.

48. This interpretation is wholly unfounded. The First Information Report is in fact the "information" that is received first in point of time, which is either given in writing or is reduced to writing. It is not the "substance" of it, which is to be entered in the diary prescribed by the State Government. The term 'General Diary' (also called as 'Station Diary' or 'Daily Diary' in some States) is maintained not under Section 154 of the Code but under the provisions of Section 44 of the Police Act, 1861 in the States to which it applies, or under the respective provisions of the Police Act(s) applicable to a State or under the Police Manual of a State, as the case may be. Section 44 of the Police Act, 1861 is reproduced below:

44. Police- officers to keep diary.- - It shall be the duty of every officer in charge of a police- station to keep a general diary in such form as shall, from time to time, be prescribed by the State Government and to record therein all complaints and charged preferred, the names of all persons arrested, the names of the complainants, the offences charged against them, the weapons or property that shall have been taken from their possession or otherwise, and the names of the witnesses who shall have been examined. The Magistrate of the district shall be at liberty to call for any inspect such diary.

49. It is pertinent to note that during the year 1861, when the aforesaid Police Act, 1861 was passed, the Code of Criminal Procedure, 1861 was also passed. Section 139 of that Code dealt with registration of FIR and this Section is also referred to the word "diary", as can be seen from the language of this Section, as reproduced below:

139. Every complaint or information preferred to an officer in charge of a Police Station, shall be reduced into writing, and the substance thereof shall be entered in a diary to be kept by such officer, in such form as shall be prescribed by the local government.

Thus, Police Act, 1861 and the Code of Criminal Procedure, 1861, both of which were passed in the same year, used the same word "diary".

50. However, in the year 1872, a new Code came to be passed which was called the Code of Criminal Procedure, 1872. Section 112 of the Code dealt with the issue of registration of FIR and is reproduced below:

112. Every complaint preferred to an officer in charge of a Police station shall be reduced into writing, and shall be signed, sealed, or marked by the person making it; and the substance thereof

shall be entered in a book to be kept by such officer in the form prescribed by the Local Government.

51. It is, thus, clear that in the Code of Criminal Procedure, 1872, a departure was made and the word 'book' was used in place of 'diary'. The word 'book' clearly referred to FIR book to be maintained under the Code for registration of FIRs.

52. The question that whether the FIR is to be recorded in the FIR Book or in General Diary, is no more res integra. This issue has already been decided authoritatively by this Court.

53. In Madhu Bala v. Suresh Kumar MANU/SC/0806/1997 : (1997) 8 SCC 476, this Court has held that FIR must be registered in the FIR Register which shall be a book consisting of 200 pages. It is true that the substance of the information is also to be mentioned in the Daily diary (or the general diary). But, the basic requirement is to register the FIR in the FIR Book or Register. Even in Bhajan Lal (supra), this Court held that FIR has to be entered in a book in a form which is commonly called the First Information Report.

54. It is thus clear that registration of FIR is to be done in a book called FIR book or FIR Register. of course, in addition, the gist of the FIR or the substance of the FIR may also be mentioned simultaneously in the General Diary as mandated in the respective Police Act or Rules, as the case may be, under the relevant State provisions.

55. The General Diary is a record of all important transactions/events taking place in a police station, including departure and arrival of police staff, handing over or taking over of charge, arrest of a person, details of law and order duties, visit of senior officers etc. It is in this context that gist or substance of each FIR being registered in the police station is also mentioned in the General Diary since registration of FIR also happens to be a very important event in the police station. Since General Diary is a record that is maintained chronologically on day- today basis (on each day, starting with new number 1), the General Diary entry reference is also mentioned simultaneously in the FIR Book, while FIR number is mentioned in the General Diary entry since both of these are prepared simultaneously.

56. It is relevant to point out that FIR Book is maintained with its number given on an annual basis. This means that each FIR has a unique annual number given to it. This is on similar lines as the Case Numbers given in courts. Due to this reason, it is possible to keep a strict control and track over the registration of FIRs by the supervisory police officers and by the courts, wherever necessary. Copy of each FIR is sent to the superior officers and to the concerned Judicial Magistrate.

57. On the other hand, General Diary contains a huge number of other details of the proceedings of each day. Copy of General Diary is not sent to the Judicial Magistrate having jurisdiction over the police station, though its copy is sent to a superior police officer. Thus, it is not possible to keep strict control of each and every FIR recorded in the General Diary by superior police officers and/or the court in view of enormous amount of other details mentioned therein and the numbers changing every day.

58. The signature of the complainant is obtained in the FIR Book as and when the complaint is given to the police station. On the other hand, there is no such requirement of obtaining signature of the complainant in the general diary. Moreover, at times, the complaint given may consist of large number of pages, in which case it is only the gist of the complaint which is to be recorded in the General Diary and not the full complaint. This does not fit in with the suggestion that what is recorded in General Diary should be considered to be the fulfillment/compliance of the requirement of Section 154 of registration of FIR. In fact, the usual practice is to record the complete complaint in the FIR book (or annex it with the FIR form) but record only about one or two paragraphs (gist of the information) in the General Diary.

59. In view of the above, it is useful to point out that the Code was enacted under Entry 2 of the Concurrent List of the Seventh Schedule to the Constitution which is reproduced below:

2. Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution.

On the other hand, Police Act, 1861 (or other similar Acts in respective States) were enacted under Entry 2 of the State List of the Seventh Schedule to the Constitution, which is reproduced below:

2. Police (including railway and village police) subject to the provisions of Entry 2A of List I.

60. Now, at this juncture, it is pertinent to refer Article 254(1) of the Constitution, which lays down the provisions relating to inconsistencies between the laws made by the Parliament and the State Legislatures. Article 254(1) is reproduced as under:

254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of Clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

Thus it is clear from the mandate of Article 254(1) of the Constitution that if there is any inconsistency between the provisions of the Code and the Police Act, 1861, the provisions of the Code will prevail and the provisions of the Police Act would be void to the extent of the repugnancy.

61. If at all, there is any inconsistency in the provisions of Section 154 of the Code and Section 44 of the Police Act, 1861, with regard to the fact as to whether the FIR is to be registered in the FIR book or in the General Diary, the provisions of Section 154 of the Code will prevail and the provisions of Section 44 of the Police Act, 1861 (or similar provisions of the respective corresponding Police Act or Rules in other respective States) shall be void to the extent of the repugnancy. Thus, FIR is to be recorded in the FIR Book, as mandated under Section 154 of the Code, and it is not correct to state that information will be first recorded in the General Diary and only after preliminary inquiry, if required, the information will be registered as FIR.

62. However, this Court in Tapan Kumar Singh (supra), held that a GD entry may be treated as First information in an appropriate case, where it discloses the commission of a cognizable offence. It was held as under:

15. It is the correctness of this finding which is assailed before us by the Appellants. They contend that the information recorded in the GD entry does disclose the commission of a cognizable offence. They submitted that even if their contention, that after recording the GD entry only a preliminary inquiry was made, is not accepted, they are still entitled to sustain the legality of the investigation on the basis that the GD entry may be treated as a first information report, since it disclosed the commission of a cognizable offence.

16. The parties before us did not dispute the legal position that a GD entry may be treated as a first information report in an appropriate case, where it discloses the commission of a cognizable offence. If the contention of the Appellants is upheld, the order of the High Court must be set aside because if there was in law a first information report disclosing the commission of a cognizable offence, the police had the power and jurisdiction to investigate, and in the process of investigation to conduct search and seizure. It is, therefore, not necessary for us to consider the authorities cited at the Bar on the question of validity of the preliminary inquiry and the validity of the search and seizure.

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19. The High Court fell into an error in thinking that the information received by the police could not be treated as a first information report since the allegation was vague inasmuch as it was not

stated from whom the sum of rupees one lakh was demanded and accepted. Nor was it stated that such demand or acceptance was made as motive or reward for doing or forbearing to do any official act, or for showing or forbearing to show in exercise of his official function, favour or disfavour to any person or for rendering, attempting to render any service or disservice to any person. Thus there was no basis for a police officer to suspect the commission of an offence which he was empowered under Section 156 of the Code to investigate.

63. It is thus unequivocally clear that registration of FIR is mandatory and also that it is to be recorded in the FIR Book by giving a unique annual number to each FIR to enable strict tracking of each and every registered FIR by the superior police officers as well as by the competent court to which copies of each FIR are required to be sent.

'Information'

64. The legislature has consciously used the expression "information" in Section 154(1) of the Code as against the expression used in Section 41(1)(a) and (g) where the expression used for arresting a person without warrant is "reasonable complaint" or "credible information". The expression under Section 154(1) of the Code is not qualified by the prefix "reasonable" or "credible". The non qualification of the word "information" in Section 154(1) unlike in Section 41(1)(a) and (g) of the Code is for the reason that the police officer should not refuse to record any information relating to the commission of a cognizable offence on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, reasonableness or credibility of the said information is not a condition precedent for the registration of a case.

65. The above view has been expressed by this Court in Bhajan Lal (supra) which is as under:

32...in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression "information" without qualifying the same as in Section 41(1)(a) or (g) of the Code wherein the expressions, "reasonable complaint" and "credible information" are used. Evidently, the non- qualification of the word "information" in Section 154(1) unlike in Section 41(1)(a) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, 'reasonableness' or 'credibility' of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word "information" without qualifying the said word.

66. In Parkash Singh Badal (supra), this Court held as under:

65. The legal mandate enshrined in Section 154(1) is that every information relating to the commission of a "cognizable offence" [as defined under Section 2(c) of the Code] if given orally (in which case it is to be reduced into writing) or in writing to "an officer in charge of a police station" [within the meaning of Section 2(o) of the Code] and signed by the informant should be entered in a book to be kept by such officer in such form as the State Government may prescribe which form is commonly called as "first information report" and which act of entering the information in the said form is known as registration of a crime or a case.

66. At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) of the Code, the police officer concerned cannot embark upon an inquiry as to whether the information laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered under Section 156 of the Code to investigate, subject to the proviso to Section 157 thereof. In case an officer in charge of a police station refuses to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by Sub- section (3) of Section 154 of the Code.

67. It has to be noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression "information" without qualifying the same as in Sections 41(1)(a) or (g) of the Code wherein the expressions "reasonable complaint" and "credible information" are used. Evidently, the non qualification of the word "information" in Section 154(1) unlike in Sections 41(1)(a) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, "reasonableness" or "credibility" of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word "information" without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act 25 of 1861) passed by the Legislative Council of India read that "every complaint or information" preferred to an officer in charge of a police station should be reduced into writing which provision was subsequently modified by Section 112 of the Code of 1872 (Act 10 of 1872) which thereafter read that "every complaint" preferred to an officer in charge of a police station shall be reduced in writing. The word "complaint" which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word "information" was used in the Codes of 1882 and 1898 which word is now used in Sections 154, 155, 157 and 190(c) of the Code. An overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a first information report is that there must be an information and that information must disclose a cognizable offence.

68. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information.

67. In Ramesh Kumari (supra), this Court held as under:

4. That a police officer mandatorily registers a case on a complaint of a cognizable offence by the citizen under Section 154 of the Code is no more res integra. The point of law has been set at rest by this Court in State of Haryana v. Bhajan Lal. This Court after examining the whole gamut and intricacies of the mandatory nature of Section 154 of the Code has arrived at the finding in paras 31 and 32 of the judgment as under:

31. At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) of the Code, the police officer concerned cannot embark upon an inquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered under Section 156 of the Code to investigate, subject to the proviso to Section 157. (As we have proposed to make a detailed discussion about the power of a police officer in the field of investigation of a cognizable offence within the ambit of Sections 156 and 157 of the Code in the ensuing part of this judgment, we do not propose to deal with those sections in extenso in the present context.) In case, an officer in charge of a police station refuses to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by Sub- section (3) of Section 154 of the Code.

32. Be it noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression 'information' without qualifying the same as in Section 41(1)(a) or (g) of the Code wherein the expressions, 'reasonable complaint' and 'credible information' are used. Evidently, the non qualification of the word 'information' in Section 154(1) unlike in Section 41(1)(a) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, 'reasonableness' or 'credibility' of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with

those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word 'information' without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act 25 of 1861) passed by the Legislative Council of India read that 'every complaint or information' preferred to an officer in charge of a police station should be reduced into writing which provision was subsequently modified by Section 112 of the Code of 1872 (Act 10 of 1872) which thereafter read that 'every complaint' preferred to an officer in charge of a police station shall be reduced in writing. The word 'complaint' which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word 'information' was used in the Codes of 1882 and 1898 which word is now used in Sections 154, 155, 157 and 190(c) of the present Code of 1973 (Act 2 of 1974). An overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a first information report is that there must be information and that information must disclose a cognizable offence.

(Emphasis in original)

Finally, this Court in para 33 said:

33. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information.

5. The views expressed by this Court in paras 31, 32 and 33 as quoted above leave no manner of doubt that the provision of Section 154 of the Code is mandatory and the officer concerned is duty- bound to register the case on the basis of such information disclosing cognizable offence.

68. In Ram Lal Narang (supra), this Court held as under:

14. Under the Code of Criminal Procedure, 1898, whenever an officer in charge of the police station received information relating to the commission of a cognizable offence, he was required to enter the substance thereof in a book kept by him, for that purpose, in the prescribed form (Section 154 Code of Criminal Procedure). Section 156 of the Code of Criminal Procedure invested the Police with the power to investigate into cognizable offences without the order of a Court. If, from the information received or otherwise, the officer in charge of a police station suspected the commission of a cognizable offence, he was required to send forthwith a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and then to proceed in person or depute one of his subordinate officers to proceed to the spot, to investigate the facts and circumstances of the case and to take measures for the discovery and arrest of the offender (Section 157 Code of Criminal Procedure). He was required to complete the investigation without unnecessary delay, and, as soon as it was completed, to forward to a Magistrate empowered to take cognizance of the offence upon a police report, a report in the prescribed

form, setting forth the names of the parties, the nature of the information and the names of the persons who appeared to be acquainted with the circumstances of the case [Section 173(1) Code of Criminal Procedure]. He was also required to state whether the accused had been forwarded in custody or had been released on bail. Upon receipt of the report submitted under Section 173(1) Code of Criminal Procedure by the officer in charge of the police station, the Magistrate empowered to take cognizance of an offence upon a police report might take cognizance of the offence [Section 190(1)(b) Code of Criminal Procedure]. Thereafter, if, in the opinion of the Magistrate taking cognizance of the offence, there was sufficient ground for proceeding, the Magistrate was required to issue the necessary process to secure the attendance of the accused (Section 204 Code of Criminal Procedure). The scheme of the Code thus was that the FIR was followed by investigation, the investigation led to the submission of a report to the Magistrate, the Magistrate took cognizance of the offence on receipt of the police report and, finally, the Magistrate taking cognizance issued process to the accused.

15. The police thus had the statutory right and duty to "register" every information relating to the commission of a cognizable offence. The police also had the statutory right and duty to investigate the facts and circumstances of the case where the commission of a cognizable offence was suspected and to submit the report of such investigation to the Magistrate having jurisdiction to take cognizance of the offence upon a police report. These statutory rights and duties of the police were not circumscribed by any power of superintendence or interference in the Magistrate; nor was any sanction required from a Magistrate to empower the Police to investigate into a cognizable offence. This position in law was well- established. In King Emperor v. Khwaja Nazir Ahmad the Privy Council observed as follows:

Just as it is essential that everyone accused of a crime should have free access to a Court of justice, so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes on them the duty of inquiry. In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as Their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rules by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always of course, subject to the right of the Courts to intervene in an appropriate case when moved under Section 491 of the Code of Criminal Procedure to give directions in the nature of Habeas Corpus. In such a case as the present, however, the Court's functions begin when a charge is preferred before it and not until then... In the present case, the police have under Sections 154 and 156 of the Code of Criminal Procedure, a statutory right to investigate a cognizable offence without requiring the sanction of the Court....

Ordinarily, the right and duty of the police would end with the submission of a report under Section 173(1) Code of Criminal Procedure upon receipt of which it was up to the Magistrate to take or not to take cognizance of the offence. There was no provision in the 1898 Code prescribing the procedure to be followed by the police, where, after the submission of a report under Section

173(1) Code of Criminal Procedure and after the Magistrate had taken cognizance of the offence, fresh facts came to light which required further investigation. There was, of course, no express provision prohibiting the police from launching upon an investigation into the fresh facts coming to light after the submission of the report under Section 173(1) or after the Magistrate had taken cognizance of the offence. As we shall presently point out, it was generally thought by many High Courts, though doubted by a few, that the police were not barred from further investigation by the circumstance that a report under Section 173(1) had already been submitted and a Magistrate had already taken cognizance of the offence. The Law Commission in its 41st report recognized the position and recommended that the right of the police to make further investigation should be statutorily affirmed. The Law Commission said:

14.23. A report under Section 173 is normally the end of the investigation. Sometimes, however, the police officer after submitting the report under Section 173 comes upon evidence bearing on the guilt or innocence of the accused. We should have thought that the police officer can collect that evidence and send it to the Magistrate concerned. It appears, however, that Courts have sometimes taken the narrow view that once a final report under Section 173 has been sent, the police cannot touch the case again and cannot re- open the investigation. This view places a hindrance in the way of the investigating agency, which can be very unfair to the prosecution and, for that matter, even to the accused. It should be made clear in Section 173 that the competent police officer can examine such evidence and send a report to the Magistrate. Copies concerning the fresh material must of course be furnished to the accused.

Accordingly, in the Code of Criminal Procedure, 1973, a new provision, Section 173(8), was introduced and it says:

Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under Sub- section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of Sub- sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under Sub- section (2).

69. In Lallan Chaudhary (supra), this Court held as under:

8. Section 154 of the Code thus casts a statutory duty upon the police officer to register the case, as disclosed in the complaint, and then to proceed with the investigation. The mandate of Section 154 is manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station, such police officer has no other option except to register the case on the basis of such information.

9. In Ramesh Kumari v. State (NCT of Delhi) this Court has held that the provision of Section 154 is mandatory. Hence, the police officer concerned is duty- bound to register the case on receiving

information disclosing cognizable offence. Genuineness or credibility of the information is not a condition precedent for registration of a case. That can only be considered after registration of the case.

10. The mandate of Section 154 of the Code is that at the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence, the police officer concerned cannot embark upon an inquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not relevant or credible. In other words, reliability, genuineness and credibility of the information are not the conditions precedent for registering a case under Section 154 of the Code.

A perusal of the above- referred judgments clarify that the reasonableness or creditability of the information is not a condition precedent for the registration of a case.

Preliminary Inquiry

70. Mr. Naphade relied on the following decisions in support of his arguments that if the police officer has a doubt about the veracity of the accusation, he has to conduct preliminary inquiry, viz., E.P. Royappa v. State of Tamil Nadu MANU/SC/0380/1973 : (1974) 4 SCC 3, Maneka Gandhi (supra), S.M.D. Kiran Pasha v. Government of Andhra Pradesh MANU/SC/0473/1989 : (1990) 1 SCC 328, D.K. Basu v. State of W.B. MANU/SC/0157/1997 : (1997) 1 SCC 416, Uma Shankar Sitani v. Commissioner of Police, Delhi and Ors. : (1996) 11 SCC 714, Preeti Gupta (supra), Francis Coralie Mullin v. Administrator, Union Territory of Delhi MANU/SC/0517/1981 : (1981) 1 SCC 608, Common Cause, A Registered Society v. Union of India MANU/SC/0437/1999 : (1999) 6 SCC 667, District Registrar and Collector, Hyderabad v. Canara Bank MANU/SC/0935/2004 : (2005) 1 SCC 496 and Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra MANU/SC/0268/2005 : (2005) 5 SCC 294.

71. Learned senior counsel for the State further vehemently contended that in appropriate cases, it would be proper for a police officer, on receipt of a complaint of a cognizable offence, to satisfy himself that prima facie the allegations levelled against the accused in the complaint are credible. In this regard, Mr. Naphade cited the following decisions, viz. Tapan Kumar Singh (supra), Bhagwant Kishore Joshi (supra), P. Sirajuddin (supra), Sevi (supra), Shashikant (supra), Rajinder Singh Katoch (supra), Vineet Narain v. Union of India MANU/SC/0827/1998 : (1998) 1 SCC 226, Elumalai v. State of Tamil Nadu MANU/TN/0610/1983 : 1983 LW (CRL) 121, A. Lakshmanarao v. Judicial Magistrate, Parvatipuram MANU/SC/0076/1970 : AIR 1971 SC 186, State of Uttar Pradesh v. Ram Sagar Yadav and Ors. MANU/SC/0118/1985 : (1985) 1 SCC 552, Mona Panwar v. High Court of Judicature of Allahabad MANU/SC/0087/2011 : (2011) 3 SCC 496, Apren Joseph v. State of Kerala MANU/SC/0078/1972 : (1973) 3 SCC 114, King Emperor v. Khwaja Nazir Ahmad MANU/PR/0007/1944 : AIR 1945 PC 18 and Sarangdharsingh Shivdassingh Chavan (supra).

72. He further pointed out that the provisions have to be read in the light of the principle of malicious prosecution and the fundamental rights guaranteed under Articles 14, 19 and 21. It is the stand of learned senior counsel that every citizen has a right not to be subjected to malicious prosecution and every police officer has an in- built duty under Section 154 to ensure that an innocent person is not falsely implicated in a criminal case. If despite the fact that the police officer is not prima facie satisfied, as regards commission of a cognizable offence and proceeds to register an FIR and carries out an investigation, it would result in putting the liberty of a citizen in jeopardy. Therefore, learned senior counsel vehemently pleaded for a preliminary inquiry before registration of FIR.

73. In terms of the language used in Section 154 of the Code, the police is duty bound to proceed to conduct investigation into a cognizable offence even without receiving information (i.e. FIR) about commission of such an offence, if the officer in charge of the police station otherwise suspects the commission of such an offence. The legislative intent is therefore quite clear, i.e., to ensure that every cognizable offence is promptly investigated in accordance with law. This being the legal position, there is no reason that there should be any discretion or option left with the police to register or not to register an FIR when information is given about the commission of a cognizable offence. Every cognizable offence must be investigated promptly in accordance with law and all information provided under Section 154 of the Code about the commission of a cognizable offence must be registered as an FIR so as to initiate an offence. The requirement of Section 154 of the Code is only that the report must disclose the commission of a cognizable offence and that is sufficient to set the investigating machinery into action.

74. The insertion of Sub- section (3) of Section 154, by way of an amendment, reveals the intention of the legislature to ensure that no information of commission of a cognizable offence must be ignored or not acted upon which would result in unjustified protection of the alleged offender/accused.

75. The maxim expression unius est exclusion alterius (expression of one thing is the exclusion of another) applies in the interpretation of Section 154 of the Code, where the mandate of recording the information in writing excludes the possibility of not recording an information of commission of a cognizable crime in the special register.

76. Therefore, conducting an investigation into an offence after registration of FIR under Section 154 of the Code is the "procedure established by law" and, thus, is in conformity with Article 21 of the Constitution. Accordingly, the right of the accused under Article 21 of the Constitution is protected if the FIR is registered first and then the investigation is conducted in accordance with the provisions of law.

77. The term inquiry as per Section 2(g) of the Code reads as under:

2(g) - "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court.

Hence, it is clear that inquiry under the Code is relatable to a judicial act and not to the steps taken by the Police which are either investigation after the stage of Section 154 of the Code or termed as 'Preliminary Inquiry' and which are prior to the registration of FIR, even though, no entry in the General Diary/Station Diary/Daily Diary has been made.

78. Though there is reference to the term 'preliminary inquiry' and 'inquiry' under Sections 159 and Sections 202 and 340 of the Code, that is a judicial exercise undertaken by the Court and not by the Police and is not relevant for the purpose of the present reference.

79. Besides, learned senior counsel relied on the special procedures prescribed under the CBI manual to be read into Section 154. It is true that the concept of "preliminary inquiry" is contained in Chapter IX of the Crime Manual of the CBI. However, this Crime Manual is not a statute and has not been enacted by the legislature. It is a set of administrative orders issued for internal guidance of the CBI officers. It cannot supersede the Code. Moreover, in the absence of any indication to the contrary in the Code itself, the provisions of the CBI Crime Manual cannot be relied upon to import the concept of holding of preliminary inquiry in the scheme of the Code of Criminal Procedure. At this juncture, it is also pertinent to submit that the CBI is constituted under a Special Act, namely, the Delhi Special Police Establishment Act, 1946 and it derive its power to investigate from this Act.

80. It may be submitted that Sections 4(2) and 5 of the Code permit special procedures to be followed for special Acts. Section 4 of the Code lays down as under:

Section 4. Trial of offences under the Indian Penal Code and other laws. (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

It is thus clear that for offences under laws other than Indian Penal Code, different provisions can be laid down under a special Act to regulate the investigation, inquiry, trial etc., of those offences. Section 4(2) of the Code protects such special provisions.

81. Moreover, Section 5 of the Code lays down as under:

Section 5. Saving- Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

Thus, special provisions contained in the DSPE Act relating to the powers of the CBI are protected also by Section 5 of the Code.

82. In view of the above specific provisions in the Code, the powers of the CBI under the DSPE Act, cannot be equated with the powers of the regular State Police under the Code.

Significance and Compelling reasons for registration of FIR at the earliest

83. The object sought to be achieved by registering the earliest information as FIR is inter alia two fold: one, that the criminal process is set into motion and is well documented from the very start; and second, that the earliest information received in relation to the commission of a cognizable offence is recorded so that there cannot be any embellishment etc., later.

84. Principles of democracy and liberty demand a regular and efficient check on police powers. One way of keeping check on authorities with such powers is by documenting every action of theirs. Accordingly, under the Code, actions of the police etc., are provided to be written and documented. For example, in case of arrest under Section 41(1)(b) of the Code, arrest memo along with the grounds has to be in writing mandatorily; under Section 55 of the Code, if an officer is deputed to make an arrest, then the superior officer has to write down and record the offence etc., for which the person is to be arrested; under Section 91 of the Code, a written order has to be passed by the concerned officer to seek documents; under Section 160 of the Code, a written notice has to be issued to the witness so that he can be called for recording of his/her statement, seizure memo/panchnama has to be drawn for every article seized etc.

85. The police is required to maintain several records including Case Diary as provided under Section 172 of the Code, General Diary as provided under Section 44 of the Police Act etc., which helps in documenting every information collected, spot visited and all the actions of the police officers so that their activities can be documented. Moreover, every information received relating

to commission of a non- cognizable offence also has to be registered under Section 155 of the Code.

86. The underpinnings of compulsory registration of FIR is not only to ensure transparency in the criminal justice delivery system but also to ensure 'judicial oversight'. Section 157(1) deploys the word 'forthwith'. Thus, any information received under Section 154(1) or otherwise has to be duly informed in the form of a report to the Magistrate. Thus, the commission of a cognizable offence is not only brought to the knowledge of the investigating agency but also to the subordinate judiciary.

87. The Code contemplates two kinds of FIRs. The duly signed FIR under Section 154(1) is by the informant to the concerned officer at the police station. The second kind of FIR could be which is registered by the police itself on any information received or other than by way of an informant [Section 157(1)] and even this information has to be duly recorded and the copy should be sent to the Magistrate forthwith.

88. The registration of FIR either on the basis of the information furnished by the informant under Section 154(1) of the Code or otherwise under Section 157(1) of the Code is obligatory. The obligation to register FIR has inherent advantages:

a) It is the first step to 'access to justice' for a victim.

b) It upholds the 'Rule of Law' inasmuch as the ordinary person brings forth the commission of a cognizable crime in the knowledge of the State.

c) It also facilitates swift investigation and sometimes even prevention of the crime. In both cases, it only effectuates the regime of law.

d) It leads to less manipulation in criminal cases and lessens incidents of 'ante- dates' FIR or deliberately delayed FIR.

89. In Thulia Kali v. State of Tamil Nadu MANU/SC/0276/1972 : (1972) 3 SCC 393, this Court held as under:

12...First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the

above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained....

90. In Tapan Kumar Singh (supra), it was held as under:

20. It is well settled that a first information report is not an encyclopaedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eyewitness so as to be able to disclose in great detail all aspects of the offence committed. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all the details he must find out those details in the course of investigation and collect all the necessary evidence. The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the police officer concerned is empowered under Section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not give full details regarding these matters, the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can.

91. In Madhu Bala (supra), this Court held:

6. Coming first to the relevant provisions of the Code, Section 2(d) defines "complaint" to mean any allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code, that some person, whether known or unknown has committed an offence, but does not include a police report. Under Section 2(c) "cognizable offence" means an offence for which, and "cognizable case" means a case in which a police officer may in accordance with the First Schedule (of the Code) or under any other law for the time being in force, arrest without a warrant. Under Section 2(r) "police report" means a report forwarded by a police officer to a Magistrate under Sub- section (2) of Section 173 of the Code. Chapter XII of the Code comprising Sections 154 to 176 relates to information to the police and their powers to investigate. Section 154 provides, inter alia, that the officer in charge of a police station shall reduce into writing every information relating to the commission of a cognizable offence given to him orally and every such information if given in writing shall be signed by the person giving it and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. Section 156 of the Code with which we are primarily concerned in these appeals reads as under....

9. The mode and manner of registration of such cases are laid down in the Rules framed by the different State Governments under the Indian Police Act, 1861. As in the instant case we are concerned with Punjab Police Rules, 1934 (which are applicable to Punjab, Haryana, Himachal Pradesh and Delhi) framed under the said Act we may now refer to the relevant provisions of those Rules. Chapter XXIV of the said Rules lays down the procedure an officer in charge of a police station has to follow on receipt of information of commission of crime. Under Rule 24.1 appearing in the Chapter every information covered by Section 154 of the Code must be entered in the First Information Report Register and the substance thereof in the daily diary. Rule 24.5 says that the First Information Report Register shall be a printed book in Form 24.5(1) consisting of 200 pages and shall be completely filled before a new one is commenced. It further requires that the cases shall bear an annual serial number in each police station for each calendar year. The other requirements of the said Rules need not be detailed as they have no relevance to the point at issue.

10. From the foregoing discussion it is evident that whenever a Magistrate directs an investigation on a "complaint" the police has to register a cognizable case on that complaint treating the same as the FIR and comply with the requirements of the above Rules. It, therefore, passes our comprehension as to how the direction of a Magistrate asking the police to "register a case" makes an order of investigation under Section 156(3) legally unsustainable. Indeed, even if a Magistrate does not pass a direction to register a case, still in view of the provisions of Section 156(1) of the Code which empowers the police to investigate into a cognizable "case" and the Rules framed under the Indian Police Act, 1861 it (the police) is duty- bound to formally register a case and then investigate into the same. The provisions of the Code, therefore, do not in any way stand in the way of a Magistrate to direct the police to register a case at the police station and then investigate into the same. In our opinion when an order for investigation under Section 156(3) of the Code is to be made the proper direction to the police would be "to register a case at the police station treating the complaint as the first information report and investigate into the same.

92. According to the Statement of Objects and Reasons, protection of the interests of the poor is clearly one of the main objects of the Code. Making registration of information relating to commission of a cognizable offence mandatory would help the society, especially, the poor in rural and remote areas of the country.

93. The Committee on Reforms of Criminal Justice System headed by Dr. Justice V.S. Malimath also noticed the plight faced by several people due to non- registration of FIRs and recommended that action should be taken against police officers who refuse to register such information. The Committee observed:

7.19.1 According to the Section 154 of the Code of Criminal Procedure, the office incharge of a police station is mandated to register every information oral or written relating to the commission of a cognizable offence. Non- registration of cases is a serious complaint against the police. The National Police Commission in its 4th report lamented that the police "evade registering cases for taking up investigation where specific complaints are lodged at the police stations". It referred to a study conducted by the Indian Institute of Public Opinion, New Delhi regarding "Image of the Police in India" which observed that over 50% of the Respondents mention non- registration of complaints as a common practice in police stations.

7.19.2 The Committee recommends that all complaints should be registered promptly, failing which appropriate action should be taken. This would necessitate change in the mind - set of the political executive and that of senior officers.

7.19.4 There are two more aspects relating to registration. The first is minimization of offences by the police by way of not invoking appropriate sections of law. We disapprove of this tendency. Appropriate sections of law should be invoked in each case unmindful of the gravity of offences involved. The second issue is relating to the registration of written complaints. There is an increasing tendency amongst the police station officers to advise the informants, who come to give oral complaints, to bring written complaints. This is wrong. Registration is delayed resulting in valuable loss of time in launching the investigation and apprehension of criminals. Besides, the complainant gets an opportunity to consult his friends, relatives and sometimes even lawyers and often tends to exaggerate the crime and implicate innocent persons. This eventually has adverse effect at the trial. The information should be reduced in writing by the SH, if given orally, without any loss of time so that the first version of the alleged crime comes on record.

7.20.11 It has come to the notice of the Committee that even in cognizable cases quite often the Police officers do not entertain the complaint and send the complainant away saying that the offence is not cognizable. Sometimes the police twist facts to bring the case within the cognizable category even though it is non- cognizable, due to political or other pressures or corruption. This menace can be stopped by making it obligatory on the police officer to register every complaint

received by him. Breach of this duty should become an offence punishable in law to prevent misuse of the power by the police officer.

94. It means that the number of FIRs not registered is approximately equivalent to the number of FIRs actually registered. Keeping in view the NCRB figures that show that about 60 lakh cognizable offences were registered in India during the year 2012, the burking of crime may itself be in the range of about 60 lakh every year. Thus, it is seen that such a large number of FIRs are not registered every year, which is a clear violation of the rights of the victims of such a large number of crimes.

95. Burking of crime leads to dilution of the rule of law in the short run; and also has a very negative impact on the rule of law in the long run since people stop having respect for rule of law. Thus, non- registration of such a large number of FIRs leads to a definite lawlessness in the society.

96. Therefore, reading Section 154 in any other form would not only be detrimental to the Scheme of the Code but also to the society as a whole. It is thus seen that this Court has repeatedly held in various decided cases that registration of FIR is mandatory if the information given to the police under Section 154 of the Code discloses the commission of a cognizable offence.

Is there a likelihood of misuse of the provision?

97. Another, stimulating argument raised in support of preliminary inquiry is that mandatory registration of FIRs will lead to arbitrary arrest, which will directly be in contravention of Article 21 of the Constitution.

98. While registration of FIR is mandatory, arrest of the accused immediately on registration of FIR is not at all mandatory. In fact, registration of FIR and arrest of an accused person are two entirely different concepts under the law, and there are several safeguards available against arrest. Moreover, it is also pertinent to mention that an accused person also has a right to apply for "anticipatory bail" under the provisions of Section 438 of the Code if the conditions mentioned therein are satisfied. Thus, in appropriate cases, he can avoid the arrest under that provision by obtaining an order from the Court.

99. It is also relevant to note that in Joginder Kumar v. State of U.P. and Ors. MANU/SC/0311/1994 : (1994) 4 SCC 260, this Court has held that arrest cannot be made by police in a routine manner. Some important observations are reproduced as under:

20...No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the Station without permission would do.

100. The registration of FIR under Section 154 of the Code and arrest of an accused person under Section 41 are two entirely different things. It is not correct to say that just because FIR is registered, the accused person can be arrested immediately. It is the imaginary fear that "merely because FIR has been registered, it would require arrest of the accused and thereby leading to loss of his reputation" and it should not be allowed by this Court to hold that registration of FIR is not mandatory to avoid such inconvenience to some persons. The remedy lies in strictly enforcing the safeguards available against arbitrary arrests made by the police and not in allowing the police to avoid mandatory registration of FIR when the information discloses commission of a cognizable offence.

101. This can also be seen from the fact that Section 151 of the Code allows a police officer to arrest a person, even before the commission of a cognizable offence, in order to prevent the commission of that offence, if it cannot be prevented otherwise. Such preventive arrests can be valid for 24 hours. However, a Maharashtra State amendment to Section 151 allows the custody of a person in that State even for up to a period of 30 days (with the order of the Judicial Magistrate) even before a cognizable offence is committed in order to prevent commission of such offence. Thus, the arrest of a person and registration of FIR are not directly and/or irreversibly linked and they are entirely different concepts operating under entirely different parameters. On the other hand, if a police officer misuses his power of arrest, he can be tried and punished under Section 166.

102. Besides, the Code gives power to the police to close a matter both before and after investigation. A police officer can foreclose an FIR before an investigation under Section 157 of the Code, if it appears to him that there is no sufficient ground to investigate the same. The Section itself states that a police officer can start investigation when he has a 'reason to suspect the commission of an offence'. Therefore, the requirements of launching an investigation under Section 157 of the Code are higher than the requirement under Section 154 of the Code. The police officer can also, in a given case, investigate the matter and then file a final report under Section 173 of the Code seeking closure of the matter. Therefore, the police is not liable to launch an investigation in every FIR which is mandatorily registered on receiving information relating to commission of a cognizable offence.

103. Likewise, giving power to the police to close an investigation, Section 157 of the Code also acts like a check on the police to make sure that it is dispensing its function of investigating cognizable offences. This has been recorded in the 41st Report of the Law Commission of India on the Code of Criminal Procedure, 1898 as follows:

14.1...If the offence does not appear to be serious and if the station- house officer thinks there is no sufficient ground for starting an investigation, he need not investigate but, here again, he has to send a report to the Magistrate who can direct the police to investigate, or if the Magistrate thinks fit, hold an inquiry himself.

14.2. A noticeable feature of the scheme as outlined above is that a Magistrate is kept in the picture at all stages of the police investigation, but he is not authorized to interfere with the actual investigation or to direct the police how that investigation is to be conducted.

Therefore, the Scheme of the Code not only ensures that the time of the police should not be wasted on false and frivolous information but also that the police should not intentionally refrain from doing their duty of investigating cognizable offences. As a result, the apprehension of misuse of the provision of mandatory registration of FIR is unfounded and speculative in nature.

104. It is the stand of Mr. Naphade, learned senior Counsel for the State of Maharashtra that when an innocent person is falsely implicated, he not only suffers from loss of reputation but also from mental tension and his personal liberty is seriously impaired. He relied on the Maneka Gandhi (supra), which held the proposition that the law which deprives a person of his personal liberty must be reasonable both from the stand point of substantive as well as procedural aspect is now firmly established in our Constitutional law. Therefore, he pleaded for a fresh look at Section 154 of the Code, which interprets Section 154 of the Code in conformity with the mandate of Article 21.

105. It is true that a delicate balance has to be maintained between the interest of the society and protecting the liberty of an individual. As already discussed above, there are already sufficient safeguards provided in the Code which duly protect the liberty of an individual in case of registration of false FIR. At the same time, Section 154 was drafted keeping in mind the interest of the victim and the society. Therefore, we are of the cogent view that mandatory registration of FIRs under Section 154 of the Code will not be in contravention of Article 21 of the Constitution as purported by various counsel.

Exceptions:

106. Although, we, in unequivocal terms, hold that Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognizable offence, yet, there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time. One such instance is in the case of allegations relating to medical negligence on the part of doctors. It will be unfair and inequitable to prosecute a medical professional only on the basis of the allegations in the complaint.

107. In the context of medical negligence cases, in Jacob Mathew (supra), it was held by this Court as under:

51. We may not be understood as holding that doctors can never be prosecuted for an offence of which rashness or negligence is an essential ingredient. All that we are doing is to emphasise the need for care and caution in the interest of society; for, the service which the medical profession renders to human beings is probably the noblest of all, and hence there is a need for protecting doctors from frivolous or unjust prosecutions. Many a complainant prefer recourse to criminal process as a tool for pressurising the medical professional for extracting uncalled for or unjust compensation. Such malicious proceedings have to be guarded against.

52. Statutory rules or executive instructions incorporating certain guidelines need to be framed and issued by the Government of India and/or the State Governments in consultation with the Medical Council of India. So long as it is not done, we propose to lay down certain guidelines for the future which should govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient. A private complaint may not be entertained unless the complainant has produced prima facie evidence before the court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in government service, qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying the Bolam test to the facts collected in the investigation. A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigating officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld.

108. In the context of offences relating to corruption, this Court in P. Sirajuddin (supra) expressed the need for a preliminary inquiry before proceeding against public servants.

109. Similarly, in Tapan Kumar Singh (supra), this Court has validated a preliminary inquiry prior to registering an FIR only on the ground that at the time the first information is received, the same does not disclose a cognizable offence.

110. Therefore, in view of various counter claims regarding registration or non- registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.

Conclusion/Directions:

111. In view of the aforesaid discussion, we hold:

(i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

(ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

(iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

(iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

(v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

(vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed fifteen days generally and in exceptional cases, by giving adequate reasons, six weeks time is provided. The fact of such delay and the causes of it must be reflected in the General Diary entry.

(viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

112. With the above directions, we dispose of the reference made to us. List all the matters before the appropriate Bench for disposal on merits.

MANU/SC/8179/2007

Back to Section 156 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 1685 of 2007 (Arising out of SLP (Crl.) No. 6404/2007)

Decided On: 07.12.2007

Sakiri Vasu Vs. State of U.P. and Ors.

Hon'ble Judges/Coram:

A.K. Mathur and Markandey Katju, JJ.

JUDGMENT

Markandey Katju, J.

1. Leave granted.

2. This appeal is directed against the impugned judgment and order dated 13.7.2007 passed by the Allahabad High Court in Criminal Misc. Writ Petition No. 9308 of 2007.

3. Heard learned Counsel for the parties and perused the record.

4. The son of the appellant was a Major in the Indian Army. His dead body was found on 23.8.2003 at Mathura Railway Station. The G.R.P, Mathura investigated the matter and gave a detailed report on 29.8.2003 stating that the death was due to an accident or suicide.

5. The Army officials at Mathura also held two Courts of Inquiry and both times submitted the report that the deceased Major S. Ravishankar had committed suicide at the railway track at Mathura junction. The Court of Inquiry relied on the statement of the Sahayak (domestic servant) Pradeep Kumar who made a statement that "deceased Major Ravishankar never looked cheerful; he used to sit on a chair in the verandah gazing at the roof with blank eyes and deeply involved in some thoughts and used to remain oblivious of the surroundings". The Court of Inquiry also relied on the deposition of the main eye- witness, gangman Roop Singh, who stated that Major Ravishankar was hit by a goods train that came from Delhi.

6. The appellant who is the father of Major Ravishankar alleged that in fact it was a case of murder and not suicide. He alleged that in the Mathura unit of the Army there was rampant corruption about which Major Ravishankar came to know and he made oral complaints about it to his superiors and also to his father. According to the appellant, it was for this reason that his son was murdered.

7. The first Court of Inquiry was held by the Army which gave its report in September, 2003 stating that it was a case of suicide. The appellant was not satisfied with the findings of this Court of Inquiry and hence on 22.4.2004 he made a representation to the then Chief of the Army Staff, General N.C. Vij, as a result of which another Court of Inquiry was held. However, the second Court of Inquiry came to the same conclusion as that of the first inquiry namely, that it was a case of suicide.

8. Aggrieved, a writ petition was filed in the High Court which was dismissed by the impugned judgment. Hence this appeal.

9. The petitioner (appellant herein) prayed in the writ petition that the matter be ordered to be investigated by the Central Bureau of Investigation (in short 'CBI'). Since his prayer was rejected by the High Court, hence this appeal by way of special leave.

10. It has been held by this Court in CBI and Anr. v. Rajesh Gandhi and Anr. MANU/SC/0030/1997 : 1997CriLJ63 that no one can insist that an offence be investigated by a particular agency. We fully agree with the view in the aforesaid decision. An aggrieved person can only claim that the offence he alleges be investigated properly, but he has no right to claim that it be investigated by any particular agency of his choice.

11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 Cr.P.C., then he can approach the Superintendent of Police under Section 154(3) Cr.P.C. by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156(3) Cr.P.C. before the learned Magistrate concerned. If such an application under Section 156(3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

12. Thus in Mohd. Yousuf v. Smt. Afaq Jahan and Anr. MANU/SC/8888/2006 : 2006CriLJ788 , this Court observed:

The clear position therefore is that any judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigating under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complaint because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.

13. The same view was taken by this Court in Dilawar Singh v. State of Delhi MANU/SC/3678/2007 : 2007CriLJ4709 (vide para 17). We would further clarify that even if an FIR has been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such a person can approach the Magistrate under Section 156(3) Cr.P.C., and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order orders as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under Section 156(3) Cr.P.C.

14. Section 156(3) states:

Any Magistrate empowered under Section 190 may order such an investigation as abovementioned.

The words `as abovementioned' obviously refer to Section 156(1), which contemplates investigation by the officer in charge of the Police Station.

15. Section 156(3) provides for a check by the Magistrate on the police performing its duties under Chapter XII Cr.P.C. In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and can monitor the same.

16. The power in the Magistrate to order further investigation under Section 156(3) is an independent power, and does not affect the power of the investigating officer to further investigate the case even after submission of his report vide Section 173(8). Hence the Magistrate can order re- opening of the investigation even after the police submits the final report, vide State of Bihar v. A.C. Saldanna MANU/SC/0253/1979 : 1980CriLJ98 .

17. In our opinion Section 156(3) Cr.P.C. is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an F.I.R. and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) Cr.P.C., though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

18. It is well- settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary to its execution.

19. The reason for the rule (doctrine of implied power) is quite apparent. Many matters of minor details are omitted from legislation. As Crawford observes in his 'Statutory Construction' (3rd edn. page 267):

If these details could not be inserted by implication, the drafting of legislation would be an indeterminable process and the legislative intent would likely be defeated by a most insignificant omission.

20. In ascertaining a necessary implication, the Court simply determines the legislative will and makes it effective. What is necessarily implied is as much part of the statute as if it were specifically written therein.

21. An express grant of statutory powers carries with it by necessary implication the authority to use all reasonable means to make such grant effective. Thus in ITO, Cannanore v. M.K. Mohammad Kunhi AIR 1969 SC 430, this Court held that the income tax appellate tribunal has implied powers to grant stay, although no such power has been expressly granted to it by the Income Tax Act.

22. Similar examples where this Court has affirmed the doctrine of implied powers are Union of India v. Paras Laminates MANU/SC/0173/1991 : [1990]186ITR722(SC) , Reserve Bank of India v. Peerless General Finance and Investment Company Ltd. MANU/SC/0165/1996 : [1996]1SCR58 , Chief Executive Officer and Vice Chairman Gujarat Maritime Board v. Haji Daud Haji Harun Abu MANU/SC/1719/1996 : (1996)11SCC23 , J.K. Synthetics Ltd. v. Collector of Central Excise MANU/SC/0972/1996 : 1996(86)ELT472(SC) , State of Karnataka v. Vishwabharati House Building Co- op Society MANU/SC/0033/2003 : [2003]1SCR397 etc.

23. In Savitri v. Govind Singh Rawat MANU/SC/0104/1985 : 1986CriLJ41 this Court held that the power conferred on the Magistrate under Section 125 Cr.P.C. to grant maintenance to the wife implies the power to grant interim maintenance during the pendency of the proceeding, otherwise she may starve during this period.

24. In view of the abovementioned legal position, we are of the view that although Section 156(3) is very briefly worded, there is an implied power in the Magistrate under Section 156(3) Cr.P.C. to order registration of a criminal offence and/or to direct the officer in charge of the concerned police station to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in Section 156(3) Cr.P.C., we are of the opinion that they are implied in the above provision.

25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 Cr.P.C. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters, and relegate the petitioner to his alternating remedy, firstly under Section 154(3) and Section 36 Cr.P.C. before the concerned police officers, and if that is of no avail, by approaching the concerned Magistrate under Section 156(3).

26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) Cr.P.C. or other police officer referred to in Section 36 Cr.P.C. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C. Moreover he has a further remedy of filing a criminal complaint under Section 200 Cr.P.C. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?

27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation, and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 Cr.P.C. simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the concerned police officers, and if that is of no avail, under Section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C.

28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere.

29. In Union of India v. Prakash P. Hinduja and Anr. MANU/SC/0446/2003 : 2003CriLJ3117 , it has been observed by this Court that a Magistrate cannot interfere with the investigation by the police. However, in our opinion, the ratio of this decision would only apply when a proper investigation is being done by the police. If the Magistrate on an application under Section 156(3) Cr.P.C. is satisfied that proper investigation has not been done, or is not being done by the officer-in- charge of the concerned police station, he can certainly direct the officer in charge of the police station to make a proper investigation and can further monitor the same (though he should not himself investigate).

30. It may be further mentioned that in view of Section 36 Cr.P.C. if a person is aggrieved that a proper investigation has not been made by the officer- in- charge of the concerned police station, such aggrieved person can approach the Superintendent of Police or other police officer superior in rank to the officer- in- charge of the police station and such superior officer can, if he so wishes, do the investigation vide CBI v. State of Rajasthan and Anr. MANU/SC/0042/2001 : 2001CriLJ968 , R.P. Kapur v. S.P. Singh MANU/SC/0070/1960 : [1961]2SCR143 etc. Also, the State Government is competent to direct the Inspector General, Vigilance to take over the investigation of a cognizable offence registered at a police station vide State of Bihar v. A.C. Saldanna (supra).

31. No doubt the Magistrate cannot order investigation by the CBI vide CBI v. State of Rajasthan and Anr. (Supra), but this Court or the High Court has power under Article 136 or Article 226 to order investigation by the CBI. That, however should be done only in some rare and exceptional case, otherwise, the CBI would be flooded with a large number of cases and would find it impossible to properly investigate all of them.

32. In the present case, there was an investigation by the G.R.P., Mathura and also two Courts of Inquiry held by the Army authorities and they found that it was a case of suicide. Hence, in our opinion, the High Court was justified in rejecting the prayer for a CBI inquiry.

33. In Secretary, Minor Irrigation & Rural Engineering Services U.P. and Ors. v. Sahngoo Ram Arya and Anr. MANU/SC/0441/2002 : 2002CriLJ2942 , this Court observed that although the High Court has power to order a CBI inquiry, that power should only be exercised if the High Court after considering the material on record comes to a conclusion that such material discloses prima facie a case calling for investigation by the CBI or by any other similar agency. A CBI inquiry cannot be ordered as a matter of routine or merely because the party makes some allegation.

34. In the present case, we are of the opinion that the material on record does not disclose a prima facie case calling for an investigation by the CBI. The mere allegation of the appellant that his son was murdered because he had discovered some corruption cannot, in our opinion, justify a CBI inquiry, particularly when inquiries were held by the Army authorities as well as by the G.R.P. at Mathura, which revealed that it was a case of suicide.

35. It has been stated in the impugned order of the High Court that the G.R.P. at Mathura had investigated the matter and gave a detailed report on 29.8.2003. It is not clear whether this report was accepted by the Magistrate or not. If the report has been accepted by the Magistrate and no appeal/revision was filed against the order of the learned Magistrate accepting the police report, then that is the end of the matter. However, if the Magistrate has not yet passed any order on the police report, he may do so in accordance with law and in the light of the observations made above.

36. With the above observations, this appeal stands dismissed.

37. Let a copy of this judgment be sent by the Secretary General of this Court to the Registrar Generals/Registrars of all the High Courts, who shall circulate a copy of this Judgment to all the Hon'ble Judges of the High Courts.

MANU/SC/0322/1988

IN THE SUPREME COURT OF INDIA

Writ Petition (Criminal) Nos. 49 and 129 of 1987

Decided On: 14.10.1988

Mukund Lal and Ors. Vs. Union of India (UOI) and Ors.

Back to Section 161 of Code of Criminal Procedure, 1973

Back to Section 172 of Code of Criminal Procedure, 1973

Hon'ble Judges/Coram:

M.P. Thakkar and B.C. Ray, JJ.

JUDGMENT

M.P. Thakkar, J.

1. Constitutional validity of a part of a provision enjoining a police officer engaged in an investigation under Chapter XII of the CrPC (Cr.P.C.) has been called into question. The provision which so enjoins an investigation officer is embodied in Section 172, Clause (1) whereof imposes the duty. It is a part of this provision namely Clause (3) which is the target of the challenge made by one of the two accused in a Criminal case. The High Court having repulsed the challenge, the accused have approached this Court by way of the present petition in order to reiterate the challenge on the premise that the High Court had erred in sustaining the validity of the impugned provision.

2. The analysis of Section 172 (Section 172(3)- "Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of Section 161 or 145 as the case may be, of the Indian Evidence Act, 1872 shall apply), Clause (3) whereof has given rise to the challenge to its constitutionally reveals:

(1) That it embodies a complete scheme relating to the matter of maintaining a diary.

(2) Clause (1) imposes the obligation to do so and provides for the contents thereof.

(3) The Court is empowered to call for such diaries to aid it in inquiry or trial subject to the rider that it can not be used as evidence thereat.

(4) Merely because the Court calls for the diary, the accused (or his agent) can not claim the right to peruse it.

(5) The accused can peruse that particular part 2 of the diary in the context of Section 161 (Section 161 "Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon) of the Indian Evidence Act or Section 145 (Section 145 "A witness may be cross- examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, called to those parts of it which are to be used for the purpose of contradicting him) thereof in case:

(a) if it is used by the police officer concerned to refresh his memory;

or

(b) if the Court uses it for contradicting the police official concerned.

3. The High Court has repelled the plea by recourse to the reasoning reflected in the relevant passage extracted hereinbelow:

So far as Section 172(3) is concerned, the embargo on the right of the accused or his representative in calling for the diary or seeing any part of it is only a partial one and not absolute because if a part of the diary has been used by the police officer to refresh his memory or the court uses it for the purpose of contradicting such police officer, the provisions of Section 161 and 145 of the Indian Evidence Act, will be applicable. So far as the other parts are concerned, the accused need not necessarily have a right of access to them because in a criminal trial or enquiry, whatever is sought to be proved against the accused, will have to be proved by the evidence other than the diary itself and the diary can only be used for a very limited purpose by the Court or the police officer as stated above. Even then, a safeguard has already been provided in the Section itself to protect the right of the accused. The investigating Officer deposes before the Court on the basis of the entries in the diary. If the accused or his counsel thinks that he is stating something against the diary or is trying to hide something which may be in the diary he can put question in that respect to the Investigating Officer, and if the accused or his counsel has any doubt about the veracity of the statement made by the Investigation Officer, he may always request the court to look into the diary and verify the facts and, this right of the accused can always be safeguarded. It is true that it is for the court to decide whether the facts stated are borne out by the diary or not,

but then this much reliance has always to be placed on the court and it has to be trusted as it is trusted in the case under Section 123 of the Evidence Act in order to decide whether any privilege can be claimed with respect to the documents in question. Even according to the authorities relied upon by the learned Counsel for the petitioner pertaining to Section 123 of the Evidence Act, it is the right of the court to decide whether the privileged document contains any material affecting the public interest or a particular affair of the State, which need not be disclosed.

When in the enquiry or trial, everything which may appear against the accused has to be established and brought before the Court by evidence other than the diary and the accused can have the benefit of cross- examining the witnesses and the court has power to call for the diary and use it, of course not as evidence but in aid of the enquiry or trial, I am clearly of the opinion, that the provisions under Section 172(3) Cr.P.C. cannot be said to be unconstitutional.

We fully endorse the reasoning of the High Court and concur with its conclusion. We are of the opinion that the provision embodied in Sub- section (3) of Section 172 of the Cr.P.C. cannot be characterised as unreasonable or arbitrary. Under Sub- section (2) of Section 172 Cr.P.C. the Court itself has the unfettered power to examine the entries in the diaries. This is a very important safeguard. The Legislature has reposed complete trust in the court which is conducting the inquiry or the trial. It has empowered the court to call for any such relevant case diary, if there is any inconsistency or contradiction arising in the context of the case dairy the Court can use the entries for the purpose of contradicting the Police Officer as provided in Sub- section (3) of Section 172 of the Cr.P.C. Ultimately there can be no better custodian or guardian of the interest of justice than the Court trying the case. No court will deny to itself the power to make use of the entries in the diary to the advantage of the accused by contradicting the police officer with reference to the contents of the diaries. In view of this safeguard, the charge of unreasonableness or arbitrariness cannot stand scrutiny. The petitioners claim an unfettered right to make roving inspection of the entries in the case diary regardless of whether these entries are used by the police officer concerned to refresh his memory or regardless of the fact whether the court has used these entries for the purpose of contradicting such police officer. It cannot be said that unless such unfettered right is conferred and recognised, the embargo engrafted in Sub- section (3) of Section 172 of the Cr.P.C. would fail to meet the test of reasonableness. For instance in the case diary there might be a note as regards the identity of the informant who gave some information which resulted in investigation into a particular aspect. Public Interest demands that such an entry is not made available to the accused for it might endanger the safety of the informants and it might deter the informants from giving any information to assist the investigating agency, as observed in Mohinder Singh v. Emperor MANU/LA/0069/1931 : AIR 1932 Lah 103:

The accused has no right to insist upon a police witness referring to his diary in order to elicit information which is privileged. The contents of the diary are not at the disposal of the defence and cannot be used except strictly in accordance with the provisions of Sections 162 and 172. Section 172 shows that witness may refresh his memory by reference to them but such use is at the discretion of the witness and the Judge, whose duty it is to ensure that the privilege attaching to them by statute is strictly enforced.

and also as observed in Mahabirji Birajman Mandir v. Prem Narain Shukla and Ors. MANU/UP/0141/1965 : AIR1965All494 .

The case diary contains not only the statements of witnesses recorded under Section 161 Cr.P.C. and the site plan or other documents prepared by the Investigating Officer, but also reports or observations of the Investigating Officer or his superiors. These reports are of a confidential nature and privilege can be claimed thereof. Further, the disclosure of the contents of such reports cannot help any of the parties to the litigation, as the report invariably contains the opinion of such officers and their opinion is inadmissible in evidence.

4. The public interest requirement from the stand point of the need to ensure a fair trial for an accused is more than sufficiently met by the power conferred on the court, which is the ultimate custodian of the interest of justice and can always be trusted to be vigilant to ensure that the interest of accused persons standing the trial, is fully safeguarded.

This is a factor which must be accorded its due weight. There would be no prejudice or failure of justice to the accused person since the court can be trusted to look into the police diary for the purpose of protecting his interest. Therefore, the public interest requirement from the perspective of safeguarding the interest of all persons standing trial, is not compromised. On the other hand the public interest requirement from the perspective of enabling the investigation agency to investigate the crime against the society in order that the interest of the community to ensure that a culprit is traced and brought to book is also safeguarded. The argument inspired by the observations in Raj Narain's case MANU/SC/0032/1975 : [1975]3SCR333 and S.P. Gupta's case MANU/SC/0080/1981 : [1982]2SCR365 in the context of claim for privilege in regard to Section 123 of Evidence Act, which have no direct bearing, is also effectively answered in the light of the foregoing discussion as the 'Public Interest' aspect is also taken care of. In the ultimate analysis, it is not possible to sustain the plea of the petitioners, which is rooted in the mistrust of the court itself, that the provision is unreasonable and arbitrary. There is also another dimension of the issue. Section 172 embodies a composite scheme. The duty cast under Clause (1) and the rider added by Clause(13) thereof from integral part of the scheme. Clause (3) cannot be struck down in isolation whilst retaining Clause (1). The legislature in its wisdom has cast this obligation only subject to the rider. Clause (3) cannot be viewed in isolation. Under the circumstances, we concur with the view of the High Court and repulse the challenge. These are the reasons which impelled us to dismiss the petitions.

MANU/SC/0163/1981

IN THE SUPREME COURT OF INDIA

Writ Petition Nos. 5670 and 6216 of 1980

Decided On: 10.03.1981

Khatri and Ors. Vs. State of Bihar and Ors.

Back to Section 162 of Code of Criminal Procedure, 1973

Back to Section 172 of Code of Criminal Procedure, 1973

Back to Section 304 of Code of Criminal Procedure, 1973

Hon'ble Judges/Coram:

Baharul Islam and P.N. Bhagwati, JJ.

ORDER

1. The question which arises before us for consideration is whether certain documents called for by the Court by its order dated 16th February, 1981 are liable to be produced by the State or their production is barred under some provision of law. The documents called for are set out in the order dated 16th February, 1981 and they are as follows:

1. the CID report submitted by L.V. Singh,. DIG, CID (Anti- Dacoity) on December 9, 1980;

2. the CID reports on all the 24 cases submitted by L.V. Singh and his associates between January 10 and January 20, 1981;

3. the letters number 4/R dated 3rd January, 1981 and number 20/R dated 7th January, 1981 from L.V. Singh to the IG, Police;

4. the files containing all correspondence and notings exchange between L.V. Singh, DIG and M.K. Jha, Additional IG, regarding the CID inquiry into the Windings, and

5. the file (presently in the office of the IG, S.K. Chatterjee) containing the reports submitted by Inspector and Sub- Inspector of CID to Gajendra Narain, DIG, Bhagalpur, on 18th July or thereabouts and his letter to K.D. Singh, SP, CID, Patna which has the hand- written observations of M.K. Jha.

2. The State has objected to the production of these documents on the ground that they are protected from disclosure under Sections 162 and 172 of the CrPC 1973 and the petitioners are

not entitled to see them or to make any use of them in the present proceeding. This contention raises a question of some importance and it has been debated with great farvour on both sides but we do not think it presents any serious difficulty in its resolution, if we have regard to the terms of Sections 162 and 172 of the Criminal Procedure Code on which reliance has been placed on behalf of the State.

3. We will first consider the question in regard to the reports submitted by Sh. L.V. Singh, Deputy Inspector General CID (Anti- Dacoity) on 2nd December, 1980 and the reports submitted by him 1 and his associates Sh. R.R. Prasad, S.P. (Anti- Dacoity) and Smt. Manjuri Jaurahar, S.P. (Anti-Dacoity) between 10th and 20th January, 1981. These reports have been handed over to us for our perusal by Mr. K.G. Bhagat learned advocate appearing on behalf of the State and it is clear from these reports, and that has also been 1 stated before us on behalf of the State, that by an order dated 28- 29th November, 1980 made by the State Government under Section 3 of the Indian Police Act 1861, Sh. (sic) L.V. Singh was directed by the State Government to investigate into 24 cases of blinding of under- trial prisoners and it was in discharge of this official duty entrusted to him that he with the associates Sh. R.R. Prasad and Smt. Manjuri Jaurahar investigated these cases and made these reports. These reports set out the conclusions reached by him as a result of his investigation into these cases. The question is whether the production of these reports is hit by Sections 162 and' 172 of the Criminal Procedure Code. It may be pointed out that these are the only provisions of law under which the State resists production of these reports. The State has not claimed privilege in regard to these reports under Section 123 or Section 124 of the Indian Evidence Act. All that is necessary therefore is to examine the applicability of Sections 162 and 172 of the Criminal Procedure Code in the present base.

4. Before we refer to the provisions of Sections 162 and 172 of the Criminal Procedure Code, it would be convenient to set out briefly a few relevant provisions of that Code. Section 2 is the definition Section and Clause (g) of that Section defines 'Inquiry' to mean "every inquiry, other than a trial conducted under this Code by a Magistrate or Court". Clause (h) of Section 2 gives the definition of 'investigation' and it says that investigation includes "all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf". Section (4) provide

4(1) All offences under the Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating inquiring into, trying or otherwise dealing with such offences.

5. It is apparent from this Section that the provisions of the Criminal Procedure Code are applicable where an offence under the Indian Penal Code or under any other law is being investigated, inquired into, tried or otherwise dealt with. Then we come straight to Section 162

which occurs in chapter XII dealing with the powers of the Police to investigate into offences. That Section, so far as material, reads as under.

162 (1) No statement made by any person to a police officer in the course of an investigation under this chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872; and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross- examination.

(2) Nothing in this Section shall be deemed to apply to any statement falling within the provisions of Clause (1) of Section 32 of the Indian Evidence Act, 1872, or to affect the provisions of Section 27 of that Act.

It bars the use of any statement made before a police officer in the course of an investigation under chapter XII, whether recorded in a police dairy or otherwise, but by the express terms of Section, this bar is applicable only were such statement is sought to be used 'at any inquiry or trial in respect of any offence under investigation at the time when such statement was made'. If the statement made before a police officer in course of an investigation under chapter XII is sought to be used in any proceeding other than an inquiry or trial or even at an inquiry or trial but in respect of an offence other than that which was under investigation at the time when such statement was made, the bar of Section 162 would not be attracted.

This section has been enacted for the benefit of the accused, as pointed out by this Court in Tehsildar Singh and Anr. v. The State of Uttar Pradesh MANU/SC/0053/1959 : (1959) Supp. 2 S.C.R. 875, it is intended "to protect the accused against the user of statements of witnesses made before the police during investigation, at the trial presumably on the assumption that the said statements were not made under circumstances inspiring confidence." This court, in Tehsildar Singh's case approved the following observations of Braund, J. in Emperor v. Aftab Mohd. Khan MANU/UP/0243/1939 : AIR1940All291 .

As it seems to us it is to protect accused persons from being prejudiced by statements made to police officers who by reason of the fact that an investigation is known to be on foot at the time the statement is made, may be in a position to influence the maker of it, and, on the other hand, to protect accused persons from the prejudice at the hands of persons who in the knowledge that an investigation has already started, are prepared to tell untruths.

and expressed its agreement with the view taken by the Division Bench of the Nagpur High Court in Baliram Tikaram Marathe v. Emperor MR (1945) Nag 1 that "the object of the section is to protect the accused both against overzealous police officers and untruthful witnesses." Protection against the use of statement made before the police during investigation is, therefore, granted to the accused by providing that such statement shall not be allowed to be used except for the limited purpose set out in the provision to the section, at any inquiry or trial in respect of the offence which was under investigation at the time when such statement was made. But, this protection is unnecessary in any proceeding other than an inquiry or trial in respect of the offence under investigation and hence the bar created by the section is a limited bar. It has no application, for example in a civil proceeding or in a proceeding under Article 32 or 226 of the Constitution and a statement made before a police officer in the course of investigation can be used as evidence in such proceeding, provided it is otherwise relevant under the Indian Evidence Act. There are a number of decisions of various High Courts which have taken this view and amongst them may be mentioned the decision of Jaganmohan Reddy, J. in Malakaya Surya Rao v. Janakamma MANU/AP/0089/1964 : AIR1964AP198 . The present proceeding before us is a writ petition under Article 32 of the Constitution filed by the petitioners for enforcing their Fundamental Rights under Article 21 and it is neither an "inquiry" nor a "trial" in respect of any offence and hence it is difficult to see how Section 162 can be invoked by the State in the present case. The procedure to be followed in a writ petition under Article 32 of the Constitution is prescribed in Order XXXV of the Supreme Court Rules, 1966, and Sub- rule (9) of Rule 10 lays down that at the hearing of the rule nisi, if the court is of the opinion that an opportunity be given to the party to establish their respective cases by leading further evidence, the court may take such evidence or cause such evidence to be taken in such manner as it may deem fit and proper and obviously the reception of such evidence will be governed by the provisions of the Indian Evidence Act. It is obvious, therefore, that even a statement made before a police officer during investigation can be produced and used in evidence in a writ petition under Article 32 provided it is relevant under the Indian Evidence Act and Section 162 cannot be urged as a bar against its production or use. The reports submitted by Shri L.V. Singh setting forth the result of his investigation cannot, in the circumstances, be shut out from being produced and considered in evidence under Section 162, even it they refer to any statements made before him and his associates during investigation, provided they are otherwise relevant under some provision of the Indian Evidence Act.

6. We now turn to Section 172 which is the other section relied upon by the State. That section reads as follows:

172. Diary of proceedings in investigation- - (1) Every police officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

(2) Any Criminal Court may send for the police diaries of a case under enquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

(3) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall they be entitled to see them merely because they are referred to by the court; but, if they are used by the police officer who made them to refresh his memory, or if the court uses them for the purpose of contradicting such police officers, the provisions of Section 161 or Section 145, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872) shall apply.

The first question which arises for consideration under this section is whether the reports made by Shri L.V. Singh as a result of the investigation carried out by him and his associates could be said to form part of case diary within the meaning of this section. The argument of Mrs. Mingorani and Dr. Chitale was that these reports did not form part of case diary as contemplated in this section, since the investigation which was carried out by Shri L.V. Singh was pursuant to a direction given to him by the State Government under Section 3 of the Indian Police Act 1861, and it was not an investigation under Chapter XII of the Criminal Procedure Code which alone would attract the applicability of Section 172. Mrs. Hingorani sought to support his proposition by relying upon the decision of this Court in State of Bihar v. J.A.C. Saldhana MANU/SC/0253/1979 : 1980CriLJ98 . Mr. K.G. Bhagat, learned Counsel appearing on behalf of the State however, submitted that even though Shri L.V. Singh earring out the investigation under the direction given by the State Government in exercise of the power conferred under Section 3 of the Indian Police Act, 1861, the investigation carried out by him was one under Chapter XII and Section 172 was therefore applicable in respect of the reports made by him setting out the result of the investigation. He conceded that it was undoubtedly laid down by this Court in State of Bihar v. J.A.C. Saldhana (supra) that the State Government has power to direct investigation or further investigation under Section 3 of the Indian Police Act 1861, but contended that it was equally clear from the decision in that case that "power to direct investigation or further investigation is entirely different from the method and procedure of investigation and the competence of the person who Investigates." He urged that Section 36 of the Criminal Procedure Code provides that police officers superior in rank to an officer in- charge of a police station may exercise the same powers throughout the local area to which they are appointed as may be exercised by such officer within the limits of his station and Shri L.V. Singh being the Deputy Inspector General of Police, was superior in sank to an officer in charge of a police station and was, therefore, competent to investigate the offences arising from the blinding of the undertrial prisoners and the State Government acted within its powers under Section 3 of the Indian Police Act, 1861 in directing Shri L.V. Singh to investigate into these offences. But, "the method and procedure of investigation" was to be the same as that prescribed for investigation by an officer in charge of a police station under Chapter XII and therefore the investigation made by Shri L.V. Singh was an investigation under that Chapter so as to bring in the applicability of Section 172. These rival contentions raise two interesting questions, first, whether an investigation carried out by a superior officer by virtue of a direction given to him by the State Government under Section 3 of the Indian Police Act 1861 is an investigation under Chapter XII so as to attract the applicability of Section 172 to a diary maintained by him in the course of such investigation and secondly, whether the report made by such officer as a result of the investigation carried out by him forms part of case diary within the meaning of Section 172. We do not, however, think it necessary to enter upon a consideration of these two questions and we shall assume for the purpose of our discussion that Mr. K.G. Bhagat, learned Counsel appearing on behalf of the State,

is right in his submission in regard to both these questions and that the reports made by Shri L.V. Singh setting out the result of his investigation form part of case diary so as to invite the applicability of Section 172. But, even if that be so, the question is whether these reports are protected from disclosure under Section 172 and that depends upon a consideration of the terms of this section.

7. The object of Section 172 in providing for the maintenance of a diary of his proceedings by the police officer making in investigation under Chapter XII has been admirably stated by Edge, C.J. in Queen- Empress v. Mannu (1897) 19 All. 360 in the following words:

The early stages of the investigation which follows on the commission of a crime must necessarily in the vast majority of cases be left to the police, and until the honesty, the capacity, the discretion and the judgment of the police can be thoroughly trusted, it is necessary, for the protection of the public against criminals, for the vindication of the law and for the protection of those who are charged with having committed a criminal offence that the Magistrate or Judge before whom the case is for investigation or for trial should have the means of ascertaining what was the information, true, false, or misleading which was obtained from day to day by the police officer who was investigating the case and what such police officer acted.

The criminal Court holding an inquiry or trial of a case is therefore empowered by Sub- section (2) of Section 172 to send for the police: diary of the case and the criminal court can use such diary, not as evidence in the case, but to aid it in such inquiry or trial. But, by reason of Sub- section (3) of Section 172, merely because the case diary is referred to by the criminal court, neither the accused nor his agent are entitled to call for such diary nor are they entitled to see it. If however the case diary is used by the police officer who has made it to refresh his memory or if the criminal court uses it for the purpose of contradicting such police officer in the inquiry Or trial, the provisions of Section 145, as the case may be, of the Indian Evidence Act would apply and the accused would be entitled to see the particular entry in the case diary which has been referred to for either of these purposes and so much of the diary as in the opinion of the Court is necessary to a full understanding of the particular entry so used. It will thus be seen that the bar against production and use of case diary enacted in Section 172 is intended to operate only in an inquiry or trial for an offence and even this bar is a limited bar, because in an inquiry or trial, the bar does not operate if the case diary is used by the police officer for refreshing his memory or the criminal court uses it for the purpose of contradicting such police officer. This bar can obviously have no application where a case diary is sought to be A produced and used in evidence in a civil proceeding under Article 32 or 226 of the Constitution and particularly when the party calling for the case diary is neither an accused nor his agent in respect of the offence to which the case diary relates. Now plainly and unquestionably the present writ petition which has been filed under Article 32 of 4 the Constitution to enforce the fundamental right guaranteed under Article 21 is neither an 'inquiry' nor a 'trial' for an offence nor is this Court hearing the writ petition a criminal court not are the petitttioners, accused or their agents so far as the offences arising out of their blinding are concerned. Therefore, even if the reports submitted by 5 Shri L.V. Singh as a result of his investigation could be said to form part of 'case diary', it is difficult to see how their production and use in the present writ petition under Article 32 of the Constitution could be said to be barred under Section 172.

8. Realising this difficulty created in his way by the specific language 5 of Section 172, Mr. K.G. Bhagat, learned advocate appearing on behalf of the State, made a valiant attempt to invoke the principle behind Section 172 for the purpose of excluding the reports of investigation submitted by Sh. L.V. Singh. He contended that if, under the terras of Section 172, the accused in an inquiry or trial is not entitled to call for the case diary or to look at it, save for a limited purpose, it is difficult to believe that the Legislature could have ever intended that the complainant or a third party should be entitled to call for or look at the case diary in some other proceeding, for that would jeopardise the secrecy of the investigation and defeat the object and purpose of Section 172 and therefore, applying the principle of that section, we should hold that the case diary is totally protected from disclosure and even the complainant or a third party cannot call for it or look at it in a civil proceeding. This contention is in our opinion wholly unfounded. It is based on what may be called an appeal to the spirit of Section 172 which is totally impermissible under any recognised canon of construction. Either production and use of case diary in a proceeding is barred under the terms of Section 172 or it is not; it is difficult to see how it can be said to be barred on an extended or analogical application of the principle supposed to be underlying that section, if it is not covered by its express terms. It must be remembered that we have adopted the adversary system of justice and in order that truth may emerge from the clash between contesting parties under this system, it is necessary that all facts relevant to the inquiry must be brought before the Court and no relevant fact must be shut- out, for otherwise the Court may get a distorted or incomplete picture of the facts and that might result in miscarriage of justice. To quote the words of the Supreme Court of United States in United States v. Nixon 418 v. 683 : 41 lawyers Edition (2nd series) 1039 "The need to develop all relevant facts in the adversary system is both fundamental and comprehensive. The ends of justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts within the frame work of the rules of evidence", it is imperative to the proper functioning of . the judicial process and satisfactory and certain ascertainment of truth that all relevant facts must be made available to the Court. But the law may, in exceptional cases, in order to protect more weighty and compelling competing interests, provide that a particular piece of evidence, though relevarft, shall not be liable to be found, infer alia, in Sections 122, 123, 124, 126 and 129 of the Indian Evidence Act and Sections 162 and 172 of the Criminal Procedure Code. But being exceptions to the legitimate demand for reception of all relevant evidence in the interest of justice, they must be strictly interpreted and not expansively constiued. "for they are in derogation of the search for truth". It would not, therefore, be right to extend the prohibition of Section 172 to cases not falling strictly within the terms of the section, by appealing to what may be regarded as the principle or spirit of the section. That is a feeble reed which cannot sustain the argument of the learned advocate appearing on behalf of the State. It would in fact be inconsistent with the Constitutional commitment of this Court to the rule of law.

9. That takes us to the question whether the reports made by Sh. L.V. Singh as a result of the investigation carried by him and his associates are relevant under any provision of the Indian Evidence Act so as to be liable to be produced and received in evidence. It is necessary, in order to answer this question, to consider what is the nature of the proceeding before us and what are the issues which arise in it. The proceeding is a writ petition under Article 32 for enforcing the

fundamental right of the petitioners enshrined in Article 21, The petitioners complain that after arrest, whilst under police custody, they were blinded by the members of the police force, acting not in their private capacity, but as police officials and their fundamental right to life guaranteed under Article 21 was therefore violated and for this violation, the State is liable to pay compensation to them. The learned Attorney General who at one stage appeared on behalf of the State at the hearing of the writ petition contended that the inquiry upon which the Court was embarking in order to find out whether or not the petitioners were blinded by the police officials whilst in police custody was irrelevant, since, in his submission, even if the petitioners were so blinded, the State was not liable to pay compensation to the petitioners first, because the State was not constitutionally or legally responsible for the acts of the police officers out side the scope of their power or authority and the Windings of the undertrial prisoners effected by the police could not therefore be said to constitute violation of their fundamental right under Article 21 by the State and secondly, even if there was violation of the fundamental right of the petitioners under Article 21 by reason of the Windings effected by the police officials, there was, on a true construction of that Article, no liability on the State to pay compensation to the petitioners. The attempt of the learned Attorney General in advancing this contention was obviously to preempt the inquiry which was being made by this Court, so that the Court may not proceed to probe further in the matter. But we do not think we can accede to this contention of the learned Attorney General. The two questions raised by the learned Attorney General are undoubtedly important but the arguments urged by him in regard to these two questions are not prime facie so strong and appealing as to persuade us to decide them as preliminary objections without first inquiring into the facts. Some serious doubts arise when we consider the argument of the learned Attorney General, if an officer of the State acting in his official capacity threatens to deprive a person of his life or personal liberty without the authority of law, can such person not approach the Court for injuncting the State from acting through such officer in violation of his fundamental right under Article 21 ? Can the State urge in defence in such a case that it is not infringing the fundamental right of the petitioner under Article 21, because the officer who is threatening, to do so is acting outside the law and therefore beyond the scope of his authority and hence the State is not responsible for his action? Would this not make a mockery of Article 21 and reduce it to nullity, a mere rape of sand, for, on this view, if the officer is acting according to law there would ex concessions be no breach of Article 21 and if he is acting without the authority of law, the State would be able to contend that it is not responsible for his action and therefore there is no violation of Article 21. So also if there is any threatened invasion by the State of the Fundamental Right guaranteed under Article 21, the petitioner who is aggrieved can move the Court under Article 32 for a writ injuncting such threatened invasion and if there is any continuing action of the State which is violative of the Fundamental Right under Article 21, the petitioner can approach the court under Article 32 and ask for a writ striking down the continuance of such action, but where the action taken by the State has already resulted in breach of the Fundamental Right under Article 21 by deprivation of some limb of the petitioner, would the petitioner have no remedy under Article 32 for breach of the Fundamental Right guaranteed to him? Would the court permit itself to become helpless spectator of the violation of the Fundamental Right of the petitioner by the State and tell the petitioner that though the Constitution has guaranteed the Fundamental Right to him and has also given him the Fundamental Right of moving the court for enforcement of his Fundamental Right, the court cannot give him any relief. These are some of the doubts which arise in our mind even in a prima facie consideration of the contention of the learned Attorney General and we do not, therefore, think it would be right to entertain this contention as a preliminary objection without inquiring into the facts of the case. If we look at the averments

made in the writ petition, it is obvious that the petitioners cannot succeed in claiming relief under Article 32 unless they establish that their Fundamental Right under Article 21 was violated and in order to establish such violation, they must show that they were blinded by the police officials at the time of arrest or whilst in police custody. This is the fundamental fact which must be established before the petitioners can claim relief under Article 32 and logically therefore the first issue to which we must address ourselves is whether this foundational fact is shown to exist by the petitioners. It is only if the petitioners can establish that they were blinded by the members of the police force at the time of arrest or whilst in police custody that the other questions raised by the learned Attorney General would arise for consideration and it would be wholly academic to consider them if the petitioners fail to establish this foundational fact. We are, therefore, of the view, as at present advised, that we should first inquire whether the petitioners were blinded by the police officials at the time of arrest or after arrest, whilst in police custody, and it is in the context of this inquiry that we must consider whether the reports made by Sh. L.V. Singh are relevant under the Indian Evidence Act so as to be receivable in evidence.

10. We may at this stage refer to one other contention raised by Mr. 3 K.G. Bhagat on behalf of the State that if the Court proceeds to hold an inquiry and comes to the conclusion that the petitioners were blinded by the members of the police force at the time of arrest or whilst in police custody, it would be tantamount to adjudicating upon the guilt of the police officers without their being parties (sic) the present writ petition and that would be grossly unfair and hence this inquiry should not be held by the Court until the investigation is completed and the guilt or innocence of the police officer is established. We cannot accept this contention of Mr. K.G. Bhagat. When the Court trying the writ petition proceeds to inquire into the issue whether the petitioners were blinded by police officials at the time of arrest or whilst in police custody, it does so, not for the purpose of adjudicating upon the guilt of any particular officer with a view to punishing him but for the purpose of deciding whether the fundamental right of the petitioners under Article 21 has been violated and the State is liable to pay compensation to them for such violation. The nature and object of the inquiry is altogether different from that in a criminal case and any decision arrived at in the writ petition on this issue cannot, have any relevance much less any binding effect, in any criminal proceeding which may be taken against a particular police officer. A situation of this kind sometimes arises when a claim for compensation for accident caused by negligent driving of a motor vehicle is made in a civil Court or Tribunal and in such a proceeding it has to be determined by the Court, for the purpose of awarding. compensation to the claimant, whether the driver of the motor vehicle was negligent in driving, even though a criminal case for rash and negligent driving may be pending against the driver. The pendency of a criminal proceeding cannot be urged as a bar against the Court trying a civil proceeding or a writ petition where a similar issue is involved. The two are entirely distinct and separate proceedings and neither is a bar against the other. It may be that in a given case if the investigation is still proceeding, the Court may defer the inquiry before it, until the investigation is completed or if the Court considers it necessary in the interests of Justice, it may postpone its inquiry even after the prosecution following upon the investigation is terminated, but that is the matter entirely for the exercise of the discretion of the Court and there is no bar precluding the Court from proceeding with the inquiry before it merely because the investigation or prosecution is pending.

11. It is clear from the aforesaid discussion that the fact in issue in the inquiry before the Court in the present writ petition is whether the petitioners were blinded by the members of the police force at the time of the arrest or whilst in police custody. Now in order to determine whether the reports made by Sh. L.V. Singh as a result of the investigation carried out by him and his associates are relevant, it is necessary to consider whether they have any bearing on the fact in issue required to be decided by the Court. It is common ground that Sh. L.V. Singh was directed by the State Government under Section 3 of the Indian Police Act, 1861 to investigate into twenty four cases of blinding of under- trial prisoners and First Information Reports were lodged that they were blinded by the police officers whilst in police custody. Sh. L.V. Singh through his associates carried out this investigation and submitted his reports in the discharge of the official duty entrusted to him by the State Government. These reports clearly relate to the issue as to how, in what manner and by whom the twenty- four undertrial prisoners were blinded, for that is the matter which Shri L.V. Singh was directed by the State Government to investigate. If that be so, it is difficult to say how the State can resist the production of these reports and their use as evidence in the present proceeding. These reports are clearly relevant under Section 35 of the Indian Evidence Act which reads as follows:

35. An entry in any public or other official book, register or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register of record is kept, is itself a relevant fact.

These reports are part of official record and they relate to the fact in issue as to how, and by whom the twenty- four under- trial prisoners were blinded and they are admittedly made by Sh. L.V. Singh, a public servant, in the discharge of his official duty and hence they are plainly and indubitably covered by Section 35. The language of Section 35 is so clear that it is not necessary to refer to any decided cases on the interpretation of that section, but we may cite two decisions to illustrate the applicability of this section in the present case. The first is the decision of this Court in Kanwar Lal Gupta v. Amar Nath Chawla MANU/SC/0277/1974 : [1975]2SCR259 . There the question was whether reports made by officers of the CID (Special Branch) relating to public meetings covered by them at the time of the election were relevant under Section 35 and this Court held that they were on the ground that they were "made by public servants, in discharge of their official duty and they were relevant under the first part of Section 35 of the Evidence Act, since they contained statements showing what were the public meetings held by the first respondent." This Court 5 in fact followed an earlier decision of the Court in P.C.P. Reddiar v. S. Perumal MANU/SC/0454/1971 : [1972]2SCR646 . So also in Jagdat v. Sheopal AIR 1927 Oudh 323, Wazirhasan J. held that the result of an inquiry by a Kanungo under Section 202 of the CrPC 1898 embodied in the report is an entry in a public record stating a fact in issue and made by a public servant in the discharge of his official duties and the report is therefore admissible in evidence under Section 35. We find that a similar view was taken by a Division Bench of the Nagpur High Court in Chandulal v. Pushkar Rai AIR 1952 Nagpur 271 where the learned Judges held that reports made by Revenue Officers, though not regarded as having judicial authority, where they express opinions on the private rights of the parties are relevant under Section 35 as reports made by public officers in the discharge of their official duties, in so far as they supply information of official proceedings and historical facts. The Calcutta High Court also held in Lionell Edweris Limited v. State of West Bengal MANU/WB/0056/1967 :

AIR1967Cal191 , that official correspondence from the Forest Officers to his superior, the conservator of Forests, carried on by the Forest Officer, in the discharge of his official duty would be admissible m evidence under Section 35. There is therefore no doubt in our mind that the reports made by Sh. L.V. Singh setting forth the result of the investigation carried on by him and his associates are clearly relevant under Section 35 since they relate to a fact in issue and are made by a public servant in the discharge of his official duty. It is indeed difficult to see how in a writ petition against the State Government where the complaint is that the police officials of the State Government blinded the petitioners at the time of arrest or whilst m police custody, the State Government can resist production of a report in regard to the truth or otherwise of the complaint, made by a highly placed officer persuant to the direction issued by the Mate Government. We are clearly of the view that the reports made by Shri L.V. Singh as a result of the investigation carried out ', by him and his associates are relevant under Section 35 and they are liable to be produced by the State Government and used in evidence in the present writ petition. Of course, what evidentiary value must attach to the statements contained in these reports is a matter which would have to be decided by the Court after considering these reports. It may ultimately be found that these reports have not much evidentiary value and even if they contain any statements adverse to the Mate Government, it may be possible for the State Government to dispute their correctness or to explain them away, but it cannot be said that these reports are not relevant. These reports must therefore be produced by the State and taken on record of the present writ postition. We may point out that though in our order dated 16th February 1981, we have referred to these reports as having been made by Shri L.V. Singh and his associates between January 10 and January 20, 1981, it seems that there has been some error on our part m mentioning the outer date as January 20, 1981 for we find that some of these reports were submitted by Shri L.V. Singh even after January 20, 1981 and the last of them was submitted on 27th January 1981 . All these reports including the report submitted on 9th December, 1980 must therefore be filed by the State and taken as 5 forming part of the record to be considered by the Court in deciding the question at issue between the parties.

12. What we have said above must apply equally in regard to the correspondence and notings referred to as items three and four in the order dated 16th February 1981 made by us. These notings and 5 correspondence would throw light on the extent of involvement, whether by acts of commission or acts of omission, of the State in the Winding episode and having been made by Shri L.V Singh and M.K. Jha in discharge of their official duties, they are clearly relevant under Section 35 and they must therefore be produced and taken on record in the writ petition, so also the reports submitted by Inspector and Sub- Inspector of CID to Gajendra Narain, DIG, Bhagalpur on 18th July and his letter to Shri K.D. Singh, Superintendent of Police, CID, Patna containing hand- written endorsement of Shri M.K. Jha must for the same reasons be held to be relevant under Section 35 and must be produced by the State and be taken as forming part of the record of the writ petition.

13. Since all these documents are required by the Central Bureau of Investigation for the purpose of carrying out the investigation which has been commenced by them pursuant to the approval given by the State Government under section 6 of the Delhi Special Police Establishment Act, we would direct that five sets of photostat copies of these documents may be prepared by the office, one for Mrs. Hingorani, learned advocate appearing on behalf of the petitioners, one for Mr. K.G.

Bhagat, learned advocate appearing on behalf of the State, one for Dr. Chitale who is appearing amicus curiae at our request and two for the Court, and after taking such photostat copies these documents along with the other documents which have been handed over to the Court by the State shall be returned immediately to Mr. K.G. Bhagat, learned advocate appearing on behalf of the State, for being immediately made available to the Central Bureau of Investigation for carrying out its investigation so that the investigation by the Central Bureau of Investigation may not be impeded or delayed. We hope and trust that the Central Bureau of Investigation will complete its investigation expeditiously without any avoidable delay.

Back to Section 164 of Code of Criminal Procedure, 1973

MANU/SC/0082/1963

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 31 of 1962

Decided On: 16.08.1963

State of Uttar Pradesh Vs. Singhara Singh and Ors.

Hon'ble Judges/Coram:

A.K. Sarkar, J.C. Shah and M. Hidayatullah, JJ.

JUDGMENT

A.K. Sarkar, J.

1. On March 20, 1959 Raja Ram, a shop- keeper, of Afzalgarh in the State of Uttar Pradesh was murdered by gunshot in his shop. Seven persons including the three respondents, Singhara Singh, Bir Singh and Tega Singh were prosecuted for this murder. The learned Additional Sessions Judge of Bijnor before whom the trial was held, convicted the respondent Singhara Singh of the murder under s. 302 of the Indian Penal Code and sentenced him to death. He convicted the respondent Bir Singh and Tega Singh of abetment of the murder under s. 302 read with Sections 120B, 109 and 114 of the said Code and sentenced Bir Singh to death and Tega Singh to imprisonment for life. He acquitted the other accused persons.

2. The respondents appealed from the conviction to the High Court at Allahabad and the State from the acquittal. The High Court had also before it the usual reference for confirmation of the sentences of death. The High Court allowed the appeals of the respondents, dismissed the appeals of the State and rejected the reference. The State has now filed this appeal against the judgment of the High Court by special leave. This Court however granted the leave only so far as the judgment of the High Court concerned the three respondents. We are not, therefore, concerned with the other accused persons and the order acquitting them is no more in question.

3. The only point argued in this appeal was as to the admissibility of certain oral evidence. It is conceded that if that evidence was not admissible, then there is not other evidence on which the respondents can be convicted. In other words, it is not in dispute that if that evidence was not admissible the High Court's decision acquitting the respondents cannot be questioned. It is therefore not necessary to state the facts in details.

4. Now, the evident with which this case is concerned was given by a learned magistrate, Mr. Dixit, of confessions of guilt made to him by the respondents and purported to have been recorded by him under s. 164 of the Code of Criminal Procedure. The terms of that section and certain other section of the Code on the interpretation of which this case depends are as follows :

S. 164 (1) Any Presidency Magistrate, any Magistrate of the first class and any Magistrate of the second class specially empowered in this behalf by the State Government may, if he is not a police- officer record, any statement or confession made to him in the course of an investigation under this Chapter or under any other law for the time being in force or at any time afterwards before the commencement of the inquiry or trial.

(2) Such statement shall be recorded in such of the manners hereinafter prescribed for recording evidence as is, in his opinion, best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in section 364, and such statements or confessions shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

(3) A Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that if he does so it may be used as evidence against him and no Magistrate shall record and such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and, where records any confession, he shall make a memorandum at the foot of such record to the following effect :-

I have explained to (name) that the does not bound make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntary made. It was taken in my presence and hearing and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

5. (Signed) A. B. Magistrate.

S. 364 (1) Whenever the accused is examined by and Magistrate, or by any Court other than a High Court for a Part A State or a Part B State the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full in the language in which he is examined, or, if that is not practicable, in the language of the Court or in English; and such record shall be shown or read to him, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

(2) When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge

shall certify under his own hand that the examination was taken in his presence and hearing and that the record contains full and true account of the statement made by the accused.

(3) In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound, as the examination proceeds, to make a memorandum thereof in the language of the Court, or in English, if he is sufficiently acquainted with the latter language; and such memorandum shall be written and signed by the Magistrate or Judge was his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability.

(4) Nothing in this section shall be deemed to apply to the examination of an accused person under section 263 or in the course of a trial held by a Presidency Magistrate.

S. 533 (1) If any Court, before which a confession or other statement of an accused person recorded or purporting to be recorded under section 164 or section 364 is tendered or has been received in evidence, finds that any of the provisions of either of such sections have not been complied with by the Magistrate recording the statement, it shall take evidence that such person duly made the statement recorded; and, notwithstanding anything contained in the Indian Evidence Act, 1872, section 91 such statement shall be admitted if the error has not injured the accused as to his defence on the merits.

(2) The provisions of this section apply to Courts of Appeal, Reference and Revision.

6. A confession duly recorded under s. 164 would no doubt be a public document under s. 74 of the Evidence Act which would prove itself under s. 80 of that Act. Mr. Dixit, who recorded the confession in this case was a second class magistrate and the prosecution was unable to prove that he had been specially empowered by the State Government to record a statement or confession under s. 164 of the Code. The trial, therefore, proceeded on the basis that he had not been so empowered. That being so, it was rightly held that the confessions had not been recorded under s. 164 and the record could not be put in evidence under Sections 74 and 80 of the Evidence Act to prove them. The prosecution, thereupon called Mr. Dixit to prove these confessions, the record being used only to refresh his memory under s. 159 of the Evidence Act. It is the admissibility of this oral evidence that is in question.

7. The Judicial Committee in Nazir Ahmed v. The King Emperor L.R. 63 IndAp 372 held that when a magistrate of the first class records a confession under s. 164 but does not follow the procedure laid down in that section, oral evidence of the confession in inadmissible. Nazir Ahmed's L.R. 63 IndAp 372. case naturally figured largely in the arguments presented to the Court and the Court below. The learned trial Judge following Ashrafi v. The State I.L.R. [1960] 2All. 488 to which we will have to refer latter, held that Nazir Ahmed's case L.R. 63 IndAp 372.

had no application where, as in the present case, a magistrate not authorised to do so purports to recorded a confession under s. 164 and on that basis admitted the oral evidence. The learned Judges of the High Court observed that the present case was governed by Nazir Ahmed's case (L.R. 63 IndAp 372.) and that Asharfi's case I.L.R. [1960] 2All. 488 had no application because it dealt "with the question of identification parades held by Magistrates. There was no occasion to discuss the question of confession recorded before Magistrates." In this view of the matter the learned Judges of the High Court held the oral evidence inadmissible and acquitted the respondents. It would help to clear the ground to state that it had not been argued in Nazir Ahmed's case L.R. 63 IndAp 372 that s. 533 of the Code had any operation in making any oral evidence admissible and the position is the same in the present case. It would not, therefore, be necessary for us to consider whether that section had any effect in this case in making any evidence admissible.

8. In Nazir Ahmed's case L.R. 63 IndAp 372 the Judicial Committee observed that the principle applied in Taylor v. Taylor [1875] 1 Ch. D. 426 a Court, namely, that where a power is given to do a certain thing in a certain way, the thing must be done in that or nor at all and that other methods of performance are necessarily forbidden, applied to judicial officers making records under s. 164 and, therefore, held that magistrate could not give oral evidence of the confession made to him which he had purported to record under s. 164 of the Code. It was said that otherwise all the precautions and safe guards laid down in Sections 164 and 364, both which had to be read together, would become of such trifling value as to be almost idle and that "it would be an unnatural construction to hold that any other procedure was permitted than which is laid down with such minute particularity in the section themselves."

9. The rule adopted in Taylor v. Taylor [1875] 1 Ch. D. 426 is well recognised and is founded on sound principle. Its result is that if a statue has conferred a power to do an act and has laid down the method in which power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted.

A magistrate, therefore, cannot in the course of investigation record a confession except in the manner laid down in s. 164. The power to record the confession had obviously been given so that the confession might be proved by the record of it made in the manner laid down. If proof of the confession by other means was permissible the whole provision of s. 164 including the safeguards contained in it for the protection of accused persons would be rendered nugatory. The section, therefore, by conferring on magistrates the power to record statements or confessions, by necessary implication, prohibited a magistrate from giving oral evidence of the statements or confessions made to him.

10. Mr. Aggarwala does not question the validity of the principle but says that Nazi Ahmed's case L.R. 63 IndAp 372 was wrongly decided as the principle was not applicable to its facts. He put his challenge to the correctness of the decision on two grounds, the first of which was that the principle applied in Taylor v. Taylor [1875] 1 Ch. 426 had no application where the statutory

provision conferring the power was not mandatory and that the provisions of s. 164 were not mandatory as would appear from the term of s. 533.

11. This contention seems to us to be without foundation. Quite clearly, the power conferred by s. 164 to record a statement or confession is not one which must be exercised. The Judicial Committee expressly said so in Nazir Ahmed's case L.R. 63 IndAp 372 and we did not understand Mr. Aggarwala to question this part of the judgment. What he meant was that s. 533 of the Code showed that in recording a statement or confession under s. 164, it was not obligatory for the magistrate to follow the procedure mentioned in it. Section 533 says that if the court before which a statement or confession of an accused person purporting to be recorded under s. 164 or s. 364 is tendered, in evidence, "finds that and of the provisions of either of such sections have not been complex with by the magistrate recording the statement, it shall take evidence that such person duly made the statement recorded." Now a statement would not have been "duly made" unless the procedure for making it laid down in s. 164 had been followed. What s. 533 therefore, does is to permit oral evidence to be given to prove that the procedure laid down in s. 164 had in fact been followed when the court finds that the record produced before it does not show that that was so. If the oral evidence establishes that the procedure had been followed, then only can the record be admitted. Therefore, far from showing that the procedure laid down in s. 164 is not intended to be obligatory, s. 533 really emphasises that that procedure has to be followed. The section only permits oral evidence to prove that the procedure had actually been followed in certain cases where the record which ought to show that does not on the face of it do so.

12. The second ground on which Mr. Aggarwala challenged the decision in Nazir Ahmed's case L.R. 63 IndAp 372. was that object of s. 164 of the Code is to permit a record being kept so as to take advantage of Sections 74 and 80 of the Evidence Act and avoid the inconvenience of having to call the magistrate to whom the statement or confession had been made, to prove it. The contention apparently is that the section was only intended to confer a benefit on the prosecution and, therefore, the sole effect of the disregard of its provisions would be to deprive the prosecution of that benefit, for it cannot then rely on Sections 74 and 80 the Evidence Act and has to prove the confession by other evidence including the oral evidence of the magistrate recording it. It was, therefore, said that the principle adopted in Nazir Ahmed's case L.R. 63 IndAp 372 had no application in interpreting s. 164.

13. A similar argument was advanced in Nazir Ahmed's case L.R. 63 IndAp 372 and rejected by the Judicial Committee. We respectfully agree with that view. The section gives power make a record of the confession made by an accused which may be used in evidence against him and at the same time it provides certain safeguards for his protection by laying down the procedure subject to which alone the record may be made and used in evidence. The record, if duly made, may no doubt be admitted in evidence without further proof but if it had not been so made and other evidence was admissible to prove that the statements recorded had been made, then the creation of the safeguards would have been futile. The safeguards were obviously not created for nothing and it could not have been intended that the safeguards might at will of the prosecution, be bypassed. That is what would happen if oral evidence was admissible to prove a confession

purported to have been recorded under s. 164. Therefore it seems to us that the object of s. 164 was not to give the prosecution the advantage of Sections 74 and 80 of the Evidence Act but to provide for evidence being made available to the prosecution subject to due protection of the interest of the accused.

14. We have to point out that the correctness of the decision of Nazir Ahmed's case L.R.63 IndAp 372 has been accepted by this Court in at least two cases, namely, Rao Shiv Bahadur Chand v. The State of Vindhya Pradesh MANU/SC/0053/1954 : 1954CriLJ910 and Deep Chand v. State of Rajasthan MANU/SC/0118/1961 : [1962]1SCR662 . We have found no reason to take a different view.

15. Mr. Aggarwala then contended that Nazir Ahmed's case L.R. 63 IndAp 372 was distinguishable. He said that all that the Judicial Committee decided in Nazir Ahmed's case was that if a Presidency Magistrate, a Magistrate of the first class or a Magistrate of the second class specially empowered in that behalf records a statement or confession under s. 164 but the procedure laid down in it is not complied with, he cannot give oral evidence to prove the statement or confession. According to Mr. Aggarwala, it does not follow from that decision that a Magistrate of a class not mentioned in the section, for example, a magistrate of the second class not specially, empowered by the State Government cannot give oral evidence of a confession made to him which he had purported to record under s. 164 of the Code.

16. It is true that the Judicial Committee did not have to deal with a case like the present one where a magistrate of the second class not specially empowered had purported to record a confession under s. 164. The principle applied in that decision would however equally prevent such magistrate from giving oral evidence of the confession. When a statute confers a power on certain judicial officers that power can obviously be exercised only by those officers. No other officer can exercise that power, for it has not been given to him. Now the power has been conferred by s. 164 on certain magistrates of higher classes. Obviously it was not intended to confer the power on magistrates of lower classes. If, therefore, a proper construction of s. 164 as we have held, is that a magistrate of a higher class prevented from giving oral evidence of a confession made to him because thereby the safeguards created for the benefit of an accused person by s. 164 would be rendered nugatory, it would be an unnatural construction of the section to hold that the safeguards were not thought necessary and could be ignored, where the confession had been made to a magistrate of lower class and that such a magistrate was, therefore, free to give oral evidence of confession made to him. We cannot put an interpretation on s. 164 which produces the a anomaly that while its possible for higher class magistrates to practically abrogate the safeguards created in s. 164 for the benefit of an accused person, it is open to lower class magistrate to do so. We, therefore, think that the decision in Nazir Ahmed's case L.R. 63 IndAp 372 also covers the case in had and that on the principles there applied, here too oral evidence given by Mr. Dixit of the confession made to him must be held inadmissible.

17. It remains now to notice in some of the decisions on which Mr. Aggarwala relied in support of his contention. First of all we have to refer to Asharfi's case I.L.R. [1960] 2 All. 488. That was a case which was concerned with the memorandum of an identification parade prepared by a magistrate of the first class. It was observed in that case that Nazir Ahmed's case L.R. 63 IndAp 372. was authority for the proposition that where a magistrate belongs to a class mentioned in s. 164, be must Act in terms of it or not at all, but where the proceedings are held before any to the magistrate the statement is of under the unwritten general law and Nazir Ahmed's case had no application. It was also observed that an identification memorandum was statement recorded under s. 164 when the record was made by a magistrate of a class mentioned in it but where the memorandum was prepared by magistrate of another class it was not a record made under that section and the magistrate making the record can give oral evidence in proof of the statements in the memorandum. We are not very clear as to what exactly was intended to be laid down in this case about s. 164. Furthermore it does not appear to us from the report how the observations referred to above were necessary for the decision of the case, for, as earlier stated, the identification memorandum considered there had been prepared by a magistrate of the first class. It is not necessary for us in this judgment to decide whether or how far a memorandum of identification proceeding is a statement recorded under s. 164 and we do not wish to be understood as lending our support to the view expressed on that question in Asharfi's case I.L.R. [1960] 2 All. 488. We think it enough to state that for the reasons earlier mentioned, we are unable to share the view - if that was the view expressed in Asharfi's case - that where a statement or confession is made in the course of investigation to a magistrate not belonging to one of the classes mentioned in s. 164, he can prove the statement or confession by oral evidence. We may state here that later judgment of the same High Court has expressed some doubt about the correctness of that case : see Ram Sanehi v. State MANU/UP/0087/1963 : AIR1963All308 .

18. The next case to which reference was made by Mr. Aggarwala was Ghulam Hussain v. The King L.R. 77 IndAp 65.. That case dealt with the question whether statement recorded under s. 164 which did not amount to a confession could be used against the maker as an admission by him within Sections 18 to 21 of the Evidence Act and it was held, that it could. The Judicial Committee observed that "the fact that an admission is made to a Magistrate while he is functioning under s. 164 of the Code of Criminal Procedure cannot take it outside the scope of the Evidence Act." That case only held that the relevancy of a statement recorded under s. 164 had to be decided by the provisions of the Evidence Act. We have nothing to do with any question as to relevance of evidence. The question before us is whether a confession which is relevant can be proved by oral evidence in view of the provision of s. 164 of the Code. The question dealt with in Ghulam Hussain's case L.R. 77 IndAp 65. was quite different and that case has no bearing on the question before us.

19. It is clear that the observation quoted earlier from Ghulam Hussain's case L.R. 77 IndAp 65. does not, as argued by Mr. Aggarwala, support the contention that where a confession has been purported to be recorded under s. 164 but by a magistrate who is not one of those mentioned it, the Evidence Act can sill be called in aid to admit oral evidence to prove the confession. All that the Judicial Committee did in that case was to hold that an admission in a statement duly recorded under s. 164 was substantive evidence of the facts stated in it under Sections 18 to 21 of the Evidence Act. The Judicial Committee made that observation for this purpose only and to

reject an argument that the cases of Brij Bhushan Singh v. King Emperor L.R. 73 IndAp 1, and Bhuboni Sahu v. The King L.R. 76 IndAp 147. showed that the admission made in the statement recorded under s. 164 could not be used against an accused person as substantive evidence of a fact stated. The Judicial Committee pointed out that "In these cases the Board was considering whether a statement made, by a witness under s. 164 of the Code of Criminal Procedure could be used against the accused substantive evidence of the facts stated, and it was held that such a statement could not be used in that way."

20. Another case cited was Emperor v. Ram Naresh I.L.R. [1939] All. 377.. What had happened there was that two accused persons walled into the court of a magistrate and wanted to make a confession. The magistrate called a petition- writer and the accused persons dictated an application to him and that was taken down by the petition- writer and signed by them That petition was admitted in evidence under s. 21 of the Evidence Act. It was held, and we think rightly, that Nazir Ahmed's case L.R. 63 IndAp 372. did not prevent the petition being admitted in evidence because it only forbade certain oral evidence being given. This case turned on wholly different facts and is of no assistance.

21. We may also refer to, In re Natesan A.I.R. 1960 Mad. 443 where it was observed that the decision in Nazir Ahmed's case L.R. 63 IndAp 372. might require reconsideration in view of the observations of this Court in Willie Slaney v. The State of Madhya Pradesh MANU/SC/0038/1955 : 1956CriLJ291 . The actual decision in In re Natesan does not affect the question before us and with regard to the aforesaid observation made in it we think it enough on the present occasion to say that we are unable to accept it as correct.

22. We think that the High Court in the present case rightly rejected the oral evidence of Mr. Dixit.

23. The result is that the appeal fails is dismissed.

24. Appeal dismissed.

MANU/SC/0335/1992

Back to Section 167 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal Nos. 310- 311 of 1992

Decided On: 08.05.1992

Central Bureau of Investigation, Special Investigation Cell- I, New Delhi Vs. Anupam J. Kulkarni

Hon'ble Judges/Coram:

A.M. Ahmadi and K. Jayachandra Reddy, JJ.

ORDER

K. Jayachandra Reddy, J.

1. Leave granted.

2. An important question that arises for consideration is whether a person arrested and produced before the nearest Magistrate as required under Section 167(1) CrPC can still be remanded to police custody after the expiry of the initial period of 15 days. We propose to consider the issue elaborately as there is no judgment of this Court on this point. The facts giving rise to this question may briefly be stated. A case relating to abduction of four Bombay based diamond merchants and one Shri Kulkarni was registered at Police Station, Tughlak Road, New Delhi on 16.9.91 and the investigation was entrusted to C.B.I. During investigation it was disclosed that not only the four diamond merchants but also Shri Kulkarni, who is the respondent before us and one driver Babulal were kidnapped between 14th and 15th September, 1991 from two Hotels at Delhi. It emerged during investigation that the said Shri Kulkarni was one of the associates of the accused one Shri R. Chaudhary responsible for the said kidnapping of the diamond merchants. On the basis of some available material Shri Kulkarni was arrested on 4.10.91 and was produced before the Chief Metropolitan Magistrate, Delhi on 5.10.91. On the request of the C.B.I. Shri Kulkarni was remanded to judicial custody till 11.10.91. On 10.10.91 a test identification parade was arranged but Shri Kulkarni refused to cooperate and his refusal was recorded by the concerned Munsif Magistrate. On 11.10.91 an application was moved by the investigating officer seeking police custody of Shri Kulkarni which was allowed. When he was being taken on the way Shri Kulkarni pretended to be indisposed and he was taken to the Hospital the same evening where he remained confined on the ground of illness upto 21.10.91 and then he was referred to Cardiac Out- patient Department of G.B.Pant Hospital. Upto 29.10.91 Shri Kulkarni was again remanded to judicial custody by the Magistrate and thereafter was sent to Jail. In view of the fact that the Police could not take him into police custody all these days the investigating officer again applied to the court of Chief Metropolitan Magistrate for police custody of Shri Kulkarni. The Chief Metropolitan Magistrate relying on a judgment of the Delhi High Court in State (Delhi Admn.)

v. Dharam Pal and Ors. MANU/DE/0059/1981 : 1982 Cri L.J. 1103 refused police remand. Questioning the same a revision was filed before the High Court of Delhi. The learned Single Judge in the first instance considered whether there was material to make out a case of kidnapping or abduction against Shri Kulkarni and observed that even the abducted persons namely the four diamond merchants do not point an accusing finger against Shri Kulkarni and that at any rate Shri Kulkarni himself has been interrogated in jail for almost seven days by the C.B.I. and nothing has been divulged by him, therefore, it is not desirable to confine him in jail and in that view of the matter he granted him bail. The High Court, however, did not decide the question whether or not after the expiry of the initial period of 15 days a person can still be remanded to police custody by the magistrate before whom he was produced. The said order is challenged in these appeals.

3. The learned Additional Solicitor General appearing for the C.B.I. the appellant contended that the Chief Metropolitan Magistrate erred in not granting police custody and that Dharam Pal's case on which he placed reliance has been wrongly decided. The further contention is that the High Court has erred in granting bail to Shri Kulkarni without deciding the question whether he can be remanded to police custody as prayed for by the C.B.I. Shri Ram Jethmalani, learned Counsel for the respondent accused submitted that the language of Section 167 Cr. PC is clear and that the police custody if at all be granted by the Magistrate should be only during the period of first 15 days from the date of production of the accused before the magistrate and not later and that subsequent custody if any should only be judicial custody and the question of granting police custody after the expiry of first 15 days remand does not arise.

4. Section 167 Cr. PC 1973 after some changes reads as under:

167. Procedure when investigation cannot be completed in twenty- four hours.- (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty- four hours fixed by Section 57, and there are grounds for believing that the accusation or information is well founded, the officer- in- charge of the police station or the police officer making the investigation, he if is not below the rank of sub- inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that-

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence., And, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation 1 - For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be so detained in custody so long as he does not furnish bail.

Explanation II.- If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorising detention.

(2A) Notwithstanding anything contained in Sub- section (1) or Sub- section (2), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub- inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody, as he may think for a term not exceeding seven days in the aggregate, and, on the expiry of the period of the detention so authorised, the accused person

shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub- section, shall be taken into account in computing the period specified in paragraph 2(a) of the proviso to Sub- section (2);

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.

(3) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

(4) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.

(5) If in any case triable by a Magistrate as a summons- case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.

(6) Where any order stopping further investigation into an offence has been made under Sub-section (5), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under Sub-section (5) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify.

Before proceeding further it may be necessary to advert to the legislative history of this section. The old Section 167 of 1898 Code provided for the detention of an accused in custody for a term not exceeding 15 days on the whole. It was noted that this was honoured more in the breach than in the observance and that a practice of doubtful legality grew up namely the police used to file an incomplete preliminary charge- sheet and move the court for remand under Section 344 corresponding to the present Section 309 which was not meant for during investigation. Having regard to the fact that there may be genuine cases where investigation might not be completed in 15 days, the Law Commission made certain recommendations to confer power on the Magistrate to extend the period of 15 days detention. These recommendations are noticed in the objects and reasons of the Bill thus:

...At present, Section 167 enables the Magistrate to authorise detention of an accused in custody for a term not exceeding 15 days on the whole. There is a complaint that this provision is honoured more in the breach than in the observance and that the police investigation takes a much longer period in practice. A practice of doubtful legality has grown whereby the police file a "preliminary" or incomplete chargesheet and move the court for remand under Section 344 which is not intended to apply to the stage of investigation. While in some cases the delay in investigation may be due to the fault of the police, it cannot be denied that there may be genuine cases where it may not be practicable to complete the investigation in 15 days. The Commission recommended that the period should be extended to 60 days, but if this is done, 60 days would become the rule and there is no guarantee that the illegal practice referred to above would not continue. It is considered that the most satisfactory solution of the problem would be to confer on the Magistrate the power to extend the period of extension beyond 15 days, whenever he is satisfied that adequate grounds exist for granting such extension....

The Joint Committee, however, with a view to have the desired effect made provision for the release of the accused if investigation is not duly completed in case where accused has been in custody for some period. Sub- sections (5) and (6) relating to offences punishable for imprisonment for two years were inserted and the Magistrate was authorised to stop further investigation and discharge the accused if the investigation could not be completed within six months. By the Cr.PC Amendment Act 1978 proviso (a) to Sub- section (2) of Section 167 has been further amended and the Magistrate is empowered to authorise the detention of accused in custody during investigation for an aggregate period of 90 days in cases relating to major offences and in other cases 60 days. This provision for custody for 90 days intended to remove difficulties which actually arise in completion of the investigation of offences of serious nature. A new Sub-section (2A) also has been inserted empowering the Executive Magistrate to make an order for remand but only for a period not exceeding seven days in the aggregate and in cases where Judicial Magistrate is not available. This provision further lays down that period of detention ordered by such Executive Magistrate should be taken into account in computing the total period specified in Clause (a) of Sub- section (2) of Section 167. Now coming to the object and scope of Section 167 it is well- settled that it is supplementary to Section 57. It is clear from Section 57 that the investigation should be completed in the first instance within 24 hours if not the arrested person should be brought by the police before a magistrate as provided under Section 167. The law does not authorise a police officer to detain an arrested person for more than 24 hours exclusive of the time necessary for the journey from the place of arrest to the magistrate court. Sub- section (1) of Section 167 covers all this procedure and also lays down that the police officer while forwarding the accused to the nearest magistrate should also transmit a copy of the entries in the diary relating to the case. The entries in the diary are meant to afford to the magistrate the necessary information upon which he can take the decision whether the accused should be detained in the custody further or not. It may be noted even at this stage the magistrate can release him on bail if an application is made and if he is satisfied that there are no grounds to remand him to custody but if he is satisfied that further remand is necessary then he should act as provided under Section 167. It is at this stage Sub- section (2) comes into operation which is very much relevant for our purpose. It lays down that the magistrate to whom the accused person is thus forwarded may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as he thinks fit for a term not exceeding fifteen days in the whole. If such magistrate has no jurisdiction to try the case or commit it for trial and if he considers further detention unnecessary, he may order the accused to be forwarded

to a magistrate having such jurisdiction. The section is clear in its terms. The magistrate under this section can authorise the detention of the accused in such custody as he thinks fit but it should not exceed fifteen days in the whole. Therefore the custody initially should not exceed fifteen days in the whole. The custody can be police custody or judicial custody as the magistrate thinks fit. The words "such custody" and "for a term not exceeding fifteen days in the whole" are very significant. It is also well- settled now that the period of fifteen days starts running as soon as the accused is produced before the Magistrate.

5. Now comes the proviso inserted by Act no. 45 of 1978 which is of vital importance in deciding the question before us. This proviso comes into operation where the magistrate thinks fit that further detention beyond the period of fifteen days is necessary and it lays down that the magistrate may authorise the detention of the accused person otherwise than in the custody of the police beyond the period of fifteen days. The words "otherwise than in the custody of the police beyond the period of fifteen days" are again very significant.

6. The learned Additional Solicitor General appearing for the C.B.I. contended that a combined reading of Section 167(2) and the proviso therein would make it clear that if for any reason the police custody cannot be obtained during the period of first fifteen days yet a remand to the police custody even later is not precluded and what all that is required is that such police custody in the whole should not exceed fifteen days. According to him there could be cases where a remand to police custody would become absolutely necessary at a later stage even though such an accused is under judicial custody as per the orders of the magistrate passed under the proviso. The learned Additional Solicitor General gave some instances like holding an identification parade or interrogation on the basis of the new material discovered during the investigation. He also submitted that some of the judgments of the High Courts particularly that of the Delhi High Court relied upon by the Chief Metropolitan Magistrate do not lay down the correct position of law in this regard. In Gian Singh v. State (Delhi Administration) MANU/DE/0052/1982 : 1981 Cri.L.J. 100 a learned Single Judge of the High Court held that once the accused is remanded to judicial custody he cannot be sent back again to police custody in connection with or in continuation of the same investigation even though the first period of fifteen days has not exhausted. Again the same learned Judge Justice M.L. Jain in Trilochan Singh v. The State (Delhi Administration) MANU/DE/0248/1981 : 20(1981)DLT20 took the same view. In State (Delhi Administration) v. Dharam Pal and Ors. MANU/DE/0059/1981 : 1982 Cri.L.J. 1103 a Division Bench of the Delhi High Court overruled the learned Single Judge's judgments in Gian Singh's case and Trilochan Singh's case. The Division Bench held that the words "from time to time" occurring in the Section show that several orders can be passed under Section 167(2) and that the nature of the custody can be altered from judicial custody to police custody and vice- versa during the first period of fifteen days mentioned in Section 167(2) of the Code and that after fifteen days the accused could only be kept in judicial custody or any other custody as ordered by the magistrate but not in the custody of the police. In arriving at this conclusion the Division Bench sought support on an earlier decision in State v. Mehar Chand MANU/DE/0102/1967 : 1969 Delhi Law Times 179. In that case the accused had been arrested for an offence of kidnapping and after the expiry of the first period of fifteen days the accused was in judicial custody under Section 344 Cr. PC (old code). At that stage the police found on investigation that an offence of murder also was prima facie made out against the said accused. Then the question arose whether the said accused who was in

judicial custody should be sent to the police custody on the basis of the discovery that there was aggravated offence. The magistrate refused to permit the accused to be put in police custody. The same was questioned before the High Court. Hardy, J. held that an accused who is in magisterial custody in one case can be allowed to be remanded to police custody in other case and on the same rule he can be remanded to police custody at a subsequent stage of investigation in the same case when the information discloses his complicity in more serious offences and that on principle, there is no difference at all between the two types of cases. The learned Judge further stated as under:

I see no insuperable difficulty in the way of the police arresting the accused for the second time for the offence for which he is now wanted by them. The accused being already in magisterial custody it is open to the learned Magistrate under Section 167(2) to take the accused out of jail or judicial custody and hand him over to the police for the maximum period of 15 days provided in that Section. All that he is required to do is to satisfy himself that a good case is made out for detaining the accused in police custody in connection with investigation of the case. It may be that the offences for which the accused is now wanted by the police relate to the same case but these are altogether different offences and in a way therefore it is quite legitimate to say that it is a different case in which the complicity of the accused has been discovered and police in order to complete their investigation of that case require that the accused should be associated with that investigation in some way.

The Division Bench in Dharam Pal's case referring to these observations of Hardy, J. observed that "We completely agree with Hardy, J. in coming to the conclusion that the Magistrate has to find out whether there is a good case for grant of police custody," A perusal of the later part of the judgment in Dharam Pal's case would show that the Division Bench referred to these observations in support of the view that the nature of the custody can be altered from judicial custody to police custody or vice- versa during the first period of fifteen days mentioned in Section 167(2) of the Code, but however firmly concluded that after fifteen days the accused could only be in judicial custody or any other custody as ordered by the magistrate but not in police custody. Then there is one more decision of the Delhi High Court in State (Delhi Administration) v. Ravinder Kumar Bhatnagar MANU/DE/0052/1982 : 1982 Cri.L.J. 2366 where a Single Judge after relying on the judgment of the Division Bench in Dharam Pal's case held that the language of Section 167(2) is plain and that words "for a term not exceeding fifteen days in the whole" would clearly indicate that those fifteen days begin to run immediately after the accused is produced before the magistrate in accordance with Sub- section (1) and the police custody cannot be granted after the lapse of the "first fifteen days". In State of Kerala v. Sadanandan 1984 K.L.T. 747 a Single Judge of the Kerala High Court held that the initial detention of the accused by the magistrate can be only for fifteen days in the whole and it may be either police custody or judicial custody and during the period the magistrate has jurisdiction to convert judicial custody to police custody and vice- versa and the maximum period under which the accused can be so detained is only fifteen days and that after the expiry of fifteen days the proviso comes into operation which expressly refers to police custody and enjoins that there shall be no police custody and judicial custody alone is possible when power is exercised under the proviso. The learned Single Judge stated that in the case before him the accused has already been in police custody for fifteen days

and therefore he could not be remanded to police custody either under Section 167 or Section 309 Cr.PC

7. The learned Additional Solicitor General submitted that the observations made by Hardy, J. in Mehar Chand's case would indicate that during the investigation of the same case in which the accused is arrested and is already in custody if more offences committed in the same case come to light there should be no bar to turn over the accused to police custody even after the first period of fifteen days and during the period of ninety days or sixty days in respect of the investigation of the cases mentioned in provisos (a)(i) and (ii) respectively. It may be noted firstly that the Mehar Chand's case was decided in respect of a case arising under the old Code. If we examine the background in enacting the new Section 167(2) and the proviso (a) as well as Section 309 of the new Code it becomes clear that the legislature recognised that such custody namely police, judicial or any other custody like detaining the arrested person in Nari Sadans etc. should be in the whole for fifteen days and the further custody under the proviso to Section 167 or under Section 309 should only be judicial. In Chaganti Satyanarayana and Ors. v. State of Andhra Pradesh MANU/SC/0165/1986 : [1986]2SCR1128 this Court examined the scope of Section 167(2) provisos (a)(i) and (ii) and held that the period of fifteen days, ninety days or sixty days prescribed therein are to be computed from the date of remand of the accused and not from the date of his arrest under Section 57 and that remand to police custody cannot be beyond the period of fifteen days and the further remand must be to judicial custody. Though the point that precisely arose before this Court was whether the period of remand prescribed should be computed from the date of remand or from the date of arrest under Section 57, there are certain observations throwing some light on the scope of the nature of custody after the expiry of the first remand of fifteen days and when the proviso comes into operation. It was observed thus:

As Sub- section (2) of Section 167 as well as proviso (1) of Sub- section (2) of Section 309 relate to the powers of remand of a magistrate, though under different situations, the two provisions call for a harmonious reading insofar as the periods of remand are concerned. It would, therefore, follow that the words "15 days in the while' occurring in Sub- section (2) of Section 167 would be tantamount to a period of "15 days at a time" but subject to the condition that if the accused is to be remanded to police custody the remand should be for such period as is commensurate with the requirements of a case with provision for further extensions for restricted periods, if need be, but in no case should the total period of remand to police custody exceed 15 days. Where an accused is placed in police custody for the maximum period of 15 days allowed under law either pursuant to a single order of remand or to more than one order, when the remand is restricted on each occasion to a lesser number of days, further detention of the accused, if warranted, has to be necessarily to judicial custody and not otherwise. The legislature having provided for an accused being placed under police custody under orders of remand for effective investigation of cases has at the same time taken care to see that the interests of the accused are not jeopardised by his being placed under police custody beyond a total period of 15 days, under any circumstances, irrespective of the gravity of the offence or the serious nature of the case.

(emphasis supplied)

These observations make it clear that if an accused is detained in police custody the maximum period during which he can be kept in such custody is only fifteen days either pursuant to a single order or more than one when such orders are for lesser number of days but on the whole such custody cannot be beyond fifteen days and the further remand to facilitate the investigation can only be by detention of the accused in judicial custody.

8. Having regard to the words ' 'in such custody as such Magistrate thinks fit for a term not exceeding fifteen days in the whole" occurring in Sub- section (2) of Section 167 now the question is whether it can be construed that the police custody, if any, should be within this period of first fifteen days and not later or alternatively in a case if such remand had not been obtained or the number of days of police custody in the first fifteen days are less whether the police can ask subsequently for police custody for full period of fifteen days not availed earlier or for the remaining days during the rest of the periods of ninety days or sixty days covered by the proviso. The decisions mentioned above do not deal with this question precisely except the judgment of the Delhi High Court in Dharam Pal's case. Taking the plain language into consideration particularly the words otherwise than in the custody of the police beyond the period of fifteen days" in the proviso it has to be held that the custody after the expiry of the first fifteen days can only be judicial custody during the rest of the periods of ninety days or sixty days and that police custody if found necessary can be ordered only during the first period of fifteen days. To this extent the view taken in Dharam Pal's case is correct.

9. At this juncture we want to make another aspect clear namely the computation of period of remand. The proviso to Section 167(2) clearly lays down that the total period of detention should not exceed ninety days in cases where the investigation relates to serious offences mentioned therein and sixty days in other cases and if by that time cognizance is not taken on the expiry of the said periods the accused shall be released on bail as mentioned therein. In Chaganti Satyanarayana's case it was held that "It, therefore, stands to reason that the total period of 90 days or 60 days can begin to run from the date of order of remand." Therefore the first period of detention should be computed from the date of order of remand. Section 167(2A) which has been introduced for pragmatic reasons states that if an arrested person is produced before an Executive Magistrate for remand the said Magistrate may authorise the detention of the accused not exceeding seven days in aggregate. It further provides that the period of remand by the Executive Magistrate should also be taken into account for computing the period specified in the proviso i.e., aggregate periods of ninety days or sixty days. Since the Executive Magistrate is empowered to order detention only for seven days in such custody as he thinks fit, he should therefore either release the accused or transmit him to the nearest Judicial Magistrate together with the entries in the diary before the expiry of seven days. The Section also lays down that the Judicial Magistrate who is competent to make further orders of detention, for the purpose of computing the period of detention has to take into consideration the period of detention ordered by the Executive Magistrate. Therefore on a combined reading of Sections 167(2) and (2A) it emerges that the Judicial Magistrate to whom the Executive Magistrate has forwarded the arrested accused can order detention in such custody namely police custody or judicial custody under Section 167(2) for the rest of the first fifteen days after deducting the period of detention ordered by the

Executive Magistrate. The detention thereafter could only be in judicial custody. Likewise the remand under Section 309 Cr.PC can be only to judicial custody in terms mentioned therein. This has been concluded by this Court and the language of the section also is clear. Section 309 comes into operation after taking cognizance and not during the period of investigation and the remand under this provision can only be to judicial custody and there cannot be any controversy about the same. (vide Natabar Parida and Ors. v. State of Orissa MANU/SC/0157/1975 : AIR1975SC1465

10. The learned Additional Solicitor General however submitted that in some of the cases of grave crimes it would be impossible for the police to gather all the materials within first fifteen days and if some valuable information is disclosed at a later stage and if police custody is denied the investigation will be hampered and will result in failure of justice. There may be some force in this submission but the purpose of police custody and the approach of the legislature in placing limitations on this are obvious. The proviso to Section 167 is explicit on this aspect. The detention in police custody is generally disfavoured by law. The provisions of law lay down that such detention can be allowed only in special circumstances and that can be only by a remand granted by a magistrate for reasons judicially scrutinised and for such limited purposes as the necessities of the case may require. The scheme of Section 167 is obvious and is intended to protect the accused from the methods which may be adopted by some overzealous and unscrupulous police officers. Article 22(2) of the Constitution of India and Section 57 of Cr. PC give a mandate that every person who is arrested and detained in police custody shall be produced before the nearest magistrate within a period of 24 hours of such arrest excluding the time necessary for the journey from the place of the arrest to the court of the magistrate and no such person shall be detained in the custody beyond the said period without the authority of a magistrate. These two provisions clearly manifest the intention of the law in this regard and therefore it is the magistrate who has to judicially scrutinise circumstances and if satisfied can order the detention of the accused in police custody. Section 167(3) requires that the magistrate should give reasons for authorising the detention in the custody of the police. It can be thus seen that the whole scheme underlying the section is intended to limit the period of police custody. However, taking into account the difficulties which may arise in completion of the investigation of cases of serious nature the legislature added the proviso providing for further detention of the accused for a period of ninety days but in clear terms it is mentioned in the proviso that such detention could only be in the judicial custody. During this period the police are expected to complete the investigation even in serious cases. Likewise within the period of sixty days they are expected to complete the investigation in respect of other offences. The legislature however disfavoured even the prolonged judicial custody during investigation. That is why the proviso lays down that on the expiry of ninety days or sixty days the accused shall be released on bail if he is prepared to and does furnish bail. If as contended by the learned Additional Solicitor General a further interrogation is necessary after the expiry of the period of first fifteen days there is no bar for interrogating the accused who is in judicial custody during the periods of 90 days or 60 days. We are therefore unable to accept this contention.

11. A question may then arise whether a person arrested in respect of an offence alleged to have been committed by him during an occurrence can be detained again in police custody in respect of another offence committed by him in the same case and which fact comes to light after the

expiry of the period of first fifteen days of his arrest. The learned Additional Solicitor General submitted that as a result of the investigation carried on and the evidence collected by the police the arrested accused may be found to be involved in more serious offences than the one for which he was originally arrested and that in such a case there is no reason as to why the accused who is in magisterial custody should not be turned over to police custody at a subsequent stage of investigation when the information discloses his complicity in more serious offences. We are unable to agree. In one occurrence it may so happen that the accused might have committed several offences and the police may arrest him in connection with one or two offences on the basis of the available information and obtain police custody. If during the investigation his complicity in more sessions offences during the same occurrence is disclosed that does not authorise the police to ask for police custody for a further period after the expiry of the first fifteen days. If that is permitted than the police can go on adding some offence or the other of a serious nature at various stages and seek further detention in police custody repeatedly, this would defeat the very object underlying Section 167. However, we must clarify that this limitation shall not apply to a different occurrence in which complicity of the arrested accused in disclosed. That would be a different transaction and if an accused is in judicial custody in connection with one case and to enable the police to complete their investigation of the other case they can require his detention in police custody for the purpose of associating him with the investigation of the other case. In such a situation he must be for formally arrested in connection with other case and then obtain the order of the magistrate for detention in police custody. The learned Additional Solicitor General however strongly relied on some of the observations made by Hardy, J. in Mehar Chand's case extracted above in support of his contention namely that an arrested accused who is in judicial custody can be turned over to police custody even after the expiry of first fifteen days at a subsequent stage of the investigation in the same case if the information discloses his complicity in more serious offences. We are unable to agree that the mere fact that some more offences alleged to have been committed by the arrested accused in the same case are discovered in the same case would by itself render it to be a different case. All these offences including the so- called serious offences discovered at a later stage arise out of the same- transaction in connection with which the accused was arrested. Therefore there is a marked difference between the two situations. The occurrences constituting two different transactions give rise to two different cases and the exercise of power under Sections 167(1) and (2) should be in consonance with the object underlying the said provision in respect of each of those occurrences which constitute two different cases. Investigation in one specific case cannot be the same as in the other. Arrest and detention in custody in the context of Sections 167(1) and (2) of the Code has to be truly viewed with regard to the investigation of that specific case in which the accused person has been taken into custody. In S. Harsimran Singh v. State of Punjab MANU/PH/0290/1983 a Division Bench of the Punjab and Haryana High Court considered the question whether the limit of police custody exceeding fifteen days as prescribed by Section 167(2) is applicable only to a single case or is attracted to a series of different cases requiring investigation against the same accused and held thus:

We see no inflexible bar against a person in custody with regard to the investigation of a particular offence being either re- arrested for the purpose of the investigation of an altogether different offence. To put it in other words, there is no insurmountable hurdle in the conversion of judicial custody into police custody by an order of the Magistrate under Section 167(2) of the Code for

investigating another offence. Therefore, a re- arrest or second arrest in a different case is not necessarily beyond the ken of law.

This view of the Division Bench of the Punjab & Haryana High Court appears to be practicable and also conforms to Section 167. We may, however, like to make it explicit that such re- arrest or second arrest and seeking police custody after the expiry of the period of first fifteen days should be with regard to the investigation of a different case other than the specific one in respect of which the accused is already in custody. A literal construction of Section 167(2) to the effect that a fresh remand for police custody of a person already in judicial custody during investigation of a specific case cannot under any circumstances be issued, would seriously hamper the very investigation of the other case the importance of which needs no special emphasis. The procedural law is meant to further the ends of justice and not to frustrate the same. It is an accepted rule that an interpretation which furthers the ends of justice should be preferred. It is true that the police custody is not the be- all and end- all of the whole investigation but yet it is one of its primary requisites particularly in the investigation of serious and heinous crimes. The legislature also noticed this and permitted limited police custody. The period of first fifteen days should naturally apply in respect of the investigation of that specific case for which the accused is held in custody. But such custody cannot further held to be a bar for invoking a fresh remand to such custody like police custody in respect of an altogether different case involving the same accused.

12. As the points considered above have an important bearing in discharge of the day- to- day magisterial powers contemplated under Section 167(2), we think it appropriate to sum up briefly our conclusions as under:

13. Whenever any person is arrested under Section 57 Cr. PC he should be produced before the nearest Magistrate within 24 hours as mentioned therein. Such Magistrate may or may not have jurisdiction to try the case. If Judicial Magistrate is not available, the police officer may transmit the arrested accused to the nearest Executive Magistrate on whom the judicial powers have been conferred. The Judicial Magistrate can in the first instance authorise the detention of the accused in such custody i.e., either police or judicial from time time but the total period of detention cannot exceed fifteen days in the whole. Within this period of fifteen days there can be more than one order changing the nature of such custody either from police to judicial or vice- versa. If the arrested accused is produced before the Executive Magistrate he is empowered to authorise the detention in such custody either police or judicial only for a week, in the same manner namely by one or more orders but after one week he should transmit him to the nearest Judicial Magistrate alongwith the records. When the arrested accused is so transmitted the Judicial Magistrate, for the remaining period, that is to say excluding one week or the number of days of detention ordered by the Executive Magistrate, may authorise further detention within that period of first fifteen days to such custody either police or judicial. After the expiry of the first period of fifteen days the further remand during the period of investigation - can only be in judicial custody. There can not be any detention in the police custody after the expiry of first fifteen days even in a case where some more offences either serious or otherwise committed by

him in the same transaction come to light at a later stage. But this bar does not apply if the same arrested accused is involved in a different case arising out of a different transaction. Even if he is in judicial custody in connection with the investigation of the earlier - case he can formally be arrested regarding his involvement in the different case and associate him with the investigation of that other case and the Magistrate can act as provided under Section 167(2) and the proviso and can remand him to such custody as mentioned therein during the first period of fifteen days and thereafter in accordance with the proviso as discussed above. If the investigation is not completed within the period of ninety days or sixty days then the accused has to be released on bail as provided under the proviso to Section 167(2). The period of ninety days or sixty days has to be computed from the date of detention as per the orders of the Magistrate and not from the date of arrest by the police. Consequently the first period of fifteen days mentioned in Section 167(2) has to be computed from the date of such detention and after the expiry of the period of first fifteen days it should be only judicial custody.

14. We may, however, in the end clarify that the position of law stated above applies to Section 167 as it stands in the Code. If there are any State amendments enlarging the periods of detention, different considerations may arise on the basis of the language employed in those amendments.

15. The appeals are accordingly dismissed.

Back to Section 173 of Code of Criminal Procedure, 1973

MANU/SC/0063/1985

IN THE SUPREME COURT OF INDIA

Contempt Petition No. 4998 of 1983 in Writ Petition (Criminal) No. 6607 of 1981

Decided On: 25.04.1985

Bhagwant Singh Vs. Commissioner of Police and Ors.

Hon'ble Judges/Coram:

A.N. Sen, D.P. Madon and P.N. Bhagwati, JJ.

JUDGMENT

1. The short question that arises for consideration in this writ petition is whether in a case where First Information Report is lodged and after completion of investigation initiated on the basis of the First Information Report, the police submits a report that no offence appears to have been committed, the Magistrate can accept the report and drop the proceeding without issuing notice to the first informant or to the injured or in case the incident has resulted in death, to the relatives of the deceased. It is not necessary to state the facts giving rise to this writ petition, because so far as this writ petition is concerned, we have already directed by our order dated 28 November, 1983 that before any final order is passed on the report of the Central Bureau of Investigation by the Chief Metropolitan Magistrate, the petitioner who is the father of the unfortunate Gurinder Kaur should be heard. Gurinder Kaur died as a result of burns received by her and allegedly she was burnt by her husband and his parents on account of failure to satisfy their demand for dowry. The circumstances in which Gurinder Kaur met with her unnatural death were investigated by the Central Bureau of Investigation and a report was filed by the Central Bureau of Investigation in the court of the Chief Metropolitan Magistrate on 11 August, 1982 stating that in their opinion in respect of the unnatural death of Gurinder Kaur no offence appeared to have been committed. The petitioner was however not aware that such a report had been submitted by the Central Bureau of Investigation and he, therefore, brought an application for initiating proceedings for contempt against the Central Bureau of Investigation on the ground that the Central Bureau of Investigation had not completed their investigation and submitted their report within the period stipulated by the Court by its earlier order dated 6 May, 1983. It was in reply to this application for initiation of contempt proceedings that the Central Bureau of Investigation intimated that they had already filed their report in the Court of the Chief Metropolitan Magistrate on 11 August, 1982 and the report was pending consideration by the Chief Metropolitan Magistrate. When this fact was brought to our notice we immediately passed an order dated 28 November, 1983 directing that the petitioner should be heard before any final order was passed on the report. There was no objection on the part of the respondents to the making of this order, but since the question whether incases of this kind, the first informant or any relative of the deceased or any other aggrieved person is entitled to be heard at the time of consideration of the report by the Magistrate and whether the Magistrate is bound to issue notice to any such person, is a question of general importance which is likely to arise frequently in criminal proceedings, we thought that

it would be desirable to finally settle this question so as to afford guidance to the courts of magistrates all over the country and we accordingly proceeded to hear the arguments on both sides in regard to this question.

2. It is necessary to refer to a few provisions of the Code of Criminal procedure, 1973 in order to arrive at a proper determination of this question. Chapter XII of the CrPC, 1973 deals with information to the police and their powers to investigate. Sub- section (1) of Section 154 provides that every information relating to the commission of a cognizable offence, if given orally to an officer- in- charge of a police station, shall be reduced in writing by him or under his direction and be read over to the informant and every such information, whether given in writing or reduced to writing, shall be signed by the person giving it and Sub- section (2) of that section requires that a copy of such information shall be given forthwith, free of cost, to the informant. Section 156 Sub- section (1) vests in the officer- in- charge of a police station the power to investigate any cognizable case without the order of a magistrate and Sub- section (3) of that section authorises the magistrate empowered under Section 190 to order an investigation as mentioned in Sub- section (1) of that section. Section 157 Sub- section (1) lays down that if, from information received or otherwise an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed to the spot to investigate the facts and circumstances of the case and, if necessary, to take measures for the discovery and arrest of the offender. But there are of the First Information Report lodged by him. No sooner he lodges the First Information Report, a copy of it has to be supplied to him, free of cost, under Sub- section (2) of Section 154. If, two provisos to this sub- section. Proviso (b) enacts that if it appears to the officer- in- charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case, but in such a case, Sub- section (2) of Section 157 requires that the officer shall forthwith notify to the informant the fact that he will not investigate the case or cause it to be investigated. What the officer in charge of a police station is required to do on completion of the investigation is set out in Section 173. Sub- section (2)(i) of Section 173 provides that as soon as investigation is completed, the officer in charge of a police station shall forward to the magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government setting out various particulars including whether, in the opinion of the officer, as offence appears to have been committed and if so, by whom. Sub- section (2)(ii) of Section 173 states that the officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given. Section 190 Sub- section (1) then proceeds to enact that any magistrate of the first class and any magistrate of the second class specially empowered in this behalf under Sub- section (2) may take cognizance of any offence : (a) upon receiving a complaint of facts which constitute such offence or (b) upon a police report of such facts or (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. We are concerned in this case only with Clause (b), because the question we are examining here is whether the magistrate is bound to issue notice to the first informant or to the injured or to any relative of the deceased when he is considering the police report submitted under Section 173 Sub- section (2).

3. It will be seen from the provisions to which we have referred in the preceding paragraph that when an informant lodges the First Information Report with the officer- in- charge of a police station, he does not fade away with the lodging of the First Information Report. He is very much concerned with what action is initiated by the officer in charge of the police station on the basis of the First Information Report lodged by him on sooner he lodges the First Information Report, a copy of it has to be supplied him, free of cost, under Sub- section (2) of Section 154. if notwithstanding the First Information Report, the officer- in- charge of a police station decides not to investigate the case on the view that there is no sufficient ground for entering on an investigation, he is required under Sub- section (2) of Section 157 to notify to the informant the fact that he is not going to investigate the case because it to be investigated. Then again, the officer in charge of a police station is obligated under Sub- section (2)(ii) of Section 173 to communicate the action taken by him to the informant and the report forwarded by him to the magistrate under Sub- section (2)(i) has therefore to be supplied by him to the informant. The question immediately arises as to why action taken by the officer in charge of a police station on the First Information Report is required to be communicated and the report forwarded to the Magistrate under Sub-section (2)(i) of Section 173 required to be supplied to the informant. Obviously, the reason is that the informant who sets the machinery of investigation into motion by filing the First Information Report must know what is the result of the investigation initiated on the basis of the First Information Report, The informant having taken the initiative in lodging the First Information Report with a view to initiating investigation by the police for the purpose of ascertaining whether any offence has been committed and, if so, by whom, is vitally interested in the result of the investigation and hence the law requires that the action taken by the officer- in- charge of a police station on the First Information Report should be communicated to him and the report forwarded by such officer to the Magistrate under Sub- section (2)(i) of Section 173 should also be supplied to him.

4. Now, when the report forwarded by the officer- in charge of a police station to the Magistrate under Sub- section (2)(i) of Section 173 comes up for consideration by the Magistrate, one of two different situation may arise, The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things : (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under Sub- section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses : (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under Sub- section (3) of Section 156.

Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or

takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose, wholly or in part.

Moreover, when the interest of the informant in prompt and effective action being taken on the First Information Report lodged by him is clearly recognised by the provisions contained in Sub-section (2) of Section 154, Sub- section (2) of Section 157 and Sub- section (2)(ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under Sub- section (2)(i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the magistrate to whom a report is forwarded under Sub- section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. It was urged before us on behalf of the respondents that if in such a case notice is required to be given to the informant, it might result in unnecessary delay on account of the difficulty of effecting service of the notice on the informant. But we do not think this can be regarded as a valid objection against the view we are taking, because in any case the action taken by the police on the First Information Report has to be communicated to the informant and a copy of the report has to be supplied to him under Sub- section (2)(i) of Section 173 if that be so, we do not see any reason why it should be difficult to serve notice of the consideration of the report on the informant. Moreover, in any event, the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate.

5. The position may however, be a little different when we consider the question whether the injured person or a relative of the deceased, who is not the informant, is entitled to notice when the report comes up for consideration by the Magistrate. We cannot spell out either from the provisions of the Code of Criminal procedure, 1973 or from the principles of natural justice, any obligation on the Magistrate to issue notice to the injured person or to a relative of the deceased for providing such person an opportunity to be heard at the time of consideration of the report, unless such person is the informant who has lodged the First Information Report. But even if such person is not entitled to notice from the Magistrate, he can appear before the Magistrate and make his submissions when the report is considered by the Magistrate for the purpose of deciding what action he should take on the report. The injured person or any relative of the deceased, though not entitled to notice from the Magistrate, has locus to appear before the Magistrate at the time of consideration of the report, if he otherwise comes to know that the report is going to be considered by the Magistrate and if he wants to make his submissions in regard to the report, the Magistrate is bound to hear him. We may also observe that even though the Magistrate is not bound to give notice of the hearing fixed for consideration of the report to the injured person or to any relative of the deceased, he may, in the exercise of his discretion, if he so thinks fit, give such notice to the injured person or to any particular relative of or relative the deceased, but not giving of such

notice will not have any invalidating effect on the order which may be made by the Magistrate on a consideration of the report.

6. This is our view in regard to the question which has arisen for consideration before us. Since the question is one of general importance, we would direct that copies of this judgment shall be sent to the High Courts in all the States so that the High Courts may in their turn circulate this judgment amongst the Magistrates within their respective jurisdiction.

MANU/RH/0023/1987

IN THE HIGH COURT OF RAJASTHAN (JAIPUR BENCH)

FULL BENCH

Criminal Misc. Petn. No. 309 of 1986 in Criminal Revn. Petn. No. 292 of 1978

Decided On: 05.12.1986

Habu Vs. State of Rajasthan

Back to Section 173 of Code of Criminal Procedure, 1973

Hon'ble Judges/Coram:

V.S. Dave, I.S. Israni and Mohini Kapoor, JJ.

JUDGMENT

V.S. Dave, J.

1. This larger Bench has been constituted by the orders of the Chief Justice, dt. July 3, 1986, to answer a question referred to larger Bench by our brother Hon'ble G. K. Sharma, J. vide his order of reference, dated May 28, 1986 wherein he has framed the following question :

"Whether the judgment given in absence of the appellant or his counsel but the case decided on merits, can be re- called by the Court in its inherent powers under Section 482, Cr.P.C."

2. The petitioner, Habu, had filed a revision petition in this Court in the year 1978 challenging his conviction and sentence. This revision- petition was admitted on Oct. 25, 1978, and was ordered to be heard in due course on May 26, 1979. Thereafter it came up for hearing on Jan. 11, 1985 before Hon'ble Sharma, J. The accused petitioner who was on bail neither appeared in person npr his counsel was present and Hon'ble Sharma, J. after hearing the learned Public Prosecutor dismissed the revision- petition on merits. The petitioner thereafter moved an application on Mar. 14, 1986 under Section 482, CnP.C. wherein it was prayed by him that he had engaged a lawyer Shri Manak Chand Jain who did not inform him of the date of hearing and as such he himself also did not appear and made arguments on his behalf. It was a surprise to him when a warrant of arrest came and he was arrested, then he learnt that his revision petition has been dismissed. He wrote a letter to his counsel but failed to get any reply; hence he engaged another lawyer to find out the position and moved this application after more than a year of the passing of the judgment. This application was heard by Hon'ble Sharma, J. who passed the order of reference. He stated in his judgment, "the case of Dhanna, (MANU/RH/0034/1963 : AIR 1963 Raj 104) decided by Hon'ble Bhargava, J. (C.B.) has been referred by Hon'ble G. M. Lodha, J. and he has tried to distinguish it. This case is identical to the present case and I perfectly agree with the principle laid down by Hon'ble Bhargava, J. but Hon'ble Lodha, J. (G.M.) in Jacob's case 1986 Raj LR 506 had different view, not agreeing with the views of Hon'ble Bhargava, J., in case of Dhanna v. State (MANU/RH/0034/1963 : AIR 1963 Raj 104)".

3. Before the reference came up for hearing we thought it proper to issue a general notice inviting assistance of learned members of the Bar to assist us as intervenors because in our opinion the matter was of general interest and importance. Several learned counsel whose names have been mentioned above intervened and addressed us.

4. Shri Satish Chandra, who was counsel in C. Jacob's case decided by Hon'ble Lodha G. M. J. to which reference has been made by Hon'ble Sharma, J. in his order of reference, raised preliminary objections and submitted that the order of reference itself is bad and there is no necessity to answer the question referred to the Full Bench. His submission is that Hon'ble G. K. Sharma, J. in his order of reference has already agreed with the principle laid down by Hon'ble Bhargava, J. and has further held that "in the present case the revision petition was, no doubt, disposed of with the assistance of the learned Public Prosecutor, but keeping in view that more assistance would have been given by the learned counsel for the petitioner also, I am of the opinion that in view of Shaukin Singh's case the petition under Section 482, Cr.P.C. can be accepted". Thus, when he has already arrived at a conclusion and has agreed with the view taken by Hon'ble Bhargava, J. and also has arrived at a finding in view of the decision of their Lordships of the Supreme Court in Shaukin Singh's case there could not have been any reference as there is a definite expression of opinion. He submits that once a Court arrives at a conclusion that the petition under Section 462, Cr.P.C. can be accepted in view of decision in Shaukin Singh v. State of Uttar Pradesh, MANU/SC/0223/1981 : AIR 1981 SC 1698 no jurisdiction vested in him to refer the matter to a larger Bench. It is further submitted that the reference is wholly uncalled for as he has arrived at further finding that the case of Dhanna v. State of Rajasthan, MANU/RH/0034/1963 : AIR 1963 Raj 104, is more or less similar to the present case.

5. His another objection about maintainability of the reference is that from the language of the question framed by learned Judge is such which does not include the absence of both, i.e., the appellant and his counsel, as the learned Judge has used the word 'or' in the question instead of 'and', therefore, the learned Judge contemplates a position where absence is of the appellant or his counsel which means absence of either of them or presence of only one of them and such a situation having not been the subject- matter of decision in Dhanna's or Jacob's case, the question framed cannot be answered in vacuum. He, therefore, submitted that because of these preliminary objections, point, referred to, need not be answered.

6. We have given our thoughtful consideration to the preliminary objections. In the instant case the accused who filed the revision petition in the year 1978 and was on bail since then. His revision petition was dismissed by the learned single Judge vide his order dated January 11, 1985, and his sentence of six months' rigorous imprisonment and a fine of Rs. 200/- , in default of payment of fine two months' simple imprisonment was maintained. Compliance of this order was issued by the High Court on Jan. 11, 1985. Thereafter the accused was arrested, in pursuance of the warrants issued by the trial Court, for custody of the accused- petitioner to serve out the remaining sentence, as he had also been in custody for about a month during trial and in between the period his appeal was dismissed by appellate Court and his bail was granted by this Court in revision- petition. The accused when learnt that the revision- petition has been dismissed filed an

application for recalling of the judgment on Mar. 11, 1986, on which this reference has been made to Full Bench on May 28, 1986. It has been listed before us after obtaining orders from Hon'ble Chief Justice on July 21, 1986, when the case came before us, we were informed that the accused has served out the sentence passed against him. This is an extremely regrettable situation that a poor rustic villager has not been able to get justice for want of timely proper legal assistance. We are called upon to do this academic exercise, which, of course, is of great importance, in a case, where we are unable to provide real justice to the man who knocked the doors of this Court in expectation of justice. Hon'ble Sharma, J. in his order of reference though opined that he is of the opinion that in view of Shaukin Singh's case (MANU/SC/0223/1981 : AIR 1981 SC 1698) petition under Section 482, Cr.P.C. can be accepted but it appears that no application was moved before him for suspending the sentence of the accused or to release him on interim bail under Section 482, Cr.P.C. itself till the Full Bench answers the reference and he too did not do so suo motu. I am at a loss to understand when his Lordship Hon'ble Sharma, J. took the pains of dictating judgment during summer vacations got it delivered through one of us who was vacation Judge on May 28, 1986, then why it took one month in reaching the file from the Court to section and then was placed before Hon'ble Chief Justice on July 3, 1986, why no efforts were made for getting the case listed earlier, and why it was not brought to the knowledge either of the Chief Justice or before us when we fixed the date and told the Deputy Registrar to list this case on July 21, 1986, that the accused is in jail. We expect from the registry that the record must disclose whether the accused is in jail or not, when it is placed before the Court. It must appear from the title cover. Thus in charge of stamp reporting must ensure that in the cause title as well as on the file cover it must be shown as to what is the position of the accused at the time when the case is presented. Had the Registry in this case taken proper care to see that there is mention that the accused is in jail or had the learned counsel brought the fact to the notice of Hon'ble Sharma, J., possibly the accused would have been benefited of being on interim bail during the pendency. The draft of the entire miscellaneous application only shows one line in para 7, "that when the accused has been arrested, then he could know that his case has been dismissed." Besides this there is not a word in the entire record of the case as to since what date the accused is in jail, in which jail and on what date he had surrendered. We find an affidavit filed by the accused sworn in Jaipur on Mar. 7, 1986 where he has accepted the correctness of the facts mentioned in application, dt. Mar. 11, 1986 which has been presented on Mar. 3, 1986. We are at a loss to understand when an application has been typed and drafted on March 11, 1986 how it could be sworn before the Oath Commissioner on Mar. 7, 1986. We asked the learned counsel for the petitioner, Shri Kasliwal, to explain the anomaly and the circumstances in which the proper facts have not been placed before the Court and which has resulted in making a false record in this case. Mr. Kasliwal thereupon filed an application signed by Shri Pradeep Chaudhary the learned counsel who had brought the case to him from Ajmer. According to this application the accused was arrested on Feb. 17, 1986 and has been released on July 16, 1986 having served out the entire sentence awarded to him by this Court. He has also stated in the application that he got the affidavit verified on Mar. 7, 1986 by Oath Commissioner at Jaipur identifying the accused who was already in Central Jail, Ajmer and as there were typing errors one page was got re- typed on Mar. 11, 1986, and signature of Oath Commissioner taken. He has submitted that these mistakes have been committed by him as he is a new entrant to the Bar and was not knowing the procedure. He has expressed his regrets and has prayed that looking to his inexperience and future in the profession he may be excused. It is unfortunate that due to the negligence and the illegal procedure followed by the learned counsel the accused has served out the sentence and the facts could not be properly placed on the record. The manner in which the affidavit has been filed and has been got sworn in is unknown

to the fair practice and the law concerning swearing in of the affidavits. Neither the Oath Commissioner nor the learned counsel has acted in accordance with law and in fact it amounts to making a false record. However, looking to the extreme youth of the learned counsel and that the Oath Commissioner is also in the evening of his life, we refrain from ordering the prosecution or reference of the matter to the Bar Council suo motu but sound a note of warning and express our strong displeasure on their conduct.

7. Coming to the preliminary objection it is worthwhile to reproduce Rule 59 of the High Court Rules which reads as under:

"Rule 59. Reference of a case to a larger Bench- - The Chief Justice may constitute a Bench of two or more Judges to decide a case or any question or questions of law formulated by a Bench hearing a case. In the latter even the decision of such Bench on the questions so formulated shall be returned to the Bench hearing the case and that Bench shall follow that decision on such question or questions and dispose of the case after deciding the remaining questions, if any, arising therein."

8. On a plain reading of the aforesaid rule it is obvious that this bench is called upon to determine only the question formulated by Hon'ble S. Sharma, J. We do not find any other rule in the High Court rules which gives power to Hon'ble the Chief Justice to constitute a Bench of two or more Judges for deciding a case or any question referred to. The argument of the learned counsel is that reference could not be made to this Bench as the learned Judge himself has agreed with one of the views taken by this Court and once he was in agreement the reference was incompetent. We are unable to accept this contention because despite the fact that learned Judge accepted the view in Shaukin's case (MANU/SC/0223/1981 : AIR 1981 SC 1698) yet he had a right to refer the matter to Hon'ble the Chief Justice for referring it to Full Bench, It is for the Full Bench to consider thereafter whether the question framed has to be answered in affirmative or negative or not to answer at all. It is true that the scope of the Full Bench is only to the extent the rule provides, as has been held by the Full Bench of this Court in State of Rajasthan v. Shamlal, MANU/RH/0068/1960 : AIR 1960 Raj 256, where this Court held :

"It appears to me, therefore, that Rule 59 cannot be exhaustive of the powers which the Chief Justice must process in regulating the functioning of the Court to constitute appropriate Benches for the decision of such questions which may, from time to time, necessarily arise."

Since Hon'ble Sarjoo Prasad, J. who was then Chief Justice was himself presiding over the Bench he further held as under

"Since I have the honour of presiding myself over this Special Bench constituted for the purpose, I think that there can be no valid objection to my enlarging the scope of the enquiry in the present case, and formulating the auxiliary question in the manner that I have done, so that this Special Bench of three Judges may conveniently address itself to this important question of law bearing on the interpretation of Article 295 of the Constitution, and the decision given by this Court may be binding as an authority in future."

9. The word 'case' in Rule 59 again came up for consideration before the Division Bench of this Court in Umrao Singh Dhabariya v. Yashwant Singh Nagar, MANU/RH/0032/1970 : AIR 1970 Raj 134. This Court held as under :

"Rule 59 of the High Court Rules for Rajasthan contemplates a reference to a larger Bench to decide a case or any question or questions of law formulated by a Bench. The word 'case' may be used in a narrow sense to imply the whole case or in a wider sense to connote a part of the case or to any state of facts requiring judicial determination. If the wider view is adopted, the decision on issue by the single Judge before the reference to a larger Bench remains a case finally decided and required no reopening and the larger Bench need only decide the controversy remaining alive at the time of the reference. If, on the other hand, a narrower view is adopted, then evidently the Bench has to apply its mind to all the controversies, arising in the case including those earlier decided.

The Court felt inclined to adopt the narrow view of the word 'case' in the rule and to hold that a larger Bench should decide the case as a whole including the controversy already decided by the single Judges."

Reading' the rule coupled with the aforementioned two cases we are of the opinion that nothing prevents us from answering the question referred to us by the learned single Judge despite the facts that he has already agreed with one of the views.

10. The another objection is that there is no controversy between Shaukin Singh's case (MANU/SC/0223/1981 : AIR 1981 SC 1698) and Dhanna's case (MANU/RH/0034/1963 : AIR 1963 Raj 104) and, therefore, the reference is incompetent. We will consider this argument while considering the merits of the reference as the question whether there is any controversy or there is difference of opinion can only be answered after we go through both the cases and in light of the arguments advanced before us by various learned counsel. Regarding another objection about the maintainability of the reference for using the word 'or' suffice it to say that in the facts and circumstances in which the reference has been made neither the appellant nor his counsel was present and obviously the word 'and' can be read instead of the word 'or' as the question which has been referred to us relates to those cases where a case has been decided on merits in the absence of the party and/or counsel representing the party. There is no substance in this argument and we overrule the preliminary objections and proceed to examine the points referred to us, namely:

"Whether the judgment given in the absence of the appellant or his counsel, but the case decided on merits, can be re- called by the Court in its inherent powers under Section 482, Cr.P.C."

11. The aforesaid question has been raised in view of the previsions contained in Section 362 Cr.P.C. which corresponds to Section 369 of the old Cr.P.C. Section 362, Cr.P.C. reads as under:-

"Section 362, Cr.P.C. Court not to alter judgment.- - Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."

12. A plain reading of the aforesaid section puts a complete bar for altering or reviewing of judgment or a final order on merits and the only power given to the Court is that it can correct a

clerical or arithmetical error. But the question posed before us is whether in these circumstances where the judgment or the final order has been passed without affording an opportunity of being heard to the accused- appellant.

13. Shri S. C. Agarwal submitted that in an application under Section 482, Cr.P.C. this Court has ample powers to re- call its judgment as recalling is not a bar under Section 362, Cr.P.C. He submits that the provisions of Section 482, Cr.P.C. are wide enough to meet any eventuality and if the Court is satisfied that injustice has been done to a person it can always recall its judgment in order to secure the ends of justice. It is submitted that the ban imposed under Section 362, Cr.P.C. is about reviewing or altering the judgment, i.e., interfering with the findings which had been given in the judgment but when it is re- called it means complete abrogation as if there is no judgment at all and, therefore, this Court has to make a distinction between review, alter and re-call. He submits that it is mandatory to give an opportunity of hearing to an accused person in the Court and he should not be condemned unheard. He referred to proviso (b) to Sub- section (1) of Section 384, Cr.P.C. and submitted that no appeal can be dismissed except after giving the appellant a reasonable opportunity of being heard and this means that the presence of the appellant or his counsel is a condition precedent. He submits that if Section 362, Cr.P.C. is given a narrow connotation, then it will make the provisions of Section 384, Cr.P.C. redundant. He referred to a decision reported in T. Somu Naidu, MANU/TN/0350/1923 : AIR 1924 Mad 640 where the Court re- called the earlier judgment and directed the case to be heard afresh. This case came up on a reference made by learned single Judge and a similar question was raised as in the instant case. Their Lordships after considering the various authorities held as under:

"that in exceptional circumstances the judgment has to be re- called since it is either void ab initio or is otherwise null and void. It was held that sound judicial view is that reasonable opportunity for the accused to be heard is essential condition precedent to the exercise of jurisdiction under Section 439, Cr.P.C. when the Court is considering the question of enhancing the punishment inflicted on him. The Court further held that where the condition laid down by law as precedent and requisite to the bearing of a case are not observed the case has to be re- heard and it does not amount to review or revising the order."

14. Reference was then made to Muhammad Sadiq v. The Crown AIR 1925 Lah 355 where the scope of Section 561(A) of the then Cr.P.C. which corresponds to Section 482, Cr.P.C. was considered. It was held that "where an appeal has been dismissed without the appellant or his pleader being given a reasonable opportunity of being heard in support of the same, the order refusing the appeal must be held to have been passed without jurisdiction and the Court has inherent power to make an order that the appeal should be re- heard after giving the appellant or his counsel a reasonable opportunity of being heard in support of the same." In this case their Lordships considered the various cases before coming to the conclusion that the Court has a power to rehearing the case. Reference was then made to Emperor v. Shivadatt (: (MANU/OU/0012/1928 : AIR 1928 Oudh 402 : 1928) 111 Ind Cas 573) wherein it has held as under :

"Where owing to counsel's carelessness in not appearing in the Court at the time when a case is called on for hearing, his client's case goes unrepresented and an ex parte order is passed, the High Court has jurisdiction under Section 561A of the Cr.P.C. to entertain an application to re-

hear the matter, if, in its discretion, it considers, it necessary to do so in order to secure the ends of justice."

15. Reference was then made to Sangam Lal v. Rent Control and Eviction Officer, Allahabad, MANU/UP/0078/1966 : AIR 1966 All 221 a Full Bench decision wherein interpretation to the High Court Rules was given and it was held as under :

"There is power of review both in cases where judgment has been delivered but not signed and cases in which judgment has been delivered, signed and sealed. In the former case, the power to alter or amend or even to change completely is unlimited provided notice is given to the parties and they are heard before the proposed change is made, while in the latter case the power is limited and review is permitted only on very narrow grounds. Hence a judgment which has been orally dictated in open Court can be completely changed before it is signed and sealed provided notice is given to all parties concerned and they are heard before the change is made".

In our opinion this judgment has no bearing on the facts of this case as the point involved therein was absolutely different. The Court was only considering whether a judgment which has been delivered in open Court but not signed can be changed. Hence as mentioned above this case is neither applicable on facts nor on law. Reference was then made to Swarth Mahto v. Dharmdeo Narain Singh, MANU/SC/0272/1972 : AIR 1972 SC 1300 which is a case of improper publication of the cause- list where neither the name of the respondent nor his advocates were properly mentioned. In this case in Patna High Court when an appeal against acquittal came up for hearing after 2 1/2 years after issuance of notice neither the name of the accused- respondent nor his advocate appeared in the cause- list and the State appeal was allowed ex parte. Their Lordships of the Supreme Court held that "when the names of the accused- respondent and his advocate did not appear in the causelist resulting in conviction of the accused without hearing his counsel it could not be said that the accused was given reasonable opportunity of hearing and the application filed by him for re- hearing of appeal afresh by the High Court was allowed by their Lordships of the Supreme Court".

16. Reliance was then placed on Superintendent and Remembrancer of Legal Affairs, West Bengal v. Mohan Singh, MANU/SC/0223/1974 : (1975) 3 SCC 706 : (AIR 1975 SC 1002) wherein their Lordships held as under :

"S. 561- A preserves the inherent power of the High Court to make such orders as it deems fit to prevent abuse of the process of the Court or to secure the ends of justice and the High Court must therefore exercise its inherent powers having regard to the situation prevailing at the particular point of time when its inherent jurisdiction is sought to be invoked."

17. Reference was made to Galos Hirad v. The King AIR 1944 PC 93. In the aforesaid case their Lordships of the Privy Council were considering the scope of Poor Persons Defence Ordinance and were further considering whether an appeal decided in the absence of a lawyer should be re-heard or not. Their Lordships held as under :

"The importance of persons accused of a serious crime having the advantage of counsel to assist them before the Courts cannot be doubted by anybody who remembers the long struggle which took place in this country and which ultimately resulted in such persons having the right to be represented by counsel; see Holdworth History of English Law, Vol. 9, p. 226, et. seq. This is a much stronger case. Just as a conviction following a trial cannot stand if there has been a refusal to hear the counsel for the accused so it seems to their Lordships, an appeal cannot stand where there has been a refusal to adjourn an appeal in which the appellant was entitled as of right to be heard by a counsel assigned to him by the Govt. who was unable, without any default on his part to reach the Court in time to conduct the appeal. The result is that the appeal to the Protectorate Court of Appeal which appears to have been properly lodged has not been effectively heard, The present appeal must therefore be allowed. Steps must be taken to restore the appeal for hearing either with Mr. Manilal or some other advocate properly assigned to the appellants under circumstances which will enable him to conduct the appeal. Their Lordships will humbly advise His Majesty accordingly".

18. Reference then was made to Ganesharam v. State of Raj. MANU/RH/0081/1968 where at the time of disposal of the main case provisions of the Probation of Offenders Act were not brought to the notice of the Court and the same were brought to the notice by way of an application under Section 561- A Cr.P.C. His Lordship Hon'bte Tyagi held as under :

"S. 561- A Cr.P.C. envisages three circumstances in which the Court can exercise that power, namely, when it is necessary (1) for securing the ends of justice, (2) for preventing abuse of the process of Court, and (3) to give effect to any order under this Code.

It is now well settled that this section doesn't confer any power on the High Court. It only saves such inherent power which the Court possessed before the Cr.P.C. was enacted. If such a power is so included it can be exercised for the purposes mentioned in the Section and it would be a matter for determination by the Court in each individual case whether the circumstance obtaining in that case makes out that purpose and makes inherent on the Court to exercise such a power to achieve the objects mentioned in the section".

19. Reference was made to Kailash Nath Lahiri v. Shamilal Khushaldas and Bros. Pvt. Ltd. 1977 Cri LJ 1520) (Goa) wherein it was held as under :

"High Court has inherent power to set aside order dismissing a revision for default of appearance. What Section 362 forbids is the alteration or review of the "final order disposing of a case", but it does not prohibit the total obliteration of such order. The alteration or review pre- supposes the continuation of the initial order and the effectuation of some changes in it, whereas the setting aside of the order means the complete abrogation of it. There is therefore, no specific bar contained in Section 362 or in any other section of the Code against the setting aside of an order of dismissal for default. It follows that the inherent powers of High Court are not taken away as far as the setting aside of the orders of dismissal ex parte are concerned".

In totality Mr. Agarwal's contention is that this Court has ample power to re- call its judgment/order in case it is satisfied that one of the three essentials of Section 482, Cr.P.C. so warrants.

20. Mr. Ravi Kasliwal referred to Deepak Thanwardas Balwani v. State of Maharashtra (1984) 1 Crimes 736 : (1985 Cri LJ 23) wherein it was held as under :

"In its inherent powers as provided under Section 482, Cr.P.C., 1973, the High Court can review or revise its judgment if such a judgment is pronounced without giving an opportunity of being heard to a party who is entitled to a hearing and that party is not at fault. For the mistake of the Court, a party cannot suffer".

He also referred to Raj Narain v. The State, (MANU/UP/0075/1959 : AIR 1959 All 315) which is again a Full Bench decision and where the High Court's power to revoke, review, re- call or alter its own earlier decision in a criminal revision and rehear the same came up for consideration. The question referred to the Full Bench was whether this Court has power to revoke, review, re- call or alter its earlier decision in a criminal revision and re- hear the same and if so in what circumstances. Their Lordships answered the question as under :

"1. that this Court has power to revoke, review, recall or alter its own earlier decision in a criminal revision and re- hear the same.

2. that this can be done only in cases falling under one or the other of the three conditions mentioned in Section 561- A, namely :

(i) for the purpose of giving effect to any order passed under the Code of Criminal Procedure,

(ii) for the purpose of preventing abuse of the process of any Court,

(iii) for otherwise securing the ends of justice.

Reference answered accordingly".

In Makkapati Nageswara Sastri v. S. S. Satyanarayan, MANU/SC/0156/1980 : AIR 1981 SC 1156 their Lordships held that the view taken by the High Court that in a revision party was not entitled to be heard as of right and though the counsel did not appear due to non- appearance of his name in the cause- list yet decided the revision ex parte. Their Lordships held that the view

taken by the High Court is manifestly contrary to audi alteram partem rule of natural justice which was applicable to the proceedings before the High Court.

21. Mr. A. K. Bhandari submitted that there is a great difference between the word 'review' or 're-call'. He submitted that what is a bar under Section 362, Cr.P.C. is a review or alteration but not the re- call. He referred to Chambers Dictionary and submitted that review means a re-consideration, a critical examination, to look back etc. while re- call means to call back, to revoke etc. which means that in one there is an examination of the judgment and then on viewing the same from a different angle it has to be reviewed. While in another it is not only abrading it but to revoke it as a whole as if everything is obliterated from the record. In one earlier judgment remains on record with correction of the errors while in another it completely goes out. Therefore, what is contemplated in Section 482, Cr.P.C. is re- calling the judgment and not reviewing the same. In other words it is submitted that Section 362, Cr.P.C. bars the review or alteration but not the re- calling. He submits, that in Swarth Mahto v. Dharmdeo, (MANU/SC/0272/1972 : AIR 1972 SC 1300) their Lordships were conscious of the phraseology and have used the word 're-hearing' and not 'reviewing'. It is further submitted that in all other Courts except High Court the presence of an accused on each date of hearing is a condition precedent, while in the High Court it is not so except that according to Section 385, Cr.P.C. when the appellate Court does not dismiss the appeal summarily it has to cause notice of the time and place at which such appeal will be heard to be given to the appellant or his pleader and by the High Court Rules the notice of time and place is given through cause- list. He, therefore, submits that if either the name is wrongly printed or omitted to be printed or the description of the case is erroneous or for any other reason there is defect in the list, it is non- compliance of Section 385, Cr.P.C. and in case the appeal is heard in non- compliance of Section 385, Cr.P.C. then it is not hearing at all and it violates the principles of natural justice as well.

22. Mr. Subhash Zindal relied on the observations made by their Lordships of the Supreme Court in State of Orissa v. Ram Chandra Agrawal, MANU/SC/0179/1978 : AIR 1979 SC 87 where it was observed :

"That this Court entertained the application for quashing the proceedings on the ground that a subsequent application to quash would not amount to review or revise the order made by this Court."

In our opinion this case has a limited bearing and will be considered at an appropriate place on a different point i.e. whether the provisions of Section 561- A, Cr.P.C. can be invoked for exercise of powers which are specifically prohibited by the Court.

23. Mr. Bapna submitted that Section 482, Cr.P.C. does not confer any new jurisdiction on the High Court. It is inherent on the Court and whenever this Court feels that injustice has been done it has to invoke that jurisdiction which is inherent in every Court. He places' reliance on Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiraial, MANU/SC/0056/1961 : AIR 1962 SC 527 wherein their Lordships of the Supreme Court in reference to Section 151, C.P.C. held that the

inherent power has not been conferred upon the Court. It is a power inherent in the Court by virtue of its duty to do justice between the parties before it. It is then submitted that Section 482, Cr.P.C. only makes this power inherent. Further it is always the duty of the Court to do justice between the parties and in doing so nothing can come as an impediment. It is submitted that when there is an anxiety to do justice Section 362, Cr.P.C. would not operate as a bar because that only prohibits altering or reviewing judgments, neither the correction has to be done nor the judgment has to be dressed. Section 362, Cr.P.C. will only be a bar when there will be some fault finding in the judgment. Learned counsel then relied on Sankatha Singh v. State of Uttar Pradesh, MANU/SC/0142/1962 : AIR 1962 SC 1208. On the strength of this case it is submitted that a Court cannot pass a judgment in the absence of the accused or his counsel and though the order is not without jurisdiction yet the hearing should be given. In this judgment, however, the Court has held that Sessions Judge could not pass the order rehearing of the appeal in exercise of such power that Section 362 read with Section 424, Cr.P.C. specifically prohibits the alter or reviewing of its order by a Court. Inherent powers cannot be exercised to do what the Code specifically prohibits the Court from doing. Reliance was then placed on Bindeshwari Prasad Singh v. Kali Singh, MANU/SC/0100/1976 : AIR 1977 SC 2432. In this case their Lordships of the Supreme Court have made a distinction between the jurisdiction vested in the subordinate Courts and in the High Court. It has been held that "there is no provision in Code of Criminal Procedure empowering a Magistrate to review or recall a judicial order passed by him. Inherent powers under Section 561- A are only given to High Court and unlike Section 151, C.P.C. subordinate Criminal Courts have no inherent powers". Thus, this case in fact impliedly explains what has been held in Sankatha Singh v. State of U.P. and clearly lays down that the High Court has the inherent powers while the lower Courts do not possess it. It is submitted that deciding the case in the absence of the party or his lawyer would amount to denial of justice as the view point of the accused is not before the Court and there is likely to be a prejudice to his case.

24. Mr. Ganpat Singh Singhvi submitted that there is yet another angle of looking at the entire case and if need be this Court should go in the constitutional validity of the provisions of the Code of Criminal Procedure, particularly Section 362, Cr.P.C. which is basically against the rights of the citizens. He submits that if that strict interpretation is taken that Section 362, Cr.P.C., puts a complete bar for rehearing the cases even in case where the principles of natural justice are violated, then this provision would be ultra vires of Article 21 of the Constitution. It is submitted that even in matters of property rights the settled law is that none can be deprived of the property in violation of principles of natural justice. He submits that up to 1978 this view was generally acceptable only in the property matters and an individual's liberty was not put at the same pedestal but that was the capitalistic way of looking at things. Now after 1978 the Courts have given new dimensions to Article 21 of the Constitution and right from Hussainara, Khatoon's case (MANU/SC/0119/1979 : AIR 1979 SC 1360) till date their Lordships of the Supreme Court by series of decisions have opened new vistas and it is in the same sequence that this Court must take a view that Section 482, Cr.P.C. is wide enough to give effect to the spirit of principles of natural justice. It is submitted that there is no inherent prohibition and even if there is one in Section 362, Cr.P.C. the same must be held to be violative to the principles of natural justice and Article 41 of the Constitution. It is submitted that this Court should not take a view that right of hearing of an appeal is completely taken away. In support of his aforesaid contentions he placed reliance on the following observations in Central Inland Water Transport Corporation Ltd. v.

Brojo Nath Ganguly (and another Civil Appeal), MANU/SC/0439/1986 : (1986) 3 SCC 156 : (AIR 1986 SC 1571) wherein it has been held as under :

"The law exists to serve the needs of the society which is governed by it. If the law is to play its plotted role of serving the needs of the society, it must reflect the ideas and ideologies of that society. It must keep time with the heartbeats of the society and with the needs and aspirations of the people. As the society changes, the law cannot remain immutable. The early nineteenth century essayist and wit, Sydney Smith said : "When I hear any man talk of an unalterable law, I am convinced that he is an unalterable Fool", The law must, therefore, in a changing society march in tune with the changed ideas and ideologies. Legislatures are, however, not best fitted for the role of adapting the law to the necessities of the time for the legislative process is to slow and the legislatures often divided by politics, slowed down by periodic elections and overburdened with myriad other legislative activities. A constitutional document is even less suited to this task, for the philosophy and the ideologies underlying it must of necessity be expressed in broad and general terms and the process of amending a Constitution is too cumbersome and time-consuming to meet the immediate needs. This task must, therefore, of necessity fall upon the Courts because the Courts can by the process of judicial interpretation adapt the law to suit the needs of the society".

He then referred to Nawabkhan Abbaskhan v. State of Gujarat AIR 1971 SC 1471 wherein it has been held as under :

"Decisions are legion where the conditions for the exercise of power have been contravened and the order treated as void. And when there is excess or error of jurisdiction the end product is a semblance, not an actual order, although where the error is within jurisdiction it is good, particularly when a finality clause exists. The order becomes 'infallible in error' a peculiar legal phenomenon like the hybrid beast of voidable voidness for which, according to a learned author, Lord Denning is largely responsible. The legal chaos on this branch of jurisprudence should be avoided by evolving simpler concepts which work in practice in Indian conditions. Legislation, rather than judicial law- making will meet the needs more adequately. The only safe course, until simple and sure light is shed from a legislative source, is to treat as void and ineffectual to bind parties from the beginning any order made without hearing the party affected if the injury is to a constitutionally guaranteed right. In other cases, the order in violation of natural justice is void in the limited sense of being liable to be avoided by Court with retroactive force.

In the present case, a fundamental right of the petitioner has been encroached upon by the police commissioner without due hearing. So the Court quashed it not killed it then but performed the formal obsequies of the order which had died at birth. The legal result is that the accused was never guilty of flouting an order which never legally existed."

Reliance has been placed on the following observations of their Lordships in Suk Das v. Union Territory of Arunachal Pradesh, MANU/SC/0140/1986 : AIR 1986 SC 991. It is submitted that this judgment is a landmark and extends the horizons of Article 21 of the Constitution of India

and has an important bearing in deciding this reference. Then reference has been made to A. K. Roy v. Union of India, MANU/SC/0051/1981 : AIR 1982 SC 710 wherein it has been held as under :

"If the detaining authority or the Government takes the aid of a legal practitioner or a legal adviser before the Advisory Board, the detenu must be allowed the facility of appearing before the Board through a legal practitioner.

The embargo on the appearance of legal practitioners should not be extended so as to prevent the detenu from being aided or assisted by a friend who, in truth and substance, is not a legal practitioner. Every person, whose interests are adversely affected as a result of the proceedings which have a serious import, is entitled to be heard in those proceedings and be assisted by a friend."

Reliance has also been placed on the Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni, MANU/SC/0184/1982 : AIR 1983 SC 109, wherein it has been held as under :

"In this connection, we would like to refer to a weighty observation on this point where despite constitutional inhibition this Court conceded such a right. In A. K. Roy v. Union of India, MANU/SC/0051/1981 : (1982) 1 SCC 271 at P. 335 (para 93) : (AIR 1982 SC 710 at p. 747 para 93), the learned Chief Justice while rejecting the contention that a detenu should be entitled to appear through a legal adviser before the Advisory Board observed that Article 22(3)(b) makes it clear that a legal practitioner should not be permitted to appear before an Advisory Board for any party. While noting this constitutional mandate, the learned Chief Justice proceeded to examine, what would be the effect if the department is represented before the Advisory Board by a legally trained person. It was held that in such situation despite the inhibition of Article 22(3)(b) the fair procedure as contemplated by Article 21 requires that a detenu be permitted to appear by a legal practitioner."

On the strength of the aforesaid two authorities it is submitted that their Lordships of the Supreme Court have accepted the right of being heard by a legal expert even in those cases where there was prohibition by law. Reliance has also been placed on Mariabhilli Ramanna v. Andhavarapu Dharmayya 1986 Cri LJ 738 (Andh Pra) and stated that power of re- call is different than the power of review. It has been held in this case that "it is fairly settled that the Court has no power to review its order unless there is a provision specifically empowering the Court to exercise the power of review. The inherent power conferred on the High Court under Section 482, Cr. P.C. cannot be called in aid in a situation where the Magistrate seeks to review the matter. The power of review lacks sanction of any of the provisions of Criminal P.C. Therefore, I am unable to agree with the decision of the Patna High Court."

25. Mr. Ajeet Bhandari placed reliance on Rafiq v. Munshilal, MANU/SC/0076/1981 : AIR 1981 SC 1400 wherein it has been held as under :

"Where an appeal filed by the appellant was disposed of in absence of his counsel, so also his application for recall of order of dismissal was rejected by the High Court, the Supreme Court in appeal set aside both the orders of dismissal on ground that a party who as per the present adversary legal system, has selected his advocate, briefed him and paid his fee can remain supremely confident that his lawyer will look after his interest and such a innocent party who has done everything in his power and expected of him, should not suffer for the inaction, deliberate omission or misdemeanour of his counsel".

It is submitted that" though this was the civil case but the principle laid down therein shall also be applicable in criminal cases.

26. Mr. A. K. Gupta submits that Section 304, Cr. P.C. and Article 39A of the Constitution where right to defend the accused at the State expenditure has been accepted then not to order rehearing of cases decided in the absence of the counsel - must be seriously deprecated. He submits that according to Section 304, Cr. P.C. in a Sessions trial as well as in the appeals legal aid has to be provided at the State expenditure and a notification is also contemplated. While in Article 39A of the Constitution, the framers have categorically enacted that the State shall secure for providing free legal aid by suitable legislation or schemes or in any other way. Seeking support from these it is submitted that whenever case is decided in the absence of legal aid to an accused then keeping in spirit all the aforesaid provisions that judgment should be re- called in the inherent powers of the Court in case it is found that same is prejudicial to the interest of the accused.

27. Mr. Tibrewal submitted that harmonious construction has to be given to the provisions of Section 362, Cr. P.C. and Section 482, Cr. P.C. He submits that under Section 362, Cr. P.C. review or alteration is prohibited but Court has also to bear in mind that power of review is always a creation of a statute and since it has not been created in Code of Criminal Procedure, rather, there is a specific bar, no review is permissible but the question is whether order of review is an order of recall, it has to be considered that whether Section 362, Cr. P.C. can be considered to be a complete bar even if there is gross injustice done to an accused whether the Court will only remain a silent spectator. He submits that in appropriate cases despite bar under Section 362, Cr. P.C. Court is obliged to grant relief to secure ends of justice. Learned counsel has placed reliance on a Full Bench decision of this Court reported in Noor Taki Mammu v. State of Rajasthan 1986 Raj LR 195 : (1986 Cri U 1488) wherein it has been held that in exceptional cases despite the bar contained in Section 397, Cr. P.C. interference can be made with interlocutory orders under Section 482, Cr. P.C. as it gives unfettered powers to this Court for securing the ends of justice. In the aforesaid case the Court was considering the question of releasing an approver on bail who was not on bail at the time of granting pardon. After considering the various authorities the Court held as under :

"A perusal of the aforesaid cases coupled with that of many other cases, like that of Sunil Batra v. Delhi Administration : 1980 Cri LJ 1099 : (MANU/SC/0184/1978 : AIR 1980 SC 1579), and yet another case of Hussainara Khatoon reported in MANU/SC/0119/1979 : AIR 1979 SC 1360, we have no hesitation in holding that detention of a person even by due process of law has to be reasonable, fair and just and if it is not so, it will amount to violation of Article 21 of the Constitution of India. Reasonable expeditious trial is warranted by the provisions of Cr. P.C. and in case this is not done and an approver is detained for a period which is longer than what can be considered to be reasonable in the circumstances of each case, the Court has always power to declare his detention either illegal or enlarge him to bail while exercising its inherent powers. Section 482, Cr. P.C. gives wide power to this Court in three circumstances. Firstly, where the jurisdiction is invoked to give effect to an order of the Court. Secondly if there is an abuse of the process of the Court and thirdly in 'order to. secure the ends of justice. There may be occasions where a case of approver may fall within latter two categories. For example in a case where there are large number of witnesses a long period is taken in trial where irregularities and illegalities have been committed by the Court and a re- trial is ordered and while doing so the accused persons are released on bail, the release of the approver will be occasioned for securing the ends of justice. Similarly, there may be cases that there may be an abuse of the process of the Court and the accused might be trying to delay the proceedings by absconding one after another, the approver may approach this Court for seeking indulgence. But this too will depend upon the facts and circumstances of each case. Broadly, the parameters may be given but no hard and fast rule can be laid down. For instance, an approver, who has already been examined and has supported the prosecution version and has also not violated the terms of pardon coupled with the fact that no early end of the trial is visible, then he may be released by invoking the powers under Section 482, Cr. P.C. Section 482, Cr. P.C. gives only power to the High Court. Sessions Judge cannot invoke the provisions of the same. High Court therefore in suitable cases can examine the expediency of the release of an approver. We are not inclined to accept the contention of the learned Public Prosecutor that since there is a specific bar under Section 306(4)(b), Cr. P.C. Section 482, Cr. P.C. should not be made applicable. Their Lordships of the Supreme Court have said it in times without number that there is nothing in the Code to fetter the powers of the High Court under Section 482, Cr. P.C. Even if there is a bar in different provisions for the three purposes mentioned in Section 482, Cr. P.C., and one glaring example quoted is that though Section 397 gives a bar for interference with interlocutory order yet Section 482, Cr. P.C. has been made applicable in exceptional cases. Secondly revision by the same petitioner is barred yet this Court in exceptional cases invokes the provisions of Section 482, Cr. P.C. Therefore, Section 482, Cr. P.C. give sample power to this Court. However, in exceptional cases, to enlarge the approver on bail, we answer the question that according to Section 306(4)(b), Cr. P.C. the approver should be detained in custody till the termination of trial, if he is not already on bail, at the same time in exceptional and reasonable cases this Court has power under Section 482, Cr. P.C. to enlarge him on bail or in case there are circumstances to suggest that his detention had been so much prolonged, which would otherwise outlive the period of sentence, if convicted his detention can be declared to be illegal, as violative of Article 21 of the Constitution."

Relying on Ranchod Mathur Wasawa v. State of Gujarat, MANU/SC/0442/1973 : (1974) 3 SCC 581: (AIR 1974 SC 1143) it is submitted that adequate opportunity and facility should be provided to the counsel for an accused to prepare the case. He relied on the following passage of the judgment :

"Indigence should never be a ground for denying fair trial or equal justice. Therefore, particular attention should be paid to appoint competent advocates, equal to handling the complex cases -- not patronising gestures to raw entrants to the Bar. Sufficient time and complete papers should also be made available, so that the Advocate chosen may serve the cause of justice with all the ability at his command. In all these cases there should be a sensitive approach made by the Court to see that the accused feels confident that his counsel chosen by the Court has had adequate time and material to defend him properly".

Reliance was placed on a Full Bench decision of Travancore Cochin reported in State v. Kunjan Pillai Alyappan Pillai AIR 1952 Trav Co 210, where power to review was considered. Their Lordships though held that Section 561A does not confer any power on the High Courts even under Section 561A to review or alter the judgment, yet observed that in the circumstances of that particular case since there was no abuse of the process of the Court or any grave injustice was done to the party, they were dismissing the petition. They however, did not express any specific view about the correctness of the law laid down in different cases wherein power of re- call had been accepted. The Full Bench of Allahabad High Court in Mahesh v. State consisting of five Judges considered the scope of inherent powers of the High Court and held as under :

"The inherent power cannot affect the substantive rights. It can be invoked only to law down the procedure in cases not covered by the provisions of the Code. The inherent power is to be exercised in exceptional cases, and even then carefully and with caution, when there is no other remedy which can be effectively availed of. The High Court will also be justified to exercise its inherent power in those exceptional cases which could not be in the mind of the legislature at the time of enacting the Code even though for usual cases a provision was made therein. Whenever the inherent power is exercised, it shall be for one of the three purposes mentioned in Section 561A, Cr. P.C. that is, to prevent the abuse of the process of the Court or to secure the ends of justice".

A Full Bench consisting of four Judges of Jammu and Kashmir High Court in Prem Singh v. State MANU/JK/0040/1981, held as under :

"If there is no decision because it is a nullity, the bar under Section 369 cannot operate. Cases are conceivable where the order passed in appeal or revision is a nullity not because of any procedural non- compliance by the Court of appeal or revision, which goes to the roof of the matter, but because the order passed by the trial Court itself is found to be a nullity. That may be so where the trial Court has violation of principles of natural justice and the appellate or the revisional Court had no jurisdiction of its own to make an order but its jurisdiction is only to confirm or set aside the order of the trial Court. In such cases, the order passed in appeal or revision would be a nullity because in law the order of the trial Court will be deemed to be non-existent and it would necessarily follow that there was no order which the appellate Court or the revisional Court would confirm or set aside. Consequently, it shall be open to the appellate Court or the revisional Court, as the case may be, to proceed to rehear the case as if the order already passed by it did not exist, Section 369, Cr. P.C. would not stand in its way".

Reliance has also been placed on Deepak Thanwardas Balwani v. State of Maharashtra 1985 Cri LJ 23 (Bom) wherein it has been held as under :

"In its inherent powers as provided in Section 482, the High Court can review or revise its judgment if such a judgment is pronounced without giving an opportunity of being heard to a party who is entitled to a hearing and that party is not at fault. For the mistake of the Court, a party cannot suffer".

28. Mr. Dalip Singh laid emphasis on the right recognised for providing in engaging a lawyer and hearing them. He relied on the observations of their Lordships of the Supreme Court in State of Madhya Pradesh v. Shobharam, MANU/SC/0271/1966 : AIR 1966 SC 1910 wherein it has been held as under :

"But the right to be defended by a legal practitioner is not conferred only on a person arrested. The right to be defended by a legal practitioner extends also to a case of defence in a trial which may result in the loss of personal liberty. On the other hand, where a person is subjected to a trial under a law which does not provide for an order resulting in the loss of his personal liberty, he is not entitled to the constitutional right to defend himself at the trial by a legal practitioner. The reason is that Articles 21 & 22 of the Constitution are concerned only with giving protection to personal liberty. That is strongly indicated by the language used in these Articles and by the context in which they occur in the Constitution. It would follow that the requirement laid down in Art, 22(1) is not a constitutional necessity in any enactment which does not affect life or personal liberty."

29- 30. Mr. Jagdeep Dhankhar also laid emphasis on Articles 21 & 39A of the Constitution of India and further submitted that scope of Section 482, Cr. P.C. is very wide enough and Section 362, Cr. P.C. cannot be said to be a bar in all cases under Code of Criminal Procedure. He submits that this Court while interpreting an order under Section 68 IPC wherein an accused has not paid the fine during the period given to him has negatived the argument of the Government Advocate that Section 362, Cr. P.C. would come into operation and this Court cannot now review the order. In this light he has referred to Sheduram v. State of Rajasthan 1985 Cri LR 703 (Raj). Reliance was also placed on an order of the Supreme Court reported in Chakreshwarnath Jain v. State of Uttar Pradesh : (MANU/SC/0128/1981 : AIR 1981 SC 2009 (2) : 1981 (Supp) SCC 11, where a revision petition was ex parte decided by the Allahabad High Court. Their Lordships set aside the order and sent the case back to Allahabad High Court for a decision afresh. Reliance was also placed on a decision of the Supreme Court in Superintendent and Remembrancer of Legal Affairs W.B. v. Mohan Singh (MANU/SC/0223/1974 : AIR 1975 SC 1002 : 1975 Cri LJ 812) wherein it has been held as under :

"Inherent power of High Court to quash criminal proceedings in lower Court - - Proceedings long drawn out - - No prima facie case made out against accused - - Proceedings may be quashed by High Court to prevent abuse of process of Court and to secure ends of justice - - Fact that a similar application for quashing the proceedings on a former occasion was rejected by the High Court on the ground that questions involved were purely questions of fact which were for the Court of fact to decide, is no bar to the quashing of the proceedings at the later stage - - Such quashing will not amount to revision or review of the High Court's earlier order - - Order under Section 561- A should be passed in view of the circumstances existing at the time when the order is passed."

31. Mr. M.I. Khan Additional Advocate General submitted that this question is of much wider importance and should be referred to a still larger Bench. He submits that one of us has already taken view in Noortaki's case {MANU/RH/0015/1987 : 1986 Cri LJ 1488) (Raj) (supra), that even when there is specific prohibition under same provision in exceptional cases inherent powers of the Court can be invoked, he submits that Noortaki's case requires reconsideration and it has to be considered whether scope of Article 21 of the Constitution can be extended to that extent. He submits that according to Article 21 of the Constitution there are only two riders that no person should be deprived of his life or personal liberty and that if it is to be curtailed it can only be in accordance with the procedure established by law. He submits that it is essential to consider Article 21 of the Constitution and it is submitted that even on consideration of it it cannot be said that the provisions of Section 362, Cr. P.C. can be circumvented by taking resort to Section 482, Cr. P.C. It is submitted that Section 362, Cr. P.C. starts with the word save as 'otherwise provided by this Code, therefore, unless there is some provision specifically giving effect to the bar contained in Section 362, Cr. P.C this Court cannot widen the horizans by taking resort to Section 482, Cr. P.C. He relies on Smt. Sooraj Devi v. Pyare Lal, 1981 Cri LJ 296 : (MANU/SC/0228/1981 : AIR 1981 SC 736) and specifically refers to the following observations of their Lordship of the Supreme Court:

"The appellant points out that he invoked the inherent power of the High Court saved by Section 482 of the Code and that notwithstanding the prohibition imposed by Section 362 the High Court had power to grant relief. Now it is well settled that the inherent power of the Court cannot be exercised for doing that which is specifically prohibited by the Code. Sankatha Singh v. State of U.P., MANU/SC/0142/1962 : AIR 1962 SC 1208. It is true that the prohibition in Section 362 against the Court altering or reviewing its judgment is subject to what is "otherwise provided by this Code or by any other law for the time being in force". Those words, however, refer to those provisions only where the Court has been expressly authorised by the Code or other law to alter or review its judgment. The inherent power of the Court is not contemplated by the saving provision contained in Section 362 and, therefore, the attempt to invoke that power can be of no avail".

He submits that their Lordships in the aforesaid case have categorically held that inherent powers cannot be invoked when there is a complete bar. He has also placed reliance on Nandlal Chunilal Bodiwala v. Emperor, MANU/MH/0072/1945 : AIR 1946 Bom 276 and submitted that the Full Bench of Bombay High Court considered the meaning of the word 'judgment' as occurred in then Section 369, Cr. P.C. and the scope of reviewing and altering the said judgment. Section 438, Cr. P.C. was made for hearing the effect of the petition still it would not affect its validity and the binding nature on the petitioner. He also relied on S. Kuppuswami Rao v. The King AIR 1949 FCI to substantiate that the term 'judgment' indicates the judicial decision given on the merits of the dispute before the Court and in criminal case the expression 'judgment' or 'final order' cannot cover a preliminary or interlocutory order made on a preliminary objection. On the strength of this case it is submitted that if the judgment is final order then there is a bar for reviewing or altering the same. Mr. Khan also submitted that when a reference has been made to this Bench it should only answer the question referred to and the scope is limited. He refers to Eknath Shankarrao Mukkawar v. State of Maharashtra MANU/SC/0087/1977 and submits that the reference made is competent.

32. Mr. Mohammad Rafiq submitted that power to re- call must be derived only from some specific provisions in the Code and there being none the Code cannot enlarge the scope which otherwise has been restricted by the negative provisions of Section 362 Cr. P.C. He submitted that the inherent power regarding review or alteration of the judgment in Section 482 Cr. P.C. has been deleted by virtue of Section 362 Cr. P.C. He has further submitted that a judgment is a termination of a proceeding and once the proceeding is terminated that Court is functus officio and to give effect to this principle of functus officio the legislature has incorporated Section 362 Cr. P.C. It is submitted that the express provision of Section 367 Cr. P.C. would override even inherent powers as the same is prohibitory. He also emphasized on the words 'save as otherwise provided by this Code or by any other law' and submits that these words make it clear that the only authority vested with power is Supreme Court. He submits that Supreme Court possesses three types of , jurisdiction, namely, appellate jurisdiction, power to correct the errors of subordinate Courts and to lay down the law under Article 141 of the Constitution of India. It is submitted that the Supreme Court has held that there are no inherent powers vested in a court when there is specific bar against it and that being the law binding on this Court the Court cannot now enlarge the jurisdiction by giving wider interpretation to Section 482 Cr. P.C. He relies on Manohar Nathurao Samarth v. Marotrao, MANU/SC/0350/1979 : (1979) 4 SCC 93 : (AIR 1979 SC 1084) and submits that the emphasis while interpreting a law should be on the function, utility, aim and purpose which the provision has to fulfil He has relied on para 14 of this judgment which reads as under :

"Even assuming ' that literality in construction has tenability in given circumstances, the doctrinal development in the nature of judicial interpretation takes us to other methods like the teleological , the textual, the contextual and the functional. The strictly literal may not often be logical if the context indicates a contrary legislative intent. Courts are not victims of verbalism but are agents of the functional success of legislation, given flexibility of meaning, if the law will thereby hit the target intended by the law- maker. Here the emphasis lies on the function, utility, aim and purpose which the provision has to fulfil. A policy oriented, understanding of a legal provision which does not do violence to the text or the context gains preference as against a narrow reading of the words used. Indeed, this approach is a version of the plain meaning rule, and has judicial sanction. In Huttonv. Phillips (1948 45 Del 156) the Supreme Court or Delaware said :

(Interpreation) involves for more than picking out dictionary definitions of words or expressions used. Consideration of the context saying that a verbal expression is plain or unambiguous, we mean little more than that we are convinced that virtually anyone competent to understand it, and desiring fairly and impartially to ascertain its signification, would attribute to the expression in its context a meaning such as the one we derive, rather than any other; and would consider any different meaning, by comparison, strained, or farfetched, or unusual, or unlikely."

He also referred to Addl. District Magistrate, Jabalpur v. Shivakant Shukla, MANU/SC/0062/1976 : AIR 1976 SC 1207 and submitted that while interpreting the provisions and considering the observations of a High Judicial Authority like the Supreme Court greatest possible care must be taken to relate the observations of a Judge to the precise issues before him and to confine such observations, even though expressed in broad terms, in the general compass of the question before him, unless he makes it clear that he intended his remarks : to have a wider

ambit. His Lordship Hon'ble Mr. Justice Bhagwati in the aforesaid case has observed that it is not possible for Judges always to express their judgments so as to exclude entirely the risk that in some subsequent case their language may be misapplied and any attempt at such perfection of expression can only lead to the opposite result of uncertainty and even obscurity as regards the case in hand. He also placed strong reliance on Soorajdevi's case (MANU/SC/0228/1981 : AIR 1981 SC 736) (supra) relied upon by Mr. Khan. He also placed reliance on B. R. V. Satyanarayana v. The State MANU/AP/0227/1976 (Andh Pra) and submitted that the High Court cannot review its own order. He relied on the following observations :

"It is an universal principle of law that when a matter has been finally disposed of by a Court, such Court is functus officio in respect of that matter. In the absence of a direct statutory provision, the Court which became functus officio cannot entertain a fresh prayer for the same relief unless and until the previous order of final disposal has been set aside. It is this cardinal principle that has been incorporated in Section 362 of the Code. Admittedly, there is no provision in any other law permitting the High Court to alter or review a final order passed by it in a criminal revision case. Inherent powers under Section 482 cannot be exercised to do what the Code specifically prohibits the Court from doing. When Section 362 expressly prohibits the Court from altering or reviewing its final order after the same is signed, it would not be open to High Court to review or alter the order by admitting a fresh revision application. Case law reviewed.

Where the order of dismissal of a revision petition was a regular order passed on merits after hearing the petitioner's counsel, it cannot be said that the order is without jurisdiction or that it was passed without affording an opportunity to petitioner. Even a summary dismissal at the admission stage of a revision case after due hearing of the petitioner or his counsel is as much a dismissal after full hearing and the order having been pronounced and signed by the Judge, the same cannot be altered or reviewed in view of the express prohibition contained in Section 362 Cr. P.C."

He also relied on Naresh v. State of Uttar Pradesh, MANU/SC/0192/1981 where the High Court had altered the quantum of sentence. Their Lordships of the Supreme Court held that the High Court was wholly wrong in altering the judgment passed by them disposing the criminal appeals. He also relied on Chandrabali v. State MANU/UP/0275/1979 (All) wherein also it was held that Section 482 Cr. P.C. is not applicable in which it has been held as under :

"We may also point out that in the Full Bench case of Raj Narain (MANU/UP/0075/1959 : AIR 1959 All 315) (supra) it was observed in the majority judgment that Section 561- A, did not authorise this Court to rehear a case where the applicant or appellant was not heard due to some fault of his or his counsel Thus the applicant cannot get any assistance even from the majority judgment in Raj Narain's case (supra) which on this point has not been overruled by their Lordships of the Supreme Court. Thus the applicant in the case on hand will not be entitled to claim rehearing even if we were to hold that the applicant could invoke inherent jurisdiction of this Court reserved under Section 482 Cr. P.C.".

He then relied on Har Bilas v. Ram Niwas Bansal MANU/UP/0177/1983 (All). The Court held that Section 362 Cr. P.C. is a bar. But in this case we may observe that the name of the counsel was printed in the cause- list and there was no adjournment slip also nor any mention was made and it was an application under Section 482 Cr. P.C. which was decided and in those circumstances their Lordships held that S. 362 will operate as a bar. A reference has then been made to Ajit Singh v. State of Punjab (1983) 2 Crimes 60 : AIR 1982 NOC 219 (Punj & Har) (FB) wherein it has been held as under :

"It seems to be more than manifest that both with regard to the appellate and the revisional jurisdiction of the High Court there is no power to review or revise its earlier judgment, except to correct clerical errors. In face of the all pervading dictum there is no option but to hold that Lal Singh's case MANU/PH/0007/1970) (supra) can no longer hold the field and is hereby overruled. Consequently the answer to the first question has to be rendered in the affirmative and it is held that the High Court has no power to review or alter its earlier judgment within the criminal jurisdiction accept to correct clerical errors."

The learned counsel also submitted that the word 'alter' appearing in Section 362 Cr. P.C. is wider in scope than the word 're- call'. He referred to Law Lex icon by Venkataramayya 1978 Edition page 128 and submitted that 'recall' included the word 'review'. He finally submitted that legislature always intended a finality to a judgment and it should not be permitted to be tested by taking resort to Section 482 Cr. P.C. He submitted that the cancellation of earlier judgments is not permissible. He has also placed reliance on Collector of Customs v. Digvijay Singhji Spinning & Weaving Mills Ltd., Jamnagar, MANU/SC/0365/1961 : AIR 1961 SC 1549. In Shivanarayan Kabra v. State of Madras, MANU/SC/0091/1966 : AIR 1967 SC 986 it has been observed as under :

"It is a sound rule of interpretation that a statute should be so construed as to prevent the mischief and to advance remedy according to the true intention of the makers of the statute."

In The Commr. of Sales Tax U.P. v. Mangal Sen Shyamlal, MANU/SC/0448/1975 : AIR 1975 SC 1106 it has been held as under :

"A statute is supposed to be an authentic repository of the legislative will and the function of a Court is to interpret it "according to the intent of them that made it". From that function the Court is not to resile. It has to abide by the maxim ut res magis valeat quam pereat, lest the intention of the legislature may go in vain or be left to evaporate into thin air. Where that intent is clearly expressed in the language of the Act, there is little difficulty in giving effect to it. But where such intent is covert and couched in language which is imperfect, imprecise and deficient or is ambiguous or enigmatic and external aids to interpretation are few, scant and indeterminate, the Court may, despite application of all its experience, ingenuity and ratiocination, find itself in a position no better than that of a person solving a cross word puzzle with a few given hints and hunches. In such a situation a mere reference to the High Court of a question of opinion may not afford an adequate solution. Only legislative amendment may furnish an efficacious and speedy remedy."

He also referred Rule 64 of the Rajasthan High Court Rules and said that for the purpose of review there are specific rules which have to be observed.

33. Mr. S. P. Tyagi submitted that once the judgment is given and signed it has become final for the Court which has delivered and there is no provision of law which empowers the Court to alter or change the same by way of review, recall, reconsideration or rehearing. In other words he submits that the Court is functus officio and whatever may be the circumstances there being a jurisdictional power provided by Section 362 Cr. P.C. no jurisdiction express or implied is vested in the Court. He relies on two decisions of their Lordships of the Supreme Court, one reported in Sankatha Singh v. State of Uttar Pradesh, (MANU/SC/0142/1962 : AIR 1962 SC 1208) (supra) and another in State of Orissa v. Ramchander Agarwala, (MANU/SC/0179/1978 : AIR 1979 SC 87) (supra).

34. Mr. Mathur, Government Advocate, adopted the arguments of the Addl. Advocate General and Mr. Mohd. Rafiq and further submitted that Section 393 Cr. P.C. read with Sections 377, 378 and 384(4) makes it abundantly clear that there is a finality attached to the judgments and orders and Section 362 Cr. P.C. provides a bar which cannot be lifted by Section 482 Cr. P.C.

35. Mr. S. C. Agrawal in his rejoinder submitted that Advocates presence has always been felt necessary and the Courts have been zealous in looking to the fact that the case of the accused has not in any manner been prejudiced. He has placed reliance on Raj Kapoor v. State (Delhi Administration), MANU/SC/0210/1979 : AIR 1980 SC 258 where their Lordships of the Supreme Court have held that the High Court must exercise the inherent powers very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initialed illegally, vexatiously or as without jurisdiction. Learned counsel has also relied upon a judgment delivered by this Court in Baluram v. State, S. B. Cr. Misc. Appl. No. 154/82 wherein an application under Section 482 Cr. P.C. was dismissed.

36. We shall first quote and discuss the cases considered by Hon'ble Sharma, J.

37. We have given our earnest and thoughtful consideration to the rival contentions and have carefully gone through the cases cited above.

38. There are two views available on the point. According to one view Section 362 Cr. P.C. has been held to be mandatory and puts complete bar and it has been therefore, held that Section 482 Cr. P.C. can also not be invoked for the purposes of reviewing or altering the judgment. The other view is that re- calling is different than reviewing and altering and if the Court is of the opinion that gross injustice has been done, then Section 482 Cr. P.C. should be invoked to re- call the judgment and re- hear the case. !n fact the earlier view has impliedly been done away with by their Lordships of the Supreme Court in Sankatha Singh's case (MANU/SC/0142/1962 : AIR 1962

SC 1208) (supra). Their Lordships have held that the appellate Court had no power to review or restore an appeal which has been disposed of under Sections 424 and 369 Cr. P.C. (old). Similar was the view taken in State of Orissa v. Ram Chandra, (MANU/SC/0179/1978 : AIR 1979 SC 87) (supra). Sankatha Singh's case has been referred to in Sooraj Devi's case (MANU/SC/0228/1981 : AIR 1981 SC 736) (supra) wherein also their Lordships have held that inherent powers cannot be invoked when there is a complete bar. Scope of Section 482 Cr. P.C. was then considered by their Lordships in Manohar Nathu Sao Samarth v. Marot Rao, (MANU/SC/0350/1979 : AIR 1979 SC 1084) (supra). Thus on one side as mentioned above the principles which have been laid down by their Lordships of the Supreme Court can be summarised as under :- -

1. That the powers to deal with the case must flow from the statute,

2. That the powers given under Section 362 Cr. P.C. (S. 369 Cr. P.C. old) given to the Court for reviewing or altering is limited only for correcting an arithmetical or clerical error and specifically prohibits Courts from touching the judgment by taking away the powers altering or reviewing the judgment or the final order and as such principle of functus officio has been accepted.

3. That the prohibition contained in Section 362 Cr. P.C. (Section 369 Cr. P.C. Old) is not only restricted to the trial Court but also extends to appellate Court or the revisional Court.

4. That the inherent powers of the Court cannot be invoked where there is an express prohibition and in other words Section 482 Cr. P.C. cannot be invoked.

39. As against this the analogical deduction which comes out from another set of cases is- -

(i) Right of the accused to be heard is his valuable right which cannot be taken away by any provision of law,

(ii) If the accused has not been given an opportunity of being heard or is not provided with the counsel when not duly represented it will be violative of principles of natural justice as well as Article 21 of the Constitution,

(iii) That to provide defence counsel in case the accused is not in a position to engage is fundamental duty of the State and has throughout been recognized and now incorporated in Section 304 Cr. P.C. and in Article 39 A of the Constitution,

(iv) That bar of review or alter is different than the power of re- call,

(v) That inherent powers given under Section 482 Cr. P.C. (Section 561- A Cr. P.C. Old) are wide enough to cover any type of cases if three conditions mentioned therein so warrant, namely- -

(a) for the purpose of giving effect to any order passed under the Code of Criminal Procedure;

(b) for the purposes of preventing the abuse of the process of any Court; and

(c) for securing the ends of justice.

(vi) The principle of audi alteram partem shall be violated if right of hearing is taken away,

(vii) That when the judgment is re- called it is a complete obliteration/abrogation of the earlier judgment and the Appeal or the ' Revision, as the case may be, has to be heard and decided afresh,

(viii) That a Court subordinate to High Court cannot exercise the inherent powers and the Code restricts it to the High Court alone.

(ix) That no fixed parameters can be fixed and hard and fast rule also cannot be laid down and Court in appropriate cases where it is specified that one of the three conditions of Section 482 Cr. P.C. are attracted should interfere.

40. Hon'ble Mr. Justice Lodha while deciding C. Jacobs case has taken note of all these factors before he directed re- hearing of the appeals. He has in extent discussed the judgment of the Supreme Court particularly in Sankatha Singh (MANU/SC/0142/1962 : AIR 1962 SC 1208) and Swarth Mathew's cases (MANU/SC/0272/1972 : AIR 1972 SC 1300) (supra) and had then arrived at a conclusion. He has also dealt with Dhanna's case (MANU/RH/0034/1963 : AIR 1963 Raj 104) (supra) and in fact we do not find any anomaly in decisions in Dhanna's and C. Jacobs 1986 Raj LR 506 cases which would have otherwise called for this reference. Hon'ble Mr. Justice Bhargava C. B. in Dhanna's case has discussed various authorities which have been cited before us also and then has categorically held "the inherent powers under Section 561- A should be exercised very sparingly and only when the facts of the case justify the tests laid down in the section itself. They do not authorise the Court to re- direct a case where the appellants or his counsel was not heard on account of their own fault. I am, therefore, not satisfied that the absence of the learned counsel

at the time the appeal was called for hearing was due to insufficient cause and the ends of justice require that a re- hearing should be granted to him".

41. Thus in this case the power of rehearing has been accepted by Hon'ble Bhargava, J., of course in cases where sufficient cause had been shown for the absence of the appellant or his counsel He, however, was clearly of the opinion that Section 561- A Cr.P.C. is not meant for abusing the process of the Court, i.e., to say that a lawyer or the appellant deliberately, in order to avoid the Bench, absents himself, then it would not give him a right of being re- heard. The facts in that case were such where it had not been shown that the lawyer was busy elsewhere or that his name might not have been shown in the cause- list and, on merits, therefore, he refused to exercise jurisdiction under Section 561 A Cr. P.C. Hon'ble Lodha, J. distinguished the case on fact and not on the point of law. He on the other law (hand?) accepted the principle laid down by Hon'ble Bhargava, J. Therefore, in our opinion case of Dhanna (MANU/RH/0034/1963 : AIR 1963 Raj 104} (supra) was not sought to be distinguished in the case of C. Jacob 1986 Raj LR 506) by Hon'ble Lodha, J. and there is no need to refer this case before larger Bench particularly when similar principles had been laid down by their Lordships of the Supreme Court in Shaukin Singh's case (MANU/SC/0223/1981 : AIR 1981 SC 1698) (supra) relied upon by Hon'ble Sharma, J.

42. Sankatha Singh's case also, in our opinion, does not put a complete bar as their Lordships in that case were considering the scope of the trial Court and it has been explained in Swarth Methue's case (MANU/SC/0272/1972 : AIR 1972 SC 1300) in which case their Lordships set aside the conviction and ordered the rehearing of the appeal. A perusal of the history of the cases shows that in all democratic societies right of hearing has been given utmost importance, rather laws have been enacted from time to time for providing legal aid to the persons who are unable to afford the lawyers. Holds Werth's history on English Law Vol. 9 page 226 deals with history of struggle which took place in England before a litigant's representation in the Court took a final shape in bringing out Poor Persons' Defence Ordinance which came up for scrutiny before their Lordships of the Privy Council in Gelosh Hurads AIR 1944 PC 93 (cited above). Very valuable observation has been made therein that if there is a refusal to hear the counsel for the accused an appeal cannot stand. Their Lordships had gone to the extent of holding that even when an adjournment had been sought and refused the accused has to be re- heard because right of hearing cannot be taken away. Their Lordships of the Supreme Court have also advanced this very principle where it was held in couple of cases that if a lawyer does not appear it behoves the Court to appoint an amicus curiae. The same view has been taken in other cases also which have been referred to by the learned counsel above and we are firmly of the opinion that right of hearing cannot be taken away and the sound judicial view would be that reasonable opportunity of being heard must be provided to the accused. Thus, once an appeal or revision is admitted for hearing it should not normally be decided ex parte and if it has been decided ex parte and valid reasons have been shown that there had been failure of justice, inherent powers of this Court should be exercised. This of course, has not to be meant for giving long rope to those persons who either intend to delay the course of justice or to avoid the case from being heard by a particular Bench. Mr. M. I. Khan has cited a passage from Crime in Britain Today by Clive Borrell and Brian Cashinella. He referred to Chapter Eleven Courts, Law and Prisons, particularly the following paragraphs :

"Let there be no doubt, that a minority of criminal lawyers do very well from the proceeds of crime. A reputation for success, achieved by persistent lack of scruple in the defence of the most disreputable, soon attracts other clients who see little hope of acquittal in any other way. Experienced and respected Metropolitan detectives can identify lawyers in criminal practice who are more harmful to society than the clients they represent. A conviction said to result from perjury or wrong- doing by police rightly causes a public outcry. Acquittal, no matter how blatantly perverse, never does, even if brought about by highly paid forensic trickery."

"There is very little reliable information about how and why juries arrive at their verdicts because no one is allowed to listen to the discussions in the jury room. Lawyers obviously believe that public confidence in the jury would be undermined if this were allowed to happen. I find this curious. If exposing the truth about the jury would destroy the public's belief in its value, then surely it is high time that belief was destroyed I cannot think of any other social institution which is protected from rational inquiry because investigation might show that it wasn't doing its job. My own view is that the prosecution of those acquittals relating to those whom experienced police officers believe to be guilty is too high to be acceptable. I would not deny that sometimes commonsense and humanity produce an acquittal which could not be justified in law but this kind of case is much rarer than you might suppose. Much more frequent are the cases in which the defects and uncertainties in the system are ruthlessly exploited by the knowledgeable criminal and his advisers."

42A. Generally speaking we do not have any dispute with what has been said by the author but these observations have hardly any bearing on the question referred to in the case.

43. We have also gone through the observations in the following Article wherein it has been laid down by Shri Ram Jethmalani in an article titled as 'A lawyer Excommunicated' published in LEX ET JURIS wrote- -

"So important is the right of an accused to have the services of a lawyer that the Constitution-makers were not satisfied with the rights created by the successive Codes of Criminal Procedure. The Constitution- makers introduced it in the Fundamental Rights chapter so that no tyrannical regime could curtail or destroy it. Article 22 declares that no accused shall be denied the right to consult and to be defended by a legal practitioner of his choice."

".....The newly added Article 39A mandates that the legal system shall provide free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."

In another issue of the same magazine Soli Sorabjee an eminent lawyer wrote an Article 'Our Expanding Liberties wherein he wrote asunder :- -

"At present it is Article 21 which is the fountainhead of the freedom and liberties of the people of India. Yet, it is only ten years ago that the Supreme Court in its disastrous judgment in ADM

Jabalpur MANU/SC/0062/1976 : AIR 1976 SC 1207 held that on account of the suspension of Article 21 during the operation of the proclamation of Emergency the writ of habeas corpus was not available even in the case of an order of detention proven to be mala fide. Fortunately, after the Constitution (Forty- fourth) Amendment Act, which has made Article 21 non- suspendable even during an emergency, no Court can now deny to any person, at anytime, the full amplitude of Article 21 including its enforcement by a writ of habeas corpus or other appropriate writ.

There are indignant critics who charge that by an over- expansive interpretation of Article 21, the Supreme Court is acting as a super- legislature and is dabbling in matters outside its legitimate sphere. These critics forget that it is the proverbial tardiness of legislatures and the inertia, almost boardering on callousness, of the executive branch which provides a proper occasion for judicial activism. The judiciary can neither prevaricate nor procrastinate. It must respond if fundamental rights are to be living realities for the downtrodden and the oppressed. The Court is not legislating. It is adopting certain operational principles and attitudes within the framework of the Constitution.

May be the Court has "gone too far" in interpreting Article 21. If it has erred, it is an error which had made the blessings of liberty available in a real and meaningful way to numerous unfortunate and exploited segments of humanity. Indeed, the Court's recent role in this field indicates its commitment to 'Taking Rights Seriously' or, as Prof. Upendra Baxi has aptly said, "The Court is taking suffering seriously."

Ultimately, that is the real yardstick by which one can answer the question whether the Supreme Court of India is the sentinel on the qui vive for the bulk of its citizens."

A great emphasis has been laid on Article 21 of the Constitution of India which has been given new dimensions. Therefore, while considering the scope of right of hearing we are of the opinion that due consideration has to be given to Section 304 Cr. P.C. Articles 21 and 39A of the Constitution. Section 482 Cr. P.C. will have to be considered in the light of the aforesaid provisions. We have already mentioned above that in all civilized and democratic societies right of hearing has been considered to be one of the most fundamental of the fundamental rights flowing from principles of natural justice and principles enshrined in well known maxim audi alteram partem. Hon'ble Mr. Justice C. B. Bhargava white considering Dhanna's case (MANU/RH/0034/1963 : AIR 1963 Raj 104) did not consider the aforesaid aspect but st.ill after considering the various cases particularly Keshav Lal v. Gaveria, MANU/RH/0022/1952 : AIR 1952 Raj 50, Sri Ram v. Emperor AIR 1945 All 106, Chandrika v. Rex, MANU/UP/0075/1948 : AIR 1949 All 176, Ram Ballabh v. State MANU/BH/0113/1962, Mohan Singh v. Emperor, MANU/BH/0051/1943 : AIR 1944 Pat 209 and Bhagwandas v. The State AIR 1954 M B 10 and also considering his own judgment in Criminal Revision Petition No. 138/62 coupled with Rules 79 and 80 of the Rajasthan High Court Rules, did come to the conclusion that re- hearing of a revision or an appeal can be ordered if the conditions laid down in Section 561- A Cr. P. C. (S. 482 Cr. P.C now) are fulfilled but gave a caution that this power should be sparingly used and the

test laid down in the section must be satisfied. Hon'ble Mr. Justice Lodha in C. Jacob's case 1986 Raj LR 506 has not only given due weight to the observations made by Hon'ble Bhargava, J. but has gone further and laid more emphasis on this right of re- hearing. He has only distinguished the same on facts. Hon'ble Justice Bhargava, J. had, on the merits of the case found that it was not clear from the application that the learned counsel was actually arguing any case before another Bench when the appeal was called for hearing. He further held that if the learned counsel had other cases listed on that day before other Benches he could have mentioned this case as provided by Rule 80 of the Rajasthan High Court Rules and, therefore, on merits he did not hear the appeal and it was because of these facts that Hon'ble Justice Lodha, J. in his judgment distinguished the said case and in our considered opinion Hon'ble Mr. Justice Sharma was not right when he held that Hon'ble Lodha, J. in C. Jacob's case had taken a different view not agreeing with the views of Hon'ble Bhargava, J. in case of Dhanna(MANU/RH/0034/1963 : AIR 1963 Raj 104). In fact Hon'ble Mr. Justice Lodha, J. has widened the scope of Section 482 Cr. P.C. and Hon'ble Mr. Justice Sharma himself in his order of reference has accepted that proposition. Considering the various aspects of the matter in our opinion there was no necessity of making a reference to this Court and we do not find that there was any difference of opinion between two Benches of this Court. On the contrary we find that even in the order of reference Hon'ble Mr. Justice Sharma has advanced the same logic and has opined that in view of Shaukin Singh's case (MANU/SC/0223/1981 : AIR 1981 SC 1698) a petition under Section 482 Cr. P.C. can be accepted.

44. Keeping the well known principles of interpretation of statute in our mind we deem it proper to observe that while considering the scope of Section 482 Cr. P.C. we must remember that inherent powers which are always inherent in a court are if (not) specifically provided by the legislature, all pervasive and comprehensive enough to arm the Court for advancing the cause of justice and to prevent the abuse of the process of the Court. It is a well known dictum that justice has not only to be done but it should also appear to have been done and, therefore, whenever a litigant comes before the Court it is essential that he must go having full faith in his mind that the Court has done justice with his case. It is true that all cannot go satisfied with the decision of the Court but at least all must have the satisfaction that they have been heard by the Court. The litigant who comes from different corners of the State cannot be expected to be around the Court when his case is called for hearing unless he has a competent and vigilant lawyer who informs him of approximate date of hearing of a case or the litigant himself is vigilant enough to keep in touch with his case, but most of the people who are illiterate and come to the Court have to bank on the information they receive, the treatment they gel and the advice which is tendered to them by their counsel. It can also not be expected that each and very litigant will have the lawyers of the same competence which the others can afford, but at the same time it is always expected from the learned counsel that they would do their best in the best interest of their client. Equally is the responsibility of the Registry in being cautious about notifying the cases properly when they come up for hearing. What we mean to say is that a litigant is always helpless and is at the mercy of the others, whoever makes a mistake ultimate sufferer is he. If the case is not properly shown in the daily cause- list, i.e. either the number is wrong or the title is not properly given or the name of the counsel representing not shown the case will go unattended and if the lawyer misses the case despite the fact that it is properly shown or is busy elsewhere and is unable to attend the Court again sufferer is the litigant, it is for the Courts to see that the record is properly looked into with the assistance of the counsel before the case is finally decided. At the same time Court must ensure that the absence of the counsel is neither deliberate nor meant to avoid the Bench,

nor the litigant or his counsel has tried to over reach the Courts. The Courts in such case must not hesitate in proceeding against such persons.

45. Their Lordships of the Supreme Court in a case of Bhagwant Singh v. Commr. of Police, MANU/SC/0063/1985 : AIR 1985 SC 1285 even while giving interpretation to Section 173(2)(ii) Cr. P.C. have laid great emphasis on the right of hearing and held as under :

"in a case where the Magistrate to whom a report is forwarded under Sub- section (2) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report."

What we intend to emphasize is that right of hearing is very important right of which no litigant should be deprived. Thus on the consideration of all the cases cited and on the two cases quoted by learned single Judge, we answer the reference as under :

(i) That the power of re- call is different than the power of altering or reviewing the judgment.

(ii) That powers under Section 482 Cr. P.C. can be and should be exercised by this Court for re-calling the judgment in case the hearing is not given to the accused and the case falls within one of the three conditions laid down under Section 482 Cr. P.C.

MANU/SC/0054/1982

Back to Section 197 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 15 of 1979

Decided On: 09.11.1982

B.S. Sambhu Vs. T.S. Krishnaswamy

Hon'ble Judges/Coram:

A. Vardarajan and V.D. Tulzapurkar, JJ.

JUDGMENT

1. The question raised in this appeal is whether sanction under Section 197 Cr. P.C. is required for prosecuting the appellant who at the material time was working as Additional Munsiff and Judicial Magistrate First Class Madhugiri?

2. It appears that the respondent, an Advocate, was representing a party (defendant) in Suit No. 522 of 1973 which was being heard by the appellant. An application for transfer of the suit from his court to some other court was moved by the defendant before the District Court being Misc. Case No. 30 of 1975. The District Judge called for remarks from the appellant regarding certain allegations that were made in the transfer application. The appellant submitted his remarks in the form of DO. letter No. 16/75 dated 5th December, 1975 wherein he made the following statement:

In this connection I may also bring to your Honour's kind notice that the conduct and character of Sri T.S. Krishnaswamy are not good and that he misbehaves in the open Court making all nonsense allegations. Further, it is brought to my notice that Shri T.S. Krishnaswamy is a big gambler in this Town and is a rowdy also and on account of that he exhibits all sorts of rowdism in the open court. The District Judge is requested to safeguard him from the hands of such mischievous elements.

3. It appears that this letter was read out by the learned District Judge in open court. The respondent filed a criminal complaint against the appellant alleging that the aforesaid contents of the D.O. Letter amounted to his defamation under Section 499 I.P.C. A question was raised whether the Court could take cognizance of the offence without the sanction contemplated in Section 197 Cr.P.C. The learned Magistrate negatived the contention of the appellant that the sanction was necessary. In an application under Section 482 the High Court upheld in the Magistrate's view.

4. It was contended before us as was done before the High Court that the D.O. letter sent by the appellant to the District Judge was in discharge of his duties because the District Judge had called for the remarks and hence whatsoever had been written by the appellant was done while acting or purporting to act in discharge of his official duty and as such the ingredients of Section 197 Cr. P.C. were satisfied. It is not possible to accept this contention for in our view there is no reasonable nexus between the act complained of and the discharge of duty by the appellant. Calling the respondent as 'Rowdy', 'a big gambler' and 'a mischievous element' cannot even remotely be said to be connected with the discharge of official duty which was to offer his remarks regarding the allegations made in the transfer petition. In Matajog Dubey v. H.C. Bharil 1957 (2) SCR 925 this Court has laid down the test in these terms:

There must be a reasonable connection between the, act and the discharge of official duty; the act must bear such "relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty.

Applying this test to the facts of the present case it is impossible to come to the conclusion that the act complained of has any connection with the discharge of official duty by the appellant.

5. We might refer to the decision of this Court in Pukhraj MANU/SC/0145/1973 : 1973CriLJ1795 case where the facts were similar to the facts in the instant case. 1 Pukhraj filed the complaint against the respondent No. 2, his superior officer, in the postal department, under secs. 323 and 502 of I.P.C. alleging that when he went with his certain complaint to the second respondent, the second respondent kicked him at his abdomen and abused him by saying "Sale gunde, bamash...." The second respondent raised the contention that the court could not take cognizance of the offence without sanction of the Government under Section 197 of the Cr.P.C. That contention was negatived and this Court posed the Question whether the acts complained of were done by the second respondent in purported exercise of his duties and applying the test laid down in Matajog Dubey's case held that the acts complained of, namely, kicking the complainant and abusing him could not be said to have been done in the course of the performance of the duty by the second respondent.

6. For the reasons indicated above we are satisfied that the High Court was right in coming to the conclusion that Section 197 was not attracted. There is, therefore, no substance in the appeal and the same is dismissed.

MANU/HP/0027/1979

IN THE HIGH COURT OF HIMACHAL PRADESH

Decided On: 11.07.1979

Darshan Kumar Vs. Sushil Kumar Malhotra and Ors.

Back to Section 197 of Code of Criminal Procedure, 1973

Hon'ble Judges/Coram:

T.R. Handa, J.

ORDER

T.R. Handa, J.

1. The petitioner herein filed a criminal complaint under Sections 143, 148, 149, 379, 380, 382, 452, 453, 454, and 461 I. P. C. against all the 63 respondents in the court of Sub Divisional Magistrate, Chamba which complaint was later on with the enforcement of the Code of Criminal Procedure, 1973 transferred to the Court of Chief Judicial Magistrate, Chamba. Respondents Nos. 1, 3 and 4 are admittedly public servants not removable from office save by or with permission of the State Government. The learned Chief Judicial Magistrate after recording the preliminary evidence of the petitioner, vide his order dated 10- 6- 1976 summoned only 21 out of 63 respondents under Sections 143, 379, 380 and 461 read with Section 149, Indian Penal Code. As regards respondents 'Nos. 1, 3 and 4 the learned Chief Judicial Magistrate observed that he could not take cognizance against these respondents without the sanction of the State Government as contemplated by Section 197 of the Code of Criminal Procedure as the act complained of against them was committed by them while acting or purporting to act in the discharge of their official duties. He accordingly refused to summon these three respondents.

2. The petitioner has now approached this Court in revision and has challenged the order of the Chief Judicial Magistrate dated 10- 6- 1976 in so far only as it lays down that he could not take cognizance of the offences against respondents Nos. 1, 3 and 4 without the prior sanction of the State Government under Section 197, Cr. P.C.

3. Thus the sole question that falls for consideration in this revision is with regard to the application of the provisions of Section 197, Cr P. C. on the facts of the present case. The very nature of the case, therefore, demands that the facts should be set out at some length.

4. The petitioner is the Director In- charge of Messrs. Stee- Men Limited. This company entered into a contract with the President of India through the then Executive Engineer, Chamba Division, H.P. P. W. D. Chamba for the construction of a 300 ft. span stiffened suspension bridge across

Ravi at Chamba vide agreement No. 10 of 1969- 1970, As both the parties relied upon Clauses 16 to 18 of this agreement, it is considered expedient to quote these Clauses in extenso and the same are reproduced as under:

Clause 16 : - The works comprised in this tender are to be commenced after 15 days on receipt of written orders from the Divisional Officer to commence work. The time allowed 'for carrying out the work as entered in the tender shall be strictly observed by the contractor on the part of the Contractor and shall be reckoned from the fifteenth day after the date on which the order to commence the work is issued to the contractor. The work shall throughout the stipulated period of the contract be proceeded with all due diligence and the contractor shall pay as compensation an amount equal to one per cent, or such smaller amount as the Superintending Engineer (whose decision in writing shall be final) may decide on the amount of the estimated cost of the whole work shown in the tender for every day that work remains uncommenced, or unfinished after the proper dates. And further, to ensure good progress during the execution of the work, the contractor shall be bound in all cases in which the time allowed for any work exceeds, one month (save for special jobs) to complete one- eighth of the whole of the work before one- fourth of the whole of the time allowed under the contract has elapsed, three- eighths of the work before one-half of such time has elapsed, and three- fourths of the whole of the work before three- fourths of such time has elapsed. However, for special jobs if a time schedule has been submitted by the contractor and the same had been accepted by the Engineer- in- Charge, the contractor shall comply with the said time schedule. In the event of the contractor failing to comply with this condition he shall be liable to pay as compensation an amount equal to one per cent or such smaller amount as Superintending Engineer (whose decision in "writing shall be final) may decide on the said estimated cost of the whole work for every day that the due quantity of work remains incomplete, provided always that the entire amount of compensation to be paid under the provisions of this clause shall not exceed ten per cent on the estimated cost of the work as shown in the tender.

Clause 17 : - - In any case in which under any clause or clauses of this contract the contractor(s) shall have rendered himself/themselves liable to pay compensation amounting to the whole of his/their security deposit (whether paid in one sum or deducted by instalment) or committed a breach or a persistent breach of any of the terms contained in Clause 16, the Divisional Officer on behalf of the President of India, shall have power to adopt any of the following courses, as he may deem best suited to the interests of Government,

(a) To rescind the contract of which rescission notice in writing to the contractor(s) under the hand of the Divisional Officer shall be conclusive evidence, and in which case the security deposit of the contractor(s) shall stand forfeited, and be absolutely at the disposal of the Government.

(b) To employ labour paid by the P. W. D. and to supply materials to carry out the work or any part of the work, debiting the contractor(s) with the cost of the labour and the price (certificate of the Divisional Officer shall be final and conclusive) against the contractor (s) and crediting him

them with the value of the work done, the certificate of the Divisional Officer as to the value of the work done shall be final and conclusive against the con tractor (s) of the material of the amount of which costs and price.

(c) After giving notice, to the contractor to measure up the work of the contractor and to take such part of the work as shall remain unexecuted out of his/their hands and to give it to another/other contractors to complete in which case any expenses which may be incurred in excess of the sum which would have been paid to the original contractor (s) if the whole work had been executed by him/them (of the amount of which excess the certificate in writing of the Divisional Officer shall be final and conclusive) shall be borne and paid by original contractor(s) and may be deducted from any money due to them by Government. Under the contractor or otherwise or from his/their security deposit or the proceeds of the sale thereof or a sufficient part thereof.

In the event of any of the above courses being adopted by the Divisional Officer the contractor (s) shall have no claim to compensation for any loss sustained by him/them by reasons of his/their having purchased or procured any materials or entered into any engagements or made any advances on account of or with a view to the execution of the work or the performances of the contractor. And in case the contract shall be rescinded under the provision aforesaid the contractor (s) shall not be entitled to recover or be paid any sum for any work therefore actually performed under this contract unless and until the Divisional Officer will have certified in writing the performance of such work and the value payable in respect thereof and he/they shall only be entitled to be paid the value so certified.

Clause 18: - In any case in which any of the powers conferred upon the Divisional Officer, by Clause 17 hereof, shall have become exercisable and the same shall not be exercised the non-exercise thereof shall not constitute a waiver of any of the conditions hereof and such powers shall notwithstanding be exercisable in the event of any future case of default by the contractor(s) for which by any clause or clauses hereof he is/they are declared liable to pay compensation amounting to the whole of his/their security deposit and the liability of the contractor (s) for - past and future compensation shall remain unaffected. In the event of the Divisional Officer putting in force either of the power (s) or/and (c) vested in him and the preceding clause he may if so desired take possession of all or any tools, plant materials and stores in or upon the works or the site thereof or belonging to the contractor procured by him/them are intended to be used for the extension of the work or any part thereof paying or allowing for the same in account at the contract rates or in case of these not being applicable at current market rates to be certified by the Divisional Officer whose certificate thereof shall be final otherwise the Divisional Officer may by notice in writing to the contractor (s) or his/their clerk or the works foreman or other authorised agent require him/them remove such tools, plant, materials or stores from the premises (within a time to be specified in such notice) in the event of the contractor (s) failing to comply with any such requisition the Divisional Officer may remove them at the contractor's expenses or sell them by auction or private sale on account of the contractor (s) and at his/their risk in all respect and the certificate of the Divisional Officer as to the expense of any such sale shall be final and conclusive against the contractors.

5. In pursuance of this agreement the site for the construction of the aforesaid bridge was handed over to the company by the then Executive Engineer, Chamba for execution of the "work. The company after taking possession of the site brought the requisite machinery etc. for the construction of the said bridge except some items like cement, steel, C. I. ropes etc. which were to be supplied by the Department in accordance with the terms of the agreement. On 5- 7- 1971 however, the then Executive Engineer, Chamba Division, rescinded the contract referred to above on the ground of 'slow progress of the work'. The company thereupon approached the Government as a result whereof the order of rescission passed by the Executive Engineer was revoked. An intimation to that effect was conveyed to the company by the Executive Engineer on 5- 11- 4971. The dispute that arose between the company and the Department at the time of the original rescission of the contract were referred to the arbitrator. After the rescission order was withdrawn, the company restarted the construction work and made considerable progress. The then Executive Engineer, Chamba, Shri S. P. Punani, however, vide his order dated 5- 6- 1972 levied a penalty of Rs. 63,000/~ on the company on the ground of slow progress. Two days later on 7- 6- 1972 the said Executive Engineer again issued an order rescinding the contract on the pretext of 'slow progress'. The company thereupon approached the arbitrator with its grievances as the proceedings were still pending before the arbitrator.

6. On 13- 6- 1972 the then Executive Engineer, Chamba for the first time made an attempt to take forcible possession of the site of the bridge along- with the property lying thereon from the company with the assistance of his own men. That attempt of the Executive Engineer was successfully resisted by the petitioner who on coming to know of the designs of the Executive Engineer had arranged for police protection in advance. Thereafter on 13- 9- 1972 respondent No. 1 who had then taken over as Executive Engineer, Chamba sent a telegram to the petitioner . stating therein that under Clause 18 of the agreement, respondent No. 1 would be implementing the order of rescission dated 7- 6- 1972 on 15- 9- 1972 at 10.30 a.m. Respondent No. 1 further directed vide the aforesaid telegram to the petitioner to depute some representatives as respondent No. 1 intended to take final measurements and also the control of the property. In pursuance to that telegram respondent No. 1 accompanied by respondents 3 and 5 and some other 50 Beldars duly armed with Gentis, Belchas and Jhabbals actually came to the spot at 10.30 a.m. on 15- 9- 1972 to take forcible possession from the company. The petitioner, however, did not permit them to enter upon the site unless they showed him some order of a competent court. The petitioner had also arranged for police force and the A. S. I. present on the spot also told respondent No. 1 that he could help respondent No. 1 in taking over possession only after respondent No. 1 produced orders from some competent Court to that effect. As respondent No. 1 insisted to take possession, the A. S. I. informed the District authorities of his difficulties on which the Sub- Divisional Magistrate, Chamba reached the spot by about 12.30 p. m. where he held a conference with respondent No. I and the Managing Director of the company. After holding some talks the Sub Divisional Magistrate left at about 1.30 p. m. without passing any order. Respondent No. 1, after the departure of the Sub Divisional Magistrate again tried to take forcible possession of the site and the material which the petitioner was again successful in resisting with the help of the police. Respondent. No. 1 along with his men had to go back without success. Respondent Nos. 3 and 5, however, on that day made a written complaint to the A. S. I,

respondent No. 6 who on that complaint wrongfully arrested the petitioner under Section 353, I. P. C.

7. On the following day, that is, 1.6- 9- 1972 respondent No. 1 accompanied by the other respondents again visited the spot at about 1 p.m. to take forcible possession. It was a local holiday on that day and for that reason the company was also having an off day and no work was in progress on the site. Only three Chowkidars of the company were present to guard the site on that day. The respondents after wrongfully arresting those three Chowkidars on duty, entered upon the site where they broke open the locks of the office, store room, almirahs and Chowkidars' quarters and dishonestly removed movable property of the company from its possession and without its consent. Besides other movables, cash amount of Rs. 14,365- 00 which was lying in the office of the company was also removed by the respondents. Thus according to the petitioner, the respondents after forming themselves into an unlawful assembly with intent to take forcible possession from the company had committed the offences as stated in the complaint.

8. The learned Chief Judicial Magistrate examined four witnesses including Darshan Kumar petitioner, who were produced before him in the course of preliminary enquiry. Out of them P. W. 1 is Shri Darshan Kumar, Director Incharge of the company and P. W. 4 is Shri Gopi Krishan - the Managing Director of the Company. Neither of them was present on the spot at the time of the alleged occurrence and as such ,they are not in a position to, depose as to what actually happened on the spot. The other two witnesses, namely, P. W. 2 Hanif- Ula and P. W. 3 Kesar Singh are stated to be the eye witnesses who witnessed the occurrence. According to versions of these two P. Ws, which are almost identical, respondents 1, 3 and 4 along- with their Beldars and a police party reached the site of the work in the afternoon of 16- 9- 1972 where only three Chowkidara were present at that time. As the Chowkidars refused to allow entry to the respondents, the police party accompanying the respondents arrested all the three Chowkidars. Thereafter the respondents entered upon the site where they fixed their own locks and started construction work. Neither of these witnesses stated if the respondents broke open the locks on the spot or if they removed any article from the site.

9. The petitioner, Shri Darshan Kumar Vig, appearing as P. W. 1 and the Managing Director of the Company Shri Gopi Krishan Khanna appearing as P. W. 4 deposed about the events which are alleged to have taken place prior to the date of actual occurrence, that is 16- 9- 1972. They reiterated the allegations made in the complaint which have already been referred to in details in the earlier part of this judgment.

10. Now to clear the ground for consideration of the application of the provisions of Section 197 Cr. P. C. to the facts of the instant case, it may be stated that from the preliminary evidence produced by the petitioner, the following facts were established before the learned Chief Judicial Magistrate when he passed the impugned order:

(i) That respondents 1, 3 and 4 who were officers of the Public Works Department of the Himachal Pradesh Government were then posted in Chamba Division and they were public servants not removable from office save by or with the permission of the State Government.

(ii) That the company entered into an agreement with the President of India through the Executive Engineer, Chamba which post at the relevant time was held by respondent No. 1, for the construction of a bridge over the river Ravi at Chamba.

(iii) That the work of construction of such bridge was of very urgent nature and for that reason time had been made the essence of the contract between the Government and the Company.

(iv) That respondent No. 1 was the officer responsible to ensure that the progress of the work was effected in accordance with the time schedule.

(v) In case of breach in the time schedule for construction of the bridge, respondent No. 1 had been empowered under the contract aforesaid to:

(a) rescind the contract;

(b) employ Departmental labour and to supply Departmental material at the expense of the company in order to maintain the progress of the work.

(c) After giving notice to the company to measure up the work of the company and to take up the unexecuted part of the work in his own hand for completion either through some other contractor or through Departmental labour.

(vi) That in exercise of such powers, the then Executive Engineer, Chamba for the first time on 5-7- 1971 rescinded the contract on the ground of slow progress of work which rescission was however, later on withdrawn on 5- 11- 1971.

(vii) Again for the some reason, the then Executive Engineer, Chamba, the predecessor- in-interest of respondent No. 1 imposed a penalty of 63.000/- on the company on the ground of slow progress on 5- 6- 1972 and two days later the same , officer rescinded the contract again on the ground of slow progress of work.

(viii) That on 13- 6- 1972 the then Executive Engineer in pursuance of his order rescinding the contract made an attempt to take over the control of the work from the company but that attempt was resisted by the company and hence the Executive Engineer could 'not take control over the work.

(ix) That on 13- 9- 1972 respondent No. 1 sent telegraphic intimation to the company expressing his intention to take over control of the work as per Clause 18 of the agreement in implementation of the order of rescission dated 7- 6- 1972 passed by his predecessor. In his telegram respondent No. 1 notified 15- 9- 1972 as the date and 10.30 a.m. as the hour for taking such action and further advised the company to depute some of his representatives so that final measurements could also be taken along with the control of the property in terms of Clause 18 of the contract.

(x) That as notified earlier vide the telegram referred to above, the respondent No. 1 along with his men visited the site to take measurements and control of the construction work but the company resisted and respondent No. 1 therefore had to return without accomplishing his object.

(xi) That on the following day, that is, 16- 9- 1972 respondent No. 1 again with his men and after securing the police help visited the site in order to take» possession and this time only three chowkidars of the company were found present who refused to surrender. The police accompanying the party of respondent No. 1, accordingly put all the three Chowkidars under arrest whereafter there was nobody to offer resistance on the site. Respondent No. 1 and his men then entered upon the site, affixed their own locks and started construction work to complete the incomplete portion.

(xii) That no, machinery, material, cash or any other article was removed by any of the respondents from the site as is apparent from the evidence of the two eye witnesses examined by the petitioner.

11. The provisions of Section 197 (1), Cr, P. C. which have been attracted by the Chief Judicial Magistrate in his impugned order read as under:

Section 197 (1) : - When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a) In the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government.

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with affairs of a State, of the State Government.

12. The effect, meaning, scope and interpretation of this provision has been the subject matter of several decisions announced by both the Privy Council as also the Supreme Court from time to time. The Privy Council as early as in 1948 in case H. H. B. Gill v. The King reported as MANU/PR/0013/1948 while explaining the circumstances under which the protection afforded by this section to a public servant is available observed that the test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office. The matter again came up for consideration before the Supreme Court in the case of Matajog Dobey v. H. C. Bhari reported as MANU/SC/0071/1955 : [1955]28ITR941(SC) wherein it was observed that in order to attract the protection of this section it must be shown that 'the offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty...There must be a reasonable connection between the act and the official duty...What the Court must find out is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation.' Again in the case Prabhakar V. Sinari v. Shanker Anant Verlekar reported as MANU/SC/0306/1968 : 1969CriLJ1057 the Supreme Court while explaining the scope of Section 197(1) and the circumstances under which this provision can be attracted observed as under:

What has to be found out is whether the act complained of and the official duty in the performance of which such act is alleged to have been committed are so interrelated that one could postulate reasonably that it was done by the accused in the performance of the official duty though possibly in excess of the needs and requirements of the situation. Of course it is not every offence committed by a public servant which required sanction for prosecution under Section 197 (1), Cr, P. C. nor even every act done by him while he was actually engaged in the performance of his official duties. But if the act complained of was directly concerned with his official duly so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary and that would be so, irrespective of whether it was in fact, a proper discharge of his duty or not.

In the case of Bhagwan Prasad Srivastava v. N.P. Mishra reported as MANU/SC/0093/1970 : 1970CriLJ1401 . Hon'ble Justice Dua who delivered the main judgment observed that 'S. 197 is neither to be too narrowly construed nor too widely....' There must be a reasonable connection between the act and the discharge of official duty. The act must fall within the scope and range of the official duties of the public servant concerned.

13. Thus the crux of the matter is that in order to determine whether in a particular case a public servant is entitled to the protection of Section 197, Cr. P. C. all that has to be considered is whether the act complained of against the public servant which is alleged to constitute the offence, was committed by him while discharging his official duty and that such act had a reasonable connection with his official duty. It is not material whether in discharging such official duty, the public servant acted somewhat in excess of his limits.

14. The pertinent question that next arises is as to what considerations should prevail and what tests need be applied for determining as to whether there was a reasonable connection between the act complained of and the official duty of the concerned public servant. Whereas it is not possible to lay down any hard and fast rules of universal application for the determination of this question, one safe and sure test in this regard would in my view be, to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duties. A negative answer to this question may not clinch the issue but if the answer to this question is in the affirmative, it may be said without the least hesitation and without any further probe that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant.

15. If we apply the above test in the instant case, there would be no difficulty in upholding the view taken by the learned Chief Judicial Magistrate that he could not take cognizance against respondents Nos. 1, 3 and 4 without the prior sanction of the State Government under Section 197, Cr. P. C. As already stated, respondent No. 1 is the Executive Engineer who is entrusted with the work of construction of the Bridge at River Ravi at Chamba for the construction of which the contract had been given to the Company. It is apparent from Clause 16 of the agreement referred to above that this construction work was of urgent nature and accordingly time had been made the essence of the contract between the Government and the Company. It was to ensure that there was no delay in the construction of this work that certain powers had been vested by virtue of Clauses 16 to 18 of the agreement in the Executive Engineer who had been fixed with the responsibility of getting the bridge completed in time. It was towards the discharge of this duty of getting the construction work completed in time that the predecessors of respondent No. 1 had on two earlier occasions rescinded the contract and one of them had actually made an effort on 13th June, 1972 to take control of the work. Respondent No. 1 towards the discharge of the same duty and in exercise of the power vested in him under Clause 18 of the agreement issued telegraphic notice to the Company conveying his intention to take measurements as also the control of the work for its expeditious completion. Respondent No. 1 then actually proceeded to the spot on 15th September, 1972 in pursuance of his telegraphic notice but like a disciplined public servant he came back when resistance was offered to him on behalf of the Company. On the next day after taking police help, he again went to the spot and entered upon the site when no resistance was offered and immediately thereafter started the construction work for which purpose he had gone to take possession of the site. I have no doubt in my mind that all that was done by respondent No. 1 with the aid of his staff was done in the discharge of his duties. In case respondent No. 1 had not acted in such a manner and let the things lie as they were, he would certainly have been answerable to his superiors for the delay in the construction of the bridge which could be attributed to inaction on his part. The circumstances as brought on the record

fully establish that it was the duty of respondent No. 1 to see that the progress of the construction work was in accordance with the time schedule and that in case of delay he could take immediate action and take over control of the work for completing the same through some other contractor or, through departmental aid. Respondent No. 1 in doing the act complained of did nothing beyond what he was required to do as a matter of his official duty. The case of respondents Nos. 3 and 4 is not different.

16. I thus find that the act complained of against respondents No. 1, 3 and 4 was committed by them in the discharge of their official duties and it was reasonably connected with their official duty so as to require prior sanction of the State Government for prosecuting them in respect of the offence, if any, made out from the commission of such acts.

17. In the result, I find no force in this Revision Petition which is hereby dismissed.

MANU/SC/0741/2010

Back to Section 227 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. ... of 2010 (Arising out of SLP (Crl.) No. 6374 of 2010)

Decided On: 20.09.2010

Sajjan Kumar Vs. Central Bureau of Investigation

Hon'ble Judges/Coram:

P. Sathasivam and Anil R. Dave, JJ.

JUDGMENT

P. Sathasivam, J.

1. Application for intervention is allowed.

2. Leave granted.

3. This appeal is directed against the order of the High Court of Delhi at New Delhi dated 19.07.2010 whereby the learned single Judge confirmed the order dated 15.05.2010 passed by the District Judge- VII/NE- cum- Additional Sessions Judge, Karkardooma Courts, Delhi in S.C. No. 26/10, RC SII 2005 S0024. By the said order, the Additional Sessions Judge has ordered the framing of charges against the appellant for offences punishable under Section 120B read with Sections 153A, 295, 302, 395, 427, 436, 339 and 505 of the Indian Penal Code (hereinafter referred to as "IPC") and for the offence under Section 109 read with Sections 147, 148, 149, 153A, 295, 302, 395, 427, 435, 339 and 505 IPC, besides framing of a separate charge for offence punishable under Section 153A IPC and rejected the application for discharge filed by the appellant.

4. Brief Facts:

(a) The present case arises out of 1984 anti- Sikh Riot cases in which thousands of Sikhs were killed. Delhi Police has made this case a part of FIR No. 416 of 1984 registered at Police Station Delhi Cantt. In this FIR, 24 complaints were investigated pertaining to more than 60 deaths in the area. As many as 5 charge- sheets were filed by Delhi Police relating to 5 deaths which resulted in acquittals. One supplementary charge- sheet about robbery, rioting etc. was also filed which also ended in acquittal. The investigation pertaining to the death of family members of Smt.

Jagdish Kaur PW- 1, was reopened by the anti- Riot Cell of Delhi Police in the year 2002 and after investigation, a Closure Report was filed in the Court on 15/22.12.2005.

(b) After filing of the Closure Report in the present case, on 31.07.2008, a Status Report was filed by the Delhi Police before the Metropolitan Magistrate, Patiala House Court, New Delhi. Pursuant to the recommendation of Justice Nanavati Commission, the Government of India entrusted the investigation to the Central Bureau of Investigation (hereinafter referred to as "CBI") on 24.10.2005. On receipt of the said communication, the respondent- CBI registered a formal FIR on 22.11.2005. The Closure Report was filed by Delhi Police on 15.12.2005/22.12.2005, when a case had already been registered by the CBI on 22.11.2005 and the documents had already been transferred to the respondent- CBI.

(c) After fresh investigation, CBI filed charge- sheet bearing No. 1/2010 in the present case on 13.01.2010. After committal, charges were framed on 15.05.2010. At the same time, the appellant has also filed a petition for discharge raising various grounds in support of his claim. Since he was not successful before the Special Court, he filed a revision before the High Court and by the impugned order dated 19.07.2010, after finding no merit in the case of the appellant, the High Court dismissed his criminal revision and directed the Trial Court for early completion of the trial since the same is pending from 1984.

5. Heard Mr. U.U. Lalit, learned senior counsel for the appellant, Mr. H.P. Rawal, learned Additional Solicitor General for the respondent- CBI and Mr. Dushyant Dave, learned senior counsel for the intervenor.

6. Submissions:

(a) After taking us through the charge- sheet dated 13.01.2010, statements of PW- 1, PW- 2 and PW- 10, order dated 15.05.2010 framing charges by the District Judge, Karkardooma Courts, Delhi and the impugned order of the High Court dated 19.07.2010, Mr. Lalit, learned senior counsel for the appellant submitted that i) the statement of Jagdish Kaur is highly doubtful and later she made an improvement, hence the same cannot be relied upon to frame charge against the appellant; ii) reliance on the evidence of Jagsher Singh PW- 2, who gave a statement after a gap of 25 years cannot be accepted; iii) the statement of Nirprit Kaur PW- 10 is also not acceptable since the same was also made after a gap of 25 years of the occurrence; iv) other witnesses who were examined in support of the prosecution specifically admitted that they did not see the appellant at the time of alleged commission of offence; v) inasmuch as the charge has been framed after 25 years of occurrence, proceeding against the appellant, at this juncture, is violative of his constitutional right under Article 21; vi) after filing of the closure report by the Delhi Police, by following the procedure, the present action of the CBI conducting further re- investigation and filing charge- sheet based on fresh and improved materials is impermissible in law; vii) follow-up action based on the recommendation of Justice Nanavati Commission is also impermissible at this juncture; viii) many remarks/observations made by the High Court are uncalled for and based on conjectures and surmises and also without there being any material on record. If those

observations are not deleted from the order of the High Court, it would amount to directing the trial Judge to convict the appellant without proper proof and evidence.

(b) On the other hand, Mr. H.P. Rawal, learned Additional Solicitor General appearing for the CBI submitted that in view of categorical statement by the victims before Justice Nanavati Commission and its recommendation which was deliberated in the Parliament, the Government of India took a decision to entrust further/re- investigation in respect of 1984 anti- Sikh riots through CBI. According to him, the present action by the CBI and framing of charges against the appellant and others is in consonance with Sections 227 and 228 of the Code of Criminal Procedure (hereinafter referred to as "Cr.P.C."). He also submitted that at the stage of framing of the charges, the material on record has not to be examined meticulously; a prima facie finding of sufficient material showing grave suspicion is enough to frame a charge. He pointed out that there is nothing illegal with the order framing charge which was rightly affirmed by the High Court. He further submitted that the High Court has not exceeded in making observations and, in any event, it would not affect the merits of the case.

(c) Mr. Dushyant Dave, learned senior counsel for the intervenor, while reiterating the stand taken by the learned Additional Solicitor General supported the order of the District Judge framing charges as well as the order of the High Court dismissing the criminal revision filed by the appellant. He pointed out that it is not a case for interference under Article 136 of the Constitution of India. No prejudice would be caused to the appellant and he has to face the trial. He further contended that the delay cannot be a ground for interference.

Relevant Provisions:

7. Before considering the claim of the parties, it is useful to refer Sections 227 and 228 of the Cr.P.C. which are reproduced below:

227. Discharge.- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228. Framing of charge- (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate,

or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant- cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under Clause (b) of Sub- section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

It is clear that the Judge concerned has to consider all the records of the case, the documents placed, hear the submission of the accused and the prosecution and if there is "not sufficient ground" (Emphasis supplied) for proceeding against the accused, he shall discharge the accused by recording reasons. If after such consideration and hearing, as mentioned in Section 227, if the Judge is of the opinion that "there is ground for presuming" (Emphasis supplied) that the accused has committed an offence, he is free to direct the accused to appear and try the offence in accordance with the procedure after framing charge in writing against the accused. Statements of PW- 1, PW- 2, PW- 8 and PW- 10

8. Mr. Lalit, learned senior counsel for the appellant pointed out that the prosecution, for framing the impugned charges, heavily relied on the statements of Jagdish Kaur, Jagsher Singh and Nirprit Kaur. He also took us through their statements made at various stages which are available in the paper- book. It is true that Jagdish Kaur PW- 1, in her statement under Section 161 Cr.P.C. dated 20.01.1985, did not mention the name of the appellant. Even in the affidavit dated 07.09.1985, filed before Justice Ranganath Misra Commission she has not whispered a word about the role of the appellant. According to him, for the first time i.e. in the year 2000, after a gap of 15 years an affidavit was filed before Justice Nanavati Commission, wherein she referred the name of the appellant and his role along with certain local Congress workers. According to Mr. Lalit, except the above statement in the form of an affidavit before Justice Nanavati Commission, she had not attributed anything against the appellant in the categorical statements made on 20.01.1985 as well as on 07.09.1985 before Justice Ranganath Misra Commission.

9. He also pointed out that even after submission of Justice Nanavati Commission's report and entrusting the investigation to CBI, she made a statement before the CBI officers at the initial stage by mentioning "that the mob was being led by Congress leaders". Only in later part of her statement, she mentioned that "she learnt that Sajjan Kumar, the Member of Parliament was conducting meeting in the area". She confirmed the statement in the form of an affidavit dated 07.09.1985 filed before Justice Ranganath Misra Commission as well as her deposition with regard to the appellant before Justice Nanavati Commission on 08.01.2002. No doubt, in the last part of her statement, it was stated that in the year 1984- 85, the atmosphere was totally against the Sikh

community and under pressure she did not mention the name of Sajjan Kumar. She also informed that she could not mention his name for the safety of her children.

10. The other witness Jagsher Singh, first cousin of Jagdish Kaur, in his statement recorded by the CBI on 07.11.2007 i.e. after a gap of 23 years, mentioned the name of the appellant and his threat to Sikhs as well as to Hindus who had given shelter to Sikhs. According to Mr. Lalit, this witness mentioned the name of the appellant for the first time before the CBI nearly after 23 years of the incident which, according to him, cannot be relied upon.

11. The other witness relied on by the prosecution in support of framing of charges is Nirprit Kaur PW- 10. It is pointed out that she also made certain statements to the CBI after a gap of 23 years and she did not mention the name of the appellant except stating that one Balwan Khokhar who is alleged to be a nephew of Sajjan Kumar, came to her house for discussing employment for her nephew as driver.

12. The other statement relied on by the prosecution in support of framing of charges against the appellant is that of Om Prakash PW- 8. He narrated that during the relevant time he had given shelter to a number of women and children of Sikh community including Jagdish Kaur PW- 1. Mr. Lalit pointed out that in his statement, he did not even utter a word about the appellant but at the end of his statement on being asked, stated that he knew Shri Sajjan Kumar, Member of Parliament. However, he further stated that he did not see him in that mob or even in their area during the said period. In the last sentence, he expressed that he had heard from the people in general that Sajjan Kumar was also involved in the 1984 riots.

13. By pointing out the earlier statement of Jagdish Kaur PW- 1, recorded by the CBI, her affidavit before Justice Nanavati Commission and the statement of Jagsher Singh PW- 2, Nirpreet Kaur PW- 10 and Om Prakash PW- 8 before the CBI, Mr. Lalit submitted that there was no assertion by anyone about the specific role of the appellant except the bald statement and that too after 23 years. In such circumstances, according to him, the materials relied on by the prosecution are not sufficient to frame charges. According to him, mere suspicion is not sufficient for which he relied on the judgments of this Court in Union of India v. Prafulla Kumar Samal and Anr. MANU/SC/0414/1978 : (1979) 3 SCC 4

and Dilawar Balu Kurane v. State of Maharashtra MANU/SC/0005/2002 : (2002) 2 SCC 135.

14. In Prafulla Kumar Samal (supra), the scope of Section 227 of the Cr.P.C. was considered. After adverting to various decisions, this Court has enumerated the following principles:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

15. In Dilawar Balu Kurane (supra), the principles enunciated in Prafulla Kumar Samal (supra) have been reiterated and it was held:

12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial (see Union of India v. Prafulla Kumar Samal).

14. We have perused the records and we agree with the above views expressed by the High Court. We find that in the alleged trap no police agency was involved; the FIR was lodged after seven days; no incriminating articles were found in the possession of the accused and statements of witnesses were recorded by the police after ten months of the occurrence. We are, therefore, of the opinion that not to speak of grave suspicion against the accused, in fact the prosecution has not been able to throw any suspicion. We, therefore, hold that no prima facie case was made against the appellant.

16. It is clear that at the initial stage, if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce prove the guilt of the accused even if fully accepted before it is challenged in cross- examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. A Magistrate enquiring into a case under Section 209 of the Cr.P.C. is not to act as a mere Post Office and has to come to a conclusion whether the case before him is fit for commitment of the accused to the Court of Session. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. If there is no prima facie evidence or the evidence is totally unworthy of credit, it is the duty of the Magistrate to discharge the accused, on the other hand, if there is some evidence on which the conviction may reasonably be based, he must commit the case. It is also clear that in exercising jurisdiction under Section 227 of Cr.P.C., the Magistrate should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

17. Exercise of jurisdiction under Sections 227 & 228 of Cr.P.C.

On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

(iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

18. With the above principles, if we discuss the statements of PW- 1, PW- 2, PW- 10 as well as of PW- 8, it cannot be presumed that there is no case at all to proceed. However, we are conscious of the fact that the very same witnesses did not whisper a word about the involvement of the appellant at the earliest point of time. It is the grievance of the appellant that the High Court did not take into account that the complainant Jagdish Kaur PW- 1 had not named him in her first statement filed by way of an affidavit dated 07.09.1985 before Justice Ranganath Misra Commission nor did she named him in her subsequent statements made before the Delhi Police (Riots Cell) and in her deposition dated 08.01.2002 before Justice Nanavati Commission except certain hearsay statement. It is the stand of Jagdish Kaur PW- 1, the prime prosecution witness, that apart from her statement dated 03.11.1984, she has not made any statement to Delhi Police at any stage. However, it is also the claim of the C.B.I. that the alleged statements of Jagdish Kaur PW- 1, dated 20.01.1985 and 31.12.1992 are doubtful. Likewise, Nirprit Kaur PW- 10, in her statement under Section 161 Cr.P.C., has denied having made any statement before the Delhi

Police. At the stage of framing of charge under Section 228 of the Cr.P.C. or while considering the discharge petition filed under Section 227, it is not for the Magistrate or a Judge concerned to analyse all the materials including pros and cons, reliability or acceptability etc. It is at the trial, the Judge concerned has to appreciate their evidentiary value, credibility or otherwise of the statement, veracity of various documents and free to take a decision one way or the other. Investigation by the C.B.I.

19. Learned Additional Solicitor General has brought to our notice the letter dated 24.10.2005 from Mr. K.P. Singh, Special Secretary (H) to Mr. U.S. Mishra, Director, Central Bureau of Investigation, North Block, New Delhi. A perusal of the said letter shows that in reply to the discussion held in the Lok Sabha on 10.08.2005 and the Rajya Sabha on 11.08.2005 on the report of Justice Nanavati Commission of Inquiry into 1984 anti- Sikh riots, the Prime Minister and the Home Minister had given an assurance that wherever the Commission has named any specific individuals as needing further examination or re- opening of case the Government will take all possible steps to do so within the ambit of law. The letter further shows that based on the assurance on the floor of the Parliament, the Government examined the report of Justice Nanavati Commission, its recommendations regarding investigation/re- investigation of the cases against (a) Shri Dharam Das Shastri, (b) Shri Jagdish Tytler, and (c) Shri Sajjan Kumar. The letter further shows that the Government had decided that the work of conducting further investigation/re-investigation against the abovementioned persons as per the recommendations of Justice Nanavati Commission should be entrusted to the CBI. Pursuant to the said decision, Home Department forwarded the relevant records connected with the cases against the abovementioned persons. It also shows those additional records/information required in connection with investigation are to be obtained from the Delhi Police. The materials placed by the CBI show that Justice Nanavati Commission submitted its report on 09.02.2005, its recommendations were discussed by the Lok Sabha on 10.08.2005 and the Rajya Sabha on 11.08.2005, Government of India asked CBI to inquire those recommendations on 24.10.2005 and the F.I.R. No. 416 of 1984 dated 04.11.1984 of Police Station, Delhi Cantt was re- registered by the CBI as case RC- 24(S)/2005- SCU.I/CBI/SCR.I/New Delhi. Pursuant to the same, on 22.11.2005, investigation was taken up and it revealed that the accused persons committed offences punishable under Section 109 read with Sections 147, 148, 149, 153A, 295, 302, 396, 427, 436, 449, 505 and 201 IPC and accordingly filed the charge- sheet. It is relevant to note that no one including the appellant has not challenged appointment of CBI to inquire into the recommendations made by Justice Nanavati Commission. Status Report by Delhi Police

20. Mr. Lalit heavily relied on the status report of the Delhi Police and consequential order of the Magistrate. By pointing out the same, he contended that the CBI is not justified in re- opening the case merely on the basis of observations made by Justice Nanavati Commission. The following conclusion in the status report dated 31.07.2008 filed by the Delhi Police was pressed into service.

From the investigation and verification made so far it was revealed that:

(a) There is no eye- witness to support the version of the complaint of Smt. Jagdish Kaur.

(b) The complaints and affidavits made by Smt. Jagdish Kaur are having huge contradictions.

(i) In her first statement recorded by local police during the investigation, she did not name any person specifically and also stated that she could not identify any one among the mob.

(ii) She even did not name Shri Sajjan Kumar in her statement recorded by the I.O. of the Spl. Riot Cell after a gap of seven years.

(iii) She suspected the involvement of one Congress Leader Balwan Khokhar in these riots but she had not seen him personally. She was told by one Om Prakash who was colleague of her husband, about the killing of her husband and son.

(iv) In the statement recorded on 22.01.1993 under Section 161 Cr.P.C. during the course of further investigation, the witness Om Prakash stated that he had seen nothing about the riots. Jagdish Kaur stayed at his house from 01.11.1984 to 03.11.1984 but she did not mention the name of any person who was indulged in the killing of her husband and son.

It is seen from the report that taking note of lot of contradictions in the statement of Jagdish Kaur PW- 1 before the Commissions and before different investigating officers and after getting legal opinion from the Public Prosecutor, closure report was prepared and filed before the Metropolitan Magistrate, Patiala House Courts, New Delhi on 31.07.2008. It is further seen that before accepting the closure report, the Magistrate issued summons to the complainant i.e., Smt. Jagdish Kaur number of times and the same were duly served upon her by the officers of the Special Riot Cell but she did not appear before the Court. In view of the same, the Magistrate, on going through the report and after hearing the submissions and after noting that the matter under consideration is being further investigated by the CBI and the investigation is still pending and after finding that no definite opinion can be given in respect of the closure report, without passing any order closed the matter giving liberty to the prosecution to move appropriate motion as and when required.

21. Mr. Lalit, learned senior counsel, by placing copy of the final report under Section 173 Cr.P.C. by Delhi Police as well as endorsement therein including the date on which the said report was filed before the Court, submitted that the action taken by Delhi Police cannot be faulted with. In other words, according to him, till the entrustment of further investigation by the CBI, Delhi Police was free to proceed further and there is no error in the action taken by the Delhi Police. In view of the order dated 31.07.2008 of the Magistrate, declining to give definite opinion on the

closure report since the same was under further investigation by CBI, we are of the view that no further probe/enquiry on this aspect is required. Delay

22. Learned senior counsel appearing for the appellant further submitted that because of the long delay, the continuation of the prosecution and framing of charges merely on the basis of certain statements made after a gap of 23 years cannot be accepted and according to him, it would go against the protection provided under Article 21 of the Constitution. Mr. Lalit heavily relied on para 20 of the decision of this Court in Vakil Prasad Singh v. State of Bihar MANU/SC/0089/2009 : (2009) 3 SCC 355 which reads as under:

20. For the sake of brevity, we do not propose to reproduce all the said propositions and it would suffice to note the gist thereof. These are: (A.R. Antulay case, SCC pp. 270- 73, para 86)

(i) fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily;

(ii) right to speedy trial flowing from Article 21 encompasses all the stages, namely, the stage of investigation, inquiry, trial, appeal, revision and retrial;

(iii) in every case, where the speedy trial is alleged to have been infringed, the first question to be put and answered is - - who is responsible for the delay?;

(iv) while determining whether undue delay has occurred (resulting in violation of right to speedy trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on- - what is called, the systemic delays;

(v) each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of the accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case;

(vi) ultimately, the court has to balance and weigh several relevant factors- - `balancing test' or `balancing process'- - and determine in each case whether the right to speedy trial has been denied;

(vii) ordinarily speaking, where the court comes to a conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open and having regard to the nature of offence and other circumstances when the court feels that quashing of proceedings cannot be in the interest of justice, it is open to the court to make appropriate orders, including fixing the period for completion of trial;

(viii) it is neither advisable nor feasible to prescribe any outer time- limit for conclusion of all criminal proceedings. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint;

(ix) an objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in the High Court must, however, be disposed of on a priority basis.

After adverting to various decisions including Abdul Rehman Antulay and Ors. v. R.S. Nayak and Anr. this Court further held:

24. It is, therefore, well settled that the right to speedy trial in all criminal persecutions (sic prosecutions) is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal prosecutions and is not confined to any particular category of cases. In every case, where the right to speedy trial is alleged to have been infringed, the court has to perform the balancing act upon taking into consideration all the attendant circumstances, enumerated above, and determine in each case whether the right to speedy trial has been denied in a given case.

25. Where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable including fixation of time- frame for conclusion of trial.

Considering the factual position therein, namely, alleged demand of a sum of Rs. 1,000/- as illegal gratification for release of payment for the civil work executed by a contractor, a charge was laid against Assistant Engineer in the Bihar State Electricity Board and taking note of considerable length of delay and insufficient materials, based on the above principles, ultimately the Court

after finding that further continuance of criminal proceedings pending against the appellant therein is unwarranted and quashed the same. Though the principles enunciated in the said decision have to be adhered to, considering the factual position being an extraordinary one, the ultimate decision quashing the criminal proceedings cannot be applied straightaway.

23. In P. Vijayan v. State of Kerala and Anr. MANU/SC/0058/2010 : (2010) 2 SCC 398, this Court while considering scope of Section 227 of Crl.P.C. upheld the order dismissing the petition filed for discharge and permitted the prosecution to proceed further even after 28 years. In that case, from 1970 till 1998, there was no allegation that the encounter was a fake and only in the year 1998 reports appeared in various newspapers in Kerala that the killing of Varghese in the year 1970 was in a fake encounter and that senior police officers were involved in the said fake encounter. Pursuant to the said news reports, several writ petitions were filed by various individuals and organisations before the High Court of Kerala with a prayer that the investigation may be transferred to the Central Bureau of Investigation (CBI). In the said writ petition, Constable Ramachandran Nair filed a counter affidavit dated 11.01.1999 in which he made a confession that he had shot Naxalite Varghese on the instruction of the then Deputy Superintendent of Police (DSP), Lakshmana. He also stated that the appellant was present when the incident occurred. By order dated 27.01.1999, learned Single Judge of the High Court of Kerala passed an order directing CBI to register an FIR on the facts disclosed in the counter affidavit filed by Constable Ramachandran Nair. Accordingly, CBI registered an FIR on 3- 3- 1999 in which Constable Ramachandran Nair was named as Accused 1, Mr. Lakshmana was named as Accused 2 and Mr. P. Vijayan, the appellant, was named as Accused 3 for an offence under Section 302 IPC read with Section 34 IPC. After investigation, CBI filed a charge- sheet before the Special Judge (CBI), Ernakulam on 11.12.2002 wherein all the abovementioned persons were named as A- 1 to A- 3 respectively for an offence under Sections 302 and 34 IPC. The appellant - P. Vijayan filed a petition under Section 227 of the Code on 17.05.2007 for discharge on various grounds including on the ground of delay. The trial Judge, by order dated 08.06.2007, dismissed the said petition and passed an order for framing charge for offences under Sections 302 and 34 IPC. Aggrieved by the aforesaid order, the appellant - Vijayan filed Criminal Revision Petition No. 2455 of 2007 before the High Court of Kerala. By an order dated 04.07.2007, learned Single Judge of the High Court dismissed his criminal revision petition. The said order was challenged by Mr. P. Vijayan before this Court. Taking note of all the ingredients in Section 227 of the Criminal Procedure Code and the materials placed by the prosecution and the reasons assigned by the trial Judge for dismissing the discharge petition filed under Section 227, this Court confirmed the order of the trial Judge as well as the order of the High Court. Though, there was a considerable lapse of time from the alleged occurrence and the further investigation by CBI inasmuch as adequate material was shown, the Court permitted the prosecution to proceed further.

24. Though delay is also a relevant factor and every accused is entitled to speedy justice in view of Article 21 of the Constitution, ultimately it depends upon various factors/reasons and materials placed by the prosecution. Though Mr. Lalit heavily relied on paragraph 20 of the decision of this Court in Vakil Prasad Singh's case (supra), the learned Additional Solicitor General, by drawing our attention to the subsequent paragraphs i.e., 21, 23, 24, 27 and 29 pointed out that the principles enunciated in A.R. Antulay's case (supra) are only illustrative and merely because of long delay the case of the prosecution cannot be closed.

25. Mr. Dave, learned senior counsel appearing for the intervenor has pointed out that in criminal justice "a crime never dies" for which he relied on the decision of this Court in Japani Sahoo v. Chandra Sekhar Mohanty MANU/SC/3080/2007 : (2007) 7 SCC 394. In para- 14, C.K. Thakker, J. speaking for the Bench has observed:

It is settled law that a criminal offence is considered as a wrong against the State and the society even though it has been committed against an individual. Normally, in serious offences, prosecution is launched by the State and a court of law has no power to throw away prosecution solely on the ground of delay.

In the case on hand, though delay may be a relevant ground, in the light of the materials which are available before the Court through CBI, without testing the same at the trial, the proceedings cannot be quashed merely on the ground of delay. As stated earlier, those materials have to be tested in the context of prejudice to the accused only at the trial.

Observations by the High Court

26. Coming to the last submission about the various observations made by the High Court, Mr. Lalit pointed out that the observations/reference/conclusion in paragraphs 64, 65, 69, 70, 72, 73 and 50 are not warranted. According to him, to arrive such conclusion the prosecution has not placed relevant material. Even otherwise, according to him, if the same are allowed to stand, the trial Judge has no other option but to convict the appellant which would be against all canons of justice. He further submitted that even if it is clarified that those observations are to be confined for the disposal of the appeal filed against framing of charges and dismissal of discharge petition and need not be relied on at the time of the trial, undoubtedly, it would affect the mind of the trial Judge to take independent conclusion for which he relied on a judgment of this Court in Common Cause, A Registered Society v. Union of India and Ors. MANU/SC/0437/1999 : (1999) 6 SCC 667. He pressed into service paragraph 177 which reads as under:

177. Mr. Gopal Subramaniam contended that the Court has itself taken care to say that CBI in the matter of investigation, would not be influenced by any observation made in the judgment and that it would independently hold the investigation into the offence of criminal breach of trust or any other offence. To this, there is a vehement reply from Mr. Parasaran and we think he is right. It is contended by him that this Court having recorded a finding that the petitioner on being appointed as a Minister in the Central Cabinet, held a trust on behalf of the people and further that he cannot be permitted to commit breach of the trust reposed in him by the people and still further that the petitioner had deliberately acted in a wholly arbitrary and unjust manner and that the allotments made by him were wholly mala fide and for extraneous consideration, the direction to CBI not to be influenced by any observations made by this Court in the judgment, is in the nature of palliative. CBI has been directed to register a case against the petitioner in respect of the allegations dealt with and findings reached by this Court in the judgment under review.

Once the findings are directed to be treated as part of the first information report, the further direction that CBI shall not be influenced by any observations made by this Court or the findings recorded by it, is a mere lullaby.

On the other hand, learned Additional Solicitor General highlighted that these observations by the High Court are based on the materials placed and, in any event, it would not affect the interest of the appellant in the ultimate trial. In view of the apprehension raised by the learned senior counsel for the appellant, we also verified the relevant paragraphs. In the light of the fact that it is for the trial Judge to evaluate all the materials including the evidentiary value of the witnesses of the prosecution such as Jagdish Kaur PW- 1, Jagsher Singh PW- 2, Nirpit Kaur PW- 10 and Om Prakash PW- 8, alleged contradictory statements, delay and the conduct of the Delhi Police in filing Status Report and on the basis of further investigation by the CBI, we clarify that all those observations of the High Court would not affect the ultimate analysis and final verdict of the trial Judge.

Conclusion:

27. In the light of the above discussion, we are of the view that it cannot be concluded that framing of charges against the appellant by the trial Judge is either bad in law or abuse of process of law or without any material. However, we clarify that de hors to those comments, observations and explanations emanating from the judgment of the learned single Judge, which we referred in para 26, the trial Judge is free to analyse, appreciate, evaluate and arrive at a proper conclusion based on the materials being placed by prosecution as well as the defence. Inasmuch as the trial relates to the incident of the year 1984, we direct the trial Judge to take sincere efforts for completion of the case as early as possible for which the prosecution and accused must render all assistance. Interim order granted on 13.08.2010 is vacated. With the above observation and direction, the appeal is disposed of.

MANU/SC/0167/1976

Back to Section 235 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 392 of 1975

Decided On: 17.08.1976

Santa Singh Vs. The State of Punjab

Hon'ble Judges/Coram:

P.N. Bhagwati and S. Murtaza Fazal Ali, JJ.

JUDGMENT

P.N. Bhagwati, J.

1. This appeal, by special leave, raises an interesting question of law relating to the construction of Section 235(2) of the CrPC, 1973. The appellant was tried before the Sessions Judge, Ludhiana for committing a double murder, one of his mother and the other of her second husband. He was represented by a lawyer during the trial and after the evidence was concluded and the arguments were heard, the learned Sessions Judge adjourned the case to 13th February, 1975 for pronouncing the judgment. It appears that on 13th February, 1975, the judgment was not ready and hence the case was adjourned to 20th February, 1975 and again to 26th February, 1975. The Roznamcha of the proceedings shows that on 26th February, 1975 the appellant was present without his lawyer and the learned Sessions Judge pronounced the judgment convicting the appellant of the offence under Section 302 of the Indian Penal Code and sentenced him to death. It was common ground that after pronouncing the judgment convicting the appellant, the learned Sessions Judge did not give the appellant an opportunity to be heard in regard to the sentence to be imposed on him and by one single judgment, convicted the appellant and also sentenced him to death. The appellant preferred an appeal to the High Court and the case was also referred to the High Court for confirmation of the death sentence. The High Court agreed with the view taken by the learned Sessions Judge and confirmed the conviction as also the sentence of death. The appellant thereupon preferred the present appeal with special leave obtained from this Court.

2. The appeal is limited to the question of sentence and the principal argument advanced on behalf of the appellant is that in not giving an opportunity to the appellant to be heard in regard to the sentence to be imposed on him after the judgment was pronounced convicting him, the learned Sessions Judge committed a breach of Section 235(2) of the CrPC, 1973 and that vitiated the sentence of death imposed on the appellant. This argument is a substantial one and it rests on the true interpretation of Section 235(2). This is a new provision and it occurs in Section 235 of the CrPC, 1973 which reads as follows :

235 (1) After hearing arguments and points of law (if any) the Judge shall give a judgment in the case.

(2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of Section 360, hear the accused on the question of sentence, and then pass sentence on him according to law.

3. This provision is clear and explicit and does not admit of any doubt. It requires that in every trial before a court of sessions, there must first be a decision as to the guilt of the accused. The court must in the first instance, deliver a judgment convicting or acquitting the accused. If the accused is acquitted, no further question arises. But if he is convicted, then the court has to "hear the accused on the question of sentence, and then pass sentence on him according to law". When a judgment is rendered convicting the accused, he is, at that stage, to be given an opportunity to be heard in regard to the sentence and it is only after hearing him that the court can proceed to pass the sentence.

4. This new provision in Section 235(2) is in consonance with the modern trends in penology and sentencing procedures. There was no such provision in the old Code. Under the old Code, whatever the accused wished to submit in regard to the sentence had to be stated by him before the arguments concluded and the judgment was delivered. There was no separate stage for being heard in regard to sentence. The accused had to produce material and make his submissions in regard to sentence on the assumption that he was ultimately going to be convicted. This was most unsatisfactory. The legislature, therefore, decided that it is only when the accused is convicted that the question of sentence should come up for consideration and at that stage, an opportunity should be given to the accused to be heard in regard to the sentence. Moreover, it was realised that sentencing is an important stage in the process of administration of criminal justice as important as the adjudication of guilt and it should not be consigned to a subsidiary position as if it were a matter of not much consequence. It should be a matter of some anxiety to the court to impose an appropriate punishment on the criminal and sentencing should, therefore, receive serious attention of the court.

In most of the countries of the world, the problem of sentencing the criminal offender is receiving increasing attention and that is largely because of the rapidly changing attitude towards crime and criminal. There is in many of the countries, intensive study of the sociology of crime and that has shifted the focus from the crime to the criminal, leading to a widening of the objectives of sentencing and, simultaneously, of the range of sentencing procedures. Today, more than ever before, sentencing is becoming a delicate task, requiring an inter- disciplinary approach and calling for skills and talents vary much different from those ordinarily expected of lawyers. This was pointed out in clear and emphatic words by Mr. Justice Frankfurter :

I myself think that the bench we lawyers who become judges- - are not very competent, are not qualified by experience, to impose sentences where any discretion is to be exercised. I did not think it is in the domain of the training of lawyers to know what to do with a fellow after you find out he is a thief. I do not think legal training gives you any special competence. I, myself,

hope that one of these days, and before long, we will divide the functions, of criminal justice. I think the lawyers are people who are competent to ascertain whether or not a crime has been committed. The whole scheme of common law judicial machinery the rule of evidence, the ascertainment of what is relevant and what is irrelevant and what is fair, the whole question of whether you can introduce prior crimes in order to prove intent I think lawyers are peculiarly fitted for that task. But all the questions that follow upon ascertainment of guilt, I think require very different and much more diversified talents than the lawyers and judges are normally likely to possess.

5. The reason is that a proper sentence is the amalgam of many factors such as the nature of the offence the circumstances extenuating or aggravating of the offence, the prior criminal record, if any, of the offender, the age of the offender, the record of the offender as to employment, the background of the offender with reference to education, home life, society and social adjustment, the emotional and mental condition of the offender, the prospects for the rehabilitation of the offender, the possibility of return of the offender to a normal life in the community, the possibility of treatment or training of the offender, the possibility that the sentence may serve as a deterrent to crime by the offender or by others and the current community need, if any, for such a deterrent in respect to the particular type of offence. These are factors which have to be taken into account by the court in deciding upon the appropriate sentence,

and therefore, the legislature felt that, for this purpose, a separate stage should be provided after conviction when the court can bear the accused in regard to these factors bearing on sentence and then pass proper sentence on the accused.

Hence the new provision in Section 235(2).

6. But, on the interpretation of Section 235(2) another question arises and that is, what is the meaning and content of the words "hear the accused". Does it mean merely that the accused has to be given an opportunity to make his submissions or he can also produce material bearing on sentence which has so far not come before the court ? Can he lead further evidence relating to the question of sentence or is the hearing to be confined only to oral submissions ? That depends on the interpretation to be placed on the word 'hear'. Now, the word 'hear' has no fixed rigid connotation. It can bear either of the two rival meanings depending on the context in which it occurs. It is a well settled rule of interpretation, hallowed by time and sanctified by authority, that the meaning of an ordinary word is to be found not so much in strict etymological propriety of language, nor even in popular use, as in the subject or occasion on which it is used and the object which is intended to be attained. It was Mr. Justice Holmes who pointed out in his inimitable style that "a word is not a crystal, transparent and unchanged : it is the skin of a living thought and may vary greatly in colour and content according to the circumstances and the time in which it is used". Here, in this provision, the word 'hear' has been used to give an opportunity to the accused to place before the court various circumstances bearing on the sentence to be passed against him. Modern penology, as pointed out by this Court in Ediga Annamma v. State of Andhra Pradesh MANU/SC/0128/1974 : 1974CriLJ683 "regards crime and criminal as equally material when the right sentence has to be picked out". It turns the focus not only on the crime, but also on the criminal and seeks to personalize the punishment so that the reformist component is as much operative as the deterrent element. It is necessary for this purpose that "facts of a social and personal nature, sometimes altogether irrelevant, if not injurious, at the stage of fixing the

guilt may have to be brought to the notice of the court when the actual sentence is determined". We have set out a large number of factors which go into the alchemy which ultimately produces an appropriate sentence and full and adequate material relating to these factors would have to be brought before the court in order to enable the court to pass an appropriate sentence. This material may be placed before the court by means of affidavits, but if either party disputes the correctness or veracity of the material sought to be produced by the other, an opportunity would have to be given to the party concerned to lead evidence for the purpose of bringing such material on record. The hearing on the question of sentence, would be rendered devoid of all meaning and content and it would become an idle formality, if it were confined merely to hearing oral submissions without any opportunity being given to the parties and particularly to the accused, to produce material in regard to various factors bearing on the question of sentence, and if necessary, to lead evidence for the purpose of placing such material before the court. This was also the opinion expressed by the Law Commission in its Forty Eighth Report where it was stated that "the taking of evidence as to the circumstances relevant to sentencing should be encouraged and both the prosecution and the accused should be allowed to cooperate in the process." The Law Commission strongly recommended that if a request is made in that behalf by either the prosecution or the accused, an opportunity for leading "evidence on the question" of sentence "should be given". We are, therefore, of the view that the hearing contemplated by Section 235(2) is not confined merely to hearing oral submissions, but it is also intended to give an opportunity to the prosecution and the accused to place before the court facts and material relating to various factors bearing on the question of sentence and if they are contested by either side, then to produce evidence for the purpose of establishing the same. Of course, care would have to be taken by the court to see that this hearing on the question of sentence is not abused and turned into an instrument for unduly protracting the proceedings. The claim of due and proper hearing would have to be harmonised with the requirement of expeditious disposal of proceedings.

7. Now there can be no doubt that in the present case the requirement of Section 235(2) was not complied with, inasmuch as no opportunity was given to the appellant, after recording his conviction, to produce material and make submissions in regard to the sentence to be imposed on him. Since the appellant was convicted under Section 302 of the Indian Penal Code, only two options were available to the Sessions Court in the matter of sentencing the appellant either to sentence him to death or to impose on him sentence of imprisonment for life. It the Sessions Court had, instead of sentencing him to death, imposed on him sentence of life imprisonment, the appellant could have made no grievance of the breach of the provision of Section 235(2) because, even after hearing the appellant, the Sessions Court would not have passed a sentence more favourable to the appellant than the sentence of life imprisonment. In such a case, even if any complaint of violation of the requirement of Section 235(2) were made, it would not have been entertained by the appellate court as it would have been meaningless and futile. But, in the present case, the Sessions Court chose to inflict death sentence on the appellant and the possibility cannot be ruled out that if the accused had been given opportunity to produce material and make submissions on the question of sentence, as contemplated by Section 235(2), he might have been able to persuade the Sessions Court to impose the lesser penalty of life imprisonment. The breach of the mandatory requirement of Section 235(2) cannot, in the circumstances, be ignored as inconsequential and it must be held to vitiate the sentence of death imposed by the Sessions Court.

8. It was, however, contended on behalf of the State that non- compliance with the mandatory requirement of Section 235(2) was a mere irregularity curable under Section 465 of the CrPC, 1973 as no failure of justice was occasioned by it and the trial could not on that account be held to be bad. The State leaned heavily on the fact that the appellant did not insist on his right to be heard under Section 235(2) before the Sessions Court, nor did he make any complaint before the High Court that the Sessions Court had committed a breach of Section 235(2) and this omission on the part of the appellant, contended the State, showed that he had nothing to say in regard to the question of sentence and consequently, no prejudice was suffered by him as a result of non-compliance with Section 235(2). This contention is, in my opinion, without force and must be rejected. It must be remembered that Section 235(2) is a new provision introduced for the first time in the CrPC, and 1973 and it is quite possible that many lawyers and judges might be unaware of it. Before the Sessions Court, the appellant was not represented by a lawyer at the time when the judgment was pronounced and obviously he could not be aware of this new stage in the trial provided by Section 235(2). Even the Sessions Judge was not aware of it, for it is reasonable to assume that if he had been aware, he would have informed the appellant about his right to be heard in regard to the sentence and given him an opportunity to be heard. It is unfortunate that in our country there is no system of continuing education for judges so that judges can remain fully informed about the latest developments in the law and acquire familiarity with modern methods and techniques of judicial decision- making. The world is changing fast and in our own country, vast social and economic changes are taking place. There is a revolution of rising expectation amongst millions of human beings who have so far been consigned to a life of abject poverty, hunger and destitution. Law has, for the first time, adopted a positive approach and come out openly in the service of the weaker sections of the community. It has ceased to be merely an instrument providing a framework of freedom in which men may work out their destinies. It has acquired a new dimension, a dynamic activism and it is now directed towards achieving socio- economic justice which encompasses not merely a few privileged classes but the large masses of our people who have so far been denied freedom and equality social as well as economic and who have nothing to hope for and to live for. Law strives to give them social and economic justice and it has, therefore, necessarily to be weighted in favour of the weak and the exposed. This is the new law which judges are now called upon to administer and it is, therefore, essential that they should receive proper training which would bring about an orientation in their approach and outlook, stimulate sympathies in them for the vulnerable sections of the community and inject a new awareness and sense of public commitment in them. They should also be educated in the new trends in penology and sentencing procedures so that they may learn to use penal law as a tool for reforming and rehabilitating criminals and smoothening out the uneven texture of the social fabric and not as a weapon, fashioned by law, for protecting and perpetuating the hegemony of one class over the other. Be that as it may, it is clear that the learned Sessions Judge was not aware of the provision in Section 235(2) and so also was the lawyer of the appellant in the High Court unaware of it. No inference can, therefore, be drawn from the omission of the appellant to "raise this point, that he had nothing to say in regard to the sentence and that consequently no prejudice was caused to him.

9. So far as Section 465 of the CrPC, 1973 is concerned, I do not think it can avail the State in the present case. In the first place, non- compliance with the requirement of Section 235(2) cannot be

described as mere irregularity in the course of the trial curable under Section 465. It is much more serious. It amounts to by- passing an important stage of the trial and omitting it altogether, so that the trial cannot be aid to be that contemplated in the Code. It is a different kind of trial conducted in a manner different from that prescribed by the Code. This deviation constitutes disobedience to an express provision of the Code as to the mode of trial, and as pointed out by the Judicial Committee of the Privy Council in Subramania Jyer v. King Emperor (1901) 28 I.A. 257 such a deviation cannot be regarded as a mere irregularity. It goes to the root of the matters and the resulting illegality is of such a character that it vitiates the sentence. Vide Pulukurti Kotayya v. King Emperor (1947) 74 I.A. 65 and Magga and Anr. v. State of Rajasthan. MANU/SC/0029/1953 : 1953CriLJ892 Secondly, when no opportunity has been given to the appellant to produce material and make submissions in regard to the sentence to be imposed on him, failure of justice must be regarded as implicit. Section 465 cannot, in the circumstances, have any application in a case like the present.

10. I accordingly allow the appeal and whilst not interfering with the conviction of the appellant under Section 302 of the Indian Penal Code, set aside the sentence of death and remand the case to the Sessions Court with a direction to pass appropriate sentence after giving an opportunity to the appellant to be heard in regard to the question of sentence in accordance with the provision of Section 235(2) ;as interpreted by me.

Fazal Ali, J

11. I entirely agree with the judgment proposed by my learned brother Bhagwati, J. and I am at one with the views expressed by him in his judgment, but I would like to add a few lines of my own to highlight some important aspects of the question involved in this appeal.

12. In this appeal by special leave which is confined only to the question of sentence an interesting question of law arises as to the interpretation of the provisions of Section 235(2) of the CrPC, 1973 hereinafter after referred to as 'the 1973 Code'. In the light of the arguments advanced before us by the parties the question may be framed thus :

Does the non- compliance with the provisions of Section 235(2) of the 1973 Code vitiate the sentence passed by the Court?

13. In order to answer this question it may be necessary to trace the historical background and the social setting under which Section 235(2) was inserted for the first time in the 1973 Code. It would appear that the 1973 Code was based on a good deal of research done by several authorities including the Law Commission which made several recommendations for revolutionary changes in the provisions of the previous Code so as to make the 1973 Code hi consonance with the growing needs of the society and in order to solve the social problems of the people. Apart from introducing a number of changes in the procedure, new rights and powers were conferred on the

Courts or sometimes even on the accused. For instance, a provision for anticipatory bail was introduced to enable the accused to be saved from unnecessary harassment. In its 48th Report the Law Commission while recommending the insertion of a provision which would enable the accused to make a representation against the sentence to be imposed after the judgment of conviction had been passed, observed as follows :

It is now being increasingly recognised that a rational and consistent sentencing policy requires the removal of several deficiencies in the present system. One such deficiency is the lack of comprehensive information as to characteristics and background of the offender.

We are of the view that the taking of evidence as to the circumstances relevant to sentencing should be encouraged, and both the prosecution and the accused should be allowed to co- operate in the process.

14. In the aims and objects of 1973 Code which have been given clause by clause a reference to this particular provision has been made thus .-

If the judgment is one of conviction, the accused will be given an opportunity to make his representation, if any, on the punishment proposed to be awarded and such representation shall be taken into consideration before imposing the sentence. This last provision has been made because it may happen that the accused may have some grounds to urge for giving him consideration in regard to the sentence such as that he is the bread- winner of the family of which the Court may not be made aware during the trial.

15. Para 6(d) of the statement of objects and reasons of the 1973 Code runs thus:

6. Some of the more important changes intended to provide relief to the poorer sections of the community are :-

(d) the accused will be given an opportunity to make representation against the punishment before it is imposed.

16. The statement of objects and reasons further indicates that the recommendations of the Law Commission were examined carefully keeping in view, among others, the principle that "an accused person should get a fair trial in accordance with the accepted principles of natural justice". In these circumstances, therefore, I feel that the provisions of Section 235(2) are very salutary and contain one of the cardinal features of natural justice, namely, that the accused must be given an opportunity to make a representation against the sentence proposed to be imposed on him.

17. Section 235 of the 1973 Code runs thus:

235(1) After hearing arguments and points of law (if any), the Judge shall give a judgment in the case.

(2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of Section 360, hear the accused on the question of sentence, and then pass sentence on him according to law.

18. A perusal of this Section clearly reveals that the object of the 1973 Code was to split up the sessions trial or the warrant trial, where also a similar provision exists, into two integral parts- - (i) the stage which culminates in the passing of the judgment of conviction or acquittal; and (ii) the stage which on conviction results in imposition of sentence on the accused. Both these parts are absolutely fundamental and non- compliance with any of the provisions would undoubtedly vitiate the final order passed by the Court. The two provisions do not amount merely to a ritual formula or an exercise in futility but have a very sound and definite purpose to achieve. Section 235(2) of the 1973 Code enjoins on the Court that after passing a judgment of conviction the Court should stay its hands and hear the accused on the question of sentence before passing the sentence in accordance with the law. This obviously postulates that the accused must be given an opportunity of making his representation only regarding the question of sentence and for this purpose he may be allowed to place such materials as he may think fit but which may have bearing only on the question of sentence. The statute, in my view, seeks to achieve a socio-economic purpose and is aimed at attaining the ideal principle of proper sentencing in a rational and progressive society. The modern concept of punishment and penology has undergone a vital transformation and the criminal is now not looked upon as a grave menace to the society which should be got rid of but is a diseased person suffering from mental malady or psychological frustration due to subconscious reactions and is, therefore, to be cured and corrected rather than to be killed or destroyed. There may be a number of circumstances of which the Court may not be aware and which may be taken into consideration by the Court while awarding the sentence, particularly a sentence of death, as in the instant case. It will be difficult to lay down any hard and fast rule, but the statement of objects and reasons of the 1973 Code itself gives a clear illustration. It refers to an instance where the accused is the sole bread- earner of the family. In such a case if the sentence of death is passed and executed it amounts not only to a physical effacement of the criminal but also a complete socio- economic destruction of the family which he leaves behind. Similarly there may be cases, where, after the offence and during the trial, the accused may have developed some virulent disease or some mental infirmity, which may be an important factor to be taken into consideration while passing the sentence of death. It was for these reasons that Section 235(2) of the 1973 Code was enshrined in the Code for the purpose of making the Court aware of these circumstances so that even if the highest penalty of death is passed on the accused he does not have a grievance that he was not heard on his personal, social and domestic circumstances before the sentence was given.

19. My learned brother has very rightly pointed out that our independence has led to the framing of numerous laws on various social concepts and a proper machinery must be evolved to educate

not only the people regarding the laws which have been made for their benefit but also the Courts, most of whom are not aware of some of the recent and the new provisions. It is, therefore, the prime need of the hour to set up Training Institutes to impart the new judicial recruits or even to serving judges with the changing trends of judicial thoughts and the new ideas which the new judicial approach has imbibed over the years as a result of the influence of new circumstances that have come into existence.

20. The next question that arises for consideration is whether non- compliance with Section 235(2) is merely an irregularity which can be cured by Section 465 or it is an illegality which vitiates the sentence. Having regard to the object and the setting in which the new provision of Section 235(2) was inserted in the 1973 Code there can be no doubt that it is one of the most fundamental part of the criminal procedure and non- compliance thereof will ex facie vitiate the order. Even if it be regarded as an irregularity the prejudice caused to the accused would be inherent and implicit because of the infraction of the rules of natural justice which have been incorporated in this statutory provision, because the accused has been completely deprived of an opportunity to represent to the Court regarding the proposed sentence and which manifestly results in a serious failure of justice. There is abundant authority for this proposition to which reference has been made by my learned brother.

21. The last point to be considered is the extent and import of the word "hear" used in Section 235(2) of the 1973 Code. Does it indicate, that the accused should enter into a fresh trial by producing oral and documentary evidence on the question of the sentence which naturally will result in further delay of the trial? The Parliament does not appear to have intended that the accused should adopt dilatory tactics under the cover of this new provision but contemplated that a short and simple opportunity has to be given to the accused to place materials if necessary by leading evidence before the Court bearing on the question of sentence and a consequent opportunity to the prosecution to rebut those materials. The Law Commission, was fully aware of this anomaly and it accordingly suggested thus:

We are aware that a provision for an opportunity to give evidence in this respect may necessitate an adjournment; and to avoid delay adjournment, for the purpose should, ordinarily be for not more than 14 days. It may be so provided in the relevant clause.

22. It may not be practicable to keep up to the time- limit suggested by the Law Commission with mathematical accuracy but the Courts must be vigilant to exercise proper control over the proceedings so that the trial is not unavoidably or unnecessarily delayed.

23. I, therefore, agree with the order of my learned Bhagwati, J., that the appeal should be allowed on the question of the sentence and the matter should be sent back to the Trial Court for giving an opportunity to the accused to make a representation regarding the sentence proposed.

MANU/BH/0090/1958

IN THE HIGH COURT OF PATNA

Criminal Ref. No. 1 of 1955

Decided On: 16.10.1957

Rasik Tatma Vs. Bhagwat Tanti

Back to Section 247 of Code of Criminal Procedure, 1973

Back to Section 256 of Code of Criminal Procedure, 1973

Hon'ble Judges/Coram:

Jamuar and K. Dayal, JJ.

JUDGMENT

Authored By : K. Dayal, Jamuar

K. Dayal, J.

1. This is a reference under Section 438 of the Code of Criminal Procedure by the District Magistrate, Saharsa.

2. The material facts are these: One Bhagwat Tanti filed a complaint in the court of the Subdivisional Magistrate, Madhipura, against Rasik Tatma and three others, alleging that they had forcibly uprooted wheat crop from his lands. The: Subdivisional Magistrate summoned accused Rasik. and, thereafter, transferred the case to the file of the Honorary Magistrate, First Class, Madhipura. This trying Magistrate allowed bail to the accused and summoned prosecution witnesses for the next date. On the next date, that is, the 16th March 1954, trying Magistrate found the complainant absent on call and, therefore, he acquitted the accused under section 247 of the Code of Criminal Procedure. Subsequently the complainant appeared before the trying Magistrate and filed a petition for reviving the case. On the 2nd April 1954, the learned trying Magistrate passed an order reviving the case. Accused Rasik then moved the District Magistrate for referring the matter to the High Court for setting aside the order of the learned trying Magistrate dated 2nd April, 1954 reviving the case. Upon this application, the learned District Magistiate has referred this case to this Court for quashing the proceeding against petitioner Rasik Tatma.

3. The only important question for decision in this case is as to whether the case could have been revived or restored after the accused had been acquitted under Section 247 of the Code of Criminal Procedure.

4. In Ram Mahto v. Emperor 2 Pat LT 170: AIR 1921 Pat 311 (A), Kiran Sarkarv. Emperor : (MANU/BH/0133/1923 : AIR 1924 Pat 140) (B) : 5 Pat L T 15, and Jaikaran Jha v. Dukhan Paswan, Cri, Revn. No. 637 of 1953, D/- 8- 4- 1954 (Pat) (C) (unreported), this Court has held that an order under section 247 of the Code of Criminal Procedure is a final order of acquittal which operates as a bar under Section 403 of the Code of Criminal Procedure(sic) the trial of the accused for the same offence. The principles of these cases are directly applicable to the facts of the present case. Similar is the view of the Calcutta High Court, see for instance. Kanai Hizra v. Golap Hizra MANU/WB/0065/1953 : AIR 1953 Cal 197 (D). Mr. A.K. Roy, appearing against the reference, referred us to a solitary case of the Madras High Court namely B. Kotevva v. K. Venkayya AIR 1918 Mad 212 (E) where a different view has been expressed. But it appears that, previous to 1918 and after 1918, the Madras High Court had taken the view as has been taken by the Calcutta and the Patna High Courts, see for instance, In re G. Peddaya ILR 34 Mad 253 (F), In re Sinnu Gounden ILR 36 Mad 1028: AIR 1914 Mad 628 (G), and (Devarakonda) Lakshminara- simham v. Nalluri Bapanna, MANU/TN/0058/1926 : AIR 1927 Mad 473 (H). Thus, on the authorities brought to our notice the consensus of opinion appears to be that an order of acquittal under Section 247 of the Code of Criminal Procedure operates as a bar under Section 403 of the Code to the trial of the accused for the same offence.

5. Besides, it has been laid down in a number of cases that, in a criminal case, the Magistrate, after once having signed and completed his order, has no jurisdiction to review or revise the same, see for instance, Gajo Chaudhary v. Debi Chaudhary MANU/BH/0381/1923 : AIR 1923 Pat 532 (I).

6. It is, thus, manifestly clear that the learned trying Magistrate had no jurisdiction to revive the complaint case.

7. In the result, the reference is accepted and the order of the learned trying Magistrate dated 2nd April 1954 is set aside and the fresh proceeding drawn up against Rasik Tatma is quashed.

Jamuar, J.

8. I agree.

MANU/GJ/0186/2005

Back to Section 265H of Code of Criminal Procedure, 1973

IN THE HIGH COURT OF GUJARAT

Criminal Appeal Nos. 477, 843, 891, 892, 896, 897 and 898 of 2002 and 265 of 2003

Decided On: 22.02.2005

State of Gujarat Vs. Natwar Harchandji Thakor

Hon'ble Judges/Coram:

J.N. Bhattand Dhirubhai Naranbhai Patel, JJ.

JUDGMENT

J.N. Bhatt, J.

Prelude (Focal Point)

Let us at the very outset, evidently record, remember, and recollect that ;

"A civilisation is judged by the way it treats its criminals."

1. In this group of criminal appeals, specially assigned to the Larger Bench by the Hon'ble Chief Justice, the central theme, the core issue and the main point, in focus, has been, as to whether the trial Court, on being satisfied or in presence of special and adequate reasons peculiar to the accused, to be mentioned in writing, in the judgment of the Court, in finding accused guilty, "for a first offence" either by evidence or "by raising the plea of guilty"; is competent to impose for such "first offence";

(i) a sentence of imprisonment for a term of less than three months and fine of less than Five Hundred Rupees for the offence punishable under the proviso to Sub- clause (i) of Sub- section (1) of Section 66 of the "Bombay Prohibition Act, 1949". (B. P. Act")?

And

(ii) a sentence of imprisonment for a term of less than seven days and fine of less than Rupees Twenty Five for the first offence punishable, in terms of proviso to Sub- clause (i) to Clause (1) and Clause (3) of Sub- section (1) of Section 85 of the B. P. Act, 1949?

(iii) Whether Innovative Judicial Directions and prescription of New Format, for recording plea of guilty of an accused, when statutory prescription of such a process or procedure has been prescribed in the Act, would be competent and legal?

Statutory Mechanism :

2. Chapter VII of the B. P. Act deals with the offences and penalties statutorily prescribed. This chapter consists of the provisions relating to the penalty for the offences committed under the B. P. Act. Section 66 provides for penalty in the case of person having committed offence in contravention of the provisions of the Act or of any Rule, Regulation or Order made or of any licence, pass, permit or authorisation issued thereunder, whereas, Section 85, B. P. Act, prescribes penalty for being drunk, for disorderly behaviour and drunk without permit or ineligible to hold permit under the B. P. Act. The relevant provisions of both the Sections, firstly, need to be evaluated and examined for the purpose of interpretation and applicability, and adjudication of the points in Focus. Therefore, let us at the outset, have the benefit of those relevant statutory provisions, which read hereasbelow :

Statutory provisions :

I. Section 66(1)(b) along with the proviso for the first offence, reads hereasunder :

"66. (1) Whoever in contravention of the provisions of this Act, or of any rule, regulation or order made, or any licence, permit, pass or authorisation issued, thereunder :

(b) consumes, uses, possesses or transports any intoxicant other than opium or hemp,

(c) to (e) * * * * * * * *

shall, on conviction, be punished, -

(i) For a first offence, with imprisonment for a term which may extend to six months and with fine which may extend to one thousand rupees :

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than three months and fine shall not be less than five hundred rupees :

(ii) to (iii) * * * * * * * *"

II. Section 85(1) along with the proviso for the first offence reads hereasunder :

"85. (1) Whoever in any street, or thoroughfare or public place or in any place to which the public have or are permitted to have access -

(1) is drunk and incapable of taking care of himself, or

(2) behave in a disorderly manner under the influence of drink, or

(3) is found drunk but who is not the holder of permit granted under the provisions of this Act or is not eligible to hold a permit under Sections 40, 41, 46 or 46A

shall, on conviction, be punished -

(i) for an offence under Clause (1) or Clause (3),

(a) for a first offence, with imprisonment for a term which may extend to one month and with fine which may extend to two hundred rupees :

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than seven days and fine shall not be less than twenty five rupees; and

(ii) for an offence under Clause (2) -

(a) for a first offence with imprisonment for a term which may extend to three months and with fine which may extend to five hundred rupees :

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than one month and fine shall not be less than one hundred rupees; and

(b) * * * * * *

(2) * * * * * *"

3. In view of the important interpretative exercise and jurisprudential exposition, so far as, proviso to the minimum sentence in those provisions of B. P. Act is concerned, which, obviously, would have wider legal implications and far- reaching ramifications, it was thought expedient to request the learned Senior Advocate, Mr. P.M. Thakkar, to assist and enlighten the Court, as an "amicus curiae" to which, he spontaneously and unhesitatingly, responded and agreed to assist, and he has rendered very good and valuable assistance in this group of matters, and therefore, we place on record our appreciation and grateful thanks to him for his useful assistance.

4. The learned A.P.P. Mr. L. R. Pujari has also rendered very useful and fruitful assistance in reaching the conclusion. We, also, place on record our appreciation for his assistance.

Penology and Minimum Sentence :

5. In the realm of penology, the Courts are empowered and invested with higher and wider discretion. Once, the conviction is established, the difficult and delicate issue of imposition of the penalty would arise requiring, the Court to consider, various aspects and variety of factors, particularly, "special to the accused", so as to reach a correct, appropriate, proportionate and just conclusion of imposition of sentence, which could be reasonable, adequate and proportionate to the category and nature of culpability and type of criminality established against the each accused persons. However, of late, the legislatures, State, as well as Central, have thought it fit and expedient in their wisdom, while exercising legislative prerogatives and powers, to provide 'minimum sentence', and thereby, in the result, restricting the discretionary role and exercise of the powers, by Courts, in imposition of sentences in certain cases or certain enactments. The prescription of 'minimum sentence' is an important issue in the sentencing policy and legislative measures for penalties for offences.

6. Of course, there is a purpose and policy behind providing 'minimum sentence'. There are variety of reasons which have led to legislative prescription of minimum sentences for certain offences and in certain enactments. Again, it will be interesting to note, at this juncture, that the legislatures, while enacting and providing for minimum sentence, have made further provisions in many enactments, with the help of proviso or 'explanation' or otherwise for discretion, so that in a given fit case, on being satisfied, in presence of special and adequate reasons to be recorded

in the judgment of the Court, the Court can exercise discretion vested in imposing the punishment lesser than 'minimum sentence'.

7. Wherever and whenever a minimum sentence is prescribed by the legislature, it is incumbent upon the Court to impose minimum punishment, once the conviction is recorded. However, in certain provisions or in any certain enactments, by providing for either proviso or otherwise, the Courts are conferred powers, for special and adequate reasons to be recorded in writing, to impose less than minimum, as in case of Sections 66(1)(b) and 85(1)(1) and (3) of the B. P. Act, which have also, strong nexus, sound reason, and sufficient rationale, as the commission of the offence is the outcome of variety of socio- economic and psycho- legal reasons, and at times, there may be cases, wherein, sufficient and adequate reasons, "special and peculiar to the accused" in a given case, may be available or may be present, and on being satisfied, in this behalf, the legislatures, in its wisdom, have further invested the Courts with discretion to impose less than minimum sentence in such a given situation. Of course, 'Change' and 'Revision' may be necessary upon change in socio- economic etc., reasons, as nothing could be static except 'Change'. But, it will be for the appropriate jurisdictions to consider.

Doctrine of Statutory Elasticity : Discretion

8. The basis for this is that in a proper and fit case, the Court must have more discretion having nexus and relevance with the "Doctrine of Statutory Elasticity" for power of imposing punishment or sentence than the rigidity or orthodoxy in treating all the guilty, of all the cases; upon conviction, with the same yardstick or standard of minimum sentence, on account of there being or in presence of any special and adequate reasons, in a given case and peculiar to the each accused. Let us, also, remember and recall the provisions mandated in Sections 235(2), 248(2) and 255(2) of the Criminal Procedure Code, 1973, which were absent, hitherto, in 'Repealed Code' of 1898. They, indubitably, radiate an imprint of the said Doctrine, as there is purpose and philosophy behind it, as articulated in 14th Report of the Law Commission of India in 1958, on Law Reform of Civil and Criminal Law, and also, 41st Report of Law Commission, on comprehensive Revision of the Code of Criminal Procedure, in 1969.

9. The proviso of both the Sections, Section 66(1) and Section 85(1)(1) and (3) of the B. P. Act, evidently, make it, unambiguous, that the Court is ordinarily under an obligation to impose a minimum punishment, once the conviction is recorded either under Section 66(1) or 85(1)(1) or (3) of the B. P. Act. Undoubtedly, the proviso, clearly, empowers, the Court to award less than the minimum punishment, if the Court, after convicting and before sentencing the accused, is of the opinion that for any special and adequate reasons to be recorded in writing in the judgment, the sentence of imprisonment for a term lesser than minimum is called for, and then, in that case, the Court can award lesser than minimum. Once, the discretion is vested in the Court to award less than minimum for any special and adequate reasons, the Court is under an obligation to record same in writing, the sentence of imprisonment or of a fine for a term lesser than minimum, in terms, of the proviso statutorily prescribed.

10. The quantum of sentence, is thus, in the discretion of the trial Court. Where the legislature has stepped in and circumscribed and fettered, partially, the discretion by directing the imposition of minimum sentence, the Court can exercise its discretion within the minimum sphere left open by the legislature. It could very well be visualised from the proviso to Section 66(1) and proviso to Section 85(1)(1) or (3) of the B. P. Act, That the State Legislature has circumscribed the discretion, requiring the Court to impose minimum sentence and left it open to award less than the minimum sentence, statutorily prescribed, for special and adequate reasons to be recorded in writing in the judgment. It leaves no any manner of doubt in our minds that it is always open for the competent Court to impose lesser than minimum, for in (sic.) presence of special and adequate reasons, to the contrary to be mentioned in the judgment of the Court, which are attributable and relatable to the accused in a given factual profile of the case of each accused.

11. It cannot be interpreted that the minimum sentence, prescribed in the proviso to both the Sections, would not give any option, whatsoever, to the Court or leave open any discretion to impose lesser punishment than "minimum". Although, surprisingly, unusually, it is in negative phrase or term. But, while reading plainly, it is evident, that by providing in the proviso in both the Sections, even in presence of special and adequate reasons to be recorded by the Court in the judgment, such an interpretation, in our opinion, would be diametrically opposite to the legislative prescription of sentence of minimum period and fine of minimum amount, and will efface and defy further discretion by vesting and empowering the Court to impose minimum sentence leaving Court to be unmindful of the mandate of statutory proviso in the said Sections to award less than the statutorily prescribed for special and adequate reasons in terms of the proviso. Would it not violate the proviso and underlying legislative jurisdictional design and desideratum? Answer is positively 'yes'.

12. Two negative words, "in the absence of" and "shall not be" obviously, would mean and radiate an imprint of presence of special and adequate reasons, to the contrary to be mentioned in the judgment, peculiar to the each accused, in a given case or trial. Therefore, in a given case, upon being satisfied by presence of special and adequate reasons, peculiar to the accused, the Court is empowered and invested with statutory discretion to impose lesser than minimum sentence as provided in proviso in both such Sections and similar such provisions in the B. P. Act. Even for that purpose in a given case, the Court is, obviously and completely, competent, upon satisfaction of Court, to impose, so far as, lesser sentence than minimum sentence is concerned, and in presence of special and adequate reasons, peculiar to the accused, even "Till Rising", and also, any amount of fine upon satisfaction of the Court less than minimum prescribed in proviso in both the Sections and other identical provisions.

13. This has been the consistent judicial adjudication policy and interpretations by host of pronouncements of single Bench of this Court to which references have been made in course of marathon submissions and resorted to. In our opinion, it is the correct and real interpretation. Any other view or interpretation would not only militate against the plain language, but also, would violate relevant statutory provisions, policy and purity of proviso laid down by the

Legislature in its domain and prerogative legislative jurisdictional and statutory wisdom and prudence. Any pronouncement or judicial adjudication contrary to such forensic and jurisprudential interpretation and statutory mechanism cannot be upheld and sustained, as it would not lay down or expound the real and correct interpretation and proposition of relevant provisions of law. Thus, such an interpretation as suggested shall, diametrically, run opposite to the provisions of proviso laid down by the Legislature, in its domain and prerogative legislative-jurisdiction. Any pronouncement of" the judicial adjudication propounded in the judgments of single Bench, and relied on by the State contrary to such forensic and jurisprudential mechanism of provisions in proviso cannot he upheld and sustained, being contrary to the provisions of proviso of those Sections of B. P. Act.

The Minimum Sentence in the context of Criminology and Penology :

14. A person who is an accused who has been found guilty of a criminal offence is liable to be sentenced by the Court. The exercise of process of sentencing is of considerable significance for the contours of criminal liability; when legislatures create a crime, they authorise not only a stigma or affixing a labour of censor, on the offender or perpetrator , but also, the imposition of the certain deprivations by means of sentence. There are many forms of sentence. The most serious sentence is custodial one, and in number of cases, custodial sentence should be imposed, where the offence is so serious that only custodial sentence can be justified in terms of relevant law. The length of any custodial sentence should in most case be : "commensurate with the seriousness of the offence". In deciding on the sentence in particular cases, the Court should take note and cognizance of various factors, including aggravating and mitigating the offence, and also other extenuating circumstances relevant to, in the given case. It is in this context, intimate interactions between sentencing process and criminal law policy and the legislative mandates must be kept live on mental radar.

Doctrine of Proportionality :

15. In sentencing terms, one consequences of this is that there are more broad offences with high maximum sentences, giving more discretion to the Courts at the sentencing stage. No doubt, criminal law itself proclaims individual responsibility for actions, maintaining strict standards of contact and setting its phase publicly against idea that social or other circumstances can excuse incriminating behaviour or conduct. Whereas, at the sentencing stage, Courts do not recognize from time to time exculpatory by proceeding or surrounding circumstances. It is in these context, in criminal law in certain provisions and in certain criminal enactments statutory and judicial discretion is invested in the Courts, so that, upon exercising the sentencing process the Court can take into consideration, write upon circumstances, special and adequate reasons for each accused emanating from the record and peculiar to the each accused so that idea of 'proportionality' can be considered and maintained. Whilst the notion is cruel as an underlying justification for the punishment system, the idea of proportionality ought to have been of central importance to the choice and quantum of sanction in a particular case and keeping in mind the special and adequate

reasons attributable and referable peculiar to the each accused. Therefore, 'proportionately' in this sense, also finds a place in and several other views and approaches to sentence.

16. The aims of sentence are not simply part background of the criminal law : they have implications for the sake of the criminal law itself. Thus, 'proportionately' should be a key factor in the structure of the criminal law. It is a major function of the criminal law not, only, to divide the criminal from the non- criminal, but also, to grade offence and to brand or label them 'proportionately'. There is a deep divergence between desert theories and deterrence on the question of culpability and excuses for causing harm or resultant injury. The answer to the question "Does this person deserve punishment?", sometimes differs from the answer to the question, "Would the punishment of this person deter others in similar situation?"

17. There are, also, frequent references to search and research that as material appearing of criminal justice, to give some interaction of social context in which the criminal law operates. Much more coverage given to this contextual issues, such as enforcement policy, police powers, the pre- trial concession of case, and sentencing but within the confines of this, where these issues have been treated, as less important than the constitution of doctrine. It is, therefore, an exercise to recognise the constitutional responsibility of the Courts in developing the law and interpreting legislations. There is, also an endeavour to remain alert to the implications for law enforcements of living areas of discretion when formulating laws.

Characteristics of sentencing doctrine :

18. The guilt once established, the sentencing dilemma commences. The statutory discretion is given to the Courts in sentencing the offenders. Needless to reiterate that the determination of appropriate sentence for the convicted persons is, as important as the adjudication of the guilt of the accused in the modern sentencing system. The importance of the modern sentencing system lies in the individualisation of the punishment, which itself lends to rehabilitation and reformation of the offenders in the modem sentencing system in the realm of Neo- Penology and Modern Criminology.

19. Indeed, in the process of sentencing or deciding the punishment, relevant circumstances, special and adequate reasons, peculiar to each of the accused, including aggravating or mitigating factors are important. There cannot be an exhaustive list of special and adequate circumstances and reasons, peculiar to the accused, as it would depend upon variety of circumstances. Really, there is impossibility of laying down standards for special and adequate reasons, mainly, due to the fact that it would be a domain of circumstances or reasons, special and adequate, peculiar in a given fact situation in a particular case of each accused.

Landmark Case- Law :

20. Upon the pronouncement of landmark decision in "Jagmohan Singh v. State of U. P., MANU/SC/0139/1972 : AIR 1973 SC 947" and considering the recommendation made by the Law Commission of India on Judicial Reform and Revision of Law and Procedure in Court in the Code of Criminal Procedure, 1973, there came to be incorporated for the first time, Sections 235(2) and 248(2), to ensure a great awareness on the part of the Courts to examine the case of each accused on the facts of each case, more closely, so as to determine the most appropriate sentence. This read :

"Section 235(2) .....If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of Section 360, hear the accused on the question of sentence and then pass sentence on him according to law."

"Section 248(2) .....Where, in any case, under this Chapter, the Magistrate finds the accused guilty, but does not proceed in accordance with the provisions of Section 325 or Section 360, he shall, after hearing the accused on the question of sentence, pass sentence upon him according to law."

Section 360 of the Code provides for probation in certain cases, whereas, Section 325 of the Code refers to procedure when the Magistrate cannot sentence with sufficient severity or that the accused ought to receive punishment, different in time from them than which Magistrate is empowered to award, for submitting his proceedings and forward the accused to the Chief Judicial Magistrate to whom the Magistrate is subordinate.

Pre- sentencing Policy Desideratum :

21. The very benign design and object of hearing the accused before passing the sentence is to direct the Court's attention to such matters, as to emerging from factual spectrum, including the following :

(i) The nature of offence.

(ii) The circumstances :- extenuating or aggravating of the offence.

(iii) The prior criminal record, if any, of the offender.

(iv) The age of the accused and also his dependents.

(v) The record as to the employment.

(vi) The background of the offender with reference to education, home- life, sobriety and social adjustment, emotional and mental condition of the offender.

(vii) The prospects for rehabilitation.

(viii) The possibility of return to normal life in the community.

(ix) The possibility of treatment or training of the offender.

(x) The possibility that the sentence may serve as a deterrent to crime to the offender or to others and the community needs, if any, for such deterrence in respect to the particular types of offences in the larger social interest and public good.

(xi) Anthropological reasons :

(a) Influence of social environment on the conduct.

(b) Resultant impact of the crime so as to see whether there is harm to the individual like accused or others, for keeping in mind interest and good of larger section of society.

(xii) Any other special and adequate reasons not covered in (i) to (xi).

22. The cumulative legislative mechanism and its effects of the provisions of Sections 235(2), 248(2), 354(3), 354(4), 360 and 361 of the Code of Criminal Procedure, 1973, by and large, is that the Court is to ensure, greater seriousness and awareness in examining each case with a view to determining the most appropriate sentence or for passing other post- conviction orders. It will be interesting to refer to the observations made in the Report of the "Indian Delay Committee", as early as, in 1919- 1920, which are still vivid and valued even today. The Report observes :

"The Criminal Courts.....are to a great extent without reasons necessary to enable them to adjust the punishment to the offender."

"...In this country, if not in all countries, the information, which is available to the Judge at the time of trial as to the antecedents of a prinsoner, his character and environment and causes which conducted to the commission of the crime, is found very inadequate."

Other Important Contours of Minimum Sentence :

23. Indubitably, the Courts can exercise discretion while fixing the appropriate sentence where maximum punishments have been provided, but they are helpless in situations where minimum sentences are laid down. It is said that it creates danger to the individualisation of punishment when the law enjoins the Court to pass a fixed sentence. The danger has become all the more serious because of the increasing use of minimum punishment in recent legislations. Of course, one major reason advanced in support of minimum punishment is that such punishments are effective deterrents for curbing the crime. The Law Commission of India in its 11th Report of Judicial Administration, has clearly adverted to this problem and has observed :

"The theory that more severe the punishment the greater the deterrent effect is itself a matter of controversy. If has not been ascertained whether there has been a fall in commission of these offences where enhanced penalty has been assured by prescribing minimum sentence."

Another theory advanced in favour of minimum sentence does not receive more attention. Minimum sentences have become necessary, it is said, because of the tendency on the part of the Judges to impose inadequate and inappropriate sentences. Though, the Law Commission considered this argument, also, but doubted the correctness of its premise and its basis. Here, at this stage, we do not propose to divulge in meticulous analysis and evaluation of the imposition of statutory minimum sentence, whereby, denying the accused the benefit of any special equity of mitigating circumstances, which otherwise would result in a lighter sentence itself is marked of unusual severity.

Proportionality in Punishment and Justifiable Sentences :

24. The basic principle of Criminal Jurisprudence has been that the punishment that fits the crime is the appropriate punishment in proportion to the culpability of the criminal conduct and it is what the offender or the perpetrator deserves for his crime. Having once reached to the issue of culpability, the next question will follow will be of sentencing. It will be easy enough then to decide on greater or lesser punishment according to law, lesser criminality or culpability and to assign penalties on the scale that reflects relative culpability amongst the crimes, both different kinds of crime and for different instances of same kind of crime. But, yes, that is only step in

keeping the crime and punishment in propotion. However, the scale must itself be pitched, at a level, neither too high nor too low for otherwise, even though punishments for different crimes might not be out of proportion to one another on the scale, the scale itself might be generally out of proportion as, uniformly, excessive or uniformly inadequate or deficient. Therefore, in theory, all criminal justice, it is evidently articulated by author, Mr. Hyman Gross that the Criminal law adheres in general to the principle of "proportionality" in prescribing law according to the culpability of each kind of criminal conduct.

25. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges, in essence, affirm that punishment ought always to fit that crime; yet in practice sentences are determined largely by other considerations. Sometimes, it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes are, desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. It is, therefore, said that, inevitably these consideration cause a departure from just desert, as the basis of punishment and create cases of apparent injustice that are serious and wide- spread.

26. In this context, it is rightly said that when there are certain reasons why a person who is punished more generously or liberally for his crime, such punishment less than what he deserves for what he has done justifiable, and punishment in excess of what is not. It be remembered that peculiar and special conditions favouring the accused or the offender are absent and he will get away with his crime to the extent that he is punished less than he deserves to be, punishment less then he deserves is fruitless and also impose and for that reason alone it may not be justifiable, though certainly there are certain important things to be said against it, as well.

27. It is, also required to be noted that disproportionately large sentences in excess of blameworthiness would be as unjustifiable as disproportionately small sentences. Disproportionately small accountability is useful because it may not maintain respect for the law amongst the law- abiding, whereas disproportionately large sentences would be also futile and useless infliction of suffering, it represents needless suffering. Therefore, with a view to keeping law efficient and effective, as a measure for the law- abiding, the Court need not give those who break law no more than they deserve for breaking it, and what they deserve is measured precisely by the criminality of the conduct that violated the law.

28. The principle of mitigation like principle of proportionality, has both, the legislative and judicial applications. Discretional dispassionate can be granted by the Court appropriately in order to make sentences right with regard these and other things, after the Court has fixed the culpability. Condemnation for the crime would be no less, though it would be accomplished in a given fact situation, in many cases by less severe measures of punishment.

Utility v. Disparity :

29. In this context, it will be useful to mention that because of mitigating considerations, standards are uncertain. Good reasons turn out to be problematic and considerations though not be admitted at all often influence the sentencing Judge towards a more lenient sentence. The two major aspects which are exclusionary conditions for mitigating circumstances provide a foundation for suitable sentencing standards :

(i) Whether a proposed mitigating consideration would impair the utility of the sentences.

(ii) Inequitable disparity results when there is a special treatment for some that cannot be justified by principle that apply to all, and since everyone is entitled to equal standing before the law, such treatment cannot be encouraged.

30. The legislature, in one sense, has disfavoured the sentence to plummet below the minimum limit prescribed in view of the expression "shall not be less than", which is peremptory in tone. It appears, therefore, that, normally, the Court has no discretion even to award a sentence less than the said minimum. Nonetheless, the legislature was not oblivious of certain very special and adequate situational realities obtainable in a given case and peculiar to the each accused in the given case and the profile of facts and circumstances of case in which the sentence is being awarded.

Speciality with or versus Adequacy of Reasons :

31. It will be really interesting to refer the expression special and adequate reasons. It, clearly, indicates and evidently manifests that it is not enough to have special reasons, nor adequate reasons disjunctively. There should be a set of conjunction, both for enabling the Court to invoke the discretion. The reasons which are general or common in many cases also cannot be regarded as "special and adequate reasons", but such reasons should be peculiar and attributable to the each accused in a case, as all the general or common reasons or grounds cannot be regarded as "special and adequate reasons". Therefore, the Court has to remain very altert and serious, and considering the overall factual profile and conspectus referable to each accused in such case, in view of the clear mandate of the proviso in a given case for admitting the case of the prescriptive periphery of the proviso and making departure from minimum sentence, by exercising discretion, the Court has an incumbency to record that there are special and adequate reasons for that and such reasons should be articulated clearly in the judgment of the Court, as statutorily prescribed.

Flagship Appeal and others :

32. In this group, in Flagship matter, Criminal Appeal No. 477 of 2002, and allied other matters, arising from various judgments and orders recorded by the learned trial Magistrates, relating to commission of various offences punishable under Sections 66(1)(b), and 85(1)(3) of the provisions of the B. P. Act read with Sections 110, 117 and 135, of the Bombay Police Act, the main grievance voiced, on behalf of the State, has been that, notwithstanding there being a minimum sentence requiring to be imposed for the first offence, the learned trial Magistrates, in this group of matters, have imposed sentences less than the minimum. Therefore, in short, the main contention, of the State is that the learned trial Magistrates could not have imposed sentences lesser than the minimum prescribed in view of three judgments of the single Bench. To reinforce this contention, serious reliance has been placed on the following three judgments of the same learned single Judge of this Court :

(i) "State of Gujarat v. Uttam Bhikabhai Prajapati MANU/GJ/0132/1990".

(ii) "State of Gujarat v. Thakore Somaji MANU/GJ/0172/1994".

(iii) "V.K. Bhatt, Provident Fund Inspector v. Aryodaya Ginning Mills, Ahmedabad MANU/GJ/0395/1995".

33. Placing strong reliance on the aforesaid three decisions of this Court, it has been, vehemently, submitted that it was not open for the learned trial Magistrates to accept the 'plea of guilty' offered by the accused- persons and award sentences lesser than the minimum prescribed. Thus, it is the submission, raised on behalf of the State, that in view of the aforesaid decisions and judgments of this Court, it was not open for the trial Magistrate to accept the 'plea of guilty' as being not in judicially prescribed format in the said judgments, but also not open to award sentences lesser than the minimum, even for the 'first offence', as it would be contrary to the said judgments until reconsidered or amendment in law is made. Such submission is devoid of any force of law and logic, even on a plain, if not, forensic, interpretative exposition of the proviso, which is common in both the Sections of the B. P. Act, and the reasons we propose to assign hereinafter.

34. The challenge in this group of Criminal Appeals and other allied matters is against the approach and the outcome in the impugned judgments rendered by the learned trial Magistrates in imposing sentences less than the minimum for the first offence while exercising the discretion vested in the Court by the proviso to Clause (i) of Section 66(1)(b) and Section 85(1)(3) and others of the B. P. Act, which may again be referred to, and it reads hereasunder :

"Section 66(1) * * * *

(b) to (e) * * * *

(i) for a first offence, with imprisonment for a term which may extend to six months and with fine which may extend to one thousand rupees :

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than three months and fine shall not be less than five hundred rupees;

(ii) to (iii) * * * *"

Whereas, the proviso to Section 85(1)(i)(a) referable to Clauses (1) and (3) reads hereasunder :

"Section 85(1) * * * *

(1) to (3) * * * * *

(i) for an offence under Clause (1) or Clause (3),

(a) for a first offence, with imprisonment for a term which may extend to one month and with fine which may extend to two hundred rupees :

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than seven days and fine shall not be less than twenty five rupees; and

(b) * * * *"

Whereas, the proviso to Section 85(1)(ii)(a) referable to Clauses (2) reads hereasunder ;

"Section 85(1) * * *

(1) to (3) * * *

(i) * * *

(ii) for an offence under Clause (2)-

(a) for a first offence with imprisonment for a term which may extend to three months and with fine which may extend to five hundred rupees :

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than one month and fine shall not be less than one hundred rupees; and

(b) * * * *"

35. From the plain reading and interpretation of the aforesaid proviso contained in Section 66(1)(b) to (e) and Section 85(1)(1) or (3), for the first offence, it becomes, immensely evident, and totally, unambiguous that the said provisions permit the learned trial Magistrates to award and impose less than the minimum sentence of imprisonment, as well as, fine provided, the Court is satisfied about the presence of special and adequate reasons to the contrary to be mentioned in the judgment and which are peculiar to the accused in a given case.

36. What should constitutes special and adequate reasons for the proper exercise of this discretion is obviously and indubitably by very nature of circumstances cannot be standardised. Such discretion, as employed, in the phraseology in the proviso, would depend upon the factual profile of special and adequate reasons available and present in each case. Naturally, there cannot be any die- hard recipe or fixity of circumstances or any straight- jacket formula for reaching subjective satisfaction, upon evaluation of the objective considerations of factual matrix of each accused in each case or the existence or presence of special and adequate reasons. The learned trial Magistrates are obviously, statutorily permitted to exercise the discretion and certain amount of latitude in such cases by legislative prescription, as articulated in the special provisions.

What Constitutes Adequate and Special Reasons :

37. In this context, it would be profitable to refer to the beautiful exposition and clear proposition in this behalf propounded by the Hon'ble Apex Court in a recent decision in "State of Karnataka v. Krishnappa AIR 2004 SC 1470". Para 11, of this judgment is very material and relevant. It has been observed by the Hon'ble Supreme Court in that Para as under :

".....Whether there exist any 'special and adequate reasons' would depend upon a variety of factors and the peculiar facts and circumstances of each case. No hard and fast rule can be laid down in that behalf of universal application."

38. Indeed, it would be impossible to conceive all the different factual situational realities, which may, in a given case, constitute special and adequate reasons for awarding less than minimum sentence with the help of proviso. Needless to mention, exercise of such discretion would depend upon the type and the category of objectives of legislation, the characteristic and resultant outcome of a nature of offence and such and other relevant circumstances. For example, special and adequate reasons for awarding lesser than the minimum sentence in a Prohibition Act may not even constitute special and adequate reasons for awarding lesser than the minimum sentence for offences under the Prevention of Corruption Act or Prevention of Food Adulteration Act and so on and so forth. What is important to be seriously considered in exercise of such discretion is the totality of circumstances, some of which may be individual factors peculiar and special to the each accused, whereas, some of others may be the resultant ramification and impact of the nature of offence committed by the accused on society at large and chances of repetition of such offences, etc., may all go into consideration. We are attracted to refer and quote the relevant observations lucidly articulated by the Hon'ble Apex Court in "State of Jammu & Kashmir v. Vinay Nanda. MANU/SC/0028/2001 : 2001 (2) SCC 504", wherein in Para 18, it has been observed :

"...None of the circumstances, stated in his affidavit, by itself constitute a "special reason." However, keeping in view the general conspectus of the case, we felt that under the totality of the circumstances narrated, the respondent has made out a case for invoking the proviso to Sub-section (2) of Section 5 of the Act."

39. The learned single Judge of this Court in "State of Gujarat v. Uttam Bhikhabhai Prajapati (supra)", arising form the commission of the offences punishable under Sections 65(a)(e), 66(1)(b) and 81 of the B. P. Act, has made certain observations, which are relied on by the State, to substantiate the contention that the aforesaid provisos do not admit any discretion to award the punishment less than the minimum. This submission cannot be upheld on various counts including being divorced from Text and Context, Colour and Content and misconceived perceptions of the observations made therein.

40. Upon true and correct evaluation and analysis of the said provisions engrafted in both the proviso, such observations cannot be taken and should not be taken to have laid down the appropriate and correct legal propositions as argued, when and upon the correct interpretative evaluation, forensic and jurisprudential exposition and interpretation of proviso has been appropriately projected into direct focus. Again, any interpretation of provision, which is contrary to the interpretation and exposition of law, expounded by the Hon'ble Supreme Court in the decisions referred to hereinabove and others, which are proposed to be referred to, hereinafter, would not be in accordance with law, and obviously therefore, cannot be sustained and approved,

41. In the light of the facts of the case, the learned single Judge of this Court in case of "State of Gujarat v. Uttam Bhikhabhai Prajapati (supra)" did not accept the "plea of guilty" and made certain observations, which at the best ought to be confined to the facts of that case. It cannot be contended that this Court in that judgment has laid down clear proposition of law and will have universal application in all such cases. At the best, it was the decision rendered in the light of the peculiar facts noticed by the learned single Judge, upon reaching to positive conclusion of illegal "plea bargaining". Therefore, the State cannot be permitted to contend that all offences under the B. P. Act, where minimum sentence is prescribed, the learned trial Magistrates must adhere to and invariably follow said three decisions of same learned single Judge of this Court, irrespective of peculiar and special fact situation and circumstantial and contextual profiles, Truly speaking, the words, "special and adequate reasons" in the context in which they are employed, would only mean "special and peculiar" to the accused, upon whom sentence is proposed or is being imposed. It is incumbent upon the Court to consider and evaluate objectively reasons advanced in support of each individual accused and in each case, wherein, sentence is to be awarded, so as to reach clear and correct subjective satisfaction based on objective assessment of facts whether or not, to award less than minimum sentence, in terms of proviso.

42. It is rightly said the word "special" has to be understood in contradiction to word "general" or "ordinary". It becomes apparent and unquestionable from the language employed in the proviso that the reasons to be recorded in writing in judgment for less than the minimum sentence, on the ground of presence of special and adequate reasons in the light of sentencing process must be special and adequate to the circumstances in a given case and peculiar to the accused in each case. It is, therefore, very clear that the discretionary jurisdiction empowered in the trial Magistrates must be based on and in presence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court for each case and each accused.

43. What is special and peculiar to the accused in one case may not be same or special and peculiar for the accused in other case. It is, therefore, true that reason should not be "general" or "ordinary", but it must be special and adequate peculiar to the each accused in a given case. The contention of the State that the trial- Magisterial Courts should have taken and treated the aforesaid three judgments of this Court as a clear proposition of law that in no case less than minimum punishment could be imposed is not sustainable, as, it would lead to a situation where there is no discretion left open for the trial Magistrates to impose less than the minimum, even in presence of special and adequate reasons referable and attributable to the fact situations of the case and peculiar and pertaining to the each accused and it is also; diametrically opposite to the legislative intendment of proviso in both the Section. Otherwise, provisions of proviso would be rendered otiose and nugatory.

44. Such discretion is always open for the Court, while passing through, the process of sentencing the accused for the offences under the aforesaid provisions of the B. P. Act. The trial Court for the first offence has to award minimum sentence in absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court. For the first offence, the maximum punishment is, also, prescribed, whereas, minimum sentence statutorily prescribed is required to

be awarded, provided there is absence of special and adequate reasons to be mentioned in the judgment of the Court. However, if special and adequate reasons, peculiar to the facts of each accused in a given case, are not absent, in other words, are present, then the Court is obliged to consider and evaluate those reasons, peculiar to the accused for the purpose of exercising the discretion engrafted in the proviso, while undergoing the process of awarding sentence for the 'first offence',

45. We are surprised to learn from the submissions that the Courts of trial Magistrates have many times taken or have been lead to, treat the aforesaid three decisions of the same learned single Judge, as if the trial Courts have no discretion to award less than minimum sentences, even, in absence of special and adequate reasons to be mentioned in the judgment of the Court, more so, when, "plea of guilty" has been raised. In fact, minimum sentence has to be awarded, only, in absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, and when two negatives are employed in both the proviso, it would mean that in absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, the trial Court has real discretion to award less than the minimum sentence of imprisonment, as well as, fine. As such, this is the real and manifest statutory frame and purpose and object enshrined in the proviso by the legislature in its wisdom in B. P. Act.

46. We are, therefore, in full agreement with the contention, advanced on behalf of the accused persons and by learned amicus curiae in this group of matters, that the observations and the conclusions reached by the learned single Judge in that case of "State of Gujarat v. Uttam Bhikhabhai Prajapati (supra)", arising from the offences punishable under the B. P. Act, are not supportable and acceptable as submitted and desired by the State. We find substance in the plea that the real forensic perception and correct jurisprudential exposition was not brought to the notice of the Court in those cases as a result of which those observations and conclusions are contrary to the plain and proper propositions of the provisions of proviso and case law laid down by the Hon'ble Apex Court in the cases referred to, in this judgment by us and relied on by the amicus curiae, learned Senior Advocate Mr. P. M. Thakkar.

47. Where there are mitigating or extenuating circumstances present or available on the record, which are peculiar and special to the accused and which may justify imposition of any sentence including "Till Rising", less than the prescribed minimum to the accused, it is always open for the Court to exercise the discretion, in terms of the provisions incorporated in the proviso. What is special and adequate will have to be judged by the trial Court, objectively, depending upon the facts of each case. If the conditions specified in the proviso are present, the Court has power to award less than the minimum sentence. Of course, for that, there must be special and adequate reasons and such reasons should be recorded in the judgment.

48. The Hon'ble Apex Court in "State of Orissa v. Janmejoy Dinda MANU/SC/0149/1998 : 1998 (3) SCC 63", fully supports the view, which we propose to take in this group of matters. In that case, the question was interpretation of the proviso contained in Section 27(b)(ii) of the "Drugs

and Cosmetics Act, 1940". It was held in that case that the proviso to Section 27(b)(ii) of the Act confers discretion and jurisdiction on the Court to reduce the sentence of imprisonment less than the minimum prescribed, if the conditions specified in the provisos are present.

49. In "Gurmukh Singh v. State of Punjab MANU/SC/0109/1971 : AIR 1972 SC 824", while considering and interpreting the proviso to Section 16(1) of the Prevention of Food Adulteration Act, 1954, it has been held that though offences for adulteration of food must be severely dealt with, no doubt, depending upon the facts of each case, which cannot be considered as precedents in other cases. In that instant case, having regard to the fact that the offence was only for non-renewal of the licence within a reasonable time and the appellants were only petty traders, a mitigation in this sentence under - the proviso is justified. This proposition, also, supports the view, which we propose to take in this judgment, that when discretionary powers exist special and adequate reasons of the case and peculiar to the accused out to be considered.

50. The second reliance by the State is on the decision in the case of "State of Gujarat v. Somaji Jamaji (supra)", wherein, the respondent came to be tried for the alleged offences, punishable under Section 66(1)(b) of the B. P. Act (For possession) on his raising plea of guilty was convicted for the same and sentenced "till the rising of the Court and to pay a fine of Rs. 20." While dealing with that Criminal Appeal, the learned single Judge observed that though the minimum sentence is provided in the Act, the learned trial Magistrate has awarded lesser sentence and such a "plea bargaining" is not legal and deprecated the practice adopted by the Magistrate.

51. The third decision relied on by the State is the case of "V.K. Bhatt, Provident Fund Inspector v. Aryodaya Ginning Mills, Ahmedabad MANU/GJ/0395/1995." The learned single Judge, in this case, while dealing with the Criminal Revision Application in the matter under Employees' Provident Fund Act, prescribed a pro- forma to "plead guilty". The observations made in this decision and the judicial prescription of the pro- forma for pleading guilty, is seriously criticised on behalf of the accused and also by the learned amicus curiae.

52. As regards judicial prescription of a format for recording the plea of guilty by the learned single Judge in "V.K. Bhatt case (supra)", the learned amicus curiae has rightly submitted that the specimen format for the purpose of pleading guilty and praying for mercy in sentence as condition precedent, is also not in consonance with the Criminal Jurisprudence and specific provisions provided in the Code of Criminal Procedure, 1973. In Para 12 of the said decision, it has been observed :

"12. ....Accordingly, what occurs to this Court is laying down some conditions as conditions precedent for the accused to submit the purshis at the time of pleading guilty. If that is done and scrupulously followed, in all probability, neither the accused concerned dare even to pretend to plead guilty, nor the Court haunted by disposal mania would render wander away from its judicial path in accepting the same by imposing by flea- bite sentence, sometimes inadvertently,

may be, sometimes advertently, even in not imposing the statutory minimum sentence prescribed under the Act. Accordingly, it is hereby ordered that - "No Court shall accept "plea of guilty" tendered by the accused person, more particularly, in cases where in the statute has prescribed minimum sentence, unless and until, he submits the purshis in the specified form prescribed hereunder for pleading guilty along with adequate and special reasons, if any, for taking a lenient view of the matter, in the matter of awarding sentence."

SPECIMEN FORM

FORM OF PURSHIS PLEADING GUILTY AND PRAYING FOR

MERCY IN SENTENCE

In the Court of the Learned Magistrate at ..... Court No. .....

Criminal Case No. ..... / 1999..... State/Complainant

v.

..... Accused

Sub. : "Plead guilty and mercy in the matter of sentence."

Respected Sir,

I, ... accused No. ..... in this case state that I have read / read over the complaint filed against me for the alleged offence(s) punishable under [A Sections ..... of the ..... Code/Act.

2. I have also been read- over and explained the charge against me, which is as under :-

CHARGE

.....

.....

3. I have also been informed by the learned Magistrate that for the alleged offences, the statutory minimum prescribed is S.I./R.I. for not less than the .....years/months and/or fine of Rs..... or both.

4. I have also been further informed by the Court that even if I plead guilty, it has no option to impose less than the minimum sentence prescribed under the Act; as stated above, unless I have some adequate and special reasons for praying less than the said minimum sentence.

5. Accordingly, having fully understood the consequences of "pleading guilty" I voluntarily plead guilty, I have not been promised to impose the lighter sentence, till rising of the Court and/or some small amount of fine only, if I pleaded guilty.

6. That I on being convicted on pleading guilty pray that having regard to the following "adequate and special reasons" your Honour be kind enough to impose less than the statutory minimum sentence prescribed.

ADEQUATE & SPECIAL REASONS

(i) For less than the minimum period of imprisonment.

(ii) For less than the minimum amount of fine.

.....

.....

.....

(If reasons are more, then separate sheet can be annexed.)

7. On the basis of my above submissions, my plea of guilty be kindly accepted and I be imposed with some lighter sentence.

....

Before me

.....

Signature of the learned Magistrate

Date :-

It is further observed in Para 12.1 as under :

"12.1 It shall be the duty of every Court before which the accused pleads guilty, to record the same in the specimen form of purshis prescribed hereinabove, and accordingly, not to record the plea of guilty as directed would not only render the said plea illegal, but would also render the concerned learned Magistrate liable to proceedings for judicial misconduct."

Arraignment and its Premise :

53. It is very well known that the plea of the accused is an event occurring at the general trial Court level that formally initiates the trial process. As such, it is the offence again on which the accused is given an opportunity to answer the accusation. Here, at this stage, the accused is required to enter a plea. Punishment is held in open and generally, it begins with a formal reading of the accusation or indictment or charge, by which the accused is again, formally, advised of the charges against him. The accused, is therefore, required to answer the charge by entering a plea, at this juncture. This is the right of the accused, and no doubt, the plea may take one of the two forms : One, he may deny the accusation or charge against him, or another, he may plead guilty to the crime, as charged. If the accused pleads guilty, the Magistrate shall record the plea, as nearly as possible, in the words used by the accused, and may in his discretion, convict thereon.

54. In the criminal matters as in this group of Appeals, cases are tried by the Magistrates under Chapter XX of the Code of Criminal Procedure, 1973, which deals with the trial of Summons Cases by the Magistrates, the statutory mechanism and the frame of Chapter XX, the procedures for Summary trial have been prescribed in Chapter XXI of the Code of Criminal Procedure and

the principles of" Criminal Jurisprudence would not permit the prescription of the format by Judicial fiat for the purpose of mode and manner for raising the "plea of guilty". The Court of law cannot add or subtract or ignore the statutory provisions incorporated in the enactment by the legislature in its wisdom. The making of a law or an enactment is a constitutional prerogative of the competent legislatures.

55. The function of the Court is to interpret the provisions of law. Law and statute making is exclusively within the jurisdictional domain of the legislatures. The Court cannot re- write any provision of any law by any judicial fiat or direction. Even the Constitutional Court, dealing with the constitutionality of the provision, cannot create or take away by adding or substracting from any of the provisions employed by the competent legislatures. Even the Constitutional Courts, while interpreting the correct meaning and real object of the law by its constitutional jurisdictional interpretation and adjudication, can propound and interpret correct law. Therefore, it is one of the fundamental principles, that no Court can re- write or reframe the provisions contained in the enactment made by the competent legislatures. The enthusiasm with which the direction to record the "plea of guilty" and prayer for mercy by prescribing specimen profoma for pleading guilty and praying for mercy in sentence and the manner and mode in which the specimen form is required to be filled up and signed by not only the accused, but also the complainant, as well as, the prosecutor concerned in the case before the trial Magistrate, in our opinion, is nothing, but re- writing and adding in the provisions of an enactment, and therefore, such a direction or judicial prescription of a form against the specific statutory provision, obviously, would be impermissible, unsustainable and not legal.

56. To an extent, it makes an inroad on the statutory rights and duties of the complainant, the accused and the Court. A general judicial fiat that no Court would accept the plea of guilty tendered by the accused person more particularly, in cases, wherein, the statute has prescribed a minimum sentence unless and until the accused submits the purshis in the "specimen form prescribed in the judgment for pleading guilty" along with adequate and special reasons, is not supportable, being contrary and not in consonance with the statutory provisions and outside the competence of the judicial adjudication. Such a direction and prescription of a form, contrary to the provisions specifically provided in the Code of Criminal Procedure would be incompetent and impermissible and illegal.

57. Though, we appreciate the enthusiasm anxiety and innovation to place in focus the said malpractice in raising "plea of guilty", we are unable to jurisprudentially and by settled proposition of law, uphold and maintain with utmost due respect, to the learned single Judge, such a judicial fiat by en block direction, to all trial Courts in all criminal cases, where minimum sentence is prescribed, and "plea of guilty" is raised. The fundamental canons of criminal jurisprudence much less against statutory provisions would not permit or allow such a view or perception and prescription of format. Therefore, in our opinion, the observations and directions contained in Paras 12 and 12.1 in "V.K. Bhatt's case (supra)", are also not compatible with the statutory provisions, and therefore, they cannot be sustained, being beyond the jurisdictional competence, and consequently, not legal and binding on trial Magistrates.

Statutory Prescription for Recording Plea of Guilty :

58. Let us at this stage have a close look into the statutory and mandatory provisions for trial and recording of plea in trial of cases before the Magistrate. Since, we are concerned with cases which are arising from the trial before the Magistrates the procedure is prescribed for trial of warrant cases by the Magistrate in Chapter IX of the Cr.P.C. which includes cases instituted on a police report, as well as, cases instituted otherwise then on police report.

59. It is interesting to note that Sub- section (2) of Section 240 provides that the charge shall then be read and explained to the accused and he shall be asked as to whether he pleads guilty of the offence charged or claims to be tried. Section 241 provides that if the accused pleads guilty Magistrates shall record the plea and may in his discretion convict him thereon. Now, it is not obligatory on the part of the Magistrate to convict him even if the accused pleads guilty, he may proceed with the trial.

60. In Chapter XX of the Cr.P.C., the procedure is prescribed for the trial of summons - cases by the Magistrates. Section 251 in this Chapter provides, that the substance of the accusation shall be stated to the accused and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge. Whereas, Section 252 provides for conviction of plea of guilty. If the accused pleads guilty the Magistrate is obliged to record the plea, "as nearly as possible" in the words used by the accused and may in his discretion convict him thereon. Section 252 is corresponding Section to old Section 243 of the old Repealed Code of 1898. It becomes quite clear and unambiguous from the plain text and tenor of the Section 252, that the trial (Magisterial) Court is bound to record the plea, as nearly as, possible in the words used by the accused, but is not bound to convict him upon such a plea.

61. In our opinion, it is a mandatory provision. It will be material to highlight here that the requirement of Section 252 are mandatory in character, we are reinforced by the decision of the Hon'ble Apex Court in "Mahant Kaushalya Das v. State of Madras", reported in MANU/SC/0082/1965 : AIR 1966 SC 22. This Court, has also followed the principle enunciated in the said decision in a reported decision in "Chhotu Bhagirath v. State of Gujarat" MANU/GJ/0095/1971. The judicial prescription of recording a plea in a prescribed format as directed in V.K. Bhatt's case (supra) by the learned single Judge with utmost respect within our commands, if followed would run counter to the plain meaning and interpretation of Section 252, the provisions of which are mandatory in character.

62. Probably, the attention of the learned single Judge was not drawn to the said provision of Section 252 and the provisions of Section 262. The Section 262 of the Cr.P.C. provides a procedure in summary trial. In the summary trial, the procedure prescribed for the trial of summons case is

required to be followed. The case on hand and the three decisions relied on by the State are the cases falling within the procedures of Chapter XX and XXI of the Code relating to trial of summons case by the Magistrate. It is in this respect and in this context the observations and directions of the learned single Judge in the case of V. K. Bhatt (supra) with respect are contrary to the provisions of law and the prescribed format cannot be maintained or sustained as legal and binding to the trial Magistrates.

63. It will be also material to refer the provisions contained in Para 103 of Criminal Manual provided in Chapter IV - for summary trials which reads, hereasunder :

"Though, it is not necessary to frame a formal charge in cases tried, summarily, it is always desirable that the ingredients of the offence, as also, the particulars thereof with which accused is charged are clearly stated to him. In case the accused pleads guilty the Magistrate should question the accused, in respect of each particular of the offence and record in full his answer to the same".

64. In Mahant Kaushalyadas case (supra), the accused was facing trial for the offence under Section 4(1)(a) of the Madras Prohibition Act. At the initiation of the trial, the particulars of the offence were explained to the accused by the interpreter, it was translated to the accused in Hindi by one Shri M. Sukumara Rao, Bench clerk of that Court, who had passed examination in Hindi. The "plea of guilty" by the accused was also interpreted to the Court by the same gentleman. The trial Court found accused guilty for the said offence, charged against him, and upon conviction, the sentence of one year's rigorous imprisonment and a fine of Rs. 50 was inflicted on the accused, which was confirmed by the Madras High Court in Appeal. On behalf of the accused, the plea was raised before the Hon'ble Supreme Court in an Appeal, which was brought by certificate granted under Article 134(1)(c) of the Constitution, from a judgment of the Madras High Court, that he was not afforded with fair and just trial of course, he had raised the "plea of guilty". It was contended that there was mis- carriage of justice.

65. It was held by the Hon'ble Supreme Court, considering the record, that the admission of the accused- appellant had not been recorded, "as nearly as possible in the words used by him" as required by Section 243 of the Criminal Procedure Code, 1898, a corresponding provision in the Code of 1973 is Section 252. The conviction was set aside on the ground that material mandatory requirements of old Section 243 of the old Code were not observed, and therefore, there was a violation of the said provision, vitiating the trial, and rendered the conviction legally invalid. It is, therefore, very obvious that Section 252 (old Section 243) is mandatory and the requirements of Section is not a mere empty formality, but is a matter of substance intended to secure and serve proper administration of justice. It is, therefore, an incumbency upon the Court to follow the mandate of Section 252 while recording plea, "as nearly as possible in the words used by the accused" as required under this Section. How could such a statutory mandatory provision be substituted by a judicial direction or adjudication by prescribing special format in this behalf?

66. The case of Mahant Kaushalyadas (supra) was also followed by the learned single Bench Judge of this Court in Chhotu Bhagirath v. State of Gujarat MANU/GJ/0095/1971 (Coram : T.U. Mehta,

J. as His Lordship then was). In that case, also there was a summary trial, as in the case of the criminal appeals in this group. The reference made by the Court of Sessions Judge, Rajkot, was allowed, holding that trial of the accused was vitiated and order of conviction and sentence passed by the trial Court was set aside, holding that old Section 243 (new Section 252) provided that if the accused "pleads guilty", the said plea should be recorded by the Magistrate, "as nearly as possible in the exact words used by the accused". It was further observed and held that if the Magistrate fails in doing so then obviously he does not provide any record to the appellate or revising authority to know any of the actual words, the accused had pleaded guilty and also to judge whether the said words really amounted to a plea of guilty or not.

67. It is therefore, evident that the reason behind the mandatory provisions of Section 252 (old Section 243) requires the Magistrate to record the plea of accused, "as nearly as possible" in his own words so that it could be evaluated and examined by the higher forum, as to whether there was actual plea of guilty or not and the procedure contemplated is very important and substantial because the plea of guilty raised by an accused would debar him from preferring an appeal against his conviction. Under these circumstances, it would not be open to any Court to disregard the specific provision contained in Section 252 of the new Code (old Section 243), and non-compliance of this provision, would, therefore, not be controlled even by the provisions contemplated by Section 465 or Sec, 537. It is therefore, incumbent upon the Court to record, whenever, an accused in a summary trial raises the plea of guilty, so as to place on record, what was the exact plea with a view to afford protection to the accused and proper administration of justice. It is in this context, how could a Court with a judicial adjudication or direction prescribe new format for recording the plea of guilty and to be also signed by the complainant contrary to constitutional safeguards for the offender and statutory mandate?

Contours and Contradiction of plea of guilty and "plea bargaining"

68. We make it clear that the grievance and voice raised by the learned single Judge against impermissible "plea bargaining" is not, hereby, sought to be belittled or in any way intended to be diluted. But the 'plea bargaining' and the raising of "plea of guilty", both things should not have been treated, as the same and common. There it appears to be mixed up. Nobody can dispute that "plea bargaining" is not permissible, but at the same time, it cannot be overlooked that raising of "plea of guilty", at the appropriate stage, provided in the statutory procedure for the accused and to show the special and adequate reasons for the discretionary exercise of powers by the trial Court in awarding sentences cannot be admixed or should not be treated the same and similar. Whether, "plea of guilty" really on facts is "plea bargaining" or not is a matter of proof. Every "plea of guilty", which is a part of statutory process in criminal trial, cannot be said to be a "plea bargaining" ipso facto. It is a matter requiring evaluation of factual profile of each accused in criminal trial before reaching a specific conclusion of it being only a "plea bargaining" and not a plea of guilty simpliciter. It must be based upon facts and proof not on fanciful or surmises without necessary factual supporting profile for that.

69. It is unquestionable that concept of "plea bargaining" is not recognised in any jurisdictions in our country. Therefore, it is illegal. The Hon'ble Apex Court has time and again raised clear and consistent voice, in host of the judicial pronouncements, and also has come down heavily, against the trick and play of the "plea bargaining". Therefore, so far so "plea bargaining" is held not only illegal and unconstitutional but also intending to encourage the complain, collusion and pollution of the poor punt of justice. Therefore, the observation by the learned single Judge in those cases against the "plea bargaining" and short circuiting the proceedings cannot be questioned.

70. However, as observed by us, hereinabove, that every "plea of guilty" during the course of observance of the mandatory procedure prescribed in Code and particularly in Sections 228(2), 240(2), 252 and also in Section 253 for the trial of case by the Magistrates, when plea of guilty is recorded as per the procedure prescribed cannot be said to be a "plea bargaining". In a criminal trial there must be justifiable material on record and any assumption, presumption or surmise having no nexus with the factual profile of a given case of an each accused cannot be sustained. It is matter of proof like any other proof of fact, as provided in the Evidence Act. It cannot be contended that, whenever, the "plea of guilty" is raised, then less than minimum sentence awarded though may be in the light of "special and adequate reasons" peculiar to the each accused and in the factual and contextual profile of a given cases, is only "plea bargaining". It has to be proved and shown to the satisfaction of the Court. It cannot be straightaway deduced. In the said case before the learned single Judge, there may be supporting and justifiable material to hold it as "plea- bargain". But each and every case cannot be termed or treated same way.

71. However, we are also tempted to state and suggest that in view of the inordinate delay in disposal of cases in general and criminal cases in particular, and huge backlog of cases in Courts, in the changed circumstances, introduction of concept of "plea bargaining" in our Criminal Jurisprudence and jurisdiction requires re- thinking and re- consideration. In some jurisdictions in other countries, "plea bargaining" in some of the cases, where larger interest is not involved and when the dispute revolves around the individuals, has been, successfully, introduced. It will be interesting to refer here the concept of "Nolo Contendere", practised in some of the jurisdictions like the United States.

72. Let it be reiterated that at present, there cannot be any question that "plea bargaining" is not recognised, so far and is not permissible. Whether "plea of guilty" is "plea bargaining" or not, will be a matter of fact to be examined in each case, from the factual matrix of the case and totality of the context and entire profile. It cannot be contended that every "plea of guilty" is always plea bargaining in case of each case and each accused. It cannot be also assumed without supporting facts and attending circumstances. It is a matter of proof and if on objective and independent evaluation of facts, it is found to the satisfaction of the Court, then it cannot be allowed and sustained, being not legal and permissible; in those cases based on facts and proof thereof. Thus, it is a matter of proof and evaluation of evidence in each case.

Doctrine of Nolo- Contendere : Practice and Prominence :

73. In United States, in some jurisdictions, the plea of "Nolo Contendere" is available "Nolo Contender" or "no contest" is not an 'admission of guilt', but rather a 'willingness to accept declaration of guilt', rather than to go to trial. It is treated as a guilty plea to serve one purpose not served by a guilty plea in a subsequent civil suit possibly arising out of same event. Guilty plea is admissible as evidence against the defendant (accused) but plea of "Nolo Contendere" is not. It may be stated that the expression, "defendant" is used in India in the civil dispute against whom civil action is taken whereas in United States, this expression is used in criminal trial also, and thus, the defendant is an accused. David Gorden has observed that the Latin word, 'nolo' means "I do not choose it'. This statement, variously, defined as 'plea of no contest' and 'not a plea of guilty' does not mean that defendant will not fight the same charges against him of the same as that of guilty plea. It admits the fact charged, but cannot be used as a confession of guilt in other proceedings. Acceptance of such a plea by a Court is discretionary.

74. The judgment of, conviction entered on a plea of "Nolo Contendere", may be used, by the accused as a basis of 'plea of double jeopardy', since conviction and punishment, after the "Nolo Contendere" plea operates for the protection of the accused against subsequent proceedings, is as full as a form of conviction or an acquittal after the plea of guilty or not guilty.

75. As held in "Fox v. Schedit and in State exrel Clark v. Adams 363 US 807", the plea of "Nolo Contendere" sometimes called also "Plea of Nolvut" or "Nolle Contendere" means, in its literal sense, "I do no wish to contend", and it does not origin in early English Common Law. This doctrine, is also, expressed as an implied confession, a quasi- confession of guilt, a plea of guilty, substantially though not technically a conditional plea of quality, a substitute for plea of guilty, a formal declaration that the accused will not contend, a query directed to the Court to decide on plea- guilt, a promise between the Government and the accused, and a Government agreement on the part of the accused that the charge of the accused must be considered as true for the purpose of a particular case only.

76. Be it noted, that raising of plea of "Nolo Contendere" is not ipso facto, a matter of right of the accused. It is within the particular discretion of the Court concerned to accept or reject such a plea. However, if the Court accepts such plea, it must do so unqualifiedly. It is, therefore, clear that if such plea is once accepted, by the Court, the accused may not be denied, his right to raise such plea. The Court cannot accept such plea having rights of the accused and determination of facts on any questions of law. Of course, the discretion of the Court, if plea is accepted, has to be exercised in light of special facts and circumstances of the given case. It is, also held at times that such discretion vested in the Court has to be used only when special considerations are present. It is, also important to mention, at this stage that in the absence of statutory provisions to the contrary, consent of a prosecutor is not required as a condition for refusing the plea of 'Nolo Contendere' by the Court. And the fact that the prosecutor's consent is not generally required would not tantamount to non- consideration of his version or attitude. The Court is required to consider the prosecutor's version as an important factor in influencing the Court in deciding whether such plea should be accepted or not.

77. Upon the acceptance of a plea of "Nolo Contendere" for the purpose of the case in which such a plea is made, it becomes an implied confession of the guilt equivalent to a plea of guilty; that is the incidence of plea. So far as a particular criminal action in which the plea is offered is concerned, rather than the same, as of a plea of guilty, of course, it is not necessary that there should be adjudication by the Court that the party whose plea is accepted as guilty, but the Court may immediately impose sentence. This proposition is very well elucidated in "United States v. Risfeld 340 US 914". However, it may be noted a new dimension was evolved in "Lott v. United States 367 US 421", where the Court, after stating that the plea is tantamount to an admission of a guilt for the purpose of the case, added that the plea itself, does not constitute a conviction, and hence, is not a determination of guilt. As found from some of the judicial pronouncements, it is beyond the purview of the Court once a plea of "Nolo Contendere" is needed to make in adjudication to the guilt of the accused.

78. The plea of "Nolo Contendere", barring a few percentages of cases, has been recognised in the administration of criminal justice in many countries, including the United States, and has resulted into substantial reduction in the workload of the criminal justice system. Such a plea, it has been stated, has a success of practical aspect over the technical one. In the criminal justice delivery system, should India not consider the introduction and employment of such a plea when Courts are flooded with astronomical arrears, the trial life- span is inordinately long and the expenditure is very heavy, as an effective Alternative Dispute Resolution in certain identified criminal cases? This issue, undoubtedly, requires serious consideration at this juncture, and a trial on experiment basis, also, when we are at the crossroads and Courts are obliged to engage and address itself in early, easy, less expensive and simple way of disposal of criminal cases in the criminal justice system. Of course, the introduction of such a system will have to be considered at the level of Government by appropriate legislative measures. However, our voice shall not be a cry in wilderness more so when innovative and dynamic strategies are evolved for "Excellence in Judiciary" in 2005, by My Lord Chief Justice of Supreme Court, Hon'ble Mr. Justice R.C. Lahoti. We, are concerned collectively, collaboratively and constructively, and therefore, we ought to take seriously and strive assiduously and honestly for such ingeniously and innovatively ordained by My Lord, Chief Justice of Supreme Court, Hon'ble Mr. Justice R. C. Lahoti, as a novel and noble, neo- dynamics in the armoury of Judicial Reforms and Legal Rehabilitation of the ideal Fold and System, which is undoubtedly Basic and Cornerstone in the philosophy of our Constitution. We all belong to such a Fold, wherein we owe a duty to contribute for restructuring and reshaping Administration of Law and Justice, so as to provide expeditious easy and less complex and less processual, for making it easily accessible and affordable for common and pauper litigant, which is as such a heart of Judicial Anatomical Atlas and a Consumer of Justice Dispensation in our country, for the recovery and rejuvenation the faith of such litigants and resultant enhancement of the Majesty of Justice.

79. The plea of "Nolo Contendere" in our country is not used in strict sense in absence of any statutory provision or necessary enactment. However, this plea plays a very important role in many jurisdictions in United States, Scotland and other European and non- European Courts.

80. When in India, the Courts are flooded with astronomical arrears of cases and reduction of backlog of cases is important and out of the pending cases, almost 70% - 80% of the cases are reportedly arising from criminal jurisdiction, and again, reportedly, the rate of conviction is below 5% to 7% out of 100 cases. Could it be not said that it is opportune time, to at least, consider such a plea which has been usefully and successfully employed as an effective A.D.R. in some parts of the world and that too, in petty cases and cases in which only individual interests are concerned and larger public interests are not at stake or involved, to begin with and that too on experimental basis for a short period as one of the means and methods to reduce the unbreakable heavy and huge backlog of cases with existing means and measures in India and particularly in Criminal Courts. We have suggested this jurisprudential "Doctrine of Nolo Contendere" as one of the alternatives to arrest menace of arrears with a view to find out whether in certain type of criminal cases and in certain type of (identified- earmarked) criminal trials, it needs to be tried and experimented for speedy and easy justice, as an effective A.D.R. more so, when in many jurisdictions in foreign countries, it has been gainfully and successfully used and employed as such a plea does not enter into the consideration in other litigation in clear terms of such a doctrine.

Propositions of Criminal Justice reforms :

81. It is true that the idea of "plea bargaining" in jurisdictions in India is not permissible, but in view of the changed circumstances and present state of affairs of the criminal justice delivery system in our country, a Bill has been introduced by the Government, known as "The Criminal Law (Amendment) Bill, 2003 (Bill No. LX of 2003)" in which Chapter XXIA, relating to "plea bargaining" is proposed to be introduced in the Code of Criminal Procedure, 1973. In the said Bill, new Sections, i.e. Section 265A to Section 265K are proposed to be added in the Code of Criminal Procedure so as to provide for raising the "plea bargaining" in certain types of Criminal Cases.

82. One of the main aims and objects of introduction of certain provisions in general and for the introduction of "plea bargaining" by amendment in the Code of Criminal Procedure in particular, has been the speedy disposal of criminal cases. The disposal of criminal cases in Courts, unquestionably, takes considerable long time and in that, in many cases, trials do not commence for as long as period as 3 to 5 years after the accused has been remitted to the judicial custody. Large number of persons accused of criminal offences particularly, indigent, illiterate and rustic persons are unable to secure bail, for one or the other reason and have to languish in jail, as undertrial prisoners, for years. Though, not recognised so far by the Criminal Jurisprudence, it is seen as an alternative method to deal with the huge arrears of criminal cases. It is really a measure and redressal, if brought on statute and also operative, it shall also add a new dimension in the realm of Judicial Reforms.

83. To reduce the delay in the disposal of criminal trials and appeals as also to alleviate the suffering of undertrial prisoners, as well as, their dependents and keeping in mind the real

purpose of Victimology, it has been rightly proposed to introduce the concept of "plea bargaining", as recommended by the Law Commission of India, in its 154th Report, on the Code of Criminal Procedure. The Committee of Criminal Justice Reforms under the Chairmanship of Dr. (Justice) V.S. Malimath (formerly, Chief Justice of the Kerala High Court), has also endorsed the Commission's recommendations, as well as, by Review Committee on Constitutional Reforms. The system of plea bargaining (as recommended by the Law Commission of India in its Report) should be introduced, as part of the process of decriminalization . It means pre- trial negotiations between the parties during which the accused agrees to plead guilty in exchange for certain concessions by the prosecutor. The benefit of "plea bargaining" would, however, not be admissible to habitual offenders.

84. We are tempted to mention here that law should be stable but not standstill. The very object of law is to provide easy, cheap and expeditious justice by resolution of disputes, including the trial of criminal cases, and considering the present realistic profile of the pendency and delay in disposal in the administration of law and justice, fundamental reforms are inevitable. There should not be anything static. As such, "Change is only constant thing in the world". If the individual, society or for that purpose, nation feels allergic to the change for the reforms and remaining oblivious to the realism and prevalent situations, the very existence may be in jeopardy. It is, therefore, rightly said that all must have an open mind, as mind is like a parachute; it starts working when it is open. Although, hitherto, as a part of colonial legacy, "plea bargaining" has not been recognised, so far in our system and Criminal Jurisprudence. However, keeping in mind the huge arrears and long time spent in trials and resultant hardships to parties, and particularly, the accused and the victims of the crimes, the benefit of "plea bargaining" as an alternative method to deal with the dispute or question of offence requires serious consideration, which would not be admissible and available to the habitual offenders. We should remember a saying that "every saint has past and every sinner has a future" and also that "taw and justice should not be distant neighbours."

Epilogue :

85. After having threadbare considered, evaluated and discussed the rival submissions and valued submissions of 'amicus curiae' learned Senior Advocate Mr. Thakkar and the relevant and material provisions of Bombay Prohibition Act and Code of the Criminal Procedure, as well as, important pronouncements of the Hon'ble Apex Court coupled with the principles of Criminal Jurisprudence in summing up, we hold and decide upon all the three points formulated by us in the very commencement of this judgment, hereasunder :

(i) in the affirmative

(ii) also in the affirmative

(iii) not competent and not legal and not binding to Courts. Observations in that judgment in Para 12.1 are not legal, and therefore, not approved.

86. In short, in our conclusions on objective assessment and evaluation of the factual and legal profile, in this group of criminal appeals, a sentence of imprisonment for a period of less than minimum with the help of proviso and in terms of the requirements and on proof of existence of special and adequate reasons for a first offence, the Court is empowered and entitled to award less than minimum sentence on finding accused guilty either by evidence or by raising "plea of guilty" and judicial directions and prescription of special format contrary to the statutory provisions as observed by us, hereinabove, are not binding and required to be followed for recording the plea of guilty of accused and the proposition provided in three decisions relied on by the State are not affirmed and approved by us to the extent as stated above for the elaborate reasons and factual matrix and legal profile given hereinabove and upon true and correct interpretation and legislative intendments, forensic and jurisprudential exposition of the relevant propositions of the said provisions of Bombay Prohibition Act in general and proviso to Sections 66 and 85, so far as first offence is concerned.

87. In the end- result, all the appeals, at the instance of the State are without any substance and quite meritless, and therefore, they shall stand dismissed for the foregoing discussions and reasons.

MANU/SC/0518/1981

Back to Section 304 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Writ Petition No. 5670 of 1980

Decided On: 19.12.1980

Khatri and Ors. Vs. State of Bihar and Ors.

Hon'ble Judges/Coram:

P.N. Bhagwati and A.P. Sen, JJ.

ORDER

P.N. Bhagwati, J.

1. This case has now come before us after service of notice on the State of Bihar. When this case was taken up for appearing by us on 2nd December, 1980, we expressed our displeasure that the State of Bihar had not chosen to appear in answer to the notice, but this expression of displeasure was made by us on the assumption that the notice was served on the State of Bihar. We are however informed by Mr. K.G. Bhagat, learned advocate, appearing on behalf of the State of Bihar that the notice of the writ petition was served upon the State only on 6th December, 1980 and that is the reason why it was not possible for the State to appear before us on 2nd December, 1980. We accept this explanation offered by Mr. K. G. Bhagat and exonerate the State of Bihar from remissness in appearing before the Court on 2nd December, 1980.

2. The State has filed before us a counter affidavit sworn by Tarkeshwar Parshad, Under Secretary, Home (Police) Department of the State Government giving various particulars required by us by our order dated 2nd December, 1980. We have also before us the counter affidavit filed by Jitendra Narain Singh, Assistant Jailer, Bhagalpur Central Jail, on behalf of the State and this affidavit gives certain other particulars required by us. The State has also in addition to these particulars, filed statements giving various particulars in regard to the blinded prisoners drawn from the records of the judicial magistrates dealing with their cases. The District and Sessions Judge has also addressed a letter to the Registrar (Judicial) of this Court stating that for the reasons given in his letter, no inspection of the Bhagalpur Central Jail has been carried out by the District and Sessions Judge in the year 1980. The Registrar (Judicial) has also furnished to us copies of the statements of the blinded prisoners and B.L. Das, former Superintendent of the Bhagalpur Central Jail, recorded by him pursuant to the order of this Court dated 1st December, 1980. Full and detailed arguments have been advanced before" us on the basis of the particulars contained in these documents, but we do not, at this stage, propose to deal with the arguments in regard to each of the blinded prisoners and we shall examine only the broad contentions advanced before us, leaving the arguments in regard to each specific blinded prisoner to be dealt with at a later stage when the writ petition again comes up for hearing.

3. Before we deal with the main contentions urged before us on behalf of the parties, we must dispose of one serious question which raises a rather difficult problem and which has to be resolved with some immediacy. The problem is not so much a legal problem as a human one and it arises because the blinded prisoners who are undergoing treatment in the Rajendra Prashad Ophthalmic Institute, New Delhi are likely to be discharged from that Institute since their vision is so totally impaired that it is not possible to restore it by any medical or surgical treatment, and the question is wherever they can go. Mrs. Hingorani, on behalf of the blinded prisoners, expressed apprehension that it may not be safe for them to go back to Bhagalpur, particularly when investigation into the offences of blinding was still in progress and some arrangement should, therefore, be made for housing them in New Delhi at the cost of the State. We cannot definitely state that the apprehension expressed by Mrs. Hingorani is totally unfounded nor can we say at the present stage that it is justified, but we feel that at least until the next date of hearing, it would be desirable not to send the blinded prisoners back to Bhagalpur We would, therefore, suggest that the blinded prisoners who are discharged from the Rajendra Parshad Ophthalmic Institute, New should be kept in the Home which is being run by the Blind Relief Association of Delhi on the Lal Bahadur Shastri Marg, New Delhi and the State of Bihar should bear the cost of their boarding and lodging in that Home, We hope and trust and, in fact, we would strongly recommend that the Blind Relief Association of Delhi will accept these blinded prisoners in the Home run by them and look(sic) after them until the next hearing of the petition. The State of Bihar will pay by way of advance or otherwise as may be required the costs, charges and expenses of maintaining the blinded prisoners such Home.

4. The other question raised by Mrs. Hingorani on behalf of the blinded prisoners was whether the State was liable to pay compensation to the blinded prisoners for violation of their Fundamental Right under Article 21 of the Constitution. She contended that the blinded prisoners were deprived of their eye sight by the Police Officers who were Government servant acting on behalf of the State and since this constituted a violation of the constitutional right under Article 21, the state was liable to pay compensation to the blinded prisoners. The liability to compensate a person deprived of his life or personal liberty otherwise than in accordance with procedure established by law was, according to Mrs. Hingorani, implicit in Article 21. Mr. K.G. Bhagat on behalf of the State, however, contended that it was not yet established that the blinding of the prisoners was done by the Police and that the investigation was in progress and he further urged that even if blinding was done by the police and there was violation of the constitutional right enshrined in Article 21, the State could not be held liable to pay compensation to the persons wronged. These rival arguments raised a question of great constitutional importance as to what relief can a court give for violation of the constitutional right guaranteed in Article 21. The court can certainly injunct the State from depriving a person of his life or personal liberty except in accordance with procedure established by law, but if life or personal liberty is violated otherwise than in accordance with such procedure, is the court helpless to grant relief to the person who has suffered- such deprivation ? Why should the court not be prepared to forge new tools and devise new remedies for the purpose of vindicating the most precious of the precious Fundamental Right to life and personal liberty.

These were the issues raised before us on the contention of Mrs. Hingorani, and to our mind, they are issues of the gravest constitutional importance involving as they do, the exploration of a new dimension of the right to life and personal liberty. We, therefore, intimated to the counsel appearing on behalf of the parties that we would hear detailed arguments on these issues at the next hearing of the writ petition and proceed to lay down the correct implications of the constitutional right in Article 21 in the light of the dynamic constitutional jurisprudence which we are evolving in this Court.

5. That takes us to one other important issue which arises in this case. It is clear from the particulars supplied by the State from the records of the various judicial magistrates dealing with the blinded prisoners from time to time that, neither at the time when the blinded prisoners were produced for the first lime before the judicial magistrate nor at the tune when the remand orders were passed, was any legal representation available to most of the blinded prisoners. The records of the judicial magistrates show that no legal representation was provided to the blinded prisoners, because none of them asked for it nor did the judicial magistrates enquire from the blinded prisoners produced before them either initially or at the time of remand whether they wanted any legal representation at State cost. The only excuse for not providing legal representation to the blinded prisoners at the cost of the State was that none of the blinded prisoners asked for it. The result was that barring two or three blinded prisoners who managed to get a lawyer to represent them at the later stages of remand, most of the blinded prisoners were not represented by any lawyers and save a. few who were released on bail, and that too after being in jail for quite some time, the rest of them continued to languish in jail. It is difficult to understand how this state of affairs could be permitted to continue despite the decision of this Court in Hussainara Khatonn's case MANU/SC/0121/1979 : 1979CriLJ1045 . This Court has pointed out in Hussainara Khatoon's case (supra) which was decided as far back as 9th March, 1979 that the right to free legal services is clearly an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21 and the State is under a constitutional mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require, provided of course the accused person does not object to the provision of such lawyer.

It is unfortunate that though this Court declared the right to legal aid as a Fundamental Right of an accused person by a process of judicial construction of Article 21, most of the States in the country have not taken note of this decision and provided free legal services to a person accused of an offence. We regret this disregard of the decision of the highest court in the land by many of the States despite the constitutional declaration in Article 141 that the law declared by this Court shall be binding through- out the territory of India. Mr. K.G. Bhagat on behalf of the State agreed that in view of the decision of this Court the State was bound to provide free legal services to (sic) indigent accused but he suggested that the State might find it difficult to do so owing to financial constraints. We may point out to the State of Bihar that it cannot avoid its constitutional obligation to provide free legal services to a poor accused by pleading financial or administrative inability. The State is under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services on account of indigenous and whatever is necessary for his purpose has to be done by the State. The State may have its financial constraints and its priorities in expenditure but, as pointed out by the court in Rhem v. Malcolm. 377 F. Supp. 995 the law does not per(sic) any Government to deprive its citizens of constitutional rights on a plea of poverty"

and to quote the words of Justice Blackmum in Jackson v. Bishop 404. F. Supp. 2d 571: "humane considerations and constitutional requirements are not in this day to be measured by dollar considerations." Moreover, this constitutional obligation to provide free legal services to an indigent accused does not arise only when the trial commences but also attaches when the accused is for the first time produced before the magistrate. It is elementary that the jeopardy to his personal liberty arises as soon as a person is arrested and produced before a magistrate, for it is at that stage that he gets the first opportunity to apply for bail and obtain his release as also to resist remand to police or jail custody. That is the stage at which an accused person needs competent legal advice and representation and no procedure can be said to be reasonable, fair and just which denies legal advice and representation to him at this stage. We must, therefore, hold that the State is under a constitutional obligation to provide free legal services to an indigent accused not only at the stage of trial but also at the stage when he is first produced before the magistrate as also when he is remanded from time to time.

6. But even this right to free legal services would be illusory for an indigent accused unless the magistrate or the Sessions Judge before whom he is produced informs him of such right. It is common knowledge that about 70 per cent of the people in the rural areas are illiterate and even more than that percentage of people are not aware of the rights conferred upon them by law. There is; so much lack of legal awareness that it has always been recognised as one of the principal items of the programme of the legal aid movement in this country to promote legal literacy. It would make a mockery of legal aid if it were to be left to a poor ignorant and illiterate accused to ask for free legal services. Legal aid would become merely a paper promise and it would fail of its purpose. The magistrate or the sessions judge before whom the accused appears must be held to be under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty or Indigence, he is entitled to obtain free legal services at the cost of the State. Unfortunately, the judicial magistrates failed to discharge this obligation in the case of the blinded prisoners and they merely stated that no legal representation was asked for by the blinded prisoners and hence none was provided. We would, therefore, direct the magistrates and Session Judges in the country to inform every accused who appears before them and who is not represented by a lawyer on account of his poverty or indigence that he is entitled to free legal services at the cost of the State. Unless he is not willing to take advantage every other State in the country to make provision for grant of free legal services to an accused who is unable to engage a lawyer on account of reasons such as poverty, indigence or incommunicado situation. The only qualification would be that the offence charged against the accused is such that, on conviction, it would result in a sentence of imprisonment and is of such a nature that the circumstances of the case and the needs of social justice require that he should be given free legal representation. There may be cases involving offences such as economic offences or offences against law prohibiting prostitution or child abuse and the like, where social justice may require that free legal services need not be provided by the State.

7. There are two other irregularities appearing from the record to which we think it is necessary to refer. In the first place in a few cases the accused persons do not appear to have been produced before the Judicial Magistrates within 24 hours of their arrest as required by Article 22 of the Constitution. We do not wish to express any definite opinion in regard to this irregularity which prima facie appears to have occurred in a few cases, but we would strongly urge upon the State and its police authorities to see that this constitutional and legal requirement to produce an

arrested person before a Judicial Magistrate within 24 hours of the arrest must be scrupulously observed. It is also clear from the particulars furnished to us from the records of the Judicial Magistrates that in some cases particularly those relating to Patel Sahu, Raman Bind, Shaligram Singh and a few others the accused persons were not produced before the judicial Magistrates subsequent to their first production and they continued to remain in jail without any remand orders being passed by the judicial Magistrates. This was plainly contrary to law. It is difficult to understand how the State continued to detain these accused persons in jail without any remand orders. We hope and trust that the State Government will inquire as to why (sic) this irregularity was allowed to be perpetrated and will see to com that in future no such violations of the law are permitted to be committed by the administrators of the law. The provision inhibiting detention without remand is a very healthy provision which enables the Magistrates to keep check over the police investigation and it is necessary that the Magistrates should try to enforce this requirement and where it is found to be disobeyed, come down heavily upon the police.

8. We also cannot help expressing our unhappiness at the lack of concern shown by the judicial magistrates in not enquiring from the blinded prisoners, when they were first produced before the judicial magistrates and thereafter from time to time for the purpose of remand to how they had received injuries in the eyes. It is true that most of the blinded prisoners have said in their statements before the Registrar that they were not actually produced before the judicial magistrates at any time, but we cannot, without further inquiry in that behalf, accept the ex parte statement of the blinded prisoners. Their statements may be true or may not be true; it is a matter which may require investigation. But one thing is clear that in the case of almost all the blinded prisoners, the for- warding report sent by the Police Officer In Charge stated that the accused had sustained injuries and yet the judicial magistrates did not care to enquire as to how injuries had been caused. This can give rise only to two inferences; either the blinded prisoners were not physically produced before the judicial magistrates and the judicial magistrates mechanically signed the orders of remand or they did not bother to enquire even if they found that the prisoners before them had received injuries in the eyes. It is also regrettable that no inspection of the Central Jail, Bhagalpur was carried out by the District & Sessions Judge at any time during the year 1980. We would request the High Court to look into these matters closely and ensure that such remissness on the part of the judicial officers does not occur in the future.

9. We would also like to advert to one more matter before we close and that is rather a serious matter. It appears from the record that one blinded prisoner by the name of Umesh Yadav sent a petition to the District and Sessions Judge, Bhagalpur, on 30th July, 1980 complaining that he had been blinded by Shri B. K. Sharma, District Superintendent of Police and since he had no money to prosecute this police officer, he should be provided a lawyer at Government expense so that he might be able to bring the police atrocities before the court and seek justice. Ten other blinded prisoners also made a similar petition and all these petitions were forwarded to the District & Sessions Judge on 30th July, 1980. The District & Sessions Judge by this letter dated 5th August, 1980, addressed to the Superintendent of the Bhagalpur Central Jail stated that there was no provision in the CrPC under which legal assistance could be provided to the blinded prisoners who had made a petition to him and that the had forwarded their petitions to the chief judicial magistrate for necessary action. The Chief Judicial Magistrate also expressed this inability to do anything in the matter. It appears that the Superintendent of the Bhagalpur Central Jail also sent

the petitions of these blinded prisoners to the Inspector General of Prisons, Patna on 30th July, 1980 with a request that this matter should be brought to the notice of the State Government. The Inspector General of Prisons forwarded these petitions to the Home Department. The Inspector General of Prisons was also informed by three blinded prisoners on 9th September 1980 when he visited the Banks Jail that they had been blinded by the police and the Inspector General of Prisons observed in his inspection note that it would be necessary to place the matter before the Government so that, the police atrocities may be stopped. The facts disclose a very disturbing state of affairs. In the first place we find it difficult to appreciate why the Chief Judicial Magistrate to whom the petitions of these blinded prisoners had been forwarded by the District & Sessions Judge did not act upon the complaint contained in these petitions and either take cognizance of the offence revealed in these petitions or order investigation by the higher police officers. ' The information appearing in these petitions disclosed very serious offences alleged to have been committed by the Police and the Chief Judicial Magistrate should not have nonchalantly ignored these petitions and expressed , his inability to do anything in the matter. But apart from that, one thing is certain that within a few days after 30th July 80 the Home Department did come to know from the Inspector General of Prisons that according to the blinded prisoners who had sent their petitions, they had been blinded by the Police, and from the inspection note of the Inspector General of Police it would seem reasonable to assume that he must have brought the matter to the notice of the Government. We should like to know from the Inspector General of Prisons as to who was the individual or which was the department of the State Government to whose notice he brought this matter and what steps did the State Government take on receipt of the petitions of the blinded prisoners forwarded by the Inspector General of Prisons as also on the matter being brought to their attention by the Inspector General of Prisons as observed by him in his inspection note. We should like the State Government to inform us clearly and precisely as to what steps they took after 30th July, 1980 to bring the guilty to book and to stop recurrence of such atrocities. We want to have this information because we should like to satisfy ourselves whether the Windings which took place in October 1980 could have been prevented by the State Government by taking appropriate steps on receipt of information in regard to the complaint of the blinded prisoners from the Inspector General of Prisons.

10. We would direct the State Government to furnish us full and detailed particulars in this behalf before the next hearing of the writ petition.

11. The writ petition will now be taken up for further hearing on 6th January, 1981.

MANU/SC/0140/1986

Back to Section 304 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 725 of 1985

Decided On: 10.03.1986

Suk Das Vs. Union Territory of Arunachal Pradesh

Hon'ble Judges/Coram:

P.N. Bhagwati, C.J., D.P. Madon and G.L. Oza, JJ.

JUDGMENT

P.N. Bhagwati, C.J.

1. This appeal by special leave raises a question of considerable importance relating to the administration of criminal justice in the country. The question is whether an accused who on account of his poverty is unable to afford legal representation for himself in a trial involving possibility of imprisonment imperiling his personal liberty, is entitled to free legal aid at State cost and whether it is obligatory on him to make an application for free legal assistance or the Magistrate or the Sessions Judge trying him is bound to inform him that he is entitled to free legal aid and inquire from him whether he wishes to have a lawyer provided to him at State cost: if he is not so informed and in consequence he does not apply for free legal assistance and as a result he is not represented by any lawyer in the trial and is convicted, is the conviction vitiated and liable to be set aside? This question is extremely important because we have almost 50% population which is living below the poverty line and around 70% is illiterate and large sections of people just do not know that if they are unable to afford legal representation in a criminal trial, they are entitled to free legal assistance provided to them at State cost.

2. The facts giving rise to this appeal are not material because the question posed for our consideration is a pure question of law. But even so the broad facts may be briefly set out since they provide the back- drop against which the question of law arises for consideration.

3. The appellants and five other accused were charged in the court of the Additional Deputy Commissioner, Dibang Valley, Anini, Arunachal Pradesh for an offence under Section 506 read with Section 34 of the Indian Penal Code on the allegation that the appellants and the other five accused threatened Shri H.S. Kohli, Assistant Engineer, Central Public Works Department, Anini with a view to compelling him to cancel the transfer orders of the accused which had been passed by him. The case was tried as a warrant case and at the trial 8 witnesses, on behalf of the prosecution, were examined. The appellant was not represented by any lawyer since he was admittedly unable to afford legal representation on account of his poverty and the result was that

he could not cross- examine the witnesses of the prosecution. The appellants wished to examine 7 witnesses in defence but out of them two could not be examined since they were staying far away and moreover, in the opinion of the court, they were not material witnesses. The remaining 5 witnesses were examined by the appellants without any legal assistance. The result was that at the end of the trial four of the other accused were acquitted but the appellant and another accused were convicted of the offence under Section 506 of the Indian Penal Code and they were sentenced to undergo simple imprisonment for a period of two years.

4. The appellant thereupon preferred an appeal before the Gauhati High Court. There were several contentions urged in support of the appeal but it is not necessary to refer to them, since there is one contention which in our opinion goes to the root of the matter and has invalidating effect on the conviction and sentence recorded against the appellant. That contention is that the appellant were not provided free legal aid for his defence and the trial was therefore vitiated. This self- same contention was also advanced before the High Court in the appeal preferred by the appellant but the High Court took the view that, though it was undoubtedly the right of the appellant to be provided free legal assistance, the appellant did no make any request to the learned Additional Deputy Commissioner praying for legal aid and since no application for legal aid was made by him, "it could not be said in the facts and circumstances of the case that failure to provide legal assistance vitiated the trial". The High Court in the circumstances confirmed the conviction of the appellant but in view of the fact that he was already in jail for a period of nearly 8 months, the High Court held that the ends of justice would be met if the sentence on the appellant was reduced to that already undergone by him. The appellant was accordingly ordered to be, set at liberty forthwith but since the order of conviction passed against him was sustained by the High Court, he preferred the present appeal with special leave obtained from this Court.

5. It is now well established as a result of the decision of this Court in Hussainara Khatoon's case MANU/SC/0121/1979 : 1979CriLJ1045 that "the right to free legal service is ...clearly an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and it must be held to be implicit in the guarantee of Article 21. This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation and the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require, provided of course the accused person does not object to the provision of such lawyer". This Court pointed out that it is an essential ingredient of reasonable, fair and just procedure to prisoner who is to seek his liberation through the court's process that he should have legal service available to him. The same view was taken by a Bench of this Court earlier in M.H. Hoskot v. State of Maharashtra MANU/SC/0119/1978 : 1978CriLJ1678 . It may therefore now be taken as settled law that free legal assistance at State cost is a fundamental right of a person accused of an offence which may involved jeopardy to his life or personal liberty and this fundamental right is implicit in the requirement of reasonable, fair and just procedure prescribed by Article 21. Of course, it must be recognised that there may be cases involving offences, such as, economic offences or offences against law prohibiting prostitution or child abuse and the like, where social justice may require that free legal service may not be provided by the State. There can in the circumstances be no doubt that the appellant was entitled to a free legal assistance at State cost when he was

placed in peril of their personal liberty by reason of being accused of an offence which is proved would clearly entail imprisonment for a terra of two years.

6. But the question is whether this fundamental right could lawfully be denied to the appellant if he did not apply for free legal aid. Is the exercise of this fundamental right conditioned upon the accused applying for free legal assistance so that if he does not make an application for free legal assistance the trial may lawfully proceed without adequate legal representation being afforded to him? Now it is common knowledge that about 70% of the people living in rural areas are illiterate and even more than that percentage of the people are not aware of the rights conferred upon them by law. Even literate people do not know what are their rights and entitlements under the law. It is this absence of legal awareness which is responsible for the deception, exploitation and deprivation of rights and benefits from which the poor suffer in this land. Their legal needs always stand to become crisis oriented because their ignorance prevents them from anticipating legal troubles and approaching a lawyer for consultation and advise in time and their poverty magnifies the impact of the legal troubles and difficulties when they come. Moreover, because of their ignorance and illiteracy, they cannot become self- reliant: they cannot even help themselves. The law ceases to be their protector because they do not know that they are entitled to the protection of the law and they can avail of the legal service programme for putting an end to their exploitation and winning their rights. The result is that poverty becomes with them a condition of total helplessness. This miserable condition in which the poor finds themselves can be alleviating to some extent by creating legal awareness amongst the poor. That is why it has always been recognised as one of the principal items of the programme of the legal aid movement in the country to promote legal literacy. It would in these circumstances make a mockery of legal aid if it were to be left to a poor ignorant and illiterate accused to ask for free legal services. Legal aid would become merely a paper promise and it would fail of its purpose. This is the reason why in Khatri and Ors. v. State of Bihar and Ors. MANU/SC/0518/1981 : 1981CriLJ597 , we ruled that the Magistrate or the Sessions Judge before whom an accused appears must be held to be under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty or indigence, he is entitled to obtain free legal services at the cost of the State. We deplored that in that case where the accused were blinded prisoners the Judicial Magistrate failed to discharge obligation and contented themselves by merely observing that no legal representation had been asked for by the blinded prisoners and hence none was provided. We accordingly directed "the Magistrates and Sessions Judges in the country to inform every accused who appear before them and who is not represented by a lawyer on account of his poverty or indigence that he is entitled to free legal services at the cost of the State" unless he is not willing to take advantage of the free legal services provided by the State. We also gave a general direction to every State in the country "...to make provision for grant of free legal service to an accused who is unable to engage a lawyer on account of reasons such as poverty, indigence or incommunicado situations," the only qualification being that the offence charged against an accused is such that, on conviction, it would result in a sentence of imprisonment and is of such a nature that the circumstances of the case and that the needs of social justice require that he should be given free legal representations. It is quite possible that since the trial was held before the learned Additional Deputy Commissioner prior to the declaration of the law by this Court in Khatri and Ors. v. State of Bihar (supra), the learned Additional Deputy Commissioner did not inform the appellant that if he was not in a position to engage a lawyer on account of lack of material resources he was entitled to free legal assistance at State cost nor asked him whether he would like to have free

legal aid. But it is surprising that despite this declaration of the law in Khatri and Ors. v. State of Bihar and Ors. (supra) on 19th December 1980 when the decision was rendered in that case, the High Court persisted in taking the view that since the appellant did not make an application for free legal assistance, no unconstitutionality was involved in not providing him legal representation at State cost. It is obvious that in the present case the learned Additional Deputy Commissioner did not inform the appellant that he was entitled to free legal assistance nor did he inquire from the appellant whether he wanted a lawyer to be provided to them at State cost. The result was that the appellant remained unrepresented by a lawyer and the trial ultimately resulted in his conviction. This was clearly a violation of the fundamental right of the appellant under Article 21 and the trial must accordingly be held to be vitiated on account of a fatal constitutional infirmity, and the conviction and sentence recorded against the appellant must be set aside.

7. The appellant contended that if the conviction and sentence recorded against him is set aside, the order dismissing the appellant from service passed on the basis of his conviction by the learned Additional Deputy Commissioner must also be quashed and he must be reinstated in service with back wages. Now it is true that the appellant was dismissed from service without holding an inquiry on account of his being convicted for a criminal offence and since the conviction of the appellant is being set aside by us, the order of dismissal must also fall and the appellant must be reinstated in service with back wages. But the result of our quashing the conviction of the appellants would be that the appellant would have to be tried again in accordance with law after providing free legal assistance to him at State cost and that would mean that the appellant would continue to be exposed to the risk of conviction and imprisonment and the possibility cannot be ruled out that the offence charged may ultimately be proved against him and he might land- up in jail and also lose their service. We therefore felt that it would not only meet the ends of justice but also be in the interest of the appellant that no fresh trial should be held against him and he should be reinstated in service but without back wages. We accordingly direct that the appellant shall be reinstated in service but he shall not be entitled to claim any back wages and no fresh trial shall be held against him. The appeal will stand disposed of in these terms.

MANU/SC/0147/1961

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 195 of 1960

Decided On: 24.11.1961

K.M. Nanavati Vs. State of Maharashtra

Back to Section 307 of Code of Criminal Procedure, 1973

Back to Section 431 of Code of Criminal Procedure, 1973

Hon'ble Judges/Coram:

K. Subba Rao, Raghubar Dayal and S.K. Das, JJ.

JUDGMENT

K. Subba Rao, J.

1. This appeal by special leave arises out of the judgment of the Bombay High Court sentencing Nanavati, the appellant, to life imprisonment for the murder of Prem Bhagwandas Ahuja, a businessman of Bombay.

2. This appeal presents the commonplace problem of an alleged murder by an enraged husband of a paramour of his wife : but it aroused considerable interest in the public mind by reason of the publication it received and the important constitutional point it had given rise to at the time of its admission.

3. The appellant was charged under s. 302 as well as under s. 304, Part I, of the Indian Penal Code and was tried by the Sessions Judge, Greater Bombay, with the aid of special jury. The jury brought in a verdict of "not guilty" by 8 : 1 under both the sections; but the Sessions Judge did not agree with the verdict of the jury, as in his view the majority verdict of the jury was such that no reasonable body of men could, having regard to the evidence, bring in such a verdict. The learned Sessions Judge submitted the case under s. 307 of the Code of Criminal Procedure to the Bombay High Court after recording the grounds for his opinion. The said reference was heard by a division bench of the said High Court consisting of Shelat and Naik, JJ. The two learned Judges gave separate judgments, but agreed in holding that the accused was guilty of the offence of murder under s. 302 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life. Shelat, J., having held that there were misdirections to the jury, reviewed the entire evidence and came to the conclusion that the accused was clearly guilty of the offence of murder, alternatively, he expressed the view that the verdict of the jury was perverse, unreasonable and, in any event, contrary to the weight of evidence. Naik, J., preferred to base his conclusion on the alternative ground, namely, that no reasonable body of persons could have

come to the conclusion arrived at by the jury. Both the learned Judges agreed that no case had been made out to reduce the offence from murder to culpable homicide not amounting to murder. The present appeal has been preferred against the said conviction and sentence.

4. The case of the prosecution may be stated thus : This accused, at the time of the alleged murder, was second in command of the Indian Naval Ship "Mysore". He married Sylvia in 1949 in the registry office at Portsmouth, England. They have three children by the marriage, a boy aged 9 1/2 years a girl aged 5 1/2 years and another boy aged 3 years. Since the time of marriage, the couple were living at different places having regard to the exigencies of service of Nanavati. Finally, they shifted to Bombay. In the same city the deceased Ahuja was doing business in automobiles and was residing, along with his sister, in a building called "Shreyas" till 1957 and thereafter in another building called "Jivan Jyot" in Setalvad Road. In the year 1956, Agniks, who were common friends of Nanavatis and Ahujas, introduced Ahuja and his sister to Nanavatis. Ahuja was unmarried and was about 34 years of age at the time of his death, Nanavati, as a Naval Officer, was frequently going away from Bombay in his ship, leaving his wife and children in Bombay. Gradually, friendship developed between Ahuja and Sylvia, which culminated in illicit intimacy between them. On April 27, 1959, Sylvia confessed to Nanavati of her illicit intimacy with Ahuja. Enraged at the conduct of Ahuja, Nanavati went to his ship, took from the stores of the ship a semi- automatic revolver and six cartridges on a false pretext, loaded the same, went to the flat of Ahuja entered his bed- room and shot him dead. Thereafter, the accused surrendered himself to the police. He was put under arrest and in due course he was committed to the Sessions for facing a charge under s. 302 of the Indian Penal code.

5. The defence version, as disclosed in the statement made by the accused before the Sessions Court under s. 342 of the Code of Criminal Procedure and his deposition in the said Court, may be briefly stated : The accused was away with his ship from April 6, 1959, to April 18, 1959. Immediately after returning to Bombay, he and his wife went to Ahmednagar for about three days in the company of his younger brother and his wife. Thereafter, they returned to Bombay and after a few days his brother and his wife left them. After they had left, the accused noticed that his wife was behaving strangely and was not responsive or affectionate to him. When questioned, she used to evade the issue. At noon on April 27, 1959, when they were sitting in the sitting- room for the lunch to be served, the accused put his arm round his wife affectionately, when she seemed to go tense and unresponsive. After lunch, when he questioned her about her fidelity, she shook her head to indicate that she was unfaithful to him. He guessed that her paramour was Ahuja. As she did not even indicate clearly whether Ahuja would marry her and look after the children, he decided to settle the matter with him. Sylvia pleaded with him not go to Ahuja's house, as he might shoot him. Thereafter, he drove his wife, two of his children and a neighbour's child in his car to a cinema, dropped them there and promised to come and pick them up at 6 P.M. when the show ended. He then drove his car to his ship, as he wanted to get medicine for his sick dog, he represented to the authorities in the ship, that he wanted to draw a revolver and six rounds from the stores of the ship as he was going to drive alone to Ahmednagar by night, though the real purpose was to shoot himself. On receiving the revolver and six cartridges, and put it inside a brown envelope. Then he drove his car to Ahuja's office, and not finding him there, he drove to Ahuja's flat, range the door bell, and, when it was opened by a servant, walked to Ahuja's bed- room, went into the bed- room and shut the door behind him. He also carried with

him the envelope containing the revolver. The accused saw the deceased inside the bed- room, called him a filthy swine and asked him whether he would marry Sylvia and look after the children. The deceased retorted, "Am I to marry every woman I sleep with ?" The accused became enraged, put the envelope containing the revolver on a cabnit nearby, and threatened to thrash the deceased. The deceased made a sudden move to grasp at the envelope, when the accused whipped out his revolver and told him to get back. A struggle ensued between the two and during that struggle two shots went off accidentally and hit Ahuja resulting in his death. After the shooting the accused went back to his car and drove it to the police station where he surrendered himself. This is broadly, omitting the details, the case of the defence.

6. It would be convenient to dispose of at the outset the questions of law raised in this case.

7. Mr. G. S. Pathak, learned counsel for the accused, raised before us the following points : (1) Under s. 307 of the Code of Criminal Procedure, the High Court should decide whether a reference made by a Sessions Judge was competent only on a perusal of the order of reference made to it and it had no jurisdiction to consider the evidence and come to a conclusion whether the reference was competent or not. (2) Under s. 307(3) of the said Code, the High Court had no power to set aside the verdict of a jury on the ground that there were misdirections in the charge made by the Sessions Judge. (3) There were no misdirections at all in the charge made by the Sessions Judge; and indeed his charge was fair to the prosecution as well to the accused. (4) The verdict of the jury was not perverse and it was such that a reasonable body of persons could arrive at it on the evidence placed before them. (5) In any view, the accused shot at the deceased under grave and sudden provocation, and therefore even if he had committed an offence, it would not be murder but only culpable homicide not amounting to murder.

8. Mr. Pathak elaborates his point under the first heading thus : Under s. 307 of the Code of Criminal Procedure, the High Court deals with the reference in two stages. In the first stage, the High Court has to consider, on the basis of the referring order, whether a reasonable body of persons could not have reached the conclusion arrived at by the jury; and, if it is of the view that such a body could have come to that opinion the reference shall be rejected as incompetent. At this stage, the High Court cannot travel beyond the order of reference, but shall confine itself only to the reasons given by the Sessions Judge. If, on a consideration of the said reasons, it is of the view that no reasonable body of persons could have come to that conclusion, it will then have to consider the entire evidence to ascertain whether the verdict of the jury is unreasonable. If the High Court holds that the verdict of the jury is not unreasonable, in the case of a verdict of "not guilty", the High Court acquits the accused, and in the case where the verdict is one of "guilty" it convicts the accused. In case the High Court holds that the verdict of "not guilty", is unreasonable, it refers back the case to the Sessions Judge, who convicts the accused; thereafter the accused will have a right of appeal wherein he can attack the validity of his conviction on the ground that there were misdirections in the charge of the jury. So too, in the case of a verdict of "guilty" by the jury, the High Court, if it holds that the verdict is unreasonable, remits the matter to the Sessions Judge, who acquits the accused, and the State, in an appeal against that acquittal, may question the correctness of the said acquittal on the ground that the charge to the jury was vitiated by

misdirections. In short, the argument may be put in three propositions, namely, (i) the High Court rejects the reference as incompetent, if on the face of the reference the verdict of the jury does not appear to be unreasonable, (ii) if the reference is competent, the High Court can consider the evidence to come to a definite conclusion whether the verdict is unreasonable or not, and (iii) the High Court has no power under s. 307 of the Code of Criminal Procedure to set aside the verdict of the jury on the ground that it is vitiated by misdirections in the charge to the jury.

9. The question raised turns upon the construction of the relevant provisions of the Code of Criminal Procedure. The said Code contains two fascicule of sections dealing with two different situations. Under s. 268 of the Code, "All trials before a Court of Session shall be either by jury, or by the Judge himself." Under s. 297 thereof :

"In cases tried by jury, when the case for the defence and the prosecutor's reply, if any, are concluded, the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided....."

10. Section 298 among other imposes a duty on a judge to decide all questions of law arising in the course of the trial, and especially all questions as to the relevancy of facts which it is proposed to be proved, and the admissibility of evidence or the propriety of questions asked by or on behalf of the parties, and to decide upon all matters of fact which it is necessary to prove in order to enable evidence of particular matter to be given. It is the duty of the jury "to decide which view of the facts is true and then to return the verdict which under such view ought, according to the directions of the Judges, to be returned." After charge to the jury, the jury retire to consider their verdict and, after due consideration, the foreman of the jury informs the Judge what is their verdict or what is the verdict of the majority of the jurors.

11. Where the Judge does not think it necessary to disagree with the verdict of the jurors or of the majority of them, he gives judgment accordingly. If the accused is acquitted, the Judge shall record a verdict of acquittal; if the accused is convicted, the Judge shall pass sentence on him according to law. In the case of conviction, there is a right of appeal under s. 410 of the Code, and in a case of acquittal, under s. 417 of the Code, to the High Court. But s. 418 of the Code provides :

"(1) An appeal may lie on a matter of fact as well as a matter of law except where the trial was by jury, in which case the appeal shall lie on a matter of law only."

12. Sub- section (2) thereof provides for a case of a person sentenced to death, with which we are not now concerned. Section 423 confers certain powers on an appellate Court in the matter of disposing of an appeal, such as calling for the record, hearing of the pleaders, and passing appropriate orders therein. But sub- s. (2) of s. 423 says :

"Nothing herein contained shall authorise the Court to alter or reverse the verdict of the jury, unless it is of opinion that such verdict is erroneous owning to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him."

13. It may be noticed at this stage, as it will be relevant in considering one of the arguments raised in this case, that sub- s. (2) does not confer any power on an appellate court, but only saves the limitation on the jurisdiction of an appellate court imposed under s. 418 of the Code. It is, therefore, clear that in an appeal against conviction or acquittal in a jury trial, the said appeal is confined only to a matter of law.

14. The Code of Criminal Procedure also provides for a different situation. The Sessions Judge may not agree with the verdict of the jurors or the majority of them; and in that event s. 307 provides for a machinery to meet that situation. As the argument mainly turns upon the interpretation of the provisions of this section, it will be convenient to read the relevant clauses thereof.

15. Section 307 : (1) If in any such case the Judge disagrees with the verdict of the jurors, or of a majority of the jurors, on all or any of the charges on which any accused person has been tried, and is clearly of opinion that it is necessary for the ends of justice to submit the case in respect of such accused person to the High Court, he shall submit the case accordingly, recording the grounds of his opinion, and, when the verdict is one of acquittal, stating the offence which he considers to have been committed, and in such case, if the accused is further charged under the provisions of section 310, shall proceed to try him on such charge as if such verdict had been one of conviction.

16. (3) In dealing with the case so submitted the High Court may exercise any of the powers which it may exercise on an appeal, and subject thereto it shall, after considering the entire evidence and after giving due weight to the opinions of the Sessions Judge and the jury, acquit or convict such accused of any offence of which the jury could have convicted him upon the charge framed and placed before it; and, if it convicts him, may pass such sentence as might have been passed by the Court of Session.

17. This section is a clear departure from the English law. There are good reasons for its enactment. Trial by jury outside the Presidency Towns was first introduced in the Code of Criminal Procedure of 1861, and the verdict of the jury was, subject to re- trial on certain events, final and conclusive. This led to miscarriage of justice through jurors returning erroneous verdicts due to ignorance and inexperience. The working of the system was reviewed in 1872, by a Committee appointed for that purpose and on the basis of the report of the said Committee, s. 262 was introduced in the Code of 1872. Under that section, where there was difference of view between the jurors and the judge, the Judge was empowered to refer the case to the High Court in the ends of justice, and the High Court dealt with the matter as an appeal. But in 1882 the section was amended and under the amended section the condition for reference was that the High Court should differ from the jury completely; but in the Code of 1893 the section was

amended practically in terms as it now appears in the Code. The history of the legislation shows that the section was intended as a safeguard against erroneous verdicts of inexperienced jurors and also indicates the clear intention of the Legislature to confer on a High Court a separate jurisdiction, which for convenience may be described as "reference jurisdiction". Section 307 of the Code of Criminal Procedure, while continuing the benefits of the jury system to persons tride by a Court of Session, also guards against any possible injustice, having regard to the conditions obtaining in India. It is, therefore clear that there is an essential difference between the scope of the jurisdiction of the High Court in disposing of an appeal against a conviction or acquittal, as the case may be, in a jury trial, and that in a case submitted by the Sessions Judge when he differs from the verdict of the jury : in the former the acceptance of the verdict of the jury by the Sessions Judge is considered to be sufficient guarantee against its perversity and therefore an appeal is provided only on questions of law, whereas in the latter the absence of such agreement necessitated the conferment of a larger power on the High Court in the matter of interfering with the verdict of the jury.

18. Under s. 307(1) of the Code, the obligation cast upon the Sessions Judge to submit the case to the High Court is made subject to two conditions, namely, (1) the Judge shall disagree with the verdict of the jurors, and (2) he is clearly of the opinion that it is necessary in the ends of justice to submit the case to the High Court. If the two conditions are complied with, he shall submit the case, recording the grounds of his opinion. The words "for the ends of justice" are comprehensive, and coupled with the words "is clearly of opinion", they give the Judge a discretion to enable him to exercise his power under different situations, the only criterion being his clear opinion that the reference is in the ends of justice. But the Judicial Committee, in Ramanugrah Singh v. King Emperor (1946) L.R. 173, IndAp 174, construed the words "necessary for the ends of justice" and laid down that the words mean that the Judge shall be of the opinion that the verdict of the jury is one which no reasonable body of men could have reached on the evidence. Having regard to that interpretation, it may be held that the second condition for reference is that the Judge shall be clearly of the opinion that the verdict is one which no reasonable body of men could have reached on the evidence. It follows that if a Judge differs from the jury and is clearly of such an opinion, he shall submit the case to the High Court recording the grounds of his opinion. In that event, the said reference is clearly competent. If on the other hand, the case submitted to the High Court does not ex facie show that the said two conditions have been complied with by the Judge, it is incompetent. The question of competency of the reference does not depend upon the question whether the Judge is justified in differing from the jury or forming such an opinion on the verdict of the jury. The argument that though the Sessions Judge has complied with the conditions necessary for making a reference, the High Court shall reject the reference as incompetent without going into the evidence if the reasons given do not sustain the view expressed by the Sessions Judge, is not supported by the provisions of sub- s. (1) of s. 307 of the Code. But it is said that it is borne out of the decision of the Judicial Committee in Ramanugrah Singh's case [(1946) L.R. 73, I.A. 174, 182, 186]. In that case the Judicial Committee relied upon the words "ends of justice" and held that the verdict was one which no reasonable body of men could have reached on the evidence and further laid down that the requirements of the ends of justice must be the determining factor both for the Sessions Judge in making the reference and for the High Court in disposing of it. The Judicial Committee observed :

"In general, if the evidence is such that it can properly support a verdict either of guilty or not guilty, according to the view taken of it by the trial court, and if the jury take one view of the evidence and the judge thinks that they should have taken the other, the view of the jury must prevail, since they are the judges of fact. In such a case a reference is not justified, and it is only by accepting their view that the High Court can give due weight to the opinion of the jury. If, however, the High Court considers that on the evidence no reasonable body of men could have reached the conclusion arrived at by the jury, then the reference was justified and the ends of justice require that the verdict be disregarded."

19. The Judicial Committee proceeded to state :

"In their Lordships' opinion had the High Court approached the reference on the right lines and given due weight to the opinion of the jury they would have been bound to hold that the reference was not justified and that the ends of justice did not require any interference with the verdict of the jury."

20. Emphasis is laid on the word "justified", and it is argued that the High Court should reject the reference as incompetent if the reasons given by the Sessions Judge in the statement of case do not support his view that it is necessary in the ends of the justice to refer the case to the High Court. The Judicial Committee does not lay down any such proposition. There, the jury brought in a verdict of not "guilty" under s. 302, Indian Penal Code. The Sessions Judge differed from the jury and made a reference to the High Court. The High Court accepted the reference and convicted the accused and sentenced him to transportation for life. The Judicial Committee held, on the facts of that case, that the High Court was not justified in the ends of justice to interfere with the verdict of the jury. They were not dealing with the question of competency of a reference but only with that of the justification of the Sessions Judge in making the reference, and the High Court in accepting it. It was also not considering a case of any disposal of the reference by the High Court on the basis of the reasons given in the reference, but were dealing with a case where the High Court on a consideration of the entire evidence accepted the reference and the Judicial Committee held on the evidence that there was no justification for the ends of justice to accept it. This decision, therefore, has no bearing on the competency of a reference under s. 307(1) of the Code of Criminal Procedure.

21. Now, coming to sub- s. (3) of s. 307 of the Code, it is in two parts. The first part says that the High Court may exercise any of the powers which it may exercise in an appeal. Under the second part, after considering the entire evidence and after giving due weight to the opinions of the Sessions Judge and the jury, the High Court shall acquit or convict the accused. These parts are combined by the expression "and subject thereto". The words "subject thereto" were added to the section by an amendment in 1896. This expression gave rise to conflict of opinion and it is conceded that it lacks clarity. That may be due to the fact that piecemeal amendments have been made to the section from time to time to meet certain difficulties. But we cannot ignore the expression, but we must give it a reasonable construction consistent with the intention of the Legislature in enacting the said section. Under the second part of the section, special jurisdiction to decide a case referred to it is conferred on the High Court. It also defines the scope of its jurisdiction and its limitations. The High Court can acquit or convict an accused of an offence of

which the jury could have convicted him, and also pass such sentence as might have been passed by the Court of Session. But before doing so, it shall consider the entire evidence and give due weight to the opinions of the Sessions Judge and the jury. The second part does not confer on the High Court any incidental procedural powers necessary to exercise the said jurisdiction in a case submitted to it, for it is neither an appeal nor a revision. The procedural powers are conferred on the High Court under the first part. The first part enables the High Court to exercise any of the powers which it may exercise in appeal, for without such powers it cannot exercise its jurisdiction effectively. But the expression "subject to" indicates that in exercise of its jurisdiction in the manner indicated by the second part, it can call in aid only any of the powers of an appellate court, but cannot invoke a power other than that conferred on an appellate court. The limitation on the second part implied in the expression "subject thereto" must be confined to the area of the procedural powers conferred on a appellate court. If that be the construction, the question arises, how to reconcile the provisions of s. 423(2) with those of s. 307 of the Code ? Under sub- s. (2) of s. 423 :

"Nothing herein contained shall authorise the Court to alter or reverse the verdict of a jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him."

22. It may be argued that, as an appellate court cannot alter or reverse the verdict of a jury unless such a verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him, the High Court, in exercise of its jurisdiction under s. 307 of the Code, likewise could not do so except for the said reasons. Sub- section (2) of s. 423 of the Code does not confer any power of the High Court; it only restates the scope of the limited jurisdiction conferred on the court under s. 418 of the Code, and that could not have any application to the special jurisdiction conferred on the High Court under s. 307. That apart, a perusal of the provisions of s. 423(1) indicates that there are powers conferred on an appellate court which cannot possibly be exercised by courts disposing of a reference under s. 307 of the Code, namely, the power to order commitment etc. Further s. 423(1)(a) and (b) speak of conviction, acquittal, finding and sentence, which are wholly inappropriate to verdict of a jury. Therefore, a reasonable construction will be that the High Court can exercise any of the powers conferred on an appellate court under s. 423 or under other sections of the Code which are appropriate to the disposal of a reference under s. 307. The object is to prevent miscarriage of the justice by the jurors returning erroneous or perverse verdict. The opposite construction defeats this purpose, for it equates the jurisdiction conferred under s. 307 with that of an appellate court in a jury trial. That construction would enable the High Court to correct an erroneous verdict of a jury only in a case of misdirection by the Judge but not in a case of fair and good charge. This result effaces the distinction between the two types of jurisdiction. Indeed, learned counsel for the appellant has taken a contrary position. He would say that the High Court under s. 307(3) could not interfere with the verdict of the jury on the ground that there were misdirections in the charge to the jury. This argument is built upon the hypothesis that under the Code of Criminal Procedure there is a clear demarcation of the functions of the jury and the Judge, the jury dealing with facts and the Judge with law, and therefore the High Court could set aside a verdict on the ground of misdirection only when an appeal comes to it under s. 418 and could only interfere with the verdict of the jury for the ends of justice, as interpreted by the Privy Council, when the matter comes to it under s. 307(3). If this interpretation be accepted, we would be attributing to

the Legislature an intention to introduce a circuitous method and confusion in the disposal of criminal cases. The following illustration will demonstrate the illogical result of the argument. The jury brings in a verdict of "guilty" on the basis of a charge replete with misdirections; the Judge disagrees with that verdict and states the case to the High Court; the High Court holds that the said verdict is not erroneous on the basis of the charge, but is of the opinion that the verdict is erroneous because of the misdirections in the charge; even so, it shall hold that the verdict of the jury is good and reject the reference thereafter, the Judge has to accept the verdict and acquit the accused; the prosecution then will have to prefer an appeal under s. 417 of the Code on the ground that the verdict was induced by the misdirections in the charge. This could not have been the intention of the Legislature. Take the converse case. On similar facts, the jury brings in a verdict of "guilty"; the Judge disagrees with the jury and makes a reference to the High Court; even though it finds misdirections in the charge to the jury, the High Court cannot set aside the conviction but must reject the reference; and after the conviction, the accused may prefer an appeal to the High Court. This procedure will introduce confusion in jury trials, introduce multiplicity of proceedings, and attribute ineptitude to the Legislature. What is more, this construction is not supported by the express provisions of s. 307(3) of the Code. The said sub-section enables the High Court to consider the entire evidence, to give due weight to the opinions of the Sessions Judge and the jury, and to acquit or convict the accused. The key words in the sub-section are "giving due weight to the opinions of the Sessions Judge and the jury". The High Court shall give weight to the verdict of the jury; but the weight to be given to a verdict depends upon many circumstances - it may be one that no reasonable body of persons could come to; it may be a perverse verdict; it may be a divided verdict and may not carry the same weight as the united one does; it may be vitiated by misdirections or non- directions. How can a Judge give any weight to a verdict if it is induced and vitiated by grave misdirections in the charge ? That apart, the High Court has to give due weight to the opinion of the Sessions Judge. The reasons for the opinion of the Sessions Judge are disclosed in the case submitted by him to the High Court. If the case stated by the Sessions Judge discloses that there must have been misdirections in the charge, how can the High Court ignore them in giving due weight to his opinion ? What is more, the jurisdiction of the High Court is couched in very wide terms in sub- s. (3) of s. 307 of the Code : it can acquit or convict an accused. It shall take into consideration the entire evidence in the case; it shall give due weight to the opinions of the Judge and the jury; it combines in itself the functions of the Judge and jury; and it is entitled to come to its independent opinion. Tee phraseology used does not admit of an expressed or implied limitation on the jurisdiction of the High Court.

23. It appears to us that the Legislature designedly conferred a larger power on the High Court under s. 307(3) of the Code than that conferred under s. 418 thereof, as in the former case the Sessions Judge differs from the jury while in the latter he agrees with the jury.

24. The decisions cited at the Bar do not in any way sustain in narrow construction sought to be placed by learned counsel on s. 307 of the Code. In Ramanugrah Singh's case [(1945- 46) L.R. 73 I.A. 174, 182], which has been referred to earlier, the Judicial Committee described the wide amplitude of the power of the High Court in the following terms :

"The Court must consider the whole case and give due weight to the opinions of the Sessions Judge and jury, and then acquit or convict the accused."

25. The Judicial Committee took care to observe :

".....the test of reasonableness on the part of the jury may not be conclusive in every case. It is possible to suppose a case in which the verdict was justified on the evidence placed before the jury, but in the light of further evidence placed before the High Court the verdict is shown to be wrong. In such a case the ends of justice would require the verdict to be set aside though the jury had not acted unreasonably."

26. This passage indicates that the Judicial Committee did not purport to lay down exhaustively the circumstances under which the High Court could interfere under the said sub- section with the verdict of the jury. This Court in Akhlakali Hayatalli v. The State of Bombay MANU/SC/0137/1953 : 1954CriLJ451 accepted the view of the Judicial Committee on the construction of s. 307 of the Code of Criminal Procedure, and applied it to the facts of that case. But the following passage of this Court indicates that it also does not consider the test of reasonableness as the only guide in interfering with the verdict of the jury :

"The charge was not attacked before the High Court nor before us as containing any misdirections or non- directions to the jury such as to vitiate the verdict."

27. This passage recognizes the possibility of interference by the High Court with the verdict of the jury under the said sub- section if the verdict is vitiated by misdirections or non- directions. So too, the decision of this Court in Ratan Rai v. State of Bihar [1957] S.C.R. 273 assumes that such an interference is permissible if the verdict of the jury was vitiated by misdirections. In that case, the appellants were charged under Sections 435 and 436 of the Indian Penal Code and were tried by a jury, who returned a majority verdict of "guilty". The Assistant Sessions Judge disagreed with the said verdict and made a reference to the High Court. At the hearing of the reference the counsel for the appellants contended that the charge to the jury was defective, and did not place the entire evidence before the Judges. The learned Judges of the High Court considered the objections as such and nothing more, and found the appellants guilty and convicted them. This Court, observing that it was incumbent on the High Court to consider the entire evidence and the charge as framed and placed before the jury and to come to its own conclusion whether the evidence was such that could properly support the verdict of guilty against the appellants, allowed the appeal and remanded the matter to the High Court for disposal in accordance with the provisions of s. 307 of the Code of Criminal Procedure. This decision also assumes that a High Court could under s. 307(3) of the Code of Criminal Procedure interfere with the verdict of the jury, if there are misdirections in the charge and holds that in such a case it is incumbent on the court to consider the entire evidence and to come to its own conclusion, after giving due weight to the opinions of the Sessions Judge, and the verdict of the jury. This Court again in Sashi Mohan Debnath v. The State of West Bengal [1958] S.C.R. 960, held that where the Sessions Judge disagreed with the verdict of the jury and was of the opinion that the case should be submitted to the High Court, he should submit the whole case and not a part of it. There, the jury returned a verdict of "guilty" in respect of some charges and "not guilty" in respect of others. But the Sessions Judge recorded his judgment of acquittal in respect of the latter charges in agreement

with the jury and referred the case to the High Court only in respect of the former. This Court held that the said procedure violated sub- s. (2) of s. 307 of the Code of Criminal Procedure and also had the effect of preventing the High Court from considering the entire evidence against the accused and exercising its jurisdiction under sub- s. (3) of s. 307 of the said Code. Imam, J., observed that the reference in that case was incompetent and that the High Court could not proceed to exercise any of the powers conferred upon it under sub- s. (3) of s. 307 of the Code, because the very foundation of the exercise of that power was lacking, the reference being incompetent. This Court held that the reference was incompetent because the Sessions Judge contravened the express provisions of sub- s. (2) of s. 307 of the Code, for under that sub- section whenever a Judge submits a case under that section, he shall not record judgment of acquittal or of conviction on any of the charges on which such accused has been tried, but he may either remand such accused to custody or admit him to bail. As in that case the reference was made in contravention of the express provisions of sub- s. (2) of s. 307 of the Code and therefore the use of the word 'incompetent' may not be inappropriate. The decision of a division bench of the Patna High Court in Emperor v. Ramadhar Kurmi A.I.R. 1948 Pat. 79 may usefully be referred to as it throws some light on the question whether the High Court can interfere with the verdict of the jury when it is vitiated by serious misdirections and non- directions. Das, J., observed :

"Where, however, there is misdirection, the principle embodied in s. 537 would apply and if the verdict is erroneous owing to the misdirection, it can have no weight on a reference under s. 307 as on an appeal."

28. It is not necessary to multiply decisions. The foregoing discussion may be summarized in the form of the following propositions : (1) The competency of a reference made by a Sessions Judge depends upon the existence of two conditions, namely, (i) that he disagrees with the verdict of the jurors, and (ii) that he is clearly of the opinion that the verdict is one which no reasonable body of men could have reached on the evidence, after reaching that opinion, in the case submitted by him he shall record the grounds of his opinion. (2) If the case submitted shows that the conditions have not been complied with or that the reasons for the opinion are not recorded, the High Court may reject the reference as incompetent : the High Court can also reject it if the Sessions Judge has contravened sub- s. (2) of s. 307. (3) If the case submitted shows that the Sessions Judge has disagreed with the verdict of the jury and that he is clearly of the opinion that no reasonable body of men could have reached the conclusion arrived at by the jury, and he discloses his reasons for the opinion, sub- s. (3) of s. 307 of the Code comes into play, and thereafter the High Court has an obligation to discharge its duty imposed thereunder. (4) Under sub- s. (3) of s. 307 of the Code, the High Court has to consider the entire evidence and, after giving due weight to the opinions of the Sessions Judge and the jury, acquit or convict the accused. (5) The High Court may deal with the reference in two ways, namely, (i) if there are misdirections vitiating the verdict, it may, after going into the entire evidence, disregard the verdict of the jury and come to its own conclusion, and (ii) even if there are no misdirections, the High Court can interfere with the verdict of the jury if it finds the verdict "perverse in the sense of being unreasonable", "manifestly wrong", or "against the weight of evidence", or, in other words, if the verdict is such that no reasonable body of men could have reached on the evidence. (6) In the disposal of the said reference, the High Court can exercise any of the procedural powers appropriate to the occasion, such as, issuing of notice, calling for records, remanding the case, ordering a retrial, etc. We therefore, reject the first contention of learned counsel for the appellant.

29. The next question is whether the High Court was right in holding that there were misdirections in the charge to the jury. Misdirection is something which a judge in his charge tells the jury and is wrong or in a wrong manner tending to mislead them. Even an omission to mention matters which are essential to the prosecution or the defence case in order to help the jury to come to a correct verdict may also in certain circumstances amount to a misdirection. But, in either case, every misdirection or non- direction is not in itself sufficient to set aside a verdict, but it must be such that it has occasioned a failure of justice.

30. In Mushtak Hussein v. The State of Bombay MANU/SC/0026/1953 : [1953]4SCR809 , this Court laid down :

"Unless therefore it is established in a case that there has been a serious misdirection by the judge in charging the jury which has occasioned a failure of justice and has misled the jury in giving its verdict, the verdict of the jury cannot be set aside."

31. This view has been restated by this Court in a recent decision, viz., Smt. Nagindra Bala Mitra v. Sunil Chandra Roy MANU/SC/0074/1960 : 1960CriLJ1020 .

32. The High Court in its judgment referred to as many as six misdirections in the charge to the jury which in its view vitiated the verdict, and it also stated that there were many others. Learned counsel for the appellant had taken each of the said alleged misdirections and attempted to demonstrate that they were either no misdirections at all, or even if they were, they did not in any way affect the correctness of the verdict.

33. We shall now take the first and the third misdirections pointed out by Shelat, J., as they are intimately connected with each other. They are really omissions. The first omission is that throughout the entire charge there is no reference to s. 105 of the Evidence Act or to the statutory presumption laid down in that section. The second omission is that the Sessions Judge failed to explain to the jury the legal ingredients of s. 80 of the Indian Penal code, and also failed to direct them that in law the said section was not applicable to the facts of the case. To appreciate the scope of the alleged omissions, it is necessary to read the relevant provisions.

34. Section 80 of the Indian Penal Code.

"Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution. "

35. Evidence Act.

36. Section 103 : "The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. "

37. Section 105 : "When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code (XLV of 1860) or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances. "

38. Section 3 : "In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context :-

39. A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non- existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

40. Section 4 : ..... "Whenever it is directed by this Act that the court shall presume a fact, it shall regard such fact as proved unless and until it is disproved."

41. The legal impact of the said provisions on the question of burden of proof may be stated thus : In India, as it is in England, there is a presumption of innocence in favour of the accused as a general rule, and it is the duty of the prosecution to prove the guilt of the accused; to put it in other words, the accused is presumed to be innocent until his guilt is established by the prosecution. But when an accused relies upon the General Exceptions in the Indian Penal Code or on any special exception or proviso contained in any other part of the Penal Code, or in any law defining an offence, s. 105 of the Evidence Act raises a presumption against the accused and also throws a burden on him to rebut the said presumption. Under that section the Court shall presume the absence of circumstances bringing the case within any of the exceptions, that is, the Court shall regard the non- existence of such circumstances as proved till they are disproved.

An illustration based on the facts of the present case may bring out the meaning of the said provision. The prosecution alleges that the accused intentionally shot the deceased; but the accused pleads that, though the shots emanated from his revolver and hit the deceased, it was by accident, that is, the shots went off the revolver in the course of a struggle in the circumstances mentioned in s. 80 of the Indian Penal Code and hit the deceased resulting in his death. The Court then shall presume the absence of circumstances bringing the case within the provisions of s. 80

of the Indian Penal Code, that is, it shall presume that the shooting was not by accident, and that the other circumstances bringing the case within the exception did not exist; but this presumption may be rebutted by the accused by adducing evidence to support his plea of accident in the circumstances mentioned therein. This presumption may also be rebutted by admissions made or circumstances elicited by the evidence led by the prosecution or by the combined effect of such circumstances and the evidence adduced by the accused. But the section does not in any way affect the burden that lies on the prosecution to prove all the ingredients of the offence with which the accused is charged : that burden never shifts. The alleged conflict between the general burden which lies on the prosecution and the special burden imposed on the accused under s. 105 of the Evidence Act is more imaginary than real. Indeed, there is no conflict at all. There may arise three different situations : (1) A statute may throw the burden of proof of all or some of the ingredients of an offence on the accused : (see Sections 4 and 5 of the Prevention of Corruption Act). (2) The special burden may not touch the ingredients of the offence, but only the protection given on the assumption of the proof of the said ingredients : (see Sections 77, 78, 79, 81 and 88 of the Indian Penal Code). (3) It may relate to an exception, some of the many circumstances required to attract the exception if proved affecting the proof of all or some of the ingredients of the offence : (see s. 80 of the Indian Penal Code). In the first case the burden of proving the ingredients or some of the ingredients of the offence, as the case may be, lies on the accused. In the second case, the burden of bringing the case under the exception lies on the accused. In the third case, though the burden lies on the accused to bring his case within the exception, the facts proved may not discharge the said burden, but may affect the proof of the ingredients of the offence. An illustration may bring out the meaning. The prosecution has to prove that the accused shot dead the deceased intentionally and thereby committed the offence of murder within the meaning of s. 300 of the Indian Penal Code; the prosecution has to prove the ingredients of murder, and one of the ingredients of that offence is that the accused intentionally shot the deceased; the accused pleads that he shot at the deceased by accident without any intention or knowledge in the doing of a lawful act in a lawful manner by lawful means with proper care and caution; the accused against whom a presumption is drawn under s. 105 of the Evidence Act that the shooting was not by accident in the circumstances mentioned in s. 80 of the Indian Penal Code, may adduce evidence to rebut that presumption. That evidence may not be sufficient to prove all the ingredients of s. 80 of the Indian Penal Code, but may prove that the shooting was by accident or inadvertence, i.e., it was done without any intention or requisite state of mind, which is the essence of the offence, within the meaning of s. 300, Indian Penal Code, or at any rate may throw a reasonable doubt on the essential ingredients of the offence of murder. In that event though the accused failed to bring his case within the terms of s. 80 of the Indian Penal Code, the Court may hold that the ingredients of the offence have not been established or that the prosecution has not made out the case against the accused. In this view it might be said that the general burden to prove the ingredients of the offence, unless there is a specific statute to the contrary, is always on the prosecution, but the burden to prove the circumstances coming under the exceptions lies upon the accused. The failure on the part of the accused to establish all the circumstances bringing his case under the exception does not absolve the prosecution to prove the ingredients of the offence; indeed, the evidence, though insufficient to establish the exception, may be sufficient to negative one or more of the ingredients of the offence.

42. The English decisions relied upon by Mr. Pathak, learned counsel for the accused, may not be of much help in construing the provisions of s. 105 of the Indian Evidence Act. We would, therefore, prefer not to refer to them, except to one of the leading decisions on the subject, namely,

Woolmington v. The Director of Public Prosecutions L.R. (1935) A.C. 462. The headnote in that decision gives its gist, and it read :

"In a trial for murder the Crown must prove death as the result of a voluntary act of the prisoner and malice of the prisoner. When evidence of death and malice has been given, the prisoner is entitled to show by evidence or by examination of the circumstances adduced by the Crown that the act on his part which caused death was either unintentional or provoked. If the jury are either satisfied with his explanation or, upon a review of all the evidence, are left in reasonable doubt whether, even if his explanation be not accepted, the act was unintentional or provoked, the prisoner is entitled to be acquitted. "

43. In the course of the judgment Viscount Sankey, L.C., speaking for the House, made the following observations:

"But while the prosecution must prove the guilt of the prisoner, there is no such burden laid on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the jury of his innocence..... Throughout the web of the English Criminal Law one golden thread is always to be seen that it is the duty of the prosecution to prove the prisoner's guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception. If, at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner, as to whether the prisoner killed the deceased with a malicious intention, the prosecution has not made out the case and the prisoner is entitled to an acquittal."

44. These passages are not in conflict with the opinion expressed by us earlier. As in England so in India, the prosecution must prove the guilt of the accused, i.e., it must establish all the ingredients of the offence with which he is charged. As in England so also in India, the general burden of proof is upon the prosecution; and if, on the basis of the evidence adduced by the prosecution or by the accused, there is a reasonable doubt whether the accused committed the offence, he is entitled to the benefit of doubt. In India if an accused pleads an exception within the meaning of s. 80 of the Indian Penal Code, there is a presumption against him and the burden to rebut that presumption lies on him. In England there is no provision similar to s. 80 of the Indian Penal Code, but Viscount Sankey, L.C., makes it clear that such a burden lies upon the accused if his defence is one of insanity and in a case where there is a statutory exception to the general rule of burden of proof. Such an exception we find in s. 105 of the Indian Evidence Act. Reliance is placed by learned counsel for the accused on the decision of the Privy Council in Attygalle v. Emperor A.I.R. 1936 P.C. 169 in support of the contention that notwithstanding s. 105 of the Evidence Act, the burden of establishing the absence of accident within the meaning of s. 80 of the Indian Penal Code is on the prosecution. In that case, two persons were prosecuted, one for performing an illegal operation and the other for abetting him in that crime. Under s. 106 of the Ordinance 14 of 1895 in the Ceylon Code, which corresponds to s. 106 of the Indian Evidence Act, it was enacted that when any fact was especially within the knowledge of any person, the burden of proving that fact was upon him. Relying upon that section, the Judge in his charge to the jury said :

"Miss Maye - that is the person upon whom the operation was alleged to have been performed - was unconscious and what took place in that room that three- quarters of an hour that she was under chloroform is a fact specially within the knowledge of these two accused who were there. The burden of proving that fact, the law says, is upon him, namely that no criminal operation took place but what took place was this and this speculum examination."

45. The Judicial Committee pointed out:

"It is not the law of Ceylon that the burden is cast upon an accused person of proving that no crime has been committed. The jury might well have thought from the passage just quoted that that was in fact a burden which the accused person had to discharge. The summing- up goes on to explain the presumption of innocence in favour of accused persons, but it again reiterates that the burden of proving that no criminal operation took place is on the two accused who were there."

46. The said observations do not support the contention of learned counsel. Section 106 of Ordinance 14 of 1895 of the Ceylon Code did not cast upon the accused a burden to prove that he had not committed any crime; nor did it deal with any exception similar to that provided under s. 80 of the Indian Penal Code. It has no bearing on the construction of s. 105 of the Indian Evidence Act. The decisions of this Court in The State of Madras v. A. Vaidyanatha Iyer MANU/SC/0108/1957 : 1958CriLJ232 , which deals with s. 4 of the Prevention of Corruption Act, 1947, and C.S.D. Swami v. The State MANU/SC/0025/1959 : 1960CriLJ131 , which considers the scope of s. 5(3) of the said Act, are examples of a statute throwing the burden of proving and even of establishing the absence of some of the ingredients of the offence on the accused; and this Court held that notwithstanding the general burden on the prosecution to prove the offence, the burden of proving the absence of the ingredients of the offence under certain circumstances was on the accused. Further citations are unnecessary as, in our view, the terms of s. 105 of the Evidence Act are clear and unambiguous.

47. Mr. Pathak contends that the accused did not rely upon any exception within the meaning of s. 80 of the Indian Penal Code and that his plea all through has been only that the prosecution has failed to establish intentional killing on his part. Alternatively, he argues that as the entire evidence has been adduced both by the prosecution and by the accused, the burden of proof became only academic and the jury was in a position to come to one conclusion or other on the evidence irrespective of the burden of proof. Before the Sessions Judge the accused certainly relied upon s. 80 of the Indian Penal Code, and the Sessions Judge dealt with the defence case in his charge to the jury. In paragraph 6 of the charge, the learned Sessions Judge stated:

"Before I proceed further I have to point out another section which is section 80. You know by now that the defence of the accused is that the firing of the revolver was a matter of accident during a struggle for possession of the revolver. A struggle or a fight by itself does not exempt a person. It is the accident which exempts a person from criminal liability because there may be a fight, there may be a struggle and in the fight and in the struggle the assailant may over- power the victim and kill the deceased so that a struggle or a fight by itself does not exempt an assailant. It is only an accident, whether it is in struggle or a fight or otherwise which can exempt an assailant. It is only an accident, whether it is in a struggle or a fight of otherwise which can exempt a prisoner from criminal liability. I shall draw your attention to section 80 which says : .....

(section 80 read). You know that there are several provisions which are to be satisfied before the benefit of this exception can be claimed by an accused person and it should be that the act itself must be an accident or misfortune, there should be no criminal intention or knowledge in the doing of that act, that act itself must be done in a lawful manner and it must be done by lawful means and further in the doing of it, you must do it with proper care and caution. In this connection, therefore, even while considering the case of accident, you will have to consider all the factors, which might emerge from the evidence before you, whether it was proper care and caution to take a loaded revolver without a safety catch to the residence of the person with whom you were going to talk and if you do not get an honourable answer you were prepared to thrash him. You have also to consider this further circumstance whether it is an act with proper care and caution to keep that loaded revolver in the hand and thereafter put it aside, whether that is taking proper care and caution. This is again a question of fact and you have to determine as Judges of fact, whether the act of the accused in this case can be said to be an act which was lawfully done in a lawful manner and with proper care and caution. If it is so, then and only then can you call it accident or misfortune. This is a section which you will bear in mind when you consider the evidence in this case."

48. In this paragraph the learned Sessions Judge mixed up the ingredients of the offence with those of the exception. He did not place before the jury the distinction in the matter of burden of proof between the ingredients of the offence and those of the exception. He did not tell the jury that where the accused relied upon the exception embodied in s. 80 of the Indian Penal Code, there was a statutory presumption against him and the burden of proof was on him to rebut that presumption. What is more, he told the jury that it was for them to decide whether the act of the accused in the case could be said to be an act which was lawfully done in a lawful manner with proper care and caution. This was in effect abdicating his functions in favour of the jury. He should have explained to them the implications of the terms "lawful act", "lawful manner", "lawful means" and "with proper care and caution" and pointed out to them the application of the said legal terminology to the facts of the case. On such a charge as in the present case, it was not possible for the jury, who were laymen, to know the exact scope of the defence and also the circumstances under which the plea under s. 80 of the Indian Penal Code was made out. They would not have also known that if s. 80 of the Indian Penal Code applied, there was a presumption against the accused and the burden of proof to rebut the presumption was on him. In such circumstances, we cannot predicate that the jury understood the legal implications of s. 80 of the Indian Penal Code and the scope of the burden of proof under s. 105 of the Evidence Act, and gave their verdict correctly. Nor can we say that the jury understood the distinction between the ingredients of the offence and the circumstances that attract s. 80 of the Indian Penal Code and the impact of the proof of some of the said circumstances on the proof of the ingredients of the offence. The said omissions therefore are very grave omissions which certainly vitiated the verdict of the jury.

49. The next misdirection relates to the question of grave and sudden provocation. On this question, Shelat, J., made the following remarks:

"Thus the question whether a confession of adultery by the wife of accused to him amounts to grave and sudden provocation or not was a question of law. In my view, the learned Session Judge was in error in telling the jury that the entire question was one of fact for them to decide. It was for the learned Judge to decide as a question of law whether the sudden confession by the

wife of the accused amounted to grave and sudden provocation as against the deceased Ahuja which on the authorities referred to hereinabove it was not. He was therefore in error in placing this alternative case to the jury for their determination instead of deciding it himself."

50. The misdirection according to the learned Judge was that the Sessions Judge in his charge did not tell the jury that the sudden confession of the wife to the accused did not in law amount to sudden and grave provocation by the deceased, and instead he left the entire question to be decided by the jury. The learned judge relied upon certain English decisions and textbooks in support of his conclusion that the said question was one of law and that it was for the Judge to express his view thereon. Mr. Pathak contends that there is an essential difference between the law of England and that of India in the matter of the charge to the jury in respect of grave and sudden provocation. The House of Lords in Holmes v. Director of Public Prosecution L.R. (1946) A.C. 588 laid down the law in England thus:

"If there is no sufficient material, even on a view of the evidence most favourable to the accused, for a jury (which means a reasonable jury) to form the view that a reasonable person so provoked could be driven, through transport of passion and loss of self- control, to the degree and method and continuance of violence which produces the death it is the duty of the judge as matter of law to direct the jury that the evidence does not support a verdict of manslaughter. If, on the other hand, the case is one in which the view might fairly be taken (a) that a reasonable person, in consequence of the provocation received, might be so rendered subject to passion or loss of control as to be led to use the violence with fatal results, and (b) that the accused was in fact acting under the stress of such provocation, then it is for the jury to determine whether on its view of the facts manslaughter or murder is the appropriate verdict."

51. Viscount Simon brought out the distinction between the respective duties of the judge and the jury succinctly by formulating the following questions:

"The distinction, therefore, is between asking 'Could the evidence support the view that the provocation was sufficient to lead a reasonable person to do what the accused did?' (which is for the judge to rule), and, assuming that the judge's ruling is in affirmative, asking the jury: 'Do you consider that, on the facts as you find them from the evidence, the provocation was in fact enough to lead a reasonable person to do what the accused did ?' and, if so, 'Did the accused act under the stress of such provocation' ?"

52. So far as England is concerned the judgment of the House of Lords is the last word on the subject till it is statutorily changed or modified by the House of Lords. It is not, therefore, necessary to consider the opinions of learned authors on the subject cited before us to show that the said observations did not receive their approval.

53. But Mr. Pathak contends that whatever might be the law in England, in India we are governed by the statutory provisions, and that under the explanation to Exception I to s. 300 of the Indian Penal Code, the question "whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is one of fact", and therefore, unlike in England, in India both the aforesaid questions fall entirely within the scope of the jury and they are for them to decide. To put it in other words, whether a reasonable person in the circumstances of a particular case

committed the offence under provocation which was grave and sudden is a question of fact for the jury to decide. There is force in this argument, but it is not necessary to express our final opinion thereon, as the learned Attorney- General has conceded that there was no misdirection in regard to this matter.

54. The fourth misdirection found by the High Court is that the learned Sessions Judge told the jury that the prosecution relied on the circumstantial evidence and asked them to apply the stringent rule of burden of proof applicable to such cases, whereas in fact there was direct evidence of Puransingh in the shape of extra- judicial confession. In paragraph 8 of the charge the Sessions Judge said:

"In this case the prosecution relies on what is called circumstantial evidence that is to say there is no witness who can say that he saw the accused actually shooting and killing deceased. There are no direct witnesses, direct witnesses as they are called, of the event in question. Prosecution relies on certain circumstances from which they ask you to deduce an inference that it must be the accused and only the accused who must have committed this crime. That is called circumstantial evidence. It is not that prosecution cannot rely on circumstantial evidence because it is not always the case or generally the case that people who go out to commit crime will also take witnesses with them. So that it may be that in some cases the prosecution may have to rely on circumstantial evidence. Now when you are dealing with circumstantial evidence you will bear in mind certain principles, namely, that the facts on which the prosecution relies must be fully established. They must be fully and firmly established. These facts must lead to one conclusion and one only namely the guilt of the accused and lastly it must exclude all reasonable hypothesis consistent with the innocence of the accused, all reasonable hypothesis consistent with the innocence of the accused should be excluded. In other words you must come to the conclusion by all the human probability, it must be the accused and the accused only who must have committed this crime. That is the standard of proof in a case resting on circumstantial evidence."

55. Again in paragraph 11 the learned Sessions Judge observed that the jury were dealing with circumstantial evidence and graphically stated:

"It is like this, take a word, split it up into letters, the letters, may individually mean nothing but when they are combined they will form a word pregnant with meaning. That is the way how you have to consider the circumstantial evidence. You have to take all the circumstances together and judge for yourself whether the prosecution have established their case."

56. In paragraph 18 of the charge, the learned Sessions Judge dealt with the evidence of Puransingh separately and told the jury that if his evidence was believed, it was one of the best forms of evidence against the man who made the admission and that if thy accepted that evidence, then the story of the defence that it was an accident would become untenable. Finally he summarized all the circumstances on which the prosecution relied in paragraph 34 and one of the circumstances mentioned was the extra- judicial confession made to Puransingh. In that paragraph the learned Sessions Judge observed as follows:

"I will now summarize the circumstances on which the prosecution relies in this case. Consider whether the circumstances are established beyond all reasonable doubt. In this case you are dealing with circumstantial evidence and therefore consider whether they are fully and firmly established and consider whether they lead to one conclusion and only one conclusion that it is the accused alone who must have shot the deceased and further consider that it leaves no room for any reasonable hypothesis consistent with the innocence of the accused regard being had to all the circumstances in the case and the conclusion that you have to come to should be of this nature and by all human probability it must be the accused and the accused alone who must have committed this crime."

57. Finally the learned Sessions Judge told them:

"If on the other hand you think that the circumstances on which the prosecution relies are fully and firmly established, that they lead to one and the only conclusion and one only, of the guilt of the accused and that they exclude all reasonable hypothesis of the innocence of the accused then and in that case it will be your duty which you are bound by the oath to bring verdict accordingly without any fear or any favour and without regard being had to any consequence that this verdict might lead to."

58. Mr. Pathak contends that the learned Sessions Judge dealt with the evidence in two parts, in one part he explained to the jury the well settled rule of approach to circumstantial evidence, whereas in another part he clearly and definitely pointed to the jury the great evidentiary value of the extra- judicial confession of guilt by the accused made to Puransingh, if that was believed by them. He therefore, argues that there was no scope for any confusion in the minds of the jurors in regard to their approach to the evidence or in regard to the evidentiary value of the extra-judicial confession. The argument proceeds that even if there was a misdirection, it was not such as to vitiate the verdict of the jury. It is not possible to accept this argument. We have got to look at the question from the standpoint of the possible effect of the said misdirection in the charge on the jury, who are laymen. In more than one place the learned Sessions Judge pointed out that the case depended upon circumstantial evidence and that the jury should apply the rule of circumstantial evidence settled by decisions. Though at one place he emphasized upon evidentiary value of a confession he later on included that confession also as one of the circumstances and again directed the jury to apply the rule of circumstantial evidence. It is not disputed that the extra- judicial confession made to Puransingh is direct piece of evidence and that the stringent rule of approach to circumstantial evidence does not apply to it. If that confession was true, it cannot be disputed that the approach of the jury to the evidence would be different from that if that was excluded. It is not possible to predicate that the jury did not accept that confession and therefore applied the rule of circumstantial evidence. It may well have been that the jury accepted it and still were guided by the rule of circumstantial evidence as pointed out by the learned Sessions Judge. In these circumstances we must hold, agreeing with the High Court, that this is a grave misdirection affecting the correctness of the verdict.

59. The next misdirection relied upon by the High Court is the circumstance that the three letters written by Sylvia were not read to the jury by the learned Sessions Judge in his charge and that the jury were not told of their effect on the credibility of the evidence of Sylvia and Nanavati. Shelat, J., observed in regard to this circumstance thus :

"It cannot be gainsaid that these letters were important documents disclosing the state of mind of Mrs. Nanavati and the deceased to a certain extent. If these letters had been read in juxtaposition of Mrs. Nanavati's evidence they would have shown that her statement that she felt that Ahuja had asked her not to see him for a month for the purpose of backing out of the intended marriage was not correct and that they had agreed not to see each other for the purpose of giving her and also to him an opportunity to coolly think out the implications of such a marriage and then to make up her own mind on her own. The letters would also show that when the accused asked her, as he said in his evidence, whether Ahuja would marry her, it was not probable that she would fence that question. On the other hand, she would, in all probability, have told him that they had already decided to marry. In my view, the omission to refer even once to these letters in the charge especially in view of Mrs. Nanavati's evidence was a non- direction amounting to misdirection."

60. Mr. Pathak contends that these letters were read to the jury by counsel on both sides and a reference was also made to them in the evidence of Sylvia and, therefore the jury clearly knew the contents of the letters, and that in the circumstances the non- mention of the contents of the letters by the Sessions Judge was not a misdirection and even if it was it did not affect the verdict of the jury. In this context reliance is placed upon two English decisions, namely, R. v. Roberts [1942] 1 All. E.R. 187 and R. v. Attfield [1961] 3 All. E.R. 243. In the former case the appellant was prosecuted for the murder of a girl by shooting her with a service rifle and he pleaded accident as his defence. The Judge in his summing- up, among other defects, omitted to refer to the evidence of certain witnesses; the jury returned a verdict of "guilty" not the charge of murder and it was accepted by the judge, it was contended that the omission to refer to the evidence of certain witnesses was a misdirection. Rejecting that plea, Humphreys, J., observed :

"The jury had the Dagduas before them. They had the whole of the evidence before them, and they had, just before the summing up, comments upon those matters from counsel for the defence, and from counsel for the prosecution. It is incredible that they could have forgotten them or that they could have misunderstood the matter in any way, or thought, by reason of the fact that the judge did not think it necessary to refer to them, that they were not to pay attention to them. We do not think there is anything in that point at all. A judge, in summing- up, is not obliged to refer to every witness in the case, unless he thinks it necessary to do so. In saying this, the court is by no means saying that it might not have been more satisfactory if the judge had referred to the evidence of the two witnesses, seeing that he did not think it necessary to refer to some of the Dagduas made by the accused after the occurrence. No doubt it would have been more satisfactory from the point of view of the accused. All we are saying is that we are satisfied that there was no misdirection in law on the part of judge in omitting those statements, and it was within his discretion."

61. This passage does not lay down as a proposition of law that however important certain documents or pieces of evidence may be from the standpoint of the accused or the prosecution, the judge need not refer to or explain them in his summing- up to the jury, and, if he did not, it would not amount to misdirection under any circumstances. In that case some Dagduas made by witnesses were not specifically brought to the notice of the jury and the Court held in the circumstances of that case that there was no misdirection. In the latter case the facts were simple

and the evidence was short; the judge summed up the case directing the jury as to the law but did not deal with evidence except in regard to the appellant's character. The jury convicted the appellant. The court held that, "although in a complicated and lengthy case it was incumbent on the court to deal with the evidence in summing- up, yet where, as in the present case, the issues could be simply and clearly stated, it was not fatal defect for the evidence not to be reviewed in the summing- up." This is also a decision on the facts of that case. That apart, we are not concerned with a simple case here but with a complicated one. This decision does not help us in deciding the point raised. Whether a particular omission by a judge to place before the jury certain evidence amounts to a misdirection or not falls to be decided on the facts of each case.

62. These letters show the exact position of Sylvia in the context of her intended marriage with Ahuja, and help to test the truthfulness or otherwise of some of the assertions made by her to Nanavati. A perusal of these letters indicates that Sylvia and Ahuja were on intimate terms, that Ahuja was willing to marry her, that they had made up their minds to marry, but agreed to keep apart for a month to consider coolly whether they really wanted to marry in view of the serious consequences involved in taking such a step. Both Nanavati and Sylvia gave evidence giving an impression that Ahuja was backing out of his promise to marry Sylvia and that was the main reason for Nanavati going to Ahuja's flat for an explanation. If the Judge had read these letters in his charge and explained the implication of the contents thereof in relation to the evidence given by Nanavati and Sylvia, it would not have been possible to predicate whether the jury would have believed the evidence of Nanavati and Sylvia. If the marriage between them was a settled affair and if the only obstruction in the way was Nanavati, and if Nanavati had expressed his willingness to be out of the way and even to help them to marry, their evidence that Sylvia did not answer the direct question about the intentions of Ahuja to marry her, and the evidence of Nanavati that it became necessary for him to go to Ahuja's flat to ascertain the latter's intentions might not have been believed by the jury. It is no answer to say that the letters were read to the jury at different stages of the trial or that they might have read the letters themselves for in a jury trial, especially where innumerable documents are filed, it is difficult for a lay jury, unless properly directed, to realise the relative importance of specified documents in the context of different aspects of a case. That is why the Code of Criminal Procedure, under s. 297 thereof, imposes a duty on the Sessions Judge to charge the jury after the entire evidence is given, and after counsel appearing for the accused and counsel appearing for the prosecution have addressed them. The object of the charge to the jury by the Judge is clearly to enable him to explain the law and also to place before them the facts and circumstances of the case both for and against the prosecution in order to help them in arriving at a right decision. The fact that the letters were read to the jury by prosecution or by the counsel for the defence is not of much relevance, for they would place the evidence before the jury from different angles to induce them to accept their respective versions. That fact in itself cannot absolve the Judge from his clear duty to put the contents of the letters before the jury from the correct perspective. We are in agreement with the High Court that this was a clear misdirection which might have affected the verdict of the jury.

63. The next defect pointed out by the High Court is that the Sessions Judge allowed the counsel for the accused to elicit from the police officer, Phansalkar, what Puransingh is alleged to have stated to him orally, in order to contradict the evidence of Puransingh in the court, and the Judge also dealt with the evidence so elicited in paragraph 18 of his charge to the jury. This contention

cannot be fully appreciated unless some relevant facts are stated. Puransingh was examined for the prosecution as P.W. 12. He was a watchman of "Jivan Jyot". He deposed that when the accused was leaving the compound of the said building, he asked him why he had killed Ahuja, and the accused told him that he had a quarrel with Ahuja as the latter had "connections" with his wife and therefore he killed him. At about 5- 5 P.M. on April 27, 1959, this witness reported this incident to Gamdevi Police Station. On that day Phansalkar (P.W. 13) was the Station House Duty Officer at that station from 2 to 8 P.M. On the basis of the statement of Puransingh, Phansalkar went in a jeep with Puransingh to the place of the alleged offence. Puransingh said in his evidence that he told Phansalkar in the jeep what the accused had told him when he was leaving the compound of "Jivan Jyot". After reaching the place of the alleged offence, Phansalkar learnt from a doctor that Ahuja was dead and he also made enquiries from Miss Mammie, the sister of the deceased. He did not record the statement made by Puransingh. But latter on between 10 and 10-30 P.M. on the same day, Phansalkar made a statement to Inspector Mokashi what Puransingh had told him and that statement was recorded by Mokashi. In the statement taken by Mokashi it was not recorded that Puransingh told Phansalkar that the accused told him why he had killed Ahuja. When Phansalkar was in the witness- box to a question put to him in cross- examination he answered that Puransingh did not tell him that he had asked Nanavati whey he killed Ahuja and that the accused replied that he had a quarrel with the deceased as the latter had "connections" with his wife and that he had killed him. The learned Sessions Judge not only allowed the evidence to go in but also, in paragraph 18 of his charge to the jury, referred to that statement. After giving the summary of the evidence given by Puransingh, the learned Sessions Judge proceeded to state in his charge to the jury :

"Now the conversation between him and Phansalkar (Sub- Inspector) was brought on record in which what the chowkidar told Sub- Inspector Phansalkar was, the servants of the flat of Miss Ahuja had informed him that a Naval Officer was going away in the car. He and the servants had tried to stop him but the said officer drove away in the car saying that he was going to the Police Station and to Sub- Inspector Phansalkar he did not state about the admission made by Mr. Nanavati to him that he killed the deceased as the deceased had connections with his wife. The chowkidar said that he had told this also to sub- Inspector Phansalkar. Sub- Inspector Phansalkar said the Puransingh had not made this statement to him. You will remember that this chowkidar went to the police station at Gamdevi to give information about this crime and while coming back he was with Sub- Inspector Phansalkar and Sub- Inspector Phansalkar in his own statement to Mr. Mokashi has referred to the conversation which he had between him and this witness Puransingh and that had been brought on record as a contradiction."

64. The learned Sessions Judge then proceeded to state other circumstances and observed, "Consider whether you will accept the evidence of Puransingh or not." It is manifest from the summing- up that the learned Sessions Judge not only read to the jury the evidence of Phansalkar wherein he stated that Puransingh did not tell him that the accused told him why he killed Ahuja but also did not tell the jury that the evidence of Phansalkar was not admissible to contradict the evidence of Puransingh. It is not possible to predicate what was the effect of the alleged contradiction on the mind of the jury and whether they had not rejected the evidence of Puransingh because of that contradiction. If the said evidence was not admissible, the placing of that evidence before the jury was certainly a grave misdirection which must have affected their verdict. The question is whether such evidence is legally admissible. The alleged omission was

brought on record in the cross- examination of Phansalkar, and, after having brought it in, it was sought to be used to contradict the evidence of Puransingh. Learned Attorney- General contends that the statement made by Phansalkar to Inspector Mokashi could be used only to contradict the evidence of Phansalkar and not that of Puransingh under s. 162 of the Code of Criminal Procedure; and the statement made by Puransingh to Phansalkar, it not having been recorded, could not be used at all to contradict the evidence of Puransingh under the said section. He further argues that the alleged omission not being a contradiction, it could in no event be used to contradict Puransingh. Learned counsel for the accused, on the other hand, contends that the alleged statement was made to a police officer before the investigation commenced and, therefore, it was not hit by s. 162 of the Code of Criminal Procedure, and it could be used to contradict the evidence of Puransingh. Section 162 of the Code of Criminal Procedure reads :

(1) No statement made by any person to a Police officer in the course of an investigation under this Chapter shall, if reduced into writing be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made :

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872), and when any part of such statement is so used, any part thereof may also be used in the re- examination of such witness, but for the purpose only of explaining any matter referred to in his cross- examination.

65. The preliminary condition for the application of s. 162 of the Code is that the statement should have been made to a police- officer in the course of an investigation under Chapter XIV of the Code. If it was not made in the course of such investigation, the admissibility of such statement would not be governed by s. 162 of the Code. The question, therefore, is whether Puransingh made the statement to Phansalkar in the course of investigation. Section 154 of the Code says that every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police- station shall be reduced to writing by him or under his direction; and section 156(1) is to the effect that any officer in charge of a police- station may, without the order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIV relating to the place of inquiry or trial. The evidence in the case clearly establishes that Phansalkar, being the Station House Duty Officer at Gamdevi Police- station on April 27, 1959, from 2 to 8 P.M., was an officer in charge of the Police- station within the meaning of the said sections. Puransingh in his evidence says that he went to Gamdevi Police- station and gave the information of the shooting incident to the Gamdevi Police. Phansalkar in his evidence says that on the basis of the information he went along with Puransingh to the place of the alleged offence. His evidence also discloses that he had questioned Puransingh, the doctor and also Miss Mammie in regard to the said incident. On this uncontradicted evidence there cannot be any doubt that the investigation of the offence had commenced and Puransingh made the statement

to the police officer in the course of the said investigation. But it is said that, as the information given by Puransingh was not recorded by Police Officer Phansalkar as he should do under s. 154 of the Code of Criminal Procedure, no investigation in law could have commenced with the meaning of s. 156 of the Code. The question whether investigation had commenced or not is a question of fact and it does not depend upon any irregularity committed in the matter of recording the first information report by the concerned police officer. If so, s. 162 of the Code is immediately attracted. Under s. 162(1) of the Code, no statement made by any person to a Police-officer in the course of an investigation can be used for any purpose at any inquiry or trial in respect of any offence under investigation at the time when such statement was made. But the proviso lifts the ban and says that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing, any part of his statement, if duly proved, may be used by the accused to contradict such witness. The proviso cannot be invoked to bring in the statement made by Phansalkar to Inspector Mokashi in the cross- examination of Phansalkar, for the statement made by him was not used to contradict the evidence of Phansalkar. The proviso cannot obviously apply to the oral statement made by Puransingh to Phansalkar, for the said statement of Puransingh has not been reduced into writing. The faint argument of learned counsel for the accused that the statement of Phansalkar recorded by Inspector Mokashi can be treated as a recorded statement of Puransingh himself is to be stated only to be rejected, for it is impossible to treat the recorded statement of Phansalkar as the recorded statement of Puransingh by a police- officer. If so, the question whether the alleged omission of what the accused told Puransingh in Puransingh's oral statement to Phansalkar could be used to contradict Puransingh, in view of the decision of this Court in Tahsildar Singh's case MANU/SC/0053/1959 : [[1959] Supp. (2) S.C.R. 875], does not arise for consideration. We are, therefore, clearly of the opinion that not only the learned Sessions Judge acted illegally in admitting the alleged omission in evidence to contradict the evidence of Puransingh, but also clearly misdirected himself in placing the said evidence before the jury for their consideration.

66. In addition to the misdirections pointed out by the High Court, the learned Attorney- General relied upon another alleged misdirection by the learned Sessions Judge in his charge. In paragraph 28 of the charge, the learned Sessions Judge stated thus :

"No one challenges the marksmanship of the accused but Commodore Nanda had come to tell you that he is a good shot and Mr. Kandalawala said that here was a man and good marksman, would have shot him, riddled him with bullets perpendicularly and not that way and he further said that as it is not done in this case it shows that the accused is a good marksman and a good shot and he would not have done this thing, this is the argument."

67. The learned Attorney- General points out that the learned Sessions Judge was wrong in saying that no one challenged the marksmanship of the accused, for Commodore Nanda was examined at length on the competency of the accused as a marksman. Though this is a misdirection, we do not think that the said passage, having regard to the other circumstances of the case, could have in any way affected the verdict of the jury. It is, therefore, clear that there were grave misdirections in this case, affecting the verdict of the jury, and the High Court was certainly within its rights to consider the evidence and come to its own conclusion thereon.

68. The learned Attorney- General contends that if he was right in his contention that the High Court could consider the evidence afresh and come to its own conclusion, in view of the said misdirection, this Court should not, in exercise of its discretionary jurisdiction under Art. 136 of the Constitutions interfere with the findings of the High Court. There is force in this argument. But, as we have heard counsel at great length, we propose to discuss the evidence.

69. We shall now proceed to consider the evidence in the case. The evidence can be divided into three parts, namely, (i) evidence relating to the conduct of the accused before the shooting incident, (ii) evidence in regard to the conduct of the accused after the incident, and (iii) evidence in regard to the actual shooting in the bed- room of Ahuja.

70. We may start with the evidence of the accused wherein he gives the circumstances under which he came to know of the illicit intimacy of his wife Sylvia with the deceased Ahuja, and the reasons for which he went to the flat of Ahuja in the evening of April 27, 1959. After his brother and his brother's wife, who stayed with him for a few days, had left, he found his wife behaving strangely and without affection towards him. Though on that ground he was unhappy and worried, he did not suspect of her unfaithfulness to him. On the morning of April 27, 1959, he and his wife took out their sick dog to the Parel Animal Hospital. On their way back, they stopped at the Metro Cinema and his wife bought some tickets for the 3- 30 show. After coming home, they were sitting in the room for the lunch to be served when he put his arm around his wife affectionately and she seemed to go tense and was very unresponsive. After lunch, when his wife was reading in the sitting room, he told her "Look, we must get these things straight" or something like that, and "Do you still love me ?" As she did not answer, he asked her "Are you in love with some one else ?", but she gave no answer. At that time he remembered that she had not been to a party given by his brother when he was away on the sea and when asked why she did not go, she told him that she had a previous dinner engagement with Miss Ahuja. On the basis of this incident, he asked her "Is it Ahuja ?" and she said "Yes." When he asked her "Have you been faithful to me ?", she shook her head to indicate "No." Sylvia in her evidence, as D.W. 10, broadly supported this version. It appears to us that this is clearly a made- up conversation and an unnatural one too. Is it likely that Nanavati, who says in his evidence that prior to April 27, 1959, he did not think that his wife was unfaithful to him, would have suddenly thought that she had a lover on the basis of a trivial circumstance of her being unresponsive when he put his arm around her affectionately ? Her coldness towards him might have been due to many reasons. Unless he had a suspicion earlier or was informed by somebody that she was unfaithful to him, this conduct of Nanavati in suspecting his wife on the basis of the said circumstance does not appear to be the natural reaction of a husband. The recollection of her preference to attend the dinner given by Miss Mammie to that of his brother, in the absence of an earlier suspicion or information, could not have flashed on his mind the image of Ahuja as a possible lover of his wife. There was nothing extraordinary in his wife keeping a previous engagement with Mis Mammie and particularly when she could rely upon her close relations not to misunderstand her. The circumstances under which the confession of unfaithfulness is alleged to have been made do not appear to be natural. This inference is also reinforced by the fact that soon after the confession, which is alleged to have upset him so much, he is said to have driven his wife and children to the

cinema. If the confession of illicit intimacy between Sylvia and Ahuja was made so suddenly at lunch time, even if she had purchased the tickets, it is not likely that he would have taken her and the children to the cinema. Nanavati then proceeds to say in his evidence : on his wife admitting her illicit intimacy with Ahuja, he was absolutely stunned; he then got up and said that he must go and settle the matter with the swine; he asked her what were the intentions of Ahuja and whether Ahuja was prepared to marry her and look after the children; he wanted an explanation from Ahuja for his caddish conduct. In the cross- examination he further elaborated on his intentions thus : He thought of having the matters settled with Ahuja; he would find out from him whether he would take an honourable way out of the situation; and he would thrash him if he refused to do so. The honourable course which he expected of the deceased was to marry his wife and look after the children. He made it clear further that when he went to see Ahuja the main thing in his mind was to find out what Ahuja's intentions were towards his wife and children and to find out the explanation for his conduct. Sylvia in her evidence says that when she confessed her unfaithfulness to Nanavati, the latter suddenly got up rather excitedly and said that he wanted to go to Ahuja's flat and square up the things. Briefly stated, Nanavati, according to him, went to Ahuja's flat to ask for an explanation for seducing his wife and to find out whether he would marry Sylvia and take care of the children. Is it likely that a person, situated as Nanavati was, would have reacted in the manner stated by him ? It is true that different persons react, under similar circumstances, differently. A husband to whom his wife confessed of infidelity may kill his wife, another may kill his wife as well as her paramour, the third, who is more sentimental, may commit suicide, and the more sophisticated one may give divorce to her and marry another. But it is most improbable, even impossible, that a husband who has been deceived by his wife would voluntarily go to the house of his wife's paramour to ascertain his intentions, and, what is more, to ask him to take charge of his children. What was the explanation Nanavati wanted to get from Ahuja ? His wife confessed that she had illicit intimacy with Ahuja. She is not a young girl, but a woman with three children. There was no question of Ahuja seducing an innocent girl, but both Ahuja and Sylvia must have been willing parties to the illicit intimacy between them. That apart, it is clear from the evidence that Ahuja and Sylvia had decided to marry and, therefore, no further elucidation of the intention of Ahuja by Nanavati was necessary at all. It is true that Nanavati says in his evidence that when he asked her whether Ahuja was prepared to marry her and look after the children, she did not give any proper rely; and Sylvia also in her evidence says that when her husband asked her whether Ahuja was willing to marry her and look after the children she avoided answering that question as she was too ashamed to admit that Ahuja was trying to back out from the promise to marry her. That this version is not true is amply borne out by the letters written by Sylvia to Ahuja. The first letter written by Sylvia is dated May 24, 1958, but that was sent to him only on March 19, 1959, along with another letter. In that letter dated May 24, 1958, she stated :

"Last night when you spoke about your need to marry and about the various girls you may marry, something inside me snapped and I know that I could not bear the thought of your loving or being close to someone else."

71. Reliance is placed upon these words by learned counsel for the accused in support of his contention that Ahuja intended to marry another girl. But this letter is of May 1958 and by that time it does not appear that there was any arrangement between Sylvia and Ahuja to marry. It may well have been that Ahuja was telling Sylvia about his intentions to marry another girl to

make her jealous and to fall in for him. But as days passed by, the relationship between them had became very intimate and they began to love each other. In the letter dated March 19, 1959, she said : "Take a chance on our happiness, my love. I will do my best to make you happy; I love you, I want you so much that everything is bound to work out well." The last sentence indicates that they had planned to marry. Whatever ambiguity there may be in these words, the letter dated April 17, 1959, written ten days prior to the shooting incident, dispels it; therein she writes.

"In any case nothing is going to stop my coming to you. My decision is made and I do not change my mind. I am taking this month so that we may afterwards say we gave ourselves every chance and we know what we are doing. I am torturing myself in every possible way as you asked, so that, there will be no surprise afterwards."

72. This letter clearly demonstrates that she agreed not to see Ahuja for a month, not because that Ahuja refused to marry her, but because it was settled that they should marry, and that in view of the far- reaching effects of the separation from her husband on her future life and that of her children, the lovers wanted to live separately to judge for themselves whether they really loved each other so much as to marry. In the cross- examination she tried to wriggle out of these letters and sought to explain them away; but the clear phraseology of the last letter speaks for itself, and her oral evidence, contrary to the contents of the letters, must be rejected. We have no doubt that her evidence, not only in regard to the question of marriage but also in regard to other matters, indicates that having lost her lover, out of necessity or out of deep penitence for her past misbehavior, she is out to help her husband in his defence. This correspondence belies the entire story that Sylvia did not reply to Nanavati when the latter asked her whether Ahuja was willing to marry her and that that was the reason why Nanavati wanted to visit Ahuja to ask him about his intentions. We cannot visualize Nanavati as a romantic lover determined to immolate himself to give opportunity to his unfaithful wife to start a new life of happiness and love with her paramour after convincing him that the only honourable course open to him was to marry her and take over his children. Nanavati was not ignorant of the ways of life or so gullible as to expect any chivalry or honour in a man like Ahuja. He is an experienced Naval Officer and not a sentimental hero of a novel. The reason therefore for Nanavati going to Ahuja's flat must be something other than asking him for an explanation and to ascertain his intention about marrying his wife and looking after the children.

73. Then, according to Nanavati, he drove his wife and children to cinema, and promising them to come and pick them up at the end of the show at about 6 P.M., he drove straight to his ship. He would say that he went to his ship to get medicine for his sick dog. Though ordinarily this statement would be insignificant, in the context of the conduct of Nanavati, it acquires significance. In the beginning of his evidence, he says that on the morning of the day of the incident he and his wife took out their sick dog to the Parel Animal Hospital. It is not his evidence that after going to the hospital he went to his ship before returning home. It is not even suggested that in the ship there was a dispensary catering medicine for animals. This statement, therefore, is not true and he did not go to the ship for getting medicine for his dog but for some other purpose, and that purpose is clear from his subsequent evidence. He met Captain Kolhi and asked for his permission to draw a revolver and six rounds because he was going to drive to Ahmednagar by night. Captain Kolhi gave him the revolver and six rounds, he immediately

loaded the revolver with all the six rounds and put the revolver inside an envelope which was lying in his cabin. It is not the case of the accused that he really wanted to go to Ahmednagar and he wanted the revolver for his safety. Then why did he take the revolver ? According to him, he wanted to shoot himself after driving far away from his children. But he did not shoot himself either before or after Ahuja was shot dead. The taking of the revolver on a false pretext and loading it with six cartridges indicate the intention on his part to shoot somebody with it.

74. Then the accused proceeded to state that he put the envelope containing the revolver in his car and found himself driving to Ahuja's office. At Ahuja's office he went in keeping the revolver in the car, and asked Talaja, the Sales Manager of Universal Motors of which Ahuja was the proprietor whether Ahuja was inside. He was told that Ahuja was not there. Before leaving Ahuja's office, the accused looked for Ahuja in the Show Room, but Ahuja was not there. In the cross- examination no question was put to Nanavati in regard to his statement that he kept the revolver in the car when he entered Ahuja's office. On the basis of this statement, it is contended that if Nanavati had intended to shoot Ahuja he would have taken the revolver inside Ahuja's office. From this circumstance it is not possible to say that Nanavati's intention was not to shoot Ahuja. Even if his statement were true, it might well have been that he would have gone to Ahuja's office not to shoot him there but to ascertain whether he had left the office for his flat. Whatever it may be, from Ahuja's office he straightway drove to the flat of Ahuja. His conduct at the flat is particularly significant. His version is that he parked his car in the house compound near the steps, went up the steps, but remembered that his wife had told him that Ahuja might shoot him and so he went back to his car, took the envelope containing the revolver, and went up to the flat. He rang the doorbell; when a servant opened the door, he asked him whether Ahuja was in. Having ascertained that Ahuja was in the house, he walked to his bedroom, opened the door and went in shutting the door behind him. This conduct is only consistent with his intention to shoot Ahuja. A person, who wants to seek an interview with another in order to get an explanation for his conduct or to ascertain his intentions in regard to his wife and children, would go and sit in the drawing- room and ask the servant to inform his master that he had come to see him. He would not have gone straight into the bed- room of another with a loaded revolver in hand and closed the door behind. This was the conduct of an enraged man who had gone to wreak vengeance on a person who did him a grievous wrong. But it is said that he had taken the loaded revolver with him as his wife had told him that Ahuja might shoot him. Earlier in his cross- examination he said that when he told her that he must go and settle the matter with the "swine" she put her hand upon his arm and said, "No, No, you must not go there, don't go there, he may shoot you." Sylvia in her evidence corroborates his evidence in this respect : But Sylvia has been cross- examined and she said that she knew that Ahuja had a gun and she had seen it in Ashoka Hotel in New Delhi and that she had not seen any revolver at the residence of Ahuja at any time. It is also in evidence that Ahuja had not licence for a revolver and no revolver of his was found in his bed- room. In the circumstances, we must say that Sylvia was only attempting to help Nanavati in his defence. We think that the evidence of Nanavati supported by that of Sylvia was a collusive attempt on their part to explain away the otherwise serious implication of Nanavati carrying the loaded revolver into the bed- room of Ahuja. That part of the version of the accused in regard to the manner of his entry into the bed- room of Ahuja, was also supported by the evidence of Anjani (P.W. 8), the bearer, and Deepak, the Cook. Anjani opened the door of the flat to Nanavati at about 4- 20 P.M. He served tea to his master at about 4- 15 P.M. Ahuja then telephoned to ascertain the correct time and then went to his bed- room. About five minutes

thereafter this witness went to the bed- room of his master to bring back the tea- tray from there, and at that time his master went into the bathroom for his bath. Thereafter, Anjani went to the kitchen and was preparing tea when he heard the door- bell. He then opened the door to Nanavati. This evidence shows that at about 4- 20 P.M. Ahuja was taking his bath in the bathroom and immediately thereafter Nanavati entered the bed- room. Deepak, the cook of Ahuja, also heard the ringing of the door- bell. He saw the accused opening the door of the bed- room with a brown envelope in his hand and calling the accused by his name "Prem"; he also saw his master having a towel wrapped around his waist and combing his hair standing before the dressing-table, when the accused entered the room and closed the door behind him. These two witnesses are natural witnesses and they have been examined by the police on the same day and nothing has been elicited against them to discredit their evidence. The small discrepancies in their evidence do not in any way affect their credibility. A few seconds thereafter, Mammie, the sister of the deceased, heard the crack of the window pane. The time that elapsed between Nanavati entering the bed- room of Ahuja and her hearing the noise was about 15 to 20 seconds. She describes the time that elapsed between the two events as the time taken by her to take up her saree from the door of her dressing- room and her coming to the bed- room door. Nanavati in his evidence says that he was in the bed- room of Ahuja for about 30 to 60 seconds. Whether it was 20 seconds, as Miss Mammie says, or 30 to 60 seconds, as Nanavati deposes, the entire incident of shooting took place in a few seconds.

75. Immediately after the sounds were heard, Anjani and Miss Mammie entered the bed- room and saw the accused.

76. The evidence discussed so far discloses clearly that Sylvia confessed to Nanavati of her illicit intimacy with Ahuja; that Nanavati went to his ship at about 3.30 P.M. and took a revolver and six rounds on a false pretext and loaded the revolver with six rounds; that thereafter he went to the office of Ahuja to ascertain his whereabouts, but was told that Ahuja had left for his house; that the accused then went to the flat of the deceased at about 4- 20 P.M.; that he entered the flat and then the bed- room unceremoniously with the loaded revolver, closed the door behind him and a few seconds thereafter sounds were heard by Miss Mammie, the sister of the deceased, and Anjani, a servant; that when Miss Mammie and Anjani entered the bed- room, they saw the accused with the revolver in his hand, and found Ahuja lying on the floor of the bathroom. This conduct of the accused to say the least, is very damaging for the defence and indeed in itself ordinarily sufficient to implicate him in the murder of Ahuja.

77. Now we shall scrutinize the evidence to ascertain the conduct of the accused from the time he was found in the bed- room of Ahuja till he surrendered himself to the police. Immediately after the shooting, Anjani and Miss Mammie went into the bed- room of the deceased. Anjani says in his evidence that he saw the accused facing the direction of his master who was lying in the bathroom.; that at that time the accused was having a "pistol" in his hand; that when he opened the door, the accused turned his face towards this witness and saying that nobody should come in his way or else he would shoot at them, he brought his "pistol" near the chest of the witness;

and that in the meantime Miss Mammie came there, and said that the accused had killed her brother.

78. Miss Mammie in her evidence says that on hearing the sounds, she went into the bed- room of her brother, and there she saw the accused nearer to the radiogram than to the door with a gun in his hand; that she asked the accused "what is this ?" but she did not hear the accused saying anything.

79. It is pointed out that there are material contradictions between what was stated by Miss Mammie and what was stated by Anjani. We do not see any material contradictions. Miss Mammie might not have heard what the accused said either because she came there after the aforesaid words were uttered or because in her anxiety and worry she did not hear the words. The different versions given by the two witnesses in regard to what Miss Mammie said to the accused is not of any importance as the import of what both of them said is practically the same. Anjani opened the door to admit Nanavati into the flat and when he heard the noise he must have entered the room. Nanavati himself admitted that he saw a servant in the room, though he did not know him by name; he also saw Miss Mammie in the room. These small discrepancies, therefore, do not really affect their credibility. In effect and substance both saw Nanavati with a fire- arm in his hand - though one said pistol and the other gun - going away from the room without explaining to Miss Mammie his conduct and even threatening Anjani. This could only be the conduct of a person who had committed a deliberate murder and not of one who had shot the deceased by accident. If the accused had shot the diseased by accident, he would have been in a depressed and apologetic mood and would have tried to explain his conduct to Miss Mammie or would have phoned for a doctor or asked her to send for one or at any rate he would not have been in a belligerent mood and threatened Anjani with his revolver. Learned counsel for the accused argues that in the circumstances in which the accused was placed soon after the accidental shooting he could not have convinced Miss Mammie with any amount of explanation and therefore there was no point in seeking to explain his conduct to her. But whether Miss Mammie would have been convinced by his explanation or not, if Nanavati had shot the deceased by accident, he would certainly have told her particularly when he knew her before and when she happened to be the sister of the man shot at. Assuming that the suddenness of the accidental shooting had so benumbed his senses that he failed to explain the circumstances of the shooting to her, the same cannot be said when he met others at the gate. After the accused had come out of the flat of Ahuja, he got into his car and took a turn in the compound. He was stopped near the gate by Puransingh, P.W. 12, the watchman of the building. As Anjani had told him that the accused had killed Ahuja the watchman asked him why he had killed his master. The accused told him that he had a quarrel with Ahuja as the latter had "connections" with his wife and therefore he killed him. The watchman told the accused that he should not go away from the place before the police arrived, but the accused told him that he was going to the police and that if he wanted he could also come with him in the car. At that time Anjani was standing in front of the car and Deepak was a few feet away. Nanavati says in his evidence that it was not true that he told Puransingh that he had killed the deceased as the latter had "connection" with his wife and that the whole idea was quite absurd. Puransingh is not shaken in his cross- examination. He is an independent witness; though he is a watchman of Jivan Jyot, he was not an employee of the deceased. After the accused left the place, this witness, at the instance of Miss Mammie, went to

Gamdevi Police Station and reported the incident to the police officer Phansalkar, who was in charge of the police- station at that time, at about 5- 5 P.M. and came along with the said police-officer in the jeep to Jivan Jyot at about 7 P.M. he went along with the police- officer to the police station where his statement was recorded by Inspector Mokashi late in the night. It is suggested that this witness had conspired with Deepak and Anjani and that he was giving false evidence. We do not see any force in this contention. His statement was regarded on the night of the incident itself. It is impossible to conceive that Miss Mammie, who must have had a shock, would have been in a position to coach him up to give a false statement. Indeed, her evidence discloses that she was drugged to sleep that night. Can it be said that these two illiterate witnesses, Anjani and Deepak, would have persuaded him to make false statement that night. Though both of them were present when Puransingh questioned the accused, they deposed that they were at a distance and therefore they did not hear what the accused told Puransingh. If they had all colluded together and were prepared to speak to a false case, they could have easily supported Puransingh by stating that they also heard what the accused told Puransingh. We also do not think that these two witnesses are so intelligent as to visualize the possible defence and beforehand coached Puransingh to make a false statement on the very night of the incident. Nor do we find any inherent improbability in his evidence if really Nanavati had committed the murder. Having shot Ahuja he was going to surrender himself to the police; he knew that he had committed a crime; he was not a hardened criminal and must have had a moral conviction that he was justified in doing what he did. It was quite natural, therefore, for him to confess his guilt and justify his act to the watchman who stopped him and asked him to wait there till the police came. In the mood in which Nanavati was soon after the shooting, artificial standards of status or position would not have weighed in his mind if he was going to confess and surrender to the police. We have gone through the evidence of Puransingh and we do not see any justification to reject his evidence.

80. Leaving Jivan Jyot the accused drove his car and came to Raj Bhavan Gate. There he met a police constable and asked him for the location of the nearest police station. The direction given by the police constable were not clear and, therefore, the accused requested him to go along with him to the police station, but the constable told him that as he was on duty, he could not follow him. This is a small incident in itself, but it only shows that the accused was anxious to surrender himself to the police. This would not have been the conduct of the accused, if he had shot another by accident, for in that event he would have approached a lawyer or a friend for advice before reporting the incident to the police. As the police constable was not able to give him clear directions in regard to the location of the nearest police station, the accused went to the house of Commander Samuel, the Naval Provost Marshal. What happened between the accused and Samuel is stated by Samuel in his evidence as P.W. 10. According to his evidence, on April 27, 1959, at about 4.45 P.M., he was standing at the window of his study in his flat on the ground floor at New Queen's Road. His window opens out on the road near the band stand. The accused came up to the window and he was in a dazed condition. The witness asked him what had happened, and the accused told him, "I do not quite know what happened, but I think I have shot a man." The witness asked him how it happened, and the accused told him that the man had seduced his wife and he would not stand it. When the witness asked him to come inside and explain everything calmly, the accused said "No, thank you, I must go", "please tell me where I should go and report." Though he asked him again to come in, the accused did not go inside and, therefore, this witness instructed him to go to the C.I.D. Office and report to the Deputy

Commissioner Lobo. The accused asked him to phone to Lobo and he telephoned to Lobo and told him that an officer by name Commander Nanavati was involved in an affair and that he was on the way to report to him. Nanavati in his evidence practically corroborates the evidence of Samuel. Nanavati's version in regard to this incident is as follows :

"I told him that something terrible had happened, that I did not know quite what had happened but I thought I had shot a man. He asked me where this had happened. I told him at Nepean Sea Road. He asked me why I had been there. I told him I went there because a fellow there had seduced my wife and I would not stand for it. He asked me many times to go inside his room. But I was not willing to do so. I was anxious to go to the police station. I told Commander Samuel that there had been a fight over a revolver. Commander Samuel asked to report to Deputy Commissioner Lobo."

81. The difference between the two versions lies in the fact that while Nanavati said that he told Samuel that something terrible had happened, Samuel did not say that; while Nanavati said that he told Samuel that there had been a fight over a revolver, Samuel did not say that. But substantially both of them say that though Samuel asked Nanavati more than once to get inside the house and explain to him everything calmly, Nanavati did not do so; both of them also deposed that the accused told Samuel, "I do not quite know what happened but I think I have shot a man." It may be mentioned that Samuel is a Provost Marshal of the Indian navy, and he and the accused are of the same rank though the accused is senior to Samuel as Commander. As Provost Marshal, Samuel discharges police duties in the navy. It is probable that if the deceased was shot by accident, the accused would not have stated that fact to this witness ? Is it likely that he would not have stepped into his house, particularly when he requested him more than once to come in and explain to him how the accident had taken place ? Would he not have taken his advice as a colleague before he proceeded to the police station to surrender himself ? The only explanation for this unusual conduct on the part of the accused is that, having committed the murder, he wanted to surrender himself to the police and to make a clean breast of everything. What is more, when he was asked directly what had happened he told him "I do not quite know what happened but I think I have shot a man". When he was further asked how it happened, that is, how he shot the man he said that the man had seduced his wife and that he would not stand for it. In the context his two answers read along with the questions put to him by Samuel only mean that, as the deceased had seduced his wife, the accused shot him as he would not stand for it. If really the accused shot the deceased by accident, why did he not say that fact to his colleague, particularly when it would not only be his defence, if prosecuted, but it would put a different complexion to his act in the eyes of his colleague. But strong reliance is placed on what this witness stated in the cross- examination viz., "I heard the word fight from the accused", "I heard some other words from the accused but I could not make out a sense out of these words". Learned counsel for the accused contends that this statement shows that the accused mentioned to Samuel that the shooting of the deceased was in a fight. It is not possible to build upon such slender foundation that the accused explained to Samuel that he shot the deceased by accident in a struggle. The statement in the cross- examination appears to us to be an attempt on the part of this witness to help his colleague by saying something which may fit in the scheme of his defence, though at the same time he is not willing to lie deliberately in the witness- box, for he clearly says that he could not make out the sense of the words spoken along with the word "fight". This vague

statement of this witness, without particulars, cannot detract from the clear evidence given by him in the examination- in- chief.

82. What Nanavati said to the question put by the Sessions Judge under s. 342 of the Code of Criminal Procedure supports Samuel's version. The following question was put to him by the learned Sessions Judge :

Q. - It is alleged against you that thereafter as aforesaid you went to Commander Samuel at about 4.45 P.M. and told him that something terrible had happened and that you did not quite know but you thought that you shot a man as he had seduced your wife which you could not stand and that on the advice of Commander Samuel you then went to Deputy Commissioner Lobo at the Head Crime Investigation Department Office. Do you wish to say anything about this ?

83. A. - This is correct.

84. Here Nanavati admits that he told Commander Samuel that he shot the man as he had seduced his wife. Learned counsel for the accused contends that the question framed was rather involved and, therefore, Nanavati might not have understood its implication. But it appears from the statement that, after the questions were answered, Nanavati read his answers and admitted that they were correctly recorded. The answer is also consistent with what Samuel said in his evidence as to what Nanavati told him. This corroborates the evidence of Samuel that Nanavati told him that, as the man had seduced his wife, he thought that he had shot him. Anyhow, the accused did not tell the Court that he told Samuel that he shot the deceased in a fight.

85. Then the accused, leaving Samuel, went to the office of the Deputy Commissioner Lobo. There, he made a statement to Lobo. At that time, Superintendent Korde and Inspector Mokashi were also present. On the information given by him, Lobo directed Inspector Mokashi to take the accused into custody and to take charge of the articles and to investigate the case.

86. Lobo says in his evidence that he received a telephone call from Commander Samuel to the effect that he had directed Commander Nanavati to surrender himself to him as he had stated that he had shot a man. This evidence obviously cannot be used to corroborate what Nanavati told Samuel, but it would only be a corroboration of the evidence of Samuel that he telephoned to Lobo to that effect. It is not denied that the accused set up the defence of accident for the first time in the Sessions Court. This conduct of the accused from the time of the shooting of Ahuja to the moment he surrendered himself to the police is inconsistent with the defence that the deceased was shot by accident. Though the accused had many opportunities to explain himself, he did not do so; and he exhibited the attitude of a man who wreaked out his vengeance in the manner planned by him and was only anxious to make a clean breast of everything to the police.

87. Now we will consider what had happened in the bed- room and bathroom of the deceased. But before considering the evidence on this question, we shall try to describe the scene of the incident and other relevant particulars regarding the things found therein.

88. The building "Jivan Jyot" is situate in Setalvad Road, Bombay. Ahuja was staying on the first floor of that building. As one goes up the stairs, there is a door leading into the hall; as one enters the hall and walks a few feet towards the north he reaches a door leading into the bed- room of Ahuja. In the bed- room, abutting the southern wall there is a radiogram; just after the radiogram there is a door on the southern wall leading to the bathroom, on the eastern side of the door abutting the wall there is a cupboard with a mirror thereon; in the bathroom, which is of the dimensions 9 feet x 6 feet, there is a commode in the front along the wall, above the commode there is a window with glass panes overlooking the chowk, on the east of the commode there is a bath- tub, on the western side of the bathroom there is a door leading into the hall; on the southern side of the said door there is a wash- basin adjacent to the wall.

89. After the incident the corpse of Ahuja was found in the bathroom; the head of the deceased was towards the bed- room and his legs were towards the commode. He was lying with his head on his right hand. This is the evidence of Miss Mammie, and she has not been cross- examined on it. It is also not contradicted by any witness. The top glass pane of the window in the bathroom was broken. Pieces of glass were found on the floor of the bathroom between the commode and the wash- basin. Between the bath- tub and the commode a pair of spectacles was lying on the floor and there were also two spent bullets. One chappal was found between the commode and the wash basin, and the other was found in the bedroom. A towel was found wrapped around the waist of the deceased. The floor of the bathroom was bloodstained. There was white handkerchief and bath- towel, which was bloodstained lying on the floor. The western wall was found to be bloodstained and drops of blood were trickling down. The handle of the door leading to the bathroom from the bed- room and a portion of the door adjacent to the handle were bloodstained from the inner side. The blood on the wall was little over three feet from the floor. On the floor of the bed- room there was an empty brown envelope with the words "Lt. Commander K.M. Nanavati" written on it. There was no mark showing that the bullets had hit any surface. (See the evidence of Rashmikant, P.W. 16)

90. On the dead- body the following injuries were found :

(1) A punctured would 1/4" x 1/4" x chest cavity deep just below and inside the inner end of the right collar bone with an abrasion collar on the right side of the wound.

(2) A lacerated punctured wound in the web between the ring finger and the little finger of the left hand 1/4" x 1/4" communicating with a punctured would 1/4" x 1/4" on the palmar aspect of the left hand at knuckle level between the left little and the ring finger. Both the wounds were communicating.

(3) A lacerated ellipsoid would oblique in the left parietal region with dimensions 1 1/8" x 1/4" x skull deep.

(4) A lacerated abrasion with carbonaceous tattooing 1/4" x 1/6" at the distal end of the proximal interphalangeal joint of the left index finger dorsal aspect. That means at the first joint of the crease of the index finger on its dorsal aspect, i.e., back aspect.

(5) A lacerated abrasion with carbonaceous tattooing 1/4" x 1/6" at the joint level of the left middle finger dorsal aspect.

(6) Vertical abrasion inside the right shoulder blade 3" x 1" just outside the spine.

91. On internal examination the following wounds were found by Dr. Jhala, who performed the autopsy on the dead- body. Under the first injury there was :

"A small ellipsoid wound oblique in the front of the piece of the breast bone (Sternum) upper portion right side center with dimensions 1/4" x 1/3" and at the back of the bone there was a lacerated wound accompanied by irregular chip fracture corresponding to external injury No. 1, i.e., the punctured wound chest cavity deep. Same wound continued in the contusion in area 3" x 1 1/4" in the right lung upper lobe front border middle portion front and back. Extensive clots were seen in the middle compartment upper and front part surrounding the laceration impregnated pieces of fractured bone. There was extensive echymosis and contusion around the root of the right lung in the diameter of 2 1/2" involving also the inner surface of the upper lobe. There were extensive clots of blood around the aorta. The left lung was markedly pale and showed a through and through wound in the lower lobe beginning at the inner surface just above the root opening out in the lacerated wound in the back region outer aspect at the level between 6th and 7th ribs left side not injuring the rib and injuring the space between the 6th and 7th rib left side 2" outside the junction of the spine obliquely downward and outward. Bullet was recovered from tissues behind the left shoulder blade. The wound was lacerated in the whole tract and was surrounded by contusion of softer tissues."

92. The doctor says that the bullet, after entering "the inner end, went backward, downward and then to the left" and therefore he describes the wound as "ellipsoid and oblique". He also points out that the abrasion collar was missing on the left side. Corresponding to the external injury No. 3, the doctor found on internal examination that the skull showed a haematoma under the scalp, i.e., on the left parietal region; the dimension was 2" x 2". The skull cap showed a gutter fracture of the outer table and a fracture of the inner table. The brain showed sub- arachnoid haemorrhage over the left parieto- occipital region accompanying the fracture of the vault of the skull.

93. A description of the revolver with which Ahuja was shot and the manner of its working would be necessary to appreciate the relevant evidence in that regard. Bhanagay, the Government Criminologist, who was examined as P.W. 4, describes the revolver and the manner of its working. The revolver is a semi- automatic one and it is six- chambered. To load the revolver one has to release the chamber; when the chamber is released, it comes out on the left side. Six cartridges can be inserted in the holes of the chamber and then the chamber is pressed to the revolver. After the revolver is thus loaded, for the purpose of firing one has to pull the trigger of the revolver; when the trigger is pulled the cartridge gets cocked and the revolver being semi-automatic the hammer strikes the percussion cap of the cartridge and the cartridge explodes and the bullet goes off. For firing the second shot, the trigger has to be pulled again and the same process will have to be repeated each time it is fired. As it is not an automatic revolver, each time it is fired, the trigger has to be pulled and released. If the trigger is pulled but not released, the second round will not come in its position of firing. Pulling of the trigger has a double action - one is the rotating of the chamber and cocking, and the other, releasing of the hammer. Because of this double action, the pull must be fairly strong. A pressure of about 20 pounds is required for pulling the trigger. There is controversy on the question of pressure, and we shall deal with this at the appropriate place.

94. Of the three bullets fired from the said revolver, two bullets were found in the bathroom, and the third was extracted from the back of the left shoulder blade. Exs. F- 2 and F- 2a are the bullets found in the bathroom. These two bullets are flattened and the copper jacket of one of the bullets, Ex. F- 2a, has been turn off. The third bullet is marked as Ex. F- 3.

95. With this background let us now consider the evidence to ascertain whether the shooting was intentional, as the prosecution avers, or only accidental, as the defence suggests. Excepting Nanavati, the accused, and Ahuja, the deceased, no other person was present in the latter's bed-room when the shooting took place. Hence the only person who can speak to the said incident is the accused Nanavati. The version of Nanavati, as given in his evidence may be stated thus : He walked into Ahuja's bed- room, shutting the door behind him. Ahuja was standing in front of the dressing- table. The accused walked towards Ahuja and said, "You are a filthy swine", and asked him, "Are you going to marry Sylvia and look after the kids ?" Ahuja became enraged and said in a nasty manner, "Do I have to marry every woman that I sleep with ?" Then the deceased said, "Get the hell out of here, otherwise, I will have you thrown out." The accused became angry, put the packet containing the revolver down on a cabinet which was near him and told him, "By God I am going to thrash you for this." The accused had his hands up to fight the deceased, but the latter made a sudden grab towards the packet containing the revolver. The accused grappled the revolver himself and prevented the deceased from getting it. He then whipped out the revolver and told the deceased to get back. The deceased was very close to him and suddenly caught with his right hand the right hand of the accused at the wrist and tried to twist it and take the revolver off it. The accused "banged" the deceased towards the door of the bathroom, but Ahuja would not let go of his grip and tried to kick the accused with his knee in the groin. The accused pushed Ahuja again into the bathroom, trying at the same time desperately to free his hand from the grip of the accused by jerking it around. The deceased had a very strong grip and he did not let go the grip. During the struggle, the accused thought that two shots went off : one went first and within a few seconds another. At the first shot the deceased just kept hanging on to the hand of the

accused, but suddenly he let go his hand and slumped down. When the deceased slumped down, the accused immediately came out of the bathroom and walked down to report to the police.

96. By this description the accused seeks to raise the image that he and the deceased were face to face struggling for the possession of the revolver, the accused trying to keep it and the deceased trying to snatch it, the deceased catching hold of the wrist of the right hand of the accused and twisting it, and the accused desperately trying to free his hand from his grip; and in the struggle two shots went off accidentally - he does not know about the third shot - and hit the deceased and caused his death. But in the cross- examination he gave negative answers to most of the relevant questions put to him to test the truthfulness of his version. The following answers illustrate his unhelpful attitude in the court :

(1) I do not remember whether the deceased had the towel on him till I left the place.

(2) I had no idea where the shots went because we were shuffling during the struggle in the tiny bathroom.

(3) I have no impression from where and how the shots were fired.

(4) I do not know anything about the rebound of shots or how the shots went off.

(5) I do not even know whether the spectacles of the deceased fell off.

(6) I do not know whether I heard the third shot. My impression is that I heard two shots.

(7) I do not remember the details of the struggle.

(8) I do not give any thought whether the shooting was an accident or not, because I wished to go to the police and report to the police.

(9) I gave no thought to this matter. I thought that something serious had happened.

(10) I cannot say how close we were to each other, we might be very close and we might be at arm's length during the struggle.

(11) I cannot say how the deceased had his grip on my wrist.

(12) I do not remember feeling any blows from the deceased by his free hand during the struggle; but he may have hit me.

97. He gives only a vague outline of the alleged struggle between him and the deceased. Broadly looked at, the version given by the accused appears to be highly improbable. Admittedly he had entered the bed- room of the deceased unceremoniously with a fully loaded revolver; within half a minute he cannot out of the room leaving Ahuja dead with bullet wounds. The story of his keeping the revolver on the cabinet is very unnatural. Even if he had kept it there, how did Ahuja come to know that it was a revolver for admittedly it was put in an envelope. Assuming that Ahuja had suspected that it might be a revolver, how could he have caught the wrist of Nanavati who had by that time the revolver in his hand with his finger on the trigger ? Even if he was able to do so, how did Nanavati accidentally pull the trigger three times and release it three times when already Ahuja was holding his wrist and when he was jerking his hand to release it from the grip of Ahuja ? It also appears to be rather curious that both the combatants did not use their left hands in the struggle. If, as he has said, there was a struggle between them and he pushed Ahuja into the bathroom, how was it that the towel wrapped around the waist of Ahuja was intact ? So too, if there was a struggle, why there was no bruise on the body of the accused ? Though Nanavati says that there were some "roughings" on his wrist, he had not mentioned that fact till he gave his evidence in the court, nor is there any evidence to indicate such "roughings". It is not suggested that the clothes worn by the accused were torn or even soiled. Though there was blood up to three feet on the wall of the bathroom, there was not a drop of blood on the clothes of the accused. Another improbability in the version of the accused is, while he say that in the struggle two shots went off, we find three spent bullets - two of them were found in the bathroom and the other in the body of the deceased. What is more, how could Ahuja have continued to struggle after he had received either the chest injury or the head injury, for both of them were serious ones. After the deceased received either the first or the third injury there was no possibility of further struggling or pulling of the trigger by reflex action. Dr. Jhala says that the injury on the head of the victim was such that the victim could not have been able to keep standing and would have dropped unconscious immediately and that injury No. 1 was also so serious that he could not stand for more than one or two minutes. Even Dr. Baliga admits that the deceased would have slumped down after the infliction of injury No. 1 or injury No. 3 and that either of them individually would be sufficient to cause the victim to slump down. It is, therefore, impossible that after either of the said two injuries was inflicted, the deceased could have still kept on struggling with the accused. Indeed, Nanavati says in his evidence that at the first shot the deceased just kept on hanging to his hand, but suddenly he let go his grip and slumped down.

98. The only circumstance that could be relied upon to indicate a struggle is that one of the chappals of the deceased was found in the bed- room while the other was in the bathroom. But that is consistent with both intentional and accidental shooting, for in his anxiety to escape from the line of firing the deceased might have in hurry left his one chappal in the bed- room and fled

with the other to the bathroom. The situation of the spectacles near the commode is more consistent with intentional shooting than with accidental shooting, for if there had been a struggle it was more likely that the spectacles would have fallen off and broken instead of their being intact by the side of the dead- body. The condition of the bed- room as well as of the bathroom, as described by Rashmikant, the police- officer who made the inquiry, does not show any indication of struggle or fight in that place. The version of the accused, therefore, is brimming with improbabilities and is not such that any court can reasonably accept it.

99. It is said that if the accused went to the bed- room of Ahuja to shoot him he would not have addressed him by his first name "Prem" as deposed by Deepak. But Nanavati says in his evidence that he would be the last person to address the deceased as Prem. This must have been as embellishment on the part of Deepak. Assuming he said it, it does not indicate any sentiment of affection or goodwill towards the deceased - admittedly he had none towards him - but only an involuntary and habitual expression.

100. It is argued that Nanavati is a good shot - Nanda, D.W. 6, a Commodore in the Indian Navy, certifies that he is a good shot in regard to both moving and stationary targets - and therefore if he had intended to shoot Ahuja, he would have shot him perpendicularly hitting the chest and not in a haphazard way as the injuries indicate. Assuming that accused is a good shot, this argument ignores that he was not shooting at an inanimate target for practice but was shooting to commit murder; and it also ignores the desperate attempts the deceased must have made to escape. The first shot might have been fired and aimed at the chest as soon as the accused entered the room, and the other two presumably when the deceased was trying to escape to or through the bathroom.

101. Now on the question whether three shots would have gone off the revolver accidentally, there is the evidence of Bhanagay, P.W. 4, who is a Government Criminologist. The Deputy Commissioner of Police, Bombay, through Inspector Rangnekar sent to him the revolver, three empty cartridge cases, three bullets and three live rounds for his inspection. He has examined the revolver and the bullets which are marked as Exs. F- 2, F- 2a and F- 3. He is of the opinion that the said three empties were fired from the said revolver. He speaks to the fact that for pulling the trigger a pressure of 28 pounds is required and that for each shot the trigger has to be pulled and for another shot to be fired it must be released and pulled again. He also says that the charring around the wound could occur with the weapon of the type we are now concerned within about 2 to 3 inches of the muzzle of the weapon and the blackening around the would described as carbonaceous tattooing could be caused from such a revolver up to about 6 to 8 inches from the muzzle. In the cross examination he says that the flattening of the two damaged bullets, Exs. F- 2 and F- 2a, could have been caused by their hitting a flat hard surface, and that the tearing of the copper jacket of one of the bullets could have been caused by a heavy impact, such as hitting against a hard surface; it may have also been caused, according to him, by a human bone of sufficient strength provided the bullet hits the bone tangently and passes of without obstruction. These answers, if accepted - we do not see any reason why we should not accept them - prove that the bullets, Exs. F- 2 and F- 2a, could have been damaged by their coming into contact with

some hard substance such as a bone. He says in the cross- examination that one 'struggling' will not cause three automatic firings and that even if the struggle continues he would not expect three rounds to go off, but he qualifies his statement by adding that this may happen if the person holding the revolver "co- operates so far as the reflex of his finger is concerned", to pull the trigger. He further elaborates the same idea by saying that a certain kind of reflex co- operation is required for pulling the trigger and that this reflex pull could be either conscious or unconscious. This answer is strongly relied upon by learned counsel for the accused in support of his contention of accidental firing. He argues that by unconscious reflex pull of the trigger three times by the accused three shots could have gone off the revolver. But the possibility of three rounds going off by three separate reflexes of the finger of the person holding the trigger is only a theoretical possibility, and that too only on the assumption of a fairly long struggle. Such unconscious reflex pull of the finger by the accused three times within a space of a few seconds during the struggle as described by the accused is highly improbable, if not impossible. We shall consider the evidence of this witness on the question of ricocheting of bullets when we deal with individual injuries found on the body of the deceased.

102. This witness is not a doctor but has received training in Forensic Ballistics (Identification of Fire Arms) amongst other things in London and possesses certificates of competency from his tutors in London duly endorsed by the covering letter from the Education Department, High Commissioner's Office, and he is a Government Criminologist and has been doing this work for the last 22 years; he says that he has also gained experience by conducting experiments by firing on mutton legs. He stood the test of cross- examination exceedingly well and there is no reason to reject his evidence. He makes the following points : (1) Three used bullets, Exs. F- 2, F- 2a, and F- 3, were shot from the revolver Ex. B. (2) The revolver can be fired only by pulling the trigger; and for shooting thrice, a person shooting will have to give a deep pull to the trigger thrice and release it thrice. (3) A pressure of 28 pounds is required to pull the trigger. (4) One "struggling" will not cause three automatic firings. (5) If the struggle continues and if the person who pulls the trigger co- operates by pulling the trigger three times, three shots may go off. (6) The bullet may be damaged by hitting a hard surface or a bone. As we have pointed out the fifth point is only a theoretical possibility based upon two hypothesis, namely, (i) the struggle continues for a considerable time, and (ii) the person holding the trigger co- operates by pulling it thrice by reflex action. This evidence, therefore, establishes that the bullets went off the revolver brought by the accused - indeed this is not disputed - and that in the course of the struggle of a few seconds as described by the accused, it is not possible that the trigger could have been accidentally pulled three times in quick succession so as to discharge three bullets.

103. As regards the pressure required to pull the trigger of Ex. B, Triloksing, who is the Master Armourer in the Army, deposing as D.W. 11, does not accept the figure given by the Bhanagay and he would put it at 11 to 14 pounds. He does not know the science of ballistics and he is only a mechanic who repairs the arms. He had not examined the revolver in question. He admits that a double- action revolver requires more pressure on the trigger than single- action one. While Major Burrard in his book on Identification of Fire- arms and Forensic Ballistics says that the normal trigger pull in double- action revolvers is about 20 pounds, this witness reduces it to 11 to 14 pounds; while Major Burrard says in his book that in all competitions no test other than a dead weight is accepted, this witness does not agree with him. His opinion is based on the

experiments performed with spring balance. We would prefer to accept the opinion of Bhanagay to that of this witness. But, on the basis of the opinion of Major Burrard, we shall assume for the purpose of this case that about 20 pounds of pressure would be required to pull the trigger of the revolver Ex. B.

104. Before considering the injuries in detail, it may be convenient to ascertain from the relevant text- books some of the indications that will be found in the case of injuries caused by shooting. The following passage from authoritative text- books may be consulted :

105. Snyder's Homicide Investigation, P. 117 :

Beyond the distance of about 18 inches or 24 at the most evidence of smudging and tattooing are seldom present.

106. Merkeley on Investigation of Death, P. 82 :

"At a distance of approximately over 18" the powder grains are no longer carried forward and therefore the only effect produced on the skin surface is that of the bullet."

107. Legal Medicine Pathology and Toxicology by Gonzales, 2nd Edn., 1956 :

The powder grains may travel 18 to 24 inches or more depending on the length of barrel, calibre and type of weapon and the type of ammunition.

108. Smith and Glaister, 1939 Edn., P. 17

"In general with all types of smokeless powder some traces of blackening are to be seen but it is not always possible to recognize unburnt grains of powder even at ranges of one and a half feet."

109. Glaister in his book on Medical Jurisprudence and Toxicology, 1957 Edn., makes a statement that at a range of about 12 inches and over as a rule there will not be marks of carbonaceous tattooing or powder marks. But the same author in an earlier book from which we have already quoted puts it at 18 inches. In the book "Recent Advances in Forensic Medicine" 2nd Edn., p. 11, it is stated :

At ranges beyond 2 to 3 feet little or no trace of the powder can be observed.

110. Dr. Taylor's book, Vol. 1, 11th edn., p. 373, contains the following statement :

In revolver and automatic pistol wounds nothing but the grace ring is likely to be found beyond about two feet.

111. Bhanagay, P.W. 4, says that charring around the would could occur with the weapon of the type Ex. B within about 2 to 3 inches from the muzzle of the weapon, and the blackening round about the wound could be caused from such a weapon up to about 6 to 8 inches from the muzzle. Dr. Jhala, P.W. 18, says that carbonaceous tattooing would not appear if the body was beyond 18 inches from the mouth of the muzzle.

112. Dr. Baliga, D.W. 2, accepts the correctness of the statement found in Glaister's book, namely, "when the range reaches about 6 inches there is usually an absence of burning although there will probably be some evidence of bruising and of powder mark, at a range of about 12 inches and over the skin around the wound does not as a rule show evidence of powder marks." In the cross-examination this witness says that he does not see any conflict in the authorities cited, and tries to reconcile the various authorities by stating that all the authorities show that there would not be powder marks beyond the range of 12 to 18 inches. He also says that in the matter of tattooing, there is no difference between that caused by smokeless powder used in the cartridge in question, and black powder used in other bullets, though in the case of the former there may be greater difficulty to find out whether the marks are present or not in a wound.

113. Having regard to the aforesaid impressive array of authorities on Medical Jurisprudence, we hold, agreeing with Dr. Jhala, that carbonaceous tattooing would not be found beyond range of 18 inches from the mouth of the muzzle of the weapon. We also hold that charring around the wound would occur when it is caused by a revolver like Ex. B within about 2 or 3 inches from the muzzle of the revolver.

114. The presence and nature of the abrasion collar around the injury indicates the direction and also the velocity of the bullet. Abrasion collar is formed by the gyration of the bullet caused by the rifling of the barrel. If a bullet hits the body perpendicularly, the wound would be circular and the abrasion collar would be all around. But if the hit is not perpendicular, the abrasion collar will not be around the entire wound (See the evidence of Dr. Jhala and Dr. Baliga).

115. As regards the injuries found on the dead- body, two doctors were examined, Dr. Jhala, P.W. 18, on the side of the prosecution, and Dr. Baliga, D.W. 2, on the side of the defence. Dr. Jhala is the Police Surgeon, Bombay, for the last three years. Prior to that he was a Police Surgeon in Ahmedabad for six years. He is M.R.C.P. (Edin.), D.T.M. and H. (Lond.). He conducted the postmortem on the dead- body of Ahuja and examined both external and internal injuries on the body. He is, therefore, competent to speak with authority on the wounds found on the dead- body not only by his qualifications and experience but also by reason of having performed the autopsy on the dead- body. Dr. Baliga is an F.R.C.S. (England) and has been practising as a medical surgeon since 1933. His qualifications and antecedents show that he is not only an experienced surgeon but also has been taking interest in extra- surgical activities, social, political and educational. He says that he has studied medical literature regarding bullet injuries and that he

is familiar with medico- legal aspect of wounds including bullet wounds. He was a Causality Medical Officer in the K.E.M. Hospital in 1928. He had seen bullet injuries both as Causality Medical Officer and later on as a surgeon. In the cross- examination he says :

I have never fired a revolver, nor any other fire- arm. I have not given evidence in a single case of bullet injuries prior to this occasion though I have treated and I am familiar with bullet injuries. The last that I gave evidence in Medico- legal case in a murder case was in 1949 or 1950 or thereabout. Prior to that I must have given evidence in a medico- legal case in about 1939. I cannot off hand tell how many cases of bullet injuries I have treated till now, must have been over a dozen. I have not treated any bullet injuries case for the last 7 or 8 years. It was over 8 or 9 years ago that I have treated bullet injuries on the chest and the head. Out of all these 12 bullet injuries cases which I have treated up to now there might be 4 or 5 which were bullet injuries on the head. Out of these 4 or 5 cases probably there were three cases in which there were injuries both on the chest as well as on the head..... I must have performed about half a dozen post- mortems in all my career.

116. He further says that he was consulted about a week before he gave evidence by Mr. Khandalawala and Mr. Rajani Patel on behalf of the accused and was shows the post- mortem report of the injuries; that he did not have before him either the bullets or the skull; that he gave his opinion in about 20 minutes on the basis of the post- mortem report of the injuries that the said injuries could have been caused in a struggle between the accused and the deceased. This witness has come to the Court to support his opinion based on scanty material. We are not required in this case to decide upon the comparative qualifications or merits of these two doctors of their relative competency as surgeons, but we must say that so far as the wounds on the dead-body of the deceased are concerned, Dr. Jhala, who has made the post- mortem examination, is in a better position to help us to ascertain whether shooting was by accident or by intention than Dr. Baliga, who gave his opinion on the basis of the post- mortem report.

117. Now we shall take injury No. 1. This injury is a punctured one of dimensions 1/4" x 1/4" x chest cavity deep just below and inside the inner end of the right collar bone with an abrasion collar on the right side of the wound. The internal examination showed that the bullet, after causing the punctured wound in the chest just below the inner end of the right collor bone, struck the sternum and after striking it, it slightly deflected in its course and came behind the shoulder bone. In the course of its journey the bullet entered the chest, impacted the soft tissues of the lung, the aorta and the left lung, and ultimately damaged the left lung and got lodged behind the scapula. Dr. Jhala describes the wound as ellipsoid and oblique and says that the abrasion collar is missing on the left side. On the injury there is neither charring nor carbonaceous tattooing. The prosecution version is that this wound was caused by intentional shooting, while the defence suggestion is that it was caused when the accused and the deceased were struggling for the possession of the revolver. Dr. Jhala, after describing injury No. 1, says that it could not have been received by the victim during a struggle in which both the victim and the assailant were in each other's grip. He gives reasons for his opinion, namely, as there was no carbonaceous tattooing on the injury, it must have been caused by the revolver being fired from a distance of over 18 inches from the tip of the mouth of the muzzle. We have earlier noticed that, on the basis of the authoritative text- books and the evidence, there would not be carbonaceous tattooing if the target

was beyond 18 inches from the mouth of the muzzle. It is suggested to him in the cross-examination that the absence of tattooing may be due to the fact that the bullet might have first hit the fingers of the left palm causing all or any of injuries Nos. 2, 4 and 5, presumably when the deceased placed his left palm against the line of the bullet causing carbonaceous tattooing on the said fingers and thereafter hitting the chest. Dr. Jhala does not admit the possibility of the suggestion. He rules out this possibility because if the bullet first had an impact on the fingers, it would get deflected, lose its direction and would not be able to cause later injury No. 1 with abrasion collar. He further explains that an impact with a solid substance like bones of fingers will make the bullet lose its gyratory movement and thereafter it could not cause any abrasion collar to the wound. He adds, "assuming that the bullet first hit and caused the injury to the web between the little finger and the ring finger, and further assuming that it had not lost its gyrating action, it would not have caused the injury No. 1, i.e., on the chest which is accompanied by internal damage and the depth to which it had gone."

118. Now let us see what Dr. Baliga, D.W. 2 says about injury No. 1. The opinion expressed by Dr. Jhala is put to this witness, namely, that injury No. 1 on the chest could not have been caused during the course of a struggle when the victim and the assailant were in each other's grip, and this witness does not agree with that opinion. He further says that it is possible that even if the bullet first caused injury in the web, that is, injury No. 2, and thereafter caused injury No. 1 in the chest, there would be an abrasion collar such as seen in injury No. 1. Excepting this of the suggestion possibility, he has not controverted the reasons given by Dr. Jhala why such an abrasion collar could not be caused if the bullet had hit the fingers before hitting the chest. We will presently show in considering injuries Nos. 2, 4 and 5 that the said injuries were due to the hit by one bullet. If that be so, a bullet, which had caused the said three injuries and then took a turn through the little and the ring finger, could not have retained sufficient velocity to cause the abrasion collar in the chest. Nor has Dr. Baliga controverted the reasons given by Dr. Jhala that even if after causing the injury in the web the bullet could cause injury No. 1, it could not have caused the internal damage discovered in the post- mortem examination. We have no hesitation, therefore, to accept the well reasoned view of Dr. Jhala in preference to the possibility envisaged by Dr. Baliga and hold that injury No. 1 could not have been caused when the accused and the deceased were in close grip, but only by a shot fired from a distance beyond 18 inches from the mouth of the muzzle.

119. The third injury is a lacerated ellipsoid wound oblique in the left parietal region with dimensions 1 1/8" x 1/4" and skull deep. Dr. Jhala in his evidence says that the skull had a gutter fracture of the outer table and a fracture of the inner table and the brain showed subarachnoid haemorrhage over the left parieto- occipital region accompanying the fracture of the vault of the skull. The injury was effected in a "glancing way", that is, at a tangent, and the injury went upward and to the front. He is of the opinion that the said injury to the head must have been caused by firing of a bullet from a distance of over 18 inches from the mouth of the muzzle and must have been caused with the back of the head of the victim towards the assailant. When it was suggested to him that the said wound could have been caused by a ricocheted bullet, he answered that though a ricocheted bullet coming from the same line of direction could have caused the said injury, it could not have caused the intracranial haemorrhage and also could not have caused the fracture of the inner table of the skull. He is definite that injury No. 3 could not have been inflicted

from "front to back" as the slope of the gutter fracture was from the back to the front in the direction of the "grazing" of the bullet. He gives a further reason that as a rule the fracture would be broader in the skull where the bullet has the first impact and narrower where it emerges out, which is the case in respect of injury No. 3. He also relies upon the depth of the fracture at the two points and its slope to indicate the direction in which the bullet grazed. He further says that it is common knowledge that the fracture of both the tables accompanied by haemorrhage in the skull requires great force and a ricocheted bullet cannot cause such an injury. He opines that, though a ricocheted bullet emanating from a powerful fire- arm from a close range can cause injury to a heavy bone, it cannot be caused by a revolver of the type Ex. B.

120. Another suggestion made to him is that the bullet might have hit the glass pane of the window in the bathroom first and then ricocheted causing the injury on the head. Dr. Jhala, in his evidence, says that if the bullet had hit the glass pane first, it would have caused a hole and fallen on the other side of the window, for ricocheting is not possible in the case of a bullet directly hitting the glass. But on the other hand, if the bullet first hit a hard substance and then the glass pane, it would act like a pebble and crack the glass and would not go to the other side. In the present case, the bullet must have hit the skull first and then the glass pane after having lost its velocity, and fallen down like a pebble inside the bathroom itself. If, as the defence suggests, the bullet had directly hit the glass pane, it would have passed through it to the other side, in which case four bullets must have been fired from the revolver Ex. B, which is nobody's case.

121. The evidence, of Dr. Jhala is corroborated by the evidence of the ballistics expert Bhanagay, P.W. 4, when he says that if a bullet hits a hard substance and gets flattened and damaged like the bullets Exs. F- 2 and F- 2a, it may not enter the body and that even if it enters the body, the penetration will be shallow and the injury caused thereby will be much less as compared to the injury caused by a direct hit of the bullet. Dr. Baliga, on the other hand, says that injury No. 3 could be caused both ways, that is, from "front backward" as well as from "back forward". He also contradicts Dr. Jhala and says "back that in the type of the gutter fracture caused in the present case the wound is likely to be narrower at the entry than at the exit. He further says that assuming that the gutter fracture wound was caused by a ricocheted bullet and assuming further that there was enough force left after rebound, a ricocheted bullet could cause a fracture of even the inner table and give rise to intra- cranial haemorrhage. He asserts that a bullet that can cause a gutter fracture of the outer table is capable of fracturing the inner table also. In short, he contradicts every statement of Dr. Jhala; to quote his own words, "I do not agree that injury No. 3, i.e., the gutter fracture, cannot be inflicted from front to back for the reason that the slope of the gutter fracture was behind forward direction of the grazing of the bullet; I also do not agree with the proposition that if it would have been from the front then the slope of the gutter wound would have been from the front backward; I have not heard of such a rule and that at the near end of the impact of a bullet the gutter fracture is deeper than where it files off; I do not agree that the depth of the fracture at two points is more important factor in arriving at the conclusion of the point of impact of the bullet." He also contradicts the opinion of Dr. Jhala that injury No. 3 could not be caused in a struggle between the victim and the assailant. Dr. Baliga has been cross- examined at great length. It is elicited from him that he is not a ballistics expert and that his experience in the matter of direction of bullet injuries is comparatively less than his experience in other fields. His opinion that the gutter fracture injury could be and was more likely to be caused from an injury

glancing front backwards is based upon a comparison of the photograph of the skull shown to him with the figure 15 in the book "Recent Advances in Forensic Medicine" by Smith and Glaister, p. 21. The said figure is marked as Ex. Z in the case. The witness says that the figure shows that the narrower part of the gutter is on the rear and the wider part is in front. In the cross-examination he further says that the widest part of the gutter in figure Ex. Z is neither at the front and nor at the rear end, but the rear end is pointed and tailed. It is put to this witness that figure Ex. Z does not support his evidence and that he deliberately refused to see at it correctly, but he denies it. The learned Judges of the High Court, after seeing the photograph Ex. Z with a magnifying glass, expressed the view that what Dr. Baliga called the pointed and tailed part of the gutter was a crack in the skull and not a part of the gutter. This observation has not been shown to us to be wrong. When asked on what scientific principle he would support his opinion, Dr. Baliga could not give any such principle, but only said that it was likely - he puts emphasis on the word "likely" - that the striking end was likely to be narrower and little broader at the far end. He agrees that when a conical bullet hits a hard bone it means that the hard bone is protruding in the path of the projectile and also agrees that after the initial impact the bullet adjusts itself in the new direction of flight and that the damage caused at the initial point of the impact would be more than at any subsequent point. Having agreed so far, he would not agree on the admitted hypothesis that at the initial point of contract the wound should be wider than at the exist. But he admits that he has no authority to support his submission. Finally, he admits that generally the breadth and the depth of the gutter wound would indicate the extensive nature of the damage. On this aspect of the case, therefore, the witness has broken down and his assertion is not based on any principle or on sufficient data.

122. The next statement he makes is that he does not agree that the fracture of the inner table shows that the initial impact was from behind; but he admits that the fracture of the inner table is exactly below the backside of the gutter, though he adds that there is a more extensive crack in front of the anterior end of the gutter. He admits that in the case of a gutter on the skull the bone material which dissociates from the rest of the skull is carried in the direction in which the bullet flies but says that he was not furnished with any information in that regard when he gave his opinion.

123. Coming to the question of the ricocheting, he says that a ricocheting bullet can produce depressed fracture of the skull. But when asked whether in his experience he has come across any bullet hitting a hard object like a wall and rebounding and causing a fracture of a hard bone or whether he has any text- book to support his statement, he says that he cannot quote any instance nor an authority. But he says that it is so mentioned in several books. Then he gives curious definitions of the expressions "likely to cause death", "necessarily fatal" etc. He would go to the extent of saying that in the case of injury No. 3, the chance of recovery is up to 80 per cent.; but finally he modifies that statement by saying that he made the statement on the assumption that the haemorrhage in the subarachnoid region is localised, but if the haemorrhage is extensive his answer does not hold good. Though he asserts that at a range of about 12 inches the wound does not show as a rule evidence of powder mark, he admits that he has no practical experience that beyond a distance of 12 inches no powder mark can be discovered as a rule. Though text- books and authorities are cited to the contrary, he still sticks to his opinion; but finally he admits that he is not a ballistics expert and has no experience in that line. When he is asked if after injury No. 3,

the victim could have continued the struggle, he says that he could have, though he adds that it was unlikely after the victim had received both injuries Nos. 1 and 3. He admits that the said injury can be caused both ways, that is, by a bullet hitting either on the front of the head or at the back of the head. But his reasons for saying that the bullet might have hit the victim on the front of the head are neither supported by principle nor by the nature of the gutter wound found in the skull. Ex. Z relied upon by him does not support him. His theory of a ricocheted bullet hitting the skull is highly imaginary and cannot be sustained on the material available to us : firstly, there is no mark found in the bathroom wall or elsewhere indicating that the bullet struck a hard substance before ricocheting and hitting the skull, and secondly, it does not appear to be likely that such a ricocheted bullet ejected from Ex. B could have caused such an extensive injury to the head of the deceased as found in this case.

124. Mr. Pathak finally argues that the bullet Ex. F- 2a has a "process", i.e., a projection which exactly fits in the denture found in the skull and, therefore, the projection could have been caused only by the bullet coming into contract with some hard substance before it hit the head of the deceased. This suggestion was not made to any of the experts. It is not possible for us to speculate as to the manner in which the said projection was caused.

125. We, therefore, accept, the evidence of the ballistics expert, P.W. 4, and that of Dr. Jhala, P.W. 18, in preference to that of Dr. Baliga.

126. Now coming to injuries Nos. 2, 4 and 5, injury No. 4 is found on the first joint of the crease of the index finger on the back side of the left palm and injury No. 5 at the joint level of the left middle finger dorsal aspect, and injury No. 2 is a punctured wound in the web between the ring finger and the little finger of the left hand communicating with a punctured wound on the palmer aspect of the left knukle level between the left little and the ring finger. Dr. Jhala says that all the said injuries are on the back of the left palm and all have corbonaceous tattooing and that the injuries should have been caused when his left hand was between 6 and 18 inches from the muzzle of the revolver. He further says that all the three injuries could have been caused by one bullet, for, as the postmortem discloses, the three injuries are in a straight line and therefore it can clearly be inferred that they were caused by one bullet which passed through the wound on the palmer aspect. His theory is that one bullet, after causing injuries Nos. 4 and 5 passed between the little and ring finger and caused the punctured wound on the palmar aspect of the left hand. He is also definitely of the view that these wounds could not have been received by the victim during a struggle in which both of them were in each other's grip. It is not disputed that injury No. 1 and injury No. 3 should have been caused by different bullets. If injuries Nos. 2, 4 and 5 were caused by different bullets, there should have been more than three bullets fired, which is not the case of either the prosecution or the defence. In the circumstances, the said wounds must have been caused only by one bullet, and there is nothing improbable in a bullet touching three fingers on the back of the palm and taking a turn and passing through the web between the little and ring finger. Dr. Baliga contradicts Dr. Jhala even in regard to these wounds. He says that these injuries, along with the others, indicate the probability of a struggle between the victim and the assailant over the weapon; but he does not give any reasons for his opinion. He asserts that

one single bullet cannot cause injuries Nos. 2, 4 and 5 on the left hand fingers, as it is a circuitous course for a bullet to take and it cannot do so without meeting with some severe resistance. He suggests that a bullet which had grazed and caused injuries Nos. 4 and 5 could then have inflicted injury No. 3 without causing carbonaceous tattooing on the head injury. We have already pointed out that the head injury was caused from the back, and we do not see any scope for one bullet hitting the fingers and thereafter causing the head injury. If the two theories, namely, that either injury No. 1 or injury No. 3 could have been caused by the same bullets that might have caused injury No. 2 and injuries Nos. 4 and 5 were to be rejected, for the aforesaid reasons, Dr. Baliga's view that injuries Nos. 2, 4 and 5 must have been caused by different bullets should also be rejected, for to accept it, we would require more than three bullets emanating from the revolver, whereas it is the common case that more than three bullets were not fired from the revolver. That apart in the cross- examination this witness accepts that the injury on the first phalangeal joint of the index finger and the injury in the knuckle of the middle finger and the injury in the web between the little and the ring finger, but not taking into account the injury on the palmar aspect would be in a straight line. The witness admits that there can be a deflection even against a soft tissue, but adds that the soft tissue being not of much thickness between the said two fingers, the amount of deflection is negligible. But he concludes by saying that he is not saying this as an expert in ballistics. If so, the bullet could have deflected after striking the web between the little and the ring finger. We, therefore, accept the evidence of Dr. Jhala that one bullet must have caused these three injuries.

127. Strong reliance is placed upon the nature of injury No. 6 found on the back of the deceased viz, a vertical abrasion in the right shoulder blade of dimensions 3" x 1" just outside the spine, and it is said that the injury must have been caused when the accused pushed the deceased towards the door of the bath room. Nanavati in his evidence says that he "banged" him towards the door of the bathroom, and after some struggle he again pushed the deceased into the bathroom. It is suggested that when the accused "banged" the deceased towards the door of the bathroom or when he pushed him again into the bathroom, this injury might have been caused by his back having come into contract with the frame of the door. It is suggested to Dr. Jhala that injury No. 6 could be caused by the man's back brushing against a hard substance like the edge of the door, and he admits that it could be so. But the suggestion of the prosecution case is that the injury must have been caused when Ahuja fell down in the bathroom in front of the commode and, when falling, his back may have caught the edge of the commode or the bath- tub or the edge of the door of the bathroom which opens inside the bathroom to the left of the bath- tub. Shelat, J., says in his judgment :

If the abrasion was caused when the deceased was said to have been banged against the bathroom door or its frame, it would seem that the injury would be more likely to be caused, as the deceased would be in a standing position, on the shoulder blade and not inside the right shoulder. It is thus more probable that the injury was caused when the deceased's back came into contact either with the edge of the door or the edge of the bath- tub or the commode when he slumped.

128. It is not possible to say definitely how this injury was caused, but it could have been caused when the deceased fell down in the bathroom.

129. The injuries found on the dead- body of Ahuja are certainly consistent with the accused intentionally shooting him after entering the bed- room of the deceased; but injuries Nos. 1 and 3 are wholly inconsistent with the accused accidentally shooting him in the course of their struggle for the revolver.

130. From the consideration of the entire evidence the following facts emerge : The deceased seduced the wife of the accused. She had confessed to him of her illicit intimacy with the deceased. It was natural that the accused was enraged at the conduct of the deceased and had, therefore, sufficient motive to do away with the deceased. He deliberately secured the revolver on a false pretext from the ship, drove to the flat of Ahuja, entered his bed- room unceremoniously with a loaded revolver in hand and in about a few seconds thereafter came out with the revolver in his hand. The deceased was found dead in his bathroom with bullet injuries on his body. It is not disputed that the bullets that caused injuries to Ahuja emanated from the revolver that was in the hand of the accused. After the shooting, till his trial in the Sessions Court, he did not tell anybody that he shot the deceased by accident. Indeed, he confessed his guilt to the Chowkidar Puransingh and practically admitted the same to his colleague Samuel. His description of the struggle in the bathroom is highly artificial and is devoid of all necessary particulars. The injuries found on the body of the deceased are consistent with the intentional shooting and the main injuries are wholly inconsistent with accidental shooting when the victim and the assailant were in close grips. The other circumstances brought out in the evidence also establish that there could not have been any fight or struggle between the accused and the deceased.

131. We, therefore, unhesitatingly hold, agreeing with the High Court, that the prosecution has proved beyond any reasonable doubt that the accused has intentionally shot the deceased and killed him.

132. In this view it is not necessary to consider the question whether the accused had discharged the burden laid on him under s. 80 of the Indian Penal Code, especially as learned counsel appearing for the accused here and in the High Court did not rely upon the defence based upon that section.

133. That apart, we agree with the High Court that, on the evidence adduced in this case, no reasonable body of persons could have come to the conclusion which the jury reached in this case. For that reason also the verdict of the jury cannot stand.

134. Even so, it is contended by Mr. Pathak that the accused shot the deceased while deprived of the power of self- control by sudden and grave provocation and, therefore, the offence would fall under Exception 1 to s. 300 of the Indian Penal Code. The said Exception reads :

Culpable homicide is not murder if the offender, whilst deprived of the power of self- control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

135. Homicide is the killing of a human being by another. Under this exception, culpable homicide is not murder if the following conditions are complied with : (1) The deceased must have given provocation to the accused. (2) The provocation must be grave. (3) The provocation must be sudden. (4) The offender, by reason of the said provocation, shall have been deprived of his power of self- control. (5) He should have killed the deceased during the continuance of the deprivation of the power of self- control. (6) The offender must have caused the death of the person who gave the provocation or that of any other person by mistake or accident.

136. The first question raised is whether Ahuja gave provocation to Nanawati within the meaning of the exception and whether the provocation, if given by him, was grave and sudden.

137. Learned Attorney- General argues, that though a confession of adultery by a wife may in certain circumstances be provocation by the paramour himself, under different circumstances it has to be considered from the standpoint of the person who conveys it rather than from the standpoint of the person who gives it. He further contends that even if the provocation was deemed to have been given by Ahuja, and though the said provocation might have been grave, it could not be sudden, for the provocation given by Ahuja was only in the past.

138. On the other hand, Mr. Pathak contends that the act of Ahuja, namely, the seduction of Sylvia, gave provocation though the fact of seduction was communicated to the accused by Sylvia and that for the ascertainment of the suddenness of the provocation it is not the mind of the person who provokes that matters but that of the person provoked that is decisive. It is not necessary to express our opinion on the said question, for we are satisfied that, for other reasons, the case is not covered by Exception 1 to s. 300 of the Indian Penal Code.

139. The question that the Court has to consider is whether a reasonable person placed in the same position as the accused was, would have reacted to the confession of adultery by his wife in the manner in which the accused did. In Mancini v. Director of Public Prosecutions L.R. (1942) A.C. 1, Viscount Simon, L.C., states the scope of the doctrine of provocation thus :

It is not all provocation that will reduce the crime of murder to manslaughter. Provocation, to have that result, must be such as temporarily deprives the person provoked of the power of self-control, as the result of which he commits the unlawful act which causes death..... The test to be applied is that of the effect of the provocation on a reasonable man, as was laid down by the Court of Criminal Appeal in Rex v. Lesbini [1914] 3 K.B. 1116, so that an unusually excitable or pugnacious individual is not entitled to rely on provocation which would not have led an ordinary person to act as he did. In applying the test, it is of particular importance to (a) consider

whether a sufficient interval has elapsed since the provocation to allow a reasonable man time to cool, and (b) to take into account the instrument with which the homicide was effected, for to retort, in the heat of passion induced by provocation, by a simple blow, is a very different thing from making use of a deadly instrument like a concealed dagger. In short, the mode of resentment must bear a reasonable relationship to the provocation if the offence is to be reduced to manslaughter.

140. Viscount Simon again in Holmes v. Director of Public Prosecutions L.R. (1946) A.C. 588 elaborates further on this theme. There, the appellant had entertained some suspicious of his wife's conduct with regard to other men in the village. On a Saturday night there was a quarrel between them when she said, "Well, if it will ease your mind, I have been untrue to you", and she went on, "I know I have done wrong, but I have no proof that you haven't - at Mrs. X.'s". With this appellant lost his temper and picked up the hammerhead and struck her with the same on the side of the head. As he did not like to see her lie there and suffer, he just put both hands round her neck until she stopped breathing. The question arose in that case whether there was such provocation as to reduce the offence of murder to manslaughter. Viscount Simon, after referring to Mancini's case L.R. (1942) A.C. 1, proceeded to state thus :

The whole doctrine relating to provocation depends on the fact that it causes, or may cause, a sudden and temporary loss of self- control, whereby malice, which is the formation of an intention to kill or to inflict grievous bodily harm, is negatived. Consequently, where the provocation inspires an actual intention to kill (such as Holmes admitted in the present case), or to inflict grievous bodily harm, the doctrine that provocation may reduce murder to manslaughter seldom applies.

141. Goddard, C.J., Duffy's case [[1949] 1 All. E.R. 932] defines provocation thus :

Provocation is some act, or series of acts, done by the dead man to the accused which would cause in any reasonable person, and actually causes in the accused, a sudden and temporary loss of self-control, rendering the accused so subject to passion as to make him or her for the moment not master of his mind..... What matters is whether this girl (the accused) had the time to say : 'Whatever I have suffered, whatever I have endured, I know that Thou shall not kill.' That is what matters. Similarly,.....circumstances which induce a desire for revenge, or a sudden passion of anger, are not enough. Indeed, circumstances which induce a desire for revenge are inconsistent with provocation, since the conscious formulation of a desire for revenge means that the person has had time to think, to reflect, and that would negative a sudden temporary loss of self- control which is of the essence of provocation. Provocation being,.....as I have defined it, there are two things, in considering it, to which the law attaches great importance. The first of them is, whether there was what is sometimes called time for cooling, that is, for passing to cool and for reason to regain dominion over the mind..... Secondly in considering whether provocation has or has not been made out, you must consider the retaliation in provocation - that is to say, whether the mode of resentment bears some proper and reasonable relationship to the sort of provocation that has been given.

142. A passage from the address of Baron Parke to the jury in R. v. Thomas (1837) 7 C. & P. 817 extracted in Russell on Crime, 11th ed., Vol. I at p. 593, may usefully be quoted :

But the law requires two things : first that there should be that provocation; and secondly, that the fatal blow should be clearly traced to the influence of passion arising from that provocation.

143. The passages extracted above lay down the following principles : (1) Except in circumstances of most extreme and exceptional character, a mere confession of adultery is not enough to reduce the offence of murder to manslaughter. (2) The act of provocation which reduced the offence of murder to manslaughter must be such as to cause a sudden and temporary loss of self- control; and it must be distinguished from a provocation which inspires an actual intention to kill. (3) The act should have been done during the continuance of that state of mind, that is, before there was time for passion to cool and for reason to regain dominion over the mind. (4) The fatal blow should be clearly traced to the influence of passion arising from the provocation.

144. On the other hand, in India, the first principle has never been followed. That principle has had its origin in the English doctrine that mere words and gestures would not be in point of law sufficient to reduce murder to manslaughter. But the authors of the Indian Penal Code did not accept the distinction. They observed :

It is an indisputable fact, that gross insults by word or gesture have as great tendency to move many persons to violem passion as dangerous or painful bodily in juries; nor does it appear to us that passio- excited by insult is entitled to less indulgence than passion excited by pain. On the contrary, the circumstance that a man resents an insult more than a wound is anything but a proof that he is a man of peculiarly bad heart.

145. Indian courts have not maintained the distinction between words and acts in the application of the doctrine of provocation in a given case. The Indian law on the subject may be considered from two aspects, namely, (1) whether words or gestures unaccompanied by acts can amount to provocation and (2) what is the effect of the time lag between the act of provocation and the commission of the offence. In Empress v. Khogayi I.L.R (1879) . 2 Mad. 122, a division bench of the Madras High Court held, in the circumstances of that case, that abusive language used would be a provocation sufficient to deprive the accused of self- control. The learned Judges observed :

What is required is that it should be of a character to deprive the offender of his self-control. In determining whether it was so, it is admissible to take into account the condition of mind in which the offender was at the time of the provocation. In the present case the abusive language used was of the foulest kind and was addressed to man already enraged by the conduct of deceased's son.

146. It will be seen in this case that abusive language of the foulest kind was held to be sufficient in the case of man who was already enraged by the conduct of deceased's son. The same learned Judge in a later decision in Boya Munigadu v. The Queen I.L.R(1881) . 3 Mad. 33 upheld plea of grave and sudden provocation in the following circumstances : The accused saw the deceased when she had cohabitation with his bitter enemy; that night he had no meals; next morning he went to the ryots to get his wages from them, and at that time he saw his wife eating food along with her paramour; he killed the paramour with a bill- hook. The learned Judges held that the

accused had sufficient provocation to bring the case within the first exception to s. 300 of the Indian Penal Code. The learned Judges observed :

..... If having witnessed the act of adultery, he connected this subsequent conduct as he could not fail to connect it, with that act, it would be conduct of a character highly exasperating to him, implying as it must, that all concealment of their criminal relations and all regard for his feelings were abandoned and that they purposed continuing their course of misconduct in his house. This, we think, amounted to provocation, grave enough and sudden enough to deprive him of his self- control, and reduced the offence from murder to culpable homicide not amounting to murder.

147. The case illustrates that the state of mind of the accused, having regard to the earlier conduct of the deceased, may be taken into consideration in considering whether the subsequent act would be a sufficient provocation to bring the case within the exception. Another division bench of the Madras High Court in In re Murugian [I.L.R. [1957] Mad. 805] held that, where the deceased not only committed adultery but later on swore openly in the face of the husband that she would persist in such adultery and also abused the husband for remonstrating against such conduct, the case was covered by the first exception to s. 300 of the Indian Penal Code. The judgment of the Andhra Pradesh High Court in In re C. Narayan [A.I.R. 1958 A.P. 235] adopted the same reasoning in a case where the accused, a young man, who had a lurking suspicion of the conduct of his wife, who newly joined him, was confronted with the confession of illicit intimacy with, and consequent pregnancy by another, strangled his wife to death, and held that the case was covered by Exception 1 to s. 300 of the Indian Penal Code. These two decisions indicate that the mental state created by an earlier act may be taken into consideration in ascertaining whether a subsequent act was sufficient to make the assailant to lose his self- control.

148. Where the deceased led an immoral life and her husband, the accused, upbraided her and the deceased instead of being repentant said that she would again do such acts, and the accused, being enraged struck her and, when she struggled and beat him, killed her, the Court held the immediate provocation coming on top of all that had gone before was sufficient to bring the case within the first exception to s. 300 of the Indian Penal Code. So too, where a woman was leading a notoriously immoral life, and on the previous night mysteriously disappeared from the bedside of her husband and the husband protested against her conduct, she vulgarly abused him, whereupon the husband lost his self- control, picked up a rough stick, which happened to be close by and struck her resulting in her death, the Labour High Court, in Jan Muhammad v. Emperor I.L.R. [1929] Lah 861, held that the case was governed by the said exception. The following observations of the court were relied upon in the present case :

In the present case my view is that, in judgment the conduct of the accused, one must not confine himself to the actual moment when the blow, which ultimately proved to be fatal was struck, that is to say, one must not take into consideration only the event which took place immediately before the fatal blow was struck. We must take into consideration the previous conduct of the woman..... As stated above, the whole unfortunate affair should be looked at as one prolonged agony on the part of the husband which must have been preying upon his mind and led to the assault upon the woman, resulting in her death.

149. A division bench of the Allahabad High Court in Emperor v. Balku I.L.R. [1938] All. 789 invoked the exception in a case where the accused and the deceased, who was his wife's sister's husband, were sleeping on the same cot, and in the night the accused saw the deceased getting up from the cot and going to another room and having sexual intercourse with his (accused's) wife, and the accused allowed the deceased to return to the cot, but after the deceased fell asleep, he stabbed him to death. The learned Judges held :

When Budhu (the deceased) came into intimate contact with the accused by lying beside him on the charpai this must have worked further on the mind of the accused and he must have reflected that 'this man now lying beside me had been dishonouring me a few minutes ago'. Under these circumstances we think that the provocation would be both grave and sudden.

150. The Allahabad High Court in a recent decision, viz., Babu Lal v. State MANU/UP/0047/1960 : AIR1960All223 applied the exception to a case where the husband who saw his wife in a compromising position with the deceased killed the latter subsequently when the deceased came, in his absence, to his house in another village to which he had moved. The learned Judges observed :

The appellant when he came to reside in the Government House Orchard felt that he had removed his wife from the influence of the deceased and there was no more any contact between them. He had lulled himself into a false security. This belief was shattered when he found the deceased at his hut when he was absent. This could certainly give him a mental jolt and as this knowledge will come all of a sudden it should be deemed to have given him a grave and sudden provocation. The fact that he had suspected this illicit intimacy on an earlier occasion also will not alter the nature of the provocation and make it any the less sudden.

151. All the said four decisions dealt with a case of a husband killing his wife when his peace of mind had already been disturbed by an earlier discovery of the wife's infidelity and the subsequent act of her operated as a grave and sudden provocation on his disturbed mind.

152. Is there any standard of a reasonable man for the application of the doctrine of "grave and sudden" provocation ? No abstract standard of reasonableness can be laid down. What a reasonable man will do in certain circumstances depends upon the customs, manners, way of life, traditional values etc.; in short, the cultural, social and emotional background of the society to which an accused belongs. In our vast country there are social groups ranging from the lowest to the highest state of civilization. It is neither possible nor desirable to lay down any standard with precision : it is for the court to decide in each case, having regard to the relevant circumstances. It is not necessary in this case to ascertain whether a reasonable man placed in the position of the accused would have lost his self- control momentarily or even temporarily when his wife confessed to him of her illicit intimacy with another, for we are satisfied on the evidence that the accused regained his self- control and killed Ahuja deliberately.

153. The Indian law, relevant to the present enquiry, may be stated thus : (1) The test of "grave and sudden" provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self- control. (2) In India, words and gestures may also, under certain circumstances, cause

grave and sudden provocation to an accused so as to bring his act within the first Exception to s. 300 of the Indian Penal Code. (3) The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. (4) The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation.

154. Bearing these principles in mind, let us look at the facts of this case. When Sylvia confessed to her husband that she had illicit intimacy with Ahuja, the latter was not present. We will assume that he had momentarily lost his self- control. But if his version is true - for the purpose of this argument we shall accept that what he has said is true - it shows that he was only thinking of the future of his wife and children and also of asking for an explanation from Ahuja for his conduct. This attitude of the accused clearly indicates that he had not only regained his self- control, but on the other hand, was planning for the future. Then he drove his wife and children to a cinema, left them there, went to his ship, took a revolver on a false pretext, loaded it with six rounds, did some official business there, and drove his car to the office of Ahuja and then to his flat, went straight to the bed- room of Ahuja and shot him dead. Between 1- 30 P.M., when he left his house, and 4- 20 P.M., when the murder took place, three hours had elapsed, and therefore there was sufficient time for him to regain his self- control, even if he had not regained it earlier. On the other hand, his conduct clearly shows that the murder was a deliberate and calculated one. Even if any conversation took place between the accused and the deceased in the manner described by the accused - though we do not believe that - it does not affect the question, for the accused entered the bed- room of the deceased to shoot him. The mere fact that before the shooting the accused abused the deceased and the abuse provoked an equally abusive reply could not conceivably be a provocation for the murder. We, therefore, hold that the facts of the case do not attract the provisions of Exception 1 to s. 300 of the Indian Penal Code.

155. In the result, conviction of the accused under s. 302 of the Indian Penal Code and sentence of imprisonment for life passed on him by the High Court are correct, and there are absolutely no grounds for interference. The appeal stands dismissed.

156. Appeal dismissed.

MANU/SC/0344/1995

Back to Section 313 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 266 of 1985

Decided On: 01.03.1995

Balwant Singh and Ors. Vs. State of Punjab

Hon'ble Judges/Coram:

Dr. A.S. Anand and Faizanuddin, JJ.

JUDGMENT

1. Balwant Singh, who was working as an Assistant in the office of D.P.I. Punjab in Chandigarh and Bhupinder Singh serving as a Senior Clerk in the Punjab School Education Board, Chandigarh, at the relevant time, were on 31st October, 1984 at about 5.45 p.m. arrested from near Neelam Cinema, Chandigarh and after completion of the investigation, tried for offences under Section 124A and 153A IPC. They were each sentenced to suffer one year rigorous imprisonment and a fine of Rs. 500 on each of the two counts. In default of payment of fine, they had to undergo three months further R.I. on each count. The substantive sentences were to run concurrently. Through this appeal under Section 14 of the Terrorist Affected Areas (Special Courts) Act, 1984 both of them have challenged their conviction and sentence as recorded by the learned Judge of the Special Court, Chandigarh on 2.3.1985.

2. The prosecution case against the appellants is that in a crowded in front of the Neelam Cinema, on 31st October 1984, the day Smt. Indira Gandhi, the then Prime Minister of India was assassinated, after coming out from their respective offices after the duty hours, raised the following slogans:

1. Khalistan Zindabad

2. Raj Karega Khalsa, and

3. Hinduan Nun Punjab Chon Kadh Ke Chhadange, Hun Mauka Aya Hai Raj Kayam Karan Da.

The prosecution examined Constable Som Nath, PW2 and ASI Labh Singh PW3, in support of its case besides PW1, who proved the order of sanction for prosecution.

3. According to the testimony of Som Nath PW2 and Labh Singh PW3, they had left the police station at about 5 p.m. or 5.15 p.m. and while they were patrolling in the area of the main market of Sector 17, Chandigarh, they noticed both the appellants raising slogans, as noticed above. Both the witnesses conceded that when slogans were being raised, the people in general were going bout doing their jobs and they did not gather on hearing the slogans but stated that some people went away out of 'fear'. In cross- examination, Som Nath PW2 admitted that he could not name anyone or even suggest whether any one out of the passer- by got afraid on hearing the slogans and fled away from the place. According to the witnesses, both the appellants had raised the slogans together. Though PW2 could not state as to how many times each of the three slogans was raised by the appellants, PW3 ASI Labh Singh admitted in the cross examination that the slogans "Khalistan Zindabad" was raised about five or six times while the second slogan "Raj Karega Khalsa" was raised two or four times and that the third slogan was raised only once or twice. ASI Labh Singh PW also admitted that the slogans had been raised by the appellants before they were arrested and that they did not raise any slogans afterwards. ASI Labh Singh PW, however, added that the appellants raised slogans while they were being apprehended once or twice and to the same effect is the statement made by PW2 Som Nath, who, however, was confronted with his police statement recorded under Section 161 Cr.P.C., wherein he had not mentioned that the appellants raised any slogan while being apprehended. The appellants in their statement recorded under Section 313 Cr.P.C., denied the prosecution allegations against them. According to Balwant Singh, Bhupinder Singh, appellant came to his office at about 4.30 p.m. and they left together after he finished his day's duty at about 5 p.m. That while they were proceedings towards the bus stand, in order to take a bus to go to Mohali where they reside, they met Mewa Singh DW2 and Surender Pal Singh DW3 near the fountain with whom they exchanged 'Sat Siri Akal'. Being an Amritdhari Sikh, he was wearing a kirpan. That near Neelam Cinema Dy. S.P. Sudhir Mohan and Inspector Baldev Singh caught hold of them, presumably because he was wearing a kirpan and both of them had not tied their beards. That the police officials took them to the police station in Sector 17 in their jeep. ASI Labh Singh was present at the police station attending to the telephone. On their enquiry, as to why they had been brought to the police station and why they were being detained, ASI Labh Singh told him that only the senior officers who had brought them to the police station could give them an answer to their question. Bhupinder Singh, appellant made a substantially similar statement.

4. Both Mewa Singh DW2, a Draftsman working in the Punjab Housing Board and Surender Pal Singh DW3, a Junior Accountant working with the Punjab Housing Board, corroborated the statement made by the appellants and stated that they had met the appellants after the office hours near the Neelam Cinema and had exchanged 'Sat Sri Akal' with them. They stated that in their presence, the Dy. S.P. and Inspector Baldev Singh arrested the appellants and took them to the police station in their jeep. That later on they followed them to the police station but when they could not get any information as to why the appellants had been taken to the police station, they informed the family members of the appellants. Both the defence witnesses stated that the appellants were not raising any slogans either before or at the time of their arrest and this part of their testimony was not challenged in the cross examination at all.

5. At the time of arrest of the appellants, the personal search of the appellants was taken and the personal search memos were prepared. In the personal search memo of Balwant Singh, the only

two articles which are shown to have been recovered are: one watch HMT and one gold ring. There is no mention of any kirpan having been seized. After the arrest of the appellants, the police produced them before the Ilaqa Magistrate when they were remanded to judicial custody. DW1 Shitla Prashad, Munshi, District Jail, Burail deposed that on November 1, 1984, Balwant Singh appellant was admitted to the District Jail and that;

At that time he was wearing a kirpan on his person which was taken off and kept in safe custody at the time of his admission into jail and that kirpan is still lying deposited with us. I have brought that kirpan.

Both PW2 and PW3, had however, stated in their statements that they did not see Balwant Singh wearing any kirpan and that no kirpan was taken into possession from him.

6. Mr. V.M. Tarkunde, the learned senior counsel appearing for the appellants submitted that the prosecution has not been able to establish the case against the appellants beyond a reasonable doubt. learned Counsel argued that though admittedly the occurrence had taken place in a busy place, where number of independent persons were available, prosecution had not associated any independent person at the time of arrest of the appellants and that was a serious infirmity in the case. Mr. Tarkunde then submitted that the very fact that both the police witnesses, Constable Som Nath and ASI Labh Singh made unsuccessful effort to conceals that Balwant Singh was carrying a kirpan, which fact stands established from the evidence of DW1 Munshi of the District Jail at Burail, it could be safely inferred that the entire case against the appellants, was a made up affair and not based on facts. The prosecution witnesses were guilty of giving false statements. learned Counsel then, in the alternative, went on the submit that even if the prosecution case to the effect that the appellants had raised the three slogans was accepted, no offence under Section 124A IPC or 153A IPC could be said to have been made out.

7. learned Counsel for the State, on the other hand, submitted that keeping in view the tension which had been generated on the date of the assassination of the former Prime Minister - Smt. Indira Gandhi, the raising of the three slogans by the appellants attracted the provisions of Section 124A IPC and 153A IPC and the mere fact that no independent witness was associated, could not detract from the reliability of the evidence of ASI Labh Singh and Constable Som Nath. In this context, learned Counsel referred to the statement of PW3 Labh Singh who deposed that he was unable to associate any of the independent persons from the public inspite of his making efforts because none was willing to associate himself. learned Counsel urged that nothing has been brought out on the record to show that either PW2 and PW3 had any animosity or reason to falsely implicate the appellants and that their testimony inspired confidence.

Section 124A IPC reads thus:

124A. Sedition - whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1 - The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2 - Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3 - Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this Section.

A plain reading of the above Section would show that its application would be attracted only when the accused brings or attempts to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law in India, by words either written or spoken or visible signs or representations etc. Keeping in view the prosecution evidence that the slogans as noticed above were raised a couple of times only by the appellant and that neither the slogans evoked a response from any other person of the Sikh community or reaction from people of other communities, we find it difficult to hold that upon the raising of such casual slogans, a couple of times without any other act whatsoever the charge of sedition can be founded. It is not the prosecution case that the appellants were either leading a procession or were otherwise raising the slogans with the intention to incite people to create disorder or that the slogans in fact created any law and order problem. It does not appear to us that the police should have attached much significance to the casual slogans raised by two appellants, a couple of times and read to much into them. The prosecution has admitted that no disturbance, whatsoever, was caused by the raising of the slogans by the appellants and that inspite of the fact that the appellants raised the slogans a couple of tunes, the people, in general, were un- affected and carried on with their normal activities. The casual raising of the slogans, once or twice by two individuals alone cannot be said to be aimed at exciting or attempt to excite hatred or disaffection towards the Government as established by law in India. Section 124A IPC, would in the facts and circumstances of the case have no application whatsoever and would not be attracted to the facts and circumstances of the case.

8. In so far as the offence under Section 153A IPC is concerned, it provides for punishment for promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever or brings about disharmony or feeling of hatred or ill- will between different religious, racial, language or regional groups or

castes or communities. In our opinion only where the written or spoken words have the tendency or intention of creating public disorder or disturbance of law and order or effect public tranquility, that the law needs to step in to prevent such an activity. The facts and circumstances of this case unmistakably show that there was no disturbance or semblance of disturbance of law and order or of public order or peace and tranquillity in the area from where the appellants were apprehended while raising slogans on account of the activities of the appellants. The intention to cause disorder or incite people to violence is the sine qua non of the offence under Section 153A IPC and the prosecution has to prove the existence of mens rea in order to succeed. In this case, the prosecution has not been able to establish any mens rea on the part of the appellants, as envisaged by the provisions of Section 153A IPC, by their raising causally the three slogans a couple of times. The offence under Section 153A IPC is, therefore, not made out.

9. On facts, we find that the prosecution witnesses PW2 and PW3 have not spoken the whole truth. Both the prosecution witnesses PW2 and PW3 made a deliberate attempt to conceal the existence of kirpan on the person of Balwant Singh at the time of his arrest, which fact stands amply proved from the evidence of DW1. The trial court while dealing with this aspect of the case observed :

On 1.11.1984 the accused were produced before the Magistrate. No order of the Magistrate has been produced to show that Balwant Singh accused was wearing a kirpan when he appeared before him. It was only thereafter that the accused were sent to jail. It, therefore, appears that the kirpan was supplied to Balwant Singh after he had been remanded by the Magistrate and was on his way to the jail.

(Emphasis ours)

10. We are unable to appreciate this reasoning. The trial court appears to have made out a case which was neither spoken to nor relied upon either by the prosecution or the defence. It is nobody's case that Balwant Singh and been supplied with the kirpan when he was on his way to the jail. It defies logic to think that some one from the public would have such as easy access to a person in custody of the police so as to be able to arm him with as kirpan, without the police escort knowing about it. It is not permissible for the trial court to make such an inference on assumptions without any evidence on the record. The Court must confine itself to the evidence to decide the case and not base its opinion on surmises and conjectures. We also regret to note that the trial court while recording the conviction observed:

To conclude, therefore, the accused shouted slogans 'khalistan zindabad', Hindustan Murdabad', Hinduan Nun Punjab Chon Kadh Ke Chhadange Hun Mauka Aya Hai Raj Kayam Karan Da', in the piazza of Sector 17 market which is frequented by people of both the principle communities i.e. Hindus and Sikhs at about 5.45 p.m. on the day when the beloved Prime Minister of India Smt. Indira Gandhi was riddled with bullets.

11. It is not the prosecution case that either of the appellants had shouted the slogan 'Hindustan Murdabad'. On what material did the learned Judge find that the appellants had shouted that particular slogan belies our comprehensions. Obviously, for convicting the appellants, the trial Judge also pressed into aid the allegation that the appellants had shouted 'Hindustan Murdabad', which is nobody's case. The learned trial Judge, to say the least, seems to have drawn upon his imagination a course not permissible for a Court of Law.

12. It appears to us that the raising some slogan only a couple of times by the two lonesome appellants, which neither evoked any response nor any reaction from any one in the public can neither attract the provisions of Section 124A or Section 153A IPC. Some more overt act was required to bring home the charge to the two appellants, who are Government servants. The police officials exhibited lack of maturity and more of sensitivity in arresting the appellants for raising the slogans - which arrest - and not the casual raising of one or two slogans - could have created a law and order situation, keeping in view the tense situation prevailing on the date of the assassination of Smt. Indira Gandhi. In situations like that, over sensitiveness some times is counter productive and can result in inviting trouble. Raising of some lonesome slogans, a couple of times by two individuals, without anything more, did not constitute any threat to the Government of India as by law established nor could the same give rise to feelings of enmity or hatred among different communities or religious or other groups.

13. In our opinion, for what we have stated above, the prosecution has not succeeded in establishing the case against the appellants beyond a reasonable doubt. Their conviction and sentence for the offences under Section 124A and 153A IPC, cannot be sustained. This appeal accordingly succeeds and is allowed. The conviction and sentence of the appellants is set aside. The appellants are on bail. Their bail bonds shall stand discharged.

MANU/SC/0689/2015

Neutral Citation: 2015/INSC/458

Back to Section 320 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 231 of 2015 (Arising out of SLP (Crl.) No. 5273 of 2012)

Decided On: 01.07.2015

State of M.P. Vs. Madanlal

Hon'ble Judges/Coram:

Dipak Misra and Prafulla C. Pant, JJ.

JUDGMENT

Dipak Misra, J.

1. In this appeal, by special leave, the State of M.P. calls in question the legal acceptability of the judgment and order passed by the learned Single Judge of the High Court of M.P. in Criminal Appeal No. 808 of 2009 whereby he has set aside the conviction Under Section 376(2)(f) read with Section 511 of the Indian Penal Code (Indian Penal Code) and the sentence imposed on that score, that is, rigorous imprisonment of five years by the learned Sessions Judge, Guna in ST No. 134/2009 and convicted the Respondent- accused herein Under Section 354 of the Indian Penal Code and restricted the sentence to the period already undergone which is slightly more than one year.

2. The factual narration for disposal of the present appeal lies in a narrow compass. The Respondent as accused was sent up for trial for the offence punishable Under Section 376(2)(f) Indian Penal Code before the learned Sessions Judge. The case of the prosecution before the Court below was that on 27.12.2008, the victim, aged about 7 years, PW1, was proceeding towards Haar from her home and on the way the accused, Madan Lal, met her and came to know that she was going in search of her mother who had gone to graze the goats. The accused told her that her mother had gone towards the river and accordingly took her near the river Parvati, removed her undergarment and made her sit on his lap, and at that time the prosecutrix shouted. As the prosecution story proceeds, he discharged on her private parts as well as on the stomach and washed the same. Upon hearing the cry of the prosecutrix, her mother, Ramnali Bai, PW2, reached the spot, and then accused took to his heels. The prosecutrix narrated the entire incident to her mother which led to lodging of an FIR by the mother of the prosecutrix. On the basis of the FIR lodged, criminal law was set in motion, and thereafter the investigating agency examined number of witnesses, seized the clothes of the Respondent- accused, sent certain articles for examination to the forensic laboratory and eventually after completing the examination, laid the chargesheet before the concerned court, which in turn, committed the matter to the Court of Session.

3. The accused abjured his guilt and pleaded false implication. The learned trial Judge, regard being had to the material brought on record, framed the charge Under Section 376(2)(f) read with Section 511 of Indian Penal Code. The prosecution, in order to bring home the charge leveled against the accused examined the prosecutrix, PW1, Ramnali Bai, PW2, Dr. Smt. Sharda Bhola, PW3, Head Constable Babu Singh, PW4, ASI B.R.S. Raghuwanshi, PW5, and Dr. Milind Bhagat, PW6, and also got marked nine documents as exhibits. The defence chose not to adduce any evidence.

4. The learned trial Judge on the basis of the material brought on record came to hold that the prosecution had been able to establish the charge against the accused and accordingly found him guilty and sentenced him as has been stated hereinbefore.

5. The said judgment of conviction and order of sentence was in assail before the High Court; and it was contended by the learned Counsel for the Appellant therein that the trial court had failed to appreciate the evidence in proper perspective and had not considered the material contradictions in the testimony of prosecution witnesses and, therefore, the judgment of conviction and sentence, being vulnerable, deserved to be annulled. The learned Judge also noted the alternative submission which was to the effect that the parties had entered into a compromise and a petition seeking leave to compromise though was filed before the learned trial Judge, it did not find favour with him on the ground that the offence in question was non- compoundable and, therefore, regard being had to the said factum the sentence should be reduced to the period already undergone, which was slightly more than one year.

6. The High Court, as is manifest, has converted the offence to one under 354 Indian Penal Code and confined the sentence to the period of custody already undergone.

7. We have heard Mr. C.D. Singh, learned Counsel for the Appellant- State and Ms. Asha Jain Madan, learned Counsel who was engaged by the Court to represent the Respondent. Be it stated, this Court had appointed a counsel to argue on behalf of the Respondent, as despite service of notice, the Respondent chose not to appear.

8. It is contended by the learned Counsel for the State that the High Court has not kept in mind the jurisdiction of the appellate court and dislodged the conviction and converted the conviction to one Under Section 354 Indian Penal Code in an extremely laconic manner and, therefore, the judgment deserves to be dislodged. It is urged by him that it is the bounden duty of the appellate court to reappreciate the evidence in proper perspective and thereafter arrive at appropriate conclusion and that exercise having not been done, the impugned judgment does not commend acceptation. He has also seriously criticized the quantum of sentence imposed by the High Court.

9. Ms. Asha Jain Madan, learned Counsel appearing for the Respondent, per contra, would contend that the learned Single Judge, regard being had to the evidence on record, has come to hold that the prosecution had failed to prove the offence Under Section 376(2)(f) read with Section 511 Indian Penal Code, and hence, the impugned judgment is absolutely impeccable. She would contend with immense vehemence that when the prosecutrix was a seven year old girl and the ingredients of the offence had not been established the conversion of the offence to one Under Section 354 Indian Penal Code by the High Court cannot be found fault with. It is urged by her that once the view of the High Court is found defensible, the imposition of sentence Under Section 354 Indian Penal Code cannot be regarded as perverse.

10. To appreciate the rivalised submissions advanced at the Bar, we have anxiously perused the judgment of the learned trial Judge as well as that of the High Court. As we notice, the trial court has scanned the evidence and arrived at the conclusion that the prosecution had been able to bring home the charge on the base of credible evidence. The High Court, as is demonstrable, has noted the submissions of the learned Counsel for the Appellant therein to the effect that the trial court had failed to appreciate the evidence in proper perspective, and had totally ignored the material contradictions in the testimony of the prosecution witnesses, and thereafter abruptly referred to the decisions in Ashok @ Pappu v. State of M.P. 2005 Cr.L.J. (M.P.) 471., Phulki @ Santosh @ Makhan v. State of M.P. 2006 Cr.L.J. (M.P.) 157 and Jeevan v. State of M.P. 2008 Cr.L.J. (M.P.) 1498 and the factual matrix in the said cases, and concluded thus:

Keeping in view the aforesaid position of law and the statement of prosecutrix who was aged 7 years only at the time of incident and the medical evidence on record, this Court is of the opinion that the learned Court below committed error in convicting the Appellant Under Section 376 of Indian Penal Code. After going through the evidence, it can be said that at the most Appellant can be held guilty of the offence punishable Under Section 354 of Indian Penal Code. In view of this, the appeal filed by the Appellant is allowed in part and the conviction of Appellant Under Section 376 is set aside and Appellant is convicted Under Section 354 of Indian Penal Code. So far as sentence is concerned, keeping in view the aforesaid position of law and also the fact that Appellant is in jail since last more than one year the purpose would be served in case the jail sentence is reduced to the period already undergone. Thus, the same is reduced to the period already undergone. Respondent/State is directed to release the Appellant forthwith, if not required in any other case.

11. In the instant appeal, as a reminder, though repetitive, first we shall dwell upon, in a painful manner, how some of the appellate Judges, contrary to the precedents and against the normative mandate of law, assuming a presumptuous role have paved the path of unbelievable laconicity to deal with criminal appeals which, if we permit ourselves to say, ruptures the sense of justice and punctures the criminal justice dispensation system.

12. In this regard, reference to certain authorities of this Court would be apposite. In Amar Singh v. Balwinder Singh and Ors. MANU/SC/0065/2003 : (2003) 2 SCC 518 while dealing with the role of the appellate Court, a two- Judge Bench has observed thus:

The learned Sessions Judge after placing reliance on the testimony of the eyewitnesses and the medical evidence on record was of the opinion that the case of the prosecution was fully established. Surprisingly, the High Court did not at all consider the testimony of the eyewitnesses and completely ignored the same. Section 384 Code of Criminal Procedure empowers the appellate court to dismiss the appeal summarily if it considers that there is no sufficient ground for interference. Section 385 Code of Criminal Procedure lays down the procedure for hearing appeal not dismissed summarily and Sub- section (2) thereof casts an obligation to send for the records of the case and to hear the parties. Section 386 Code of Criminal Procedure lays down that after perusing such record and hearing the Appellant or his pleader and the Public Prosecutor, the appellate court may, in an appeal from conviction, reverse the finding and sentence and acquit or discharge the accused or order him to be retried by a court of competent jurisdiction. It is, therefore, mandatory for the appellate court to peruse the record which will necessarily mean the statement of the witnesses. In a case based upon direct eyewitness account, the testimony of the eyewitnesses is of paramount importance and if the appellate court reverses the finding recorded by the trial court and acquits the accused without considering or examining the testimony of the eyewitnesses, it will be a clear infraction of Section 386 Code of Criminal Procedure. In Biswanath Ghosh v. State of W.B. MANU/SC/0208/1987 : (1987) 2 SCC 55 it was held that where the High Court acquitted the accused in appeal against conviction without waiting for arrival of records from the Sessions Court and without perusing evidence adduced by the prosecution, there was a flagrant miscarriage of justice and the order of acquittal was liable to be set aside. It was further held that the fact that the Public Prosecutor conceded that there was no evidence, was not enough and the High Court had to satisfy itself upon perusal of the records that there was no reliable and credible evidence to warrant the conviction of the accused. In State of U.P. v. Sahai MANU/SC/0258/1981 : (1982) 1 SCC 352 it was observed that where the High Court has not cared to examine the details of the intrinsic merits of the evidence of the eyewitnesses and has rejected their evidence on general grounds, the order of acquittal passed by the High Court resulted in a gross and substantial miscarriage of justice so as to invoke extraordinary jurisdiction of the Supreme Court Under Article 136 of the Constitution.

The said view was reiterated by a three- Judge Bench in the State of Madhya Pradesh v. Bhura Kunjda MANU/SC/1332/2005 : (2009) 17 SCC 346.

13. Recently, in K. Anbazhagan v. State of Karnataka and Ors. 1, a three- Judge Bench addressing the manner of exercise of jurisdiction by the appellate court while deciding an appeal has ruled that:

The appellate court has a duty to make a complete and comprehensive appreciation of all vital features of the case. The evidence brought on record in entirety has to be scrutinized with care

and caution. It is the duty of the Judge to see that justice is appropriately administered, for that is the paramount consideration of a Judge. The said responsibility cannot be abdicated or abandoned or ostracized, even remotely, solely because there might not have been proper assistance by the counsel appearing for the parties. The appellate court is required to weigh the materials, ascribe concrete reasons and the filament of reasoning must logically flow from the requisite analysis of the material on record. The approach cannot be cryptic. It cannot be perverse. The duty of the Judge is to consider the evidence objectively and dispassionately. The reasonings in appeal are to be well deliberated. They are to be resolutely expressed. An objective judgment of the evidence reflects the greatness of mind - sans passion and sans prejudice. The reflective attitude of the Judge must be demonstrable from the judgment itself. A judge must avoid all kind of weakness and vacillation. That is the sole test. That is the litmus test.

14. In the case at hand, the learned Single Judge has not at all referred to the evidence that has been adduced during the trial. We have, in fact, reproduced the entire analysis made by the learned Single Judge. Prior to that, as is manifest, he has referred to some authorities which are based on their own facts. The said pronouncements, in fact, lay down no proposition of law. As is noticeable, the learned Single Judge in his judgment has only stated that the prosecution has examined so many witnesses and filed nine documents. The said approach, we are afraid to say, does not satisfy the requirement of exercise of the appellate jurisdiction. That being the obtaining situation, we are inclined to set aside the judgment of the High Court and remit the matter to it for appropriate adjudication.

15. Having stated the aforesaid, ordinarily we would have proceeded to record our formal conclusion, but, an extremely pertinent and pregnant one, another aspect in the context of this case warrants to be addressed. As it seems to us the learned Single Judge has been influenced by the compromise that has been entered into between the accused and the parents of the victim as the victim was a minor. The learned trial Judge had rejected the said application on the ground that the offence was not compoundable. In this context, it is profitable to reproduce a passage from Shimbhu and Anr. v. State of Haryana (2014) 13 SCC 318 wherein, a three- Judge Bench has ruled thus:

Further, a compromise entered into between the parties cannot be construed as a leading factor based on which lesser punishment can be awarded. Rape is a non- compoundable offence and it is an offence against the society and is not a matter to be left for the parties to compromise and settle. Since the Court cannot always be assured that the consent given by the victim in compromising the case is a genuine consent, there is every chance that she might have been pressurised by the convicts or the trauma undergone by her all the years might have compelled her to opt for a compromise. In fact, accepting this proposition will put an additional burden on the victim. The accused may use all his influence to pressurise her for a compromise. So, in the interest of justice and to avoid unnecessary pressure/harassment to the victim, it would not be safe in considering the compromise arrived at between the parties in rape cases to be a ground for the Court to exercise the discretionary power under the proviso of Section 376(2) Indian Penal Code.

16. The aforesaid view was expressed while dealing with the imposition of sentence. We would like to clearly state that in a case of rape or attempt of rape, the conception of compromise under no circumstances can really be thought of. These are crimes against the body of a woman which is her own temple. These are offences which suffocate the breath of life and sully the reputation. And reputation, needless to emphasise, is the richest jewel one can conceive of in life. No one would allow it to be extinguished. When a human frame is defiled, the "purest treasure", is lost. Dignity of a woman is a part of her non- perishable and immortal self and no one should ever think of painting it in clay. There cannot be a compromise or settlement as it would be against her honour which matters the most. It is sacrosanct. Sometimes solace is given that the perpetrator of the crime has acceded to enter into wedlock with her which is nothing but putting pressure in an adroit manner; and we say with emphasis that the Courts are to remain absolutely away from this subterfuge to adopt a soft approach to the case, for any kind of liberal approach has to be put in the compartment of spectacular error.

Or to put it differently, it would be in the realm of a sanctuary of error. We are compelled to say so as such an attitude reflects lack of sensibility towards the dignity, the elan vital, of a woman. Any kind of liberal approach or thought of mediation in this regard is thoroughly and completely sans legal permissibility. It has to be kept in mind, as has been held in Shyam Narain v. State (NCT of Delhi) MANU/SC/0543/2013 : (2013) 7 SCC 77 that:

Respect for reputation of women in the society shows the basic civility of a civilised society. No member of society can afford to conceive the idea that he can create a hollow in the honour of a woman. Such thinking is not only lamentable but also deplorable. It would not be an exaggeration to say that the thought of sullying the physical frame of a woman is the demolition of the accepted civilised norm i.e. "physical morality". In such a sphere, impetuosity has no room. The youthful excitement has no place. It should be paramount in everyone's mind that, on the one hand, society as a whole cannot preach from the pulpit about social, economic and political equality of the sexes and, on the other, some perverted members of the same society dehumanise the woman by attacking her body and ruining her chastity. It is an assault on the individuality and inherent dignity of a woman with the mindset that she should be elegantly servile to men.

17. At this juncture, we are obliged to refer to two authorities, namely, Baldev Singh v. State of Punjab MANU/SC/1445/2011 : (2011) 13 SCC 705 and Ravindra v. State of Madhya Pradesh MANU/SC/0198/2015 : (2015) 4 SCC 491. Baldev Singh (supra) was considered by the three-Judge Bench in Shimbhu (supra) and in that case it has been stated that:

18.1. In Baldev Singh v. State of Punjab, though the courts below awarded a sentence of ten years, taking note of the facts that the occurrence was 14 years old, the Appellants therein had undergone about 3 1/2 years of imprisonment, the prosecutrix and the Appellants married (not to each other) and entered into a compromise, this Court, while considering peculiar circumstances, reduced the sentence to the period already undergone, but enhanced the fine from Rs. 1000 to Rs. 50,000. In the light of series of decisions, taking contrary view, we hold that the

said decision in Baldev Singh v. State of Punjab cannot be cited as a precedent and it should be confined to that case.

18. Recently, in Ravindra (supra), a two- Judge Bench taking note of the fact that there was a compromise has opined thus:

17. This Court has in Baldev Singh v. State of Punjab, invoked the proviso to Section 376(2) Indian Penal Code on the consideration that the case was an old one. The facts of the above case also state that there was compromise entered into between the parties.

18. In the light of the discussion in the foregoing paragraphs, we are of the opinion that the case of the Appellant is a fit case for invoking the proviso to Section 376(2) Indian Penal Code for awarding lesser sentence, as the incident is 20 years old and the fact that the parties are married and have entered into a compromise, are the adequate and special reasons. Therefore, although we uphold the conviction of the Appellant but reduce the sentence to the period already undergone by the Appellant. The appeal is disposed of accordingly.

19. Placing reliance on Shimbhu (supra), we also say that the judgments in Baldev Singh (supra) and Ravindra (supra) have to be confined to the facts of the said cases and are not to be regarded as binding precedents.

20. We have already opined that matter has to be remitted to the High Court for a reappraisal of the evidence and for a fresh decision and, therefore, we have not referred to the evidence of any of the witnesses. The consequence of such remand is that the order of the High Court stands lancinated and as the Respondent was in custody at the time of the pronouncement of the judgment by the trial Court, he shall be taken into custody forthwith by the concerned Superintendent of Police and thereafter the appeal before the High Court be heard afresh. A copy of judgment be sent to the High Court of Madhya Pradesh, Bench at Gwalior.

21. The appeal stands allowed to the extent indicated hereinabove.

MANU/SC/0089/1975

Back to Section 321 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 272 of 1975

Decided On: 05.12.1975

Bansi Lal Vs. Chandan Lal And Ors.

Hon'ble Judges/Coram:

A.C. Gupta and Y.V. Chandrachud, JJ.

JUDGMENT

A.C. Gupta, J.

1. By his order dated November 19, 1974 the First Additional Sessions Judge, Etawah, allowed the application of the Public Prosecutor, Etawah, to withdraw the prosecution against respondents Chandan Lal and Baldeo Prasad. A revisional application directed against the order was dismissed in limine by the Allahabad High Court. In this appeal by special leave the propriety of the order allowing withdrawal of the prosecution is in question.

2. The facts of the case, relevant for the present purpose, are as follows. On the morning of May 27, 1970 two reports concerning the same incident were lodged in quick succession by two persons, the first report was made by one Ram Narayan at 6.15 A.M., and the next at 6.30 A.M. by the appellant Bansilal at Etawah police station. The reports said that respondent Chandan Lal and several others had forcibly caught hold of Bansi Lal's sister's husband Mawa Ram and dragged him inside Chandan Lal's house and when attracted by his screams several persons attempted to rescue him, Mawa Ram, the other respondent Baldeo Prasad and one Sukh Lal closed the door from inside. Bansi Lal's report added that one of the inmates of the house standing on the roof was threatening the crowd outside with a gun. On receipt of this information, sub-Inspector, K.K. Sharma accompanied by some constables hastened to Chandan Lal's house which they found closed from inside and surrounded by a crowd. Some one from the roof of the house started firing at the crowd and the police party. This man who was latter identified as one Rameshwar was killed when the police returned fire. Entering Chandan Lal's house the police party found Mawa Ram lying seriously injured in a room where Chandan Lal, Baldeo Prasad and Sukh Lal were present. Chandan Lal, Baldeo and three other persons found inside the house, Sukh Lal, Gay a Prasad Damodar and Sitaram were all arrested and Mewa Ram was sent to the District Hospital for treatment. Mewa Ram died the same evening without gaining consciousness.

3. On the report of Sub- Inspector K.K. Sharma, a case under Sections 147, 148, 302, 342 and 149 of the Indian Penal Code was registered against the said five persons. Deputy Superintendent of

Police, R.B. Malik who was deputed to investigate the case submitted charge- sheet against the accused in the court of Additional District Magistrate (Judicial) on July 7, 1970. On May 22, 1974 the Additional District Magistrate (Judicial) Committed the case to the Court of Sessions. On July 7, 1974 the Additional Sessions Judge Etawah, on the application of the Public Prosecutor, allowed the case against Sukh Lal to be withdrawn. On the next day. July 8, charges were framed against the remaining accused persons including the respondent under Sections 147, 342 and 302/149 of the Indian Penal Code on November 18, 1974 the Public Prosecutor made an application "before the Additional Sessions Judge, Etawah, praying for permission to withdraw the case against respondents Chandan Lal and Baldeo Prasad. The material part of the application reads:

The prosecution does not want to produce evidence and continue the criminal matter against these accused (Chandan Lal and Baldeo Prasad).

On the next, day, November 19, the Additional Sessions Judge allowed this application and acquitted Chandan Lal and Baldeo Prasad of the Charges framed against them. Referring to certain facts which the described as the 'define case', the Additional Sessions Judge held that the case against Chandan Lal and Baldeo Prasad should be allowed to be withdrawn "because the prosecution is reluctant to prove its case against the said two accused persons" and it appeared "futile to refuse permission to the State to withdraw the prosecution." The correctness of this order is the only question for determination in this appeal.

4. Section 321 of the CrPC, 1973 which corresponds to Section 494 of the earlier Code of 1898 and is in identical terms empowers the Public Prosecutor to withdraw with the consent of the Court from the prosecution of any person either generally or in respect of any one or more of the offences for which he is being tried.... Section 494 of the Code of 1898 has been construed by tine different High Courts in a number of cases. this Court in M.N. Sankarayaryanan Nair v. P.V. Balakrishnan and Ors. (1), explaining the well- established legal position as to the scope and ambit of the powers granted by Section 494 has observed that though the section "does not circumscribe the powers of the Public Prosecutor to seek permission to withdraw from the prosecution, the essential consideration which is implicit in the grant of the power is that it should be in the interest of administration of justice...." Though it is not possible to catalogue all the circumstances in which this power can be exercised, by way of illustration MNS. Nair's case (supra) mentions a few instances where the Public Prosecutor would be apparently justified in seeking such permission, as in a case where the prosecution "will not be able to produce sufficient evidence to sustain the charge of that subsequent information before prosecuting agency would falsify the prosecution evidence or any other similar circumstances." It is added that the request to grant permission under Section 494 should not be accepted '- as a necessary formality", "for the mere asking", but the court must be satisfied "on the materials placed before it" that the grant of permission would serve the administration of justice and that "permission was not being sought covertly with an ulterior purpose unconnected with the vindication of the law which the executive organs are in duty bound to further and maintain.

5. In the case before us the prosecution has only reached the stage of framing charges against the accused and no occasion for the defence to make out a case has yet arisen. It is not clear where the Additional Sessions Judge found the case made which he calls the defence case it is not to be found in the material that was before him. Counsel for the respondent, State of U.P. drew our attention to an order dated October 18, 1973 passed by the Allahabad High Court on a revision petition filed by the State seeking to stay further proceedings of this case when it was pending before the Additional District Magistrate (Judicial), Etawah., It appears from this judgment that an application for stay of the proceedings was made before the Additional District Magistrate (Judicial) on the ground that the case required to be investigated further. The Additional District Magistrate rejected the application and the Sessions Judge, Etawah, confirmed that order. The High Court on October 18, 1973 dismissed the revision petition made against the order refusing the prayer for stay and directed the Additional District Magistrate to dispose of the proceedings before him expeditiously and in accordance with law. As stated already, the case was committed to the Court of Sessions on May 22, 1974. Therefore when the Addl. Sessions Judge made the impugned order, there was no material before him to warrant the conclusion that sufficient evidence would not be forthcoming to sustain the charges or that there was any reliable subsequent information falsifying the prosecution case or any other circumstance justifying withdrawal of the cast against the respondents. Consenting to the withdrawal of the case on the view that the attitude displayed by the Prosecution made it "futile" to refuse permission does not certainly serve the administration of justice. If the material before the Additional Sessions Judge was considered sufficient to enable him to frame the charges against the respondents, it is not possible to say that there was no evidence in support of the Prosecution case. The application for stay of the proceeding made before the committing magistrate cannot also be said to falsify the prosecution case. If the prosecuting agency brings before the court sufficient material to indicate that the prosecution was based on false evidence, the court would be justified in consenting to the withdrawal of the prosecution, but on the record of the case, as it is, we do not find any such justification. In our opinion the High Court was in error in dismissing in limine the revisional application made against the order of the Additional Sessions Judge.

6. The appeal is accordingly allowed and the order of the Additional Sessions Judge permitting the withdrawal of the case against the respondents is set aside. The Additional Sessions Judge will proceed with the trial in accordance with law.

MANU/SC/0398/1978

Back to Section 325 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 95 of 1977

Decided On: 28.09.1978

Ratilal Bhanji Mithani Vs. State of Maharashtra and Ors.

Hon'ble Judges/Coram:

A.P. Sen, O. Chinnappa Reddy and R.S. Sarkaria, JJ.

JUDGMENT

R.S. Sarkaria, J.

1. This appeal by special leave is directed against a judgment, dated January 21, 1976, of the High Court of Judicature at Bombay in Criminal Revision Application No. 565 of 1969, whereby it set aside an order, dated February 26, 1969, of the Chief Presidency Magistrate and directed the latter to restore Case No. 244/C.W. of 1968 against the accused persons, excepting accused No. 7 (who is since dead) for being dealt with in the light of the observations made therein.

2. The case was originally instituted on April 1, 1961 on the basis of a criminal complaint filed by the Assistant Collector (Customs) in the Court of the Chief Presidency Magistrate, Esplanade, Bombay. It is alleged in the complaint that between August 1957 and March 1960, offences under Section 120B, I.P.S., read with Section 167(81) of the Sea Customs Act, 1978, and Section 5 of the Imports and Exports Act, 1947, were committed by one Ramlal Laxmidutta Nanda and seven others, including the appellant, who is accused No. 2 in the Trial Court. Ramlal Laxmidutta Nanda was alleged to be the principal culprit. He died on September 15, 1960. As a result of a conspiracy, twenty- for consignments of goods came from abroad and were received in Bombay. The conspiracy was carried out in this manner. By steamer, two consignments bearing similar marks would arrive such as M.T.S. M.I.S. marked in triangle. The first consignment would contain the genuine goods and the second consignment would contain less number of cases than the first consignment. The documents would arrive for the first consignment. With the help of the documents for the genuine goods, the Customs examination would be carried out, and then at the time of removing the real consignment, contraband consignment plus one case of the genuine consignment would be removed. Remaining goods of the genuine consignments with their marks tampered, would be left unattended in the docks. Out of the 24 consignments brought into India, the last four were seized by the Customs. The appellant Mithani was not linked with any of those four. But with regard to the remaining 8 out of the twenty consignments, the prosecution alleges that it has in its possession 10 Verladescheins (called as 'mate sheets or receipts') which give the description of the contraband goods. Out of these 10 Verladescheins. 2 relate to consignments in the name of Suresh Trading Co. and Dee Deepak & Co. From the proprietors of these two firms, the appellant Mithani held Powers of Attorney.

3. Mithani was arrested and bailed out on May 11, 1960. Between March 1962 and December 1962, the prosecution examined about 200 witnesses before the Magistrate, but had not yet examined any witness in regard to any of the 10 Verladescheins.

4. The complainant made an application to the trial magistrate, requesting him to get on record a number of documents falling into these categories, viz. (1) Verladescheins (Mate's receipts), (2) the correspondence that passed between Shaw Wallace & Co. and their principals and agents abroad and also the correspondence that passed between the other shipping agents in Bombay with their principals, and (3) the documents concerning the Company known as C.C.E.I. at Zurich.

5. By an order, dated August 24, 1962, the Magistrate held that 10 out of the 20 Verladescheins were inadmissible either under the Evidence Act or under the Commercial Documents Evidence Act. 1939. By another order, dated December 6, 1962, the Magistrate held that 9 out of the 10 Verladescheins were admissible under Section 10 of the Evidence Act. Some other letters and correspondence were also excluded on the ground that they could not be said to have been written in furtherance of the conspiracy.

6. On December 12, 1962, the Magistrate found that no other witness for the prosecution was present. He, therefore, passed this order:

None of the witnesses are present. The case is very old. There is enough evidence for the purpose of charge and about 200 witnesses are examined. Prosecution may examine all witnesses as they deem proper after the charge. Prosecution closes its case. Accused statement recorded. Adjourned for arguments for charge to 13.12.1962.

7. The Magistrate then heard the arguments and thereafter on December 21, 1962, on the basis of the evidence already recorded, framed charges against Mithani and his 6 co- accused. Under the first charge, Mithani (accused No. 2) was jointly charged with Accused 1, 3, 4, 5, 6 and 7 with criminal conspiracy between September 1957 and February 1, 1960 or thereabout, with intent to defraud the Government of India of the duty payable on various contraband goods and to evade the prohibition and restrictions imposed relating thereto for acquiring possession of large quantity of contraband goods etc. It was specifically recited in the charge that accused No. 2 was, at the relevant time, partner of Shanti Lal and Chagan Lal & Co., Bombay, and also constituted Attorney of Suresh Trading Co., Dee Deepak & Co., New Delhi, and also of Eastern Trading Corporation, Bombay and had an interest in all these three concerns.

8. On February 19, 1963, the State filed Criminal Revisions Application No. 107 of 1963 in the High Court against the orders dated August 24, 1962 and December 6, 1962 of the Magistrate, whereby the latter had refused to admit 11 Verladescheins out of 20 in evidence. The State, also, made a grievance against the failure of the Magistrate to frame charges in respect of certain alleged acts of the accused. It was contended that the Magistrate had unduly curtailed the period of conspiracy, while the evidence brought on the record by the Prosecution showed that this period was longer than what the Magistrate had taken into account.

9. On July 17, 1964, Mithani, also, filed Criminal Revision No. 574 of 1964 in the High Court, challenging the Magistrate's Order, dated December 6, 1962, whereby he had admitted 9 Verladescheins, Bills of Lading, Invoices etc., into evidence. It was further alleged in the Revision Petition : "It ought to have been appreciated that all the Verladescheins, Invoices and Bills of Lading being inadmissible, there is no evidence left on record to make even a prima facie

case against the petitioner." The Revision petitioner, inter alia, prayed "that the order of the learned Magistrate dated December 6, 1962, in so far as it is against the petitioner, and the charges framed by the learned Magistrate against the petitioner, be set aside and he be discharged from the case."

10. Revision Application No. 107 by the State was heard by Mr. Justice H.R. Gokhale (as he then was) on August 19, 1964. It was contended there, on behalf of the prosecution that all the Verladescheins were straightway admissible under Sub- section (2) of Section 32, Evidence Act. Gokhale, J. Held that since the preliminary condition set out in the prefatory part of Section 32, (Viz., that the persons whose statements are sought to be admitted under Section 32 are such that their attendance cannot be procured without an amount of delay or expense, which under the circumstances of the case, may appear to the Court to be unreasonable, had not been satisfied these Verladescheins (Mates receipts) would not be admissible under Section 32. In view of this, finding the learned Judge felt that "it really does not be come necessary to consider that these Verladescheins were not prepared in the ordinary course of business". The learned Judge was careful enough to caution: "I am not suggesting that for the reasons all these documents are false." Indeed, he conceded that they may be relevant to the facts in issue, and added: "If the prosecution desires to rely upon the evidence of these documents the prosecution certainly will be entitled to prove them or to prove the correctness of the description of the document in the ordinary way without having resort to the exception contained in Section 32."

11. As regards the question whether these Verladescheins were admissible under Section 10, the learned Judge held that "before considering this question, it would be wrong to look at these very documents the admissibility of which is in dispute", and that "such a conclusion can be reached from evidence, documentary, oral or circumstantial, but apart from the disputed document itself. It does not appear from the order of the learned Magistrate that there was any independent material from which he had formed the opinion that two or more persons had conspired together to commit an offence." The learned Judge significantly added : "If there is any such material or if the prosecution leads further evidence and if such material is brought on record, the learned Magistrate will, at the appropriate stage, be entitled to take this material into consideration and decide whether these documents can be admitted under Section 10 of the Evidence Act." The learned Judge pointed out that this could include an attempt to take out the goods. In this connection he observed: "If apart from the question of the period during which the conspiracy extended they are not admissible in evidence, because other conditions required to be satisfied under Section 10 are not satisfied, then it is another matter. But I cannot accept his conclusion that they would not be so admissible, because they do not fall within the period of conspiracy." The learned Judge concluded : "I have no doubt that the learned Magistrate will have to consider afresh whether the documents, which he has admitted under Section 32 or Section 10 are admissible or not. In any case, the order which he has made admitting certain documents under Section 10 or Section 32 was an interlocutory order and the learned Magistrate will be entitled to reconsider the position in the light of the observations in this judgment.... The learned Magistrate in the light of the view which I have taken, will also consider whether it is necessary to frame additional charges and to pass an appropriate order."

12. The Revision Application No. 574 of 1964, filed by Mithani, was rejected by a separate order, dated August 21, 1964 on the ground that in the view which the learned Judge had taken in Criminal Revision No. 107 of 1963, it was not necessary to admit this Revision Application. It was, however, observed that the Magistrate will take the observations in that judgment into

consideration and consider "whether the interlocutory order, against which the present Revision Application is filed, needs to be reviewed."

13. The prosecution filed Special Leave Petitions (965 and 966 of 1965) in this Court against the judgment, dated August 19/20, 1964 of Mr. Justice Gokhale, and against the High Court's order refusing to grant certificate of fitness. this Court on January 27, 1966, summarily dismissed both these petitions. The prosecution then made an application to the Magistrate to take some photostat copies of certain documents. The Magistrate granted this application. Accused 1 challenged this order of the Magistrate in the High Court. By its order, dated October 4, 1966, the High Court restricted the time to prosecution by three months for calling the Foreign Witnesses. After expiration of this period, the prosecution on January 11, 1967 filed an application in the High Court for cancellation of Mithani's bail on the ground that he was tampering with the witnesses and abusing the liberty granted to him. The High Court cancelled Mithani's bail and Mithani surrendered and was committed to jail custody on January 13, 1967. Mithani came by special leave against the order cancelling his bail, to this Court. By order dated May 4, 1967, this Court dismissed Mithani's appeal, but restricted the time for examining the German Witnesses cited by the prosecution upto June 26, 1967. Since there was delay in procuring the attendance of German Witnesses within the time granted, Mithani was released on bail by an order dated July 26, 1967 of this Court. Thereafter, the prosecution applied to the Magistrate to proceed with the case without the Foreign Witnesses.

14. On July 10, 1967, the prosecution applied to the Magistrate for issue of commission for examination of the German Witnesses at Hamburg or Berlin or London. The Magistrate rejected this application by his order dated August 8, 1967. Against the Magistrate's order, the prosecution, again, went in revision to the High Court, which rejected the same by an order in September, 1967. Another revision petition filed in the High Court by the prosecution was dismissed by the High Court (V.S. Desai & Wagle JJ) by an order dated August 9, 1968.

15. On December 2, 1968, the prosecution made an application for examining a number of witnesses to establish the preliminary facts for admission of the Verladasheins and other documents under Sections 32(2)(3) and 10 of the Evidence Act and under the Commercial Documents Act. The Magistrate rejected that application by his order dated January 9, 1969.

16. By an order dated February 26, 1969, the Additional Chief Presidency Magistrate, deleted charges 2 to 9 against Accused 2 (Mithani), 3 and 7, and 'discharged' them. The following extract from the Magistrate's order will be useful to appreciate its true nature:

I therefore hold that with regard to overt acts in charges Nos. 2 to 9 no charges can be framed against any of the accused and therefore charges Nos. 2 to 9 will stand deleted.

Accused Nos. 2, 3 and 7 are concerned only in some of the charges Nos. 2 to 9. They are not concerned in charges Nos. 10, 11, 12 and 13.

Therefore as no overt act is held proved against them no conspiracy can be inferred as against them and therefore charge No. 1 of conspiracy as against them must go.

Therefore with regard to accused Nos. 2, 3 and 7 I hold that no case is made out against them and I therefore hold them not guilty Under Section 167 read with 81 of the Customs Act for

contravention of Import & Export Control Act 1947 and 1955 and for conspiracy and order them to be discharged.

17. Against the Magistrate's order, dated February 26, 1969, the prosecution filed Criminal Revision Application No. 565 of 1969 in the High Court.

18. By its judgment dated December 16/17, 1969, a Bench of the High Court (consisting of Vaidya and Rege JJ.) allowed Criminal Revision 565 of 1969 mainly on the ground that the Magistrate after framing the charge, had no legal power to discharge the accused persons. It was observed that "the entire complexion of the cases changed on account of the retirement of the Magistrate. The new Magistrate who will hear the matter, will have to find out whether he must alter or vary the charge and for that purpose to issue a fresh process to the two living deleted accused, after taking into consideration the evidence already recorded by the former Magistrate...and such other evidence he may have to record hereafter." The High Court concluded: "We are setting aside the order of discharge on the ground that it is open to the new Magistrate to frame a charge against the deleted accused on considering the material; and also on the ground that the former Magistrate had no power to discharge the accused after framing the charge." The High Court further observed that, "whatever submissions the accused want to make with regard to not framing the charge are also open to them." At that stage, they did not want and could not consider the evidence before the Magistrate. In the result, the order dated February 26, 1969 of the Magistrate was set aside and the case was restored to the file of the Magistrate, except with regard to the deceased accused No. 7 for being dealt with as early as possible, in accordance with law and in the light of the observations made by the High Court.

19. Against this order, dated January 21, 1976, of the High Court setting aside the order dated February 26, 1969 of the Magistrate discharging the accused, the accused 2 (Mithani) has come in appeal before us.

20. The points canvassed by Shri I.N. Shroff, learned Counsel for the appellant, may be summarised as under :

(i) In passing the then impugned order, the Magistrate was simply acting in consonance with the observation and implied directions contained in the judgment, dated August 19/20, 1964, of Mr. Justice H.R. Gokhale in Cr. R.A. No. 107 of 1964. On the contrary, the Bench of the High Court (consisting of Vaidya and Rege JJ) has failed in its duty to uphold the aforesaid judgment of Mr. Justice Gokhale- which judgment had been upheld by this Court while dismissing prosecution's Special Leave Petitions 965 and 966 of 1975. Mr. Justice. Gokhale- so proceeds the argument- had held "that 10 Verladasheins were inadmissible under Section 32 and/or Section 10 of the Evidence Act." The legal consequence of this finding was that the charges framed by the Magistrate on December 21, 1962, on the basis of the said Verladescheins, were unsustainable in law and the Magistrate had to examine the matter de novo by ignoring the said charges or by amending, altering the same- as may be justified on the remaining admissible evidence on record.

(ii) In reviewing and deleting the charges and discharging the appellant (Mithani) and two other accused, the Magistrate was acting in accordance with the observation of Gokhale J. in Cr. R.A. 574 of 1974, which was to the effect, that it would be open to the Magistrate to consider whether the interlocutory order against which that revision application was filed, needs to be reviewed.

(iii) Since the Magistrate had under the CrPC, no power to delete the charges framed against the appellant and two others, it will be deemed that in the eye of law those charges still existed when

the Magistrate by his order dated February 26, 1969, discharged the accused Mithani and two others. This being the case, this order of "discharge" ought to have been treated as an order of 'acquittal'.

(iv) (a) In revision, the High Court was not competent to set aside this order of 'acquittal' and direct, as it were, a retrial of the accused.

(b) Since the appellant had, in reality, been acquitted by the Magistrate, he could not be retried on the same charges because of the double jeopardy or autrefois acquit.

(v) There has been gross laxity and delay on the part of the prosecution in prosecuting their case and in producing all their evidence, which is nothing short of abuse of the process of the Court. The complaint was filed on April 1, 1961. The order of "discharge" was passed by the Magistrate on February 26, 1969, and the aforesaid order came up for consideration in revision before the High Court in January 1976. The High Court's order dated January 21, 1976, directing de novo proceedings against the appellant after a lapse of several years would be unjust and unfair, particularly when this delay was attributable to the prosecution which had, indeed, closed its evidence before the framing of the charge and its request to examine the German Witnesses on commission stands declined.

21. As against this, Shri Soli Sorabji, learned Additional Solicitor- General submits that the appellant (Mithani), in fact, had never filed any revision against the order of the Magistrate, framing charges against him and others. It is pointed out that in Cr.R.A. No. 574 of 1964 filed by Mithani on July 17, 1964 in the High Court, the challenge was, in terms, confined to the Magistrate's order, dated December 6, 1962, whereby he had admitted 9 Verladescheins, Bills of Lading, invoices etc. into evidence; and that the order dated December 21, 1962, framing the charges was not specifically challenged. In any case, Gokhale J. had summarily rejected Mithani's Criminal Revision by an order, dated August 21, 1964. According to Shri Sorabji, the further observation in that order of Gokhale J. to the effect that it was open to the Magistrate to consider, "whether the interlocutory order against which the present revision application is filed, needs to be reviewed", was made only in respect of the Magistrate's order dated December 6, 1962 and not the order whereby the charges were framed. It is further submitted that Gokhale J.'s observations and directions in his judgment dated August 19/20, 1964 in Cr.R.A. No. 107 of 1964, could not, by any stretch of imagination, be construed as authorising the Magistrate to reconsider and delete the charges, and discharge the accused. On the contrary, the learned Judge had directed amendment of the charge so that the period of the conspiracy was not restricted to the period mentioned in the charges. It is further submitted that the Magistrate's order arbitrarily deleting the charges and "discharging" the accused, was patently illegal and the High Court was fully competent and justified to set it aside in the exercise of its revisional powers under Section 439 of the Code.

22. As regards delay in the proceedings, Shri Sorabji submits, it was mostly due to circumstances beyond the control of the prosecution; that the charge against the appellant was a grave one and the direction given by the High Court to take further proceedings, inter alia, against the appellant was not unjust and unfair.

23. We are unable to accept any of the contentions advanced by Shri Shroff.

24. At the outset, let us have a look at the relevant provisions of the CrPC, 1898, which admittedly governed the pending proceedings in this case. The procedure for trial of warrant cases by

Magistrates is given in Chapter XXI of that Code. The present case was instituted on a criminal complaint. Section 252 provides that in such a case, the Magistrate shall proceed to hear the complainant (if any) and take all such evidence, as may be produced, in support of the prosecution. Sub- section (2) of that Section casts a duty on the Magistrate to ascertain the names of persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and to summon all such persons for evidence. Section 253 indicates when and in what circumstances ah accused may be discharged: It says:

253(1) If, upon taking all the evidence referred to in Section 252, and making such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

Section 254 indicates when and in what circumstances a charge should be framed. It reads:

254. If when such evidence and examination have been taken and made, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try, and which in his opinion could be adequately punished by him, he shall frame in writing a charge against the accused.

Section 255 enjoins that the charge shall then be read over and explained to the accused, and he shall be asked whether he is guilty or has any defence to make. If the accused pleads guilty, the Magistrate shall record that plea, and may convict him thereon.

25. Section 256 provides that if the accused refuses to plead or does not plead, or claims to be tried, he shall be required to state at the next hearing whether he wishes to cross- examine any of the witnesses for the prosecution whose evidence has been taken, and if he says he so wants to cross- examine, the witnesses named by him shall be recalled and he will be allowed to further cross- examine them. "The evidence of any remaining witnesses for the prosecution shall next be taken" and thereafter the accused shall be called upon to enter upon and produce his defence.

26. Section 257 is not material. Section 258(1) provides that if in any case "in which a charge has been framed the Magistrate finds the accused not guilty, he shall record an order of acquittal. Sub- section (2) requires, where in any case under this chapter the Magistrate does not proceed in accordance with the provisions of Section 349 or Section 562, he shall, if he finds the accused guilty, pass sentence on him in accordance with law.

27. From the scheme of the provisions noticed above, it is clear that in a warrant case instituted otherwise on a police report, 'discharge' or 'acquittal' of accused are distinct concepts applicable to different stages of the proceedings in Court. The legal effect and incidents of 'discharge' and 'acquittal' are also different. An order of discharge in a warrant case instituted on complaint, can be made only after the process has been issued and before the charge is framed. Section 253(1) shows that as a general rule there an be no order of discharge unless the evidence of all the prosecution witnesses has been taken and he considers for reasons to be recorded, in the light of the evidence that no case has been made out. Sub- section (2) which authorises the Magistrate

to discharge the accused at any previous stage of the case if he considers the charge to be groundless, is an exception to that rule. A discharge without considering the evidence taken is illegal. If a prima facie case is made out the Magistrate must proceed under Section 254 and frame charge against the accused. Section 254 shows that a charge can be framed if after taking evidence or at any previous stage, the Magistrate, thinks that there is ground for presuming that the accused has committed an offence triable as a warrant case. Once a charge is framed, the Magistrate has no power under Section 227 or any other provision of the Code to cancel the charge, and reverse the proceedings to the stage of Section 353 and discharge the accused. The trial in a warrant case starts with the framing of charge; prior to it, the proceedings are only an inquiry. After the framing of charges if the accused pleads not guilty, the Magistrate is required to proceed with the trial in the manner provided in Section 254 to 258, to a logical end.

Once a charge is framed in a warrant case, instituted either on complaint or a police report, the Magistrate has no power under the Code to discharge the accused, and thereafter, he can either acquit or convict the accused unless he decides to proceed under Section 349 and 562 of the Code of 1892 (which correspond to Sections 325 and 360 of the Code of 1973).

28. Excepting where the prosecution must fail for want of a fundamental defect, such as want of sanction, an order of acquittal must be based upon a 'finding of not guilty' turning on the merits of the case and the appreciation of evidence at the conclusion of the trial.

29. If after framing charges the Magistrate whimsically, without appraising the evidence and without permitting the prosecution to produce all its evidence, 'discharges' the accused, such an acquittal, without trial, even if clothed as 'discharge', will be illegal. This is precisely what has happened in the instant case. Here, the Magistrate, by his order dated December 12, 1962 framed charges against Mithani and two others. Subsequently, when on the disposal of the Revision applications by Gokhale, J. the records were received back, he arbitrarily deleted those charges and discharged the accused, without examining the "remaining witnesses" of the prosecution which he had in the order of framing charges, said, "will be examined after the charge".

30. It is not correct as has been contended on behalf of Mithani, that in adopting this course the Magistrate was only acting in accordance with the observations/directions of Gokhale J. in the judgments disposing of Criminal Revisions 107/63 and 514 of 1964. A perusal of Gokhale J's orders in these two Revision Applications- material portions of which have been quoted earlier- will show that there is nothing in those orders which expressly or by implication required the Magistrate to delete the charges and 'discharge' or acquit the accused. On the contrary, the learned High Court Judge (Gokhale J.) had accepted the Revision filed by the prosecution and directed the Magistrate to amend the charges in so far as they appear to restrict the period of conspiracy to the one between the dates mentioned in the charges. Gokhale J. had further directed the Magistrate to consider the circumstantial and other evidence of the prosecution with a view to frame additional charges as claimed by the prosecution.

31. Gokhale J's judgment in Cr.R.A. 107 shows that the learned Judge did not hold that the verladesheins or the other documents in question tendered by the prosecution, were not relevant at all, under any provision of the Evidence Act. All that was held by him was that before these documents could be admitted under Section 32(2) or Section 10 of the Evidence Act, some preliminary facts had to be established by the prosecution. For instance, one of the conditions precedent for the admissibility of a previous statement of a party under Section 32(2) is

that the attendance of the witness who made that statement, could not be procured without an amount of delay and expense which in the circumstances of the case, appeared to the Court to be unreasonable. Similarly, with regard to the invocation of Section 10, Evidence Act, it was observed that before the documents concerned could be admitted under Section 10, Evidence Act, prima facie proof, aliunde should be given about the existence of the conspiracy. On the contrary, Gokhale J. clearly held that the documents, in question, were relevant to the facts in issue, but they had to be proved in any of the ways recognised by the Evidence Act, Gokhale J. never quashed the charges already framed by the Magistrate. It is true that the prosecution in its Special Leave Petitions 965 and 966 contended that the observations made by Gokhale J. with regard to the admissibility of Verladasheins and other documents are of "far reaching importance and are likely to prejudice the prosecution" and will affect the future course of the proceedings adversely to the prosecution. However, apart from these Verladasheins there was other circumstantial and oral evidence on the record and more evidence was yet to be produced by the prosecution after the charge. The prosecution were doing their best to secure the evidence of German witnesses in Europe. They want to produce other evidence also, apart from the Verladasheins, to show a prima facie case of conspiracy so that in accordance with the guidelines laid down in Gokhale J's judgment, they could make out a case for the admissibility of the Verladasheins under Section 10, Evidence Act.

32. A perusal of the copy of the Revision Application No 574/64 filed by Mithani in the High Court, will show that the only order specifically challenged therein was one dated December 6, 1962 whereby the Magistrate had held that 9 Verladasheins were admissible under Section 10, Evidence Act, although, incidentally, it was mentioned that the charges framed as a consequence of the impugned order dated December 6, 1962, should also be quashed. Even so, Mithani's Revision Application (No. 574/64) was summarily rejected by the learned Judge with the observation that the Magistrate could, in the light of the observations in the Judgment in Cr.Rev. A. 107 of 1963, "consider, whether the interlocutory order against which the present Revision Application is filed needs to be reviewed." The crucial part of the observation is that which has been underlined. It shows that this observation has reference only to the order dated December 6, 1962 whereby the Magistrate had held 9 Verladasheins admissible under Section 10. In this observation, the word "order" is used in singular. It shows that the learned Judge, also, construed the Revision- petition of Mithani as one directed against the Magistrate's order dated December 6, 1962, only. Only that order of the Magistrate has been exhaustively considered in the Revision Application 107 of 1964.

33. It is thus manifest that in abruptly deleting the charges and 'discharging' the accused, the Magistrate was acting neither in accordance with the observation or directions of Gokhale J., nor in accordance with law.

34. Equally meritless, albeit ingenious is the argument that since the Magistrate had no legal power to delete the charge the order of 'discharge' must be construed as an order of "acquittal" so that the High Court could not interfere with it in revision and direct a retrial. Assuming arguendo, the Magistrate's order of discharge was an order of 'acquittal', then also, it does not alter the fact that this 'acquittal' was manifestly illegal. It was not passed on merits, but without any trial, with consequent failure of justice. The High Court has undoubtedly the power to interfere with such a patently illegal order of acquittal in the exercise of its revisional jurisdiction under Section 439, and direct a retrial. The High Court's order under appeal, directing the Magistrate to take de novo proceedings against the accused was not barred by the provisions of Section 403, (of the

Code of 1898), the earlier proceedings taken by the Magistrate being no trial at all and the order passed therein being neither a valid "discharge" of the accused nor their acquittal as contemplated by Section 405(1). The Magistrate's order (to use the words of Mudholkar J. in Mohd. Safi v. State of West Bengal MANU/SC/0076/1965:1966CriLJ75 was merely "an order putting a stop to these proceedings" since the proceedings, ended with that order. The other contentions of the appellant, have been stated only to be rejected.

35. For all the reasons aforesaid, we have no hesitation in upholding the High Court's order under appeal, and in dismissing the appeal.

36. Since the case is very old, the Magistrate shall proceed with the case with utmost despatch, if feasible, by holding day to day hearings within six months from today.

MANU/MH/0015/1983

Back to Section 335 of Code of Criminal Procedure, 1973

IN THE HIGH COURT OF BOMBAY

Criminal Appeal No. 649 of 1980

Decided On: 28.04.1983

Balu Ganpat Koshire Vs. State of Maharashtra

Hon'ble Judges/Coram:

H.H. Kantharia and S.C. Pratap, JJ.

JUDGMENT

S.C. Pratap, J.

1. This appeal by the original accused questions the legality and validity of the order of conviction and sentence recorded against him by the learned Additional Sessions Judge, Nasik, in sessions Case No. 150 of 1979, the conviction being for an offence of murder punishable under S. 302. Penal Code, with a sentence of imprisonment for life imposed in that behalf.

2. The accused Balu Ganpat Koshire was married to Mira some time in 1973. Of the said marriage, the couple had a son Sandip who was four years' old at the time of the incident. The incident constituting of subject matter of the present prosecution occurred in the evening at about 7 O'clock on 26- 9- 1979 in the house of the accused. In the early part of the very day, the accused, his wife Mira and their son Sandip had returned from about a month's residence at Vani at the house of Hirabai, the sister of the accused. Just prior to the occurrence in question, wife Mira and son Sandip were sitting in their field near their house in the company of one Devki Dalvi and others, when the accused went there, took his wife Mira to their house with Sandip following them. Within a short time devki heard cries of Mira. She went to the house of the accused knocked at the door but there was no response. In the meanwhile, some young boys, who were going by the way, climbed the roof of the house at the request of devki and effected on entry and opened the door from inside. The accused went out with only a bloodstained pyjama. In the meanwhile, Nanyabai, mother of the accused, also came there. Devki and Nanyabai were shocked to find Mira and Sandip lying inside the house in a pool of blood with injuries on their persons. Dr. Pawar, a relation of the family, also came there. He conveyed the information telephonically to the police station. An offence of murder was registered against the accused. He was arrested and, after completion of investigation, charge- sheeted and committed to stand his trial before the Sessions Court, Nasik, for the offence of murder.

3. The accused admitted the incident but pleaded insanity and claimed protection of Section 84, Penal Code. The learned trial ledge held that the deaths of Mira and Sandip were homicidal. This

fact and finding is not disputed in this appeal. It was further held that the accused had committed the murders. His plea of insanity was negatived and he was convicted under S. 302, Penal Code, and sentenced to suffer imprisonment for life. Hence this appeal.

4. In support of the appeal, we have heard Mr. C. A. Phadkar, learned counsel for the appellant-accused. The State is represented by the learned Public Prosecutor Mr. M. D. Gangakhedkar.

5. Learned counsel Mr. Phadkar took us through the record of the case including the evidence of the prosecution witnesses as also defence witnesses who in this case are as many as seven and contended that the impugned conviction cannot, for more than one reason, be sustained. The trial itself was, according to the learned counsel, not legal and valid. assuming the same to be valid, the accused even so was entitled to the protection of Section 84, Penal Code. His submission in this context was that more than sufficient reliable and cogent evidence had been placed before the Court on the basis whereof fair and reasonable inference would be that the accused had discharged the burden that lay on him thus creating a dent in the prosecution case which consequently cannot be said to have been established and proved beyond reasonable doubt. The learned Public Prosecutor Mr. M. D. Gangakhedkar sought to repel these contentions.

6. Now, on 18- 1- 1980 when the charge was framed against the accused, he was not represented by any advocate, not even a State advocate. Only subsequently, an advocate was appointed at State expense. Some days thereafter the accused engaged his own advocate who filed an application (Exhibit 5) under Section 325, Cr.P.C. inter alia to the effect that the accused was unable to give proper instructions in order to enable the advocate to defend him; that the accused appears to be of unsound mind; that he was not capable of making his defence; and that he was previously treated in a mental hospital and was being treated till his arrest; and it is necessary, therefore, that he should be examined and treated medically and mentally and further proceedings in the case should be postponed till he became capable of making his defence. The State had no objection to this examination. The trial Court directed that the accused be sent for medical examination. Pursuant thereto, he was admitted to the Mental Hospital at Thane and was kept under observation for more than three weeks. Certificate was then sent to the trial Court that the accused was "un- certifiable" indicating that he cannot be said to be of unsound mind. On receipt of this certificate, the trial Court straightway resumed and concluded the trial.

7. Under Section 329, Cr.P.C., if at the trial of any person, it appears to the Court that such person is of unsound mind and consequently incapable of making his defence, the Court shall, in the first instance, "..... try the fact of such 'unsoundness and incapacity'. Record here does not indicate compliance with this mandatory provision. All that happened was that the trial Court did take a prima facie view in favour of the accused and did postpone the trial pending his medical examination. But after medical examination, the trial Court did not try the fact of the purported unsoundness and incapacity of the accused, did not record finding as to his mental condition and defending capacity and without fulfilling this initial obligation forthwith resumed and concluded the trial on the main charge itself. The resulting lacuna was not innocuous but

vital. Under sub- section 92) of S. 329, Criminal P.C., the trial of the fact of unsoundness of mind and incapacity of the accused "..... shall be deemed to be a part of his trial before the Court". Sequitur follows that the requisite trial under S. 329, Cr.P.C. was in this case not held at all. All that happened, if one may say so, was mere collection or receipt of evidence or material. But pursuant thereto no trial took place on the basic fact of unsoundness and incapacity of the accused. This vital lacuna would vitiate the trial. The doubt regarding the unsoundness and incapacity of the accused to defend himself at the main trial must per force continue to linger on, in the process rendering the validity of the further proceeding in the trial also doubtful. Taking this to its logical conclusion, the instant trial would be no trial in the eyes of law or, putting it differently, a void trial. It is, however, not necessary to go to that extent in the instant appeal because even on the assumption that the trial was valid, the accused here, on merits, established his claim to protection under Section 84, Penal Code, and consequently to an order of acquittal.

8. Coming then to the second aspect viz., the claim of the accused for protection under Section 84 Penal Code, we may in the first instance go through the relevant testimony not only of the prosecution witnesses but also witnesses examined by the defence and who were as many as seven in number. We may in this behalf take a chronological route regarding the condition of the accused from time to time so as to find out whether in terms of S. 84, Penal Code, it could or could not be said .... not beyond reasonable doubt but in all probability ..... that at the time of the offence in question the accused, by reason of unsoundness of mind, was incapable of knowing the nature of his act or that what he was doing was either wrong or contrary to law. Before proceeding further, it may be safely accepted as an undisputed fact emerging from the totality of evidence both on the side of the prosecution as also defence that the accused was a normal person and that his mental condition cannot be said to be that of a normal man. Indeed, even Dr. Vasant Pawar, a close relation of the accused and examined by the prosecution as one of its own witnesses, testifies to the fact of the accused not being a normal man and to the further circumstances that he was in fact being medically treated in that behalf. One has, therefore, to proceed on the undisputed aforesaid basis in this behalf. The evidence of Yeshwant Kale (D.W. 1), Murlidhar Shinde (D. W. 2) and Keshav Bhadane (D.W. 3), shows that the accused had once jumped from the Victoria Bridge (at Nasik) into the river below. A mere jump into a river may not be abnormal but the evidence of the aforesaid witnesses shows that the accused jumped from the Victoria Bridge into the river at about 11 O'clock in the night. This surely would be rather unusual if not abnormal. Their evidence further shows that members of the public collected, Ramesh, brother of the accused, was contacted, he came near the bridge, the accused was rescued from the river and taken by Ramesh to his house. This was an incident seen not only by the three witnesses examined by the defence but by many other members of the public. Indeed, evidence shows that police had also arrived.

9. Soon after this incident, the accused was taken to Bombay for medical consultation and treatment relating to his mental condition. At that time, Dr. Vasant Pawar, relation of the accused and prosecution witness in this case, was in Bombay. He testifies that the accused was brought to him at Bombay because there was mental disorder with him. He took the accused to an expert psychiatrist viz., Dr. Wahiya, who is yet another defence witness in this case. Dr. Wahiya examined the accused. The accused was admitted to a hospital and kept there as an indoor patient. He remained there for several weeks. He was also given shocks. This being soon after the

virtual midnight occurrence at the Victoria Bridge, Nasik, it would be reasonable to infer that the behaviour of the accused was not normal and that his mental condition was also not normal. Indeed, as Dr. Vasant Pawar himself admits, he was brought to Bombay because of his mental disorder.

10. In this context one may now turn to the evidence of Dr. N. S. Wahiya (D.W. 6). There can be no dispute that he is an acknowledged expert in the field of psychiatry. He has been an M.D. of the Bombay University and a Fellow of the Royal College of Psychiatry, England. At the time of his evidence he had completed 32 years of practice in psychiatry. After his M. D. He had also gone to the United states for training and had stayed there for a period of one and a half years. For several years he was the Held of the Department of Psychiatry at the K.E.M. Hospital, Bombay. Indeed, even at the time of his evidence he was Professor Emiritus in G.S. Medical College, Bombay, and held an Honorary Post for postgraduate students. The credentials of this expert are thus beyond doubt. He testifies that the accused had been brought to him, that he had examined the accused, that the accused had been admitted to a hospital, that he was being treated for his mental disorder, that he was given electric shocks and that he was also administered anti-psychotic drugs. This was in the year 1974. He further testifies that the accused was a psychiatric patient, that electric shocks are given in the treatment of schizophrenia and other mental sickness and when drugs do not react. This treatment has to control psychotic .He further states that exact causes of Schizophrenia are not yet known but here are very many causes in that behalf. He also states that there is no fixed time for this disease in the life of a man. It can come in early stages of life or even later. He also states that by mere appearance one cannot say if any individual is schizophrenic or not. There are various symptoms and nothing is rigid about it. Suicidal or homicidal tendency or attempts may be present in schizophrenic patients. One may recall the midnight jump of the accused from the Victoria Bridge. The patient appears normal but may become aggressive at any moment. He expressed his approval of the observation of Keith Simpson in his book 'Forensic Medicines' to the effect that, "Schizophrenia (dementia praecox) is the commonest of all psychoses to be associated with homicidal assaults". Dr. Wahiya also expressed his agreement with the view of Robert A. Woodroff and two others to the effect that "A common fear about deluded schizophrenic patients is that they are likely to act on their delusions and commit crime". Dr. Wahiya then testifies that the patient may improve and may also relapse and that it is difficult to say if the subsequent attacks are more acute. According to him, as the causes are not known, there is no final drug or remedy. Significantly enough, we do not find any cross- examination worth the name of this expert in the filed. He states that discharge of the accused from the hospital may indicate improvement. This, however, does not help the prosecution firstly because improvement does not mean cure and secondly because Dr. Wahiya categorically states more than once that a patient may improve and may also relapse. In this context further evidence in this case establishes that the patient here viz., the accused had in fact relapsed into the same mental condition and mental disorder as before and perhaps, indeed, in a mere acute form. This possibility also, according to Dr. Wahiya, cannot be ruled out.

11. We then have the testimony of yet another expert in the field viz., Dr. S. M. Sule (D.W. 7). He is an M.D. (Psychiatrist) of the University of Bombay. He is a member of the Indian Psychiatric Society. He also holds a Fellowship in Psychological Medicines. He has been practising as a psychiatrist at Nasik. He examined the accused in June, 1977. He was referred to him by Dr.

Vasant Pawar himself (P.W. 2) in this case. History of the patient viz., the accused was to the effect that he behaved suspiciously; that he was psychiatric and rowdy; that he had paranoid delusions; that he had attacks that he had jumped into the river; and that he was previously treated at Bombay both in drugs as also electric convulsive treatment. He then states that the patient was better for some time but relapsed after some months. He gave drugs and electric convulsive treatment to the patient but there was no follow up afterwards and the treatment was stopped abruptly. His own diagnosis was that the patient was suffering from paranoid schizophrenia. His testimony shows that the patient had not recovered when he abruptly stopped treatment. His evidence further shows that there was possibility of relapse. Even here, we do not find any serious cross- examination of Dr. Sule. Merely that the symptoms were not noted in the history paper and that after 1977 he did not have occasion to see the accused. Thus, as at this stage, one finds that the accused was a mental patient for the last several years till at least the year 1977 when he was under treatment of Dr. Sule and that he was treated for that purpose not only by an expert Dr. Wahiya in Bombay but also subsequently by another expert Dr. Sule in Nasik.

12. Apart from medical testimony, we have in this case the testimony of yet another important defence witness viz., Hirabai Gulabrao Khune, the sister of the accused. Here evidence assumes important because it relates to a period of one month immediately before the date of the occurrence and during which period the accused was sent to her residence at Vani presumably for a change and with a hope of a turn for the better in his mental condition. Hirabai herself is a school teacher at Vani. She categorically states that the accused was sent to her because he was a lunatic. She then relates several instances showing the mental disorder of the accused and his inability to know what was right and what was wrong or to distinguish the proper from the improper. The accused was required to be sent to answer call of nature; he was not brushing his teeth; Hirabai herself had to at times clean his teeth; even while going for bath, the accused used to remain in the bathroom without doing anything; while wearing clothes, he put his pyjama far below his under- pant; he was urinating in the house and sometimes in the presence of women; his speech was irrelevant; he used to pick up and eat anything found on the ground; he was unable to read anything; and there was hardly anything that remained to be done to improve him. She then states that medicines also did not improve him. She then states that his wife Mira alone could undergo such hardships but the devoted Mira nevertheless hoped that one day he will improve and that she did not like others talking about her husband. Hirabai then states that after a stay of one month or so, she personally brought back the accused along with his wife and child to his residence at Nasik, for she was not sure whether he could go on his own because he was a lunatic. It is significant that most of the important incidents as also the evidence in the main of this witness relating to the behaviour and conduct of the accused has gone virtually unchallenged in her cross- examination. Indeed, as in the case of other defence witnesses so also in the case of Hirabai (D.W. 5), there is no cross- examination worth the name. Inference, therefore, is irresistible that during the period immediately prior to the occurrence in question, which is the subject matter of the instance prosecution, the accused was found behaving in the most abnormal manner and in a manner strongly indicating an abnormal mental state and condition. It is obvious from the testimony of Hirabai that the accused was unable to distinguish the proper from the improper or unable to know what is right and what is wrong. Urinating in front of women, picking up anything from the ground and eating the same, not even able to brush his own teeth and laving that task to his sister, going to the bathroom apparently for a bath but without taking both remaining there for a long time, wearing clothes in a most peculiar manner

viz., pyjama below underpant, are all indications, particularly in the case of a married man like the accused over thirty years at the relevant time, of an unusual mental set up and inability to behave like a normal man with a normal mind.

13. Though it is true that Hirabai is a sister and thus a close relation of the accused, in a case such as this that can be no ground for discrediting her testimony. Indeed, in a matter such as this, it is the testimony of relations that is of considerable assistance in reaching a fair and just finding one way or the other, because it is relations who, by virtue of their close and frequent contact with the accused, are in a much better position to give evidence relating to the mental condition of the accused. See in this context Ratanlal v. State of Madhya Pradesh MANU/SC/0180/1970 : 1971CriLJ654 , wherein it is observed (at page 657 of Cri LJ) :-

"..... We hold that the appellant has discharged the burden. There is no reason why the evidence of Shyam Lal, D.W. 1, and than Singh, D.W. 2, should not be believed. It is true that they are relation of the appellant, but it is the relations who are likely to remain in intimate contact. The behaviour of the appellant on the day of occurrence, failure of the police to lead evidence as to his condition when the appellant was in custody, and the medical evidence indicate that the appellant was insane within the meaning of S. 84, I.P.C."

Thus, considering the evidence of Hirabai along with the testimony of experts Dr. Wahiya and Dr. Sule, it would be reasonable to hold that the accused was a case of a mental patient and one with an unsound mind, incapable of any improvement, undergoing one relapse after another and of whom hopes had virtually been given up. Even the prosecution witness Devki admitted that the accused was sent to his sister Hirabai's place because he was mentally deranged and with a hope that he may improve. The behaviour of the accused at the time of the occurrence and soon thereafter further corroborates his mental condition. Evidence shows that while his wife and son were in the company of Devki and others in the field located near their house, the accused went there, brought back his wife with son following to his house and entering the home brutally killed both of them. Thereafter when the door was opened he just walked out with only a pyjama on his person, when to a field and sat there in a pensive mood. Yet another indication of his mental condition emerges from the admitted fact (vide evidence of the police officer P.W. 12) that soon after his arrest, which was soon after the occurrence, he was sent for medical examination. Unfortunately, the prosecution has not led evidence of the doctor who then examined the accused. However, the very fact that the accused was immediately sent for medical examination is yet one more indication that even at that stage, which was soon after the occurrence, he was suspected to be of an unsound mind.

14. Mr. Phadkar, learned counsel for the accused, emphasised one more circumstance in favour of the accused. He took us through the evidence of Narayan Laxman Telge (P.W. 8), the learned Judicial Magistrate, who recorded the confession of the accused. The accused was produced before the learned Magistrate on 27- 9- 1979 the very next day of the occurrence. The testimony of the learned Magistrate, however, shows that he adjourned the recording of confession for as many as seven times. On 27- 9- 1979 the matter was adjourned to 7- 10- 1979, then to 11- 10- 1079, then to 15- 10- 1979, then to 22- 10- 1979, then to 29- 10- 1979 and then again to 3- 11- 1979. Reason

given by the learned Magistrate for this extensive delay viz., he was busy with administrative work, hardly justifies the gross delay. Recording of confession is an important matter and can in a given case constitute a very important circumstance in a trial, nay, the very foundation of a conviction. The learned Magistrate does not appear to have realised the seriousness and importance. Besides, we are not satisfied that he could be so extremely busy or pre- occupied with administrative work that he had to postpone this important function from time to time and for as nearly as seven times. Submission of the learned counsel Mr. Phadkar that these several postponements were not because of the purported administrative work but because the learned Magistrate was not satisfied that the accused was in a fit state of mind to make confession, cannot be said to be unfounded. In the entire context, the considerable lapse and delay in the aforesaid behalf becomes significant and constitutes yet one more circumstances corroborating the other evidence in this case on the mental condition of the accused.

15. Cumulative effect of all this evidence of experts and laymen and both direct and circumstantial together with the facts and circumstances - which are not slender or insignificant but substantial - emerging therefrom takes the case and defence of the accused nearer home under Section 84, Penal Code. Though in terms of this section, it is for the accused to show that by reason of unsoundness of mind he was incapable of knowing the nature of the act or incapable of knowing the nature of the act or incapable of knowing that what he was doing was wrong or contrary to law, the Court, while considering this defence, would have to look at and consider the totality of the emerging situation and position in the light of facts and circumstances relating to the mental condition of the accused preceding the occurrence, at about the time of the occurrence as also after the occurrence. As observed by the Supreme Court in Dahyabhai Chhaganbhai Thakkar v. State of Gujarat MANU/SC/0068/1964 : 1964CriLJ472 :

"When a plea of legal insanity is set up, the Court has to consider whether at the time of commission of the offence the accused, by reason of unsoundness of mind, was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. The crucial point of time for ascertaining the state of mind of the accused is the time when the offence was committed. Whether the accused was in such a state of mind as to be entitled to the benefit of Section 84, Penal Code, can only be established from the circumstances which preceded, attended and followed the crime".

In yet another ruling of the Supreme Court in Jai Lal v. Delhi Administration, MANU/SC/0353/1968 : 1969CriLJ259 , it is observed :

"To establish that the acts done are not offences under S. 84, it must be proved clearly that at the time of the commission of the act the appellant by reason of unsoundness of mind was incapable of knowing that the acts were either morally wrong or contrary to law. The question is whether the appellant was suffering from such incapacity at the time of the commission of the acts. On this question, the state of his mind before and after the crucial time is relevant".

And further still :

"If a person by reason of unsoundness of mind is incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law he cannot be guilty of any criminal intent. Such a person lacks the requisite mens rea and is entitled to an acquittal".

16. Though the learned Public Prosecutor Mr. Gangakhedkar is right in contending that there is a presumption that the accused was not insane, it is well to remember that it is a rebuttable presumption. And it is, therefore, open to the accused to rebut it by placing before the Court all the relevant evidence, oral, documentary and/or circumstantial. The accused here has done that in a very good measure in this case. Relevant evidence is led not only of his relations but also of disinterested persons in the city as also medical evidence including evidence of experts in the field. That apart, the testimony of the prosecution witnesses also points in the same direction. Even Dr. Vasant Pawar, who is the complainant in the instant case, testifies to the mental disorder of the accused. Indeed, the mental condition of the accused is writ large on the record of this case. It is, of course, true that it is for the accused to discharge the burden that lies on him for rebutting the presumption of sanity and bringing his case within the ambit of Section 84, Penal Code. Equally settled, however, is the legal position that this burden or onus on the accused is not as heavy as that on the prosecution but equivalent to that which lies on a party in a civil proceeding. As authoritatively laid down by the Supreme Court in 's case MANU/SC/0068/1964 : 1964CriLJ472 supra) :

"The doctrine of burden of proof in the context of the plea of insanity may be stated in the following propositions : (1) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea; and the burden of proving that always rests on the prosecution from the beginning to the end of the trial. (2) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by Section 84, I.P.C.; the accused may rebut it by placing before the Court all the relevant evidence, oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings. (3) Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the Court by the accused or by the prosecution may raise a reasonable doubt in the mind of the Court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case the Court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged".

17. All in all, therefore, and all things considered, the accused here must be held to have more than satisfactorily rebutted the initial presumption against his insanity and to have discharged the onus to the extent it lay on him. The facts and circumstances, the evidence of the prosecution witnesses, the testimony of the defence witnesses, the testimony of the experts in the field, the failure of the prosecution to examine the doctor to whom the accused was sent immediately after the occurrence in question and the uninspiring nature of the judicial confession which ultimately came into existence after as many as seven adjournments in the matter thereof, considered together and cumulatively, brings the instant case within the four- corners of Section 84, Penal Code. In any event, the totality of evidence before the Court and the cogent facts and circumstances emerging therefrom raise, qua the charge against the accused, more than reasonable doubt in the mind of the Court. The prosecution must hence be held to have failed to bring home to the accused the impugned charge beyond reasonable doubt. The general burden of proof that "always rests on the prosecution from the beginning to the end of the trial" has not

stood discharged. The inevitable end result would, therefore, be an order of acquittal. The impugned conviction is, therefore, liable to be set aside and replaced by an order of acquittal in favour of the accused. However, in the context of section 334, Cr.P.C., a finding is here recorded to the effect that the accused had, in fact, committed the act of resulting in the death of his wife Mira and his son Sandip. That this is so is admitted by the accused in his examination under S. 313 of Cr.P.C. His only defence was based on Sec. 84, Penal Code and, as seen, he has succeeded in getting protection thereof.

18. In the result, this appeal succeeds and is allowed. The impugned order of conviction and sentence recorded against the accused by the learned Additional Sessions Judge, Nasik, in Sessions Case No. 150 of 1979 is set aside. And the accused is acquitted of the charge levelled against him.

19. This, however, is not a case where the accused can be set free but one wherein an order under Section 335, Cr.P.C. requires to be made. Mr. Phadkar, learned counsel for the accused, has filed in this Court an affidavit of one Rambhau Ganpat Koshire (who is present in Court today), the eldest brother of the accused. In the said affidavit, this Court is requested to pass an order directing the accused to be delivered into his i.e. Rambhau's custody under the provisions of Section 335(1)(a) of Cr.P.C. The said affidavit contains an undertaking to this Court - and which undertaking this Court accepts - that the accused, if so delivered, shall be properly taken care of and prevented from doing injury to himself or to any other person and that the accused shall be produced for inspection of such officer and at such times and places as the State Government may direct. In his affidavit Rambhau has also expressed his willingness to give, if so necessary, security to the satisfaction of this Court for the aforesaid purpose. In our view, this is a fit case where instead of otherwise detaining the accused in safe custody as per Section 335(1)(a), Cr.P.C. he should be delivered to his eldest brother Rambhau Ganpat Koshire who has filed an affidavit complying with the terms and conditions of Section 335(3) of the said Code. Hence order :

The accused be delivered over to Rambhau Ganpat Koshire of Koshire House, Malaviya Chowk, Panchavati, Nasik, on his (the said Rambhau Ganpat Koshire) giving in favour of the Sessions Court, Nasik, his personal bond in the sum of Rs. 5,000/- to the effect that the accused will be properly taken care of and will be prevented from doing injury to himself or to any other person and that the accused will be produced for the inspection of such officer and at such times and places as the State Government may direct.

20. The office shall make a report to the State Government in terms of S. 335(1), Cr.P.C. It shall also forward to the State Government a copy of this judgment.

21. Order accordingly.

MANU/SC/0098/1977

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 272 of 1977

Decided On: 16.11.1977

K. Karunakaran Vs. T.V. Eachara Warrier and Ors.

Back to Section 344 of Code of Criminal Procedure, 1973

Back to Section 476 of Code of Criminal Procedure, 1973

Hon'ble Judges/Coram:

P.K. Goswami and V.D. Tulzapurkar, JJ.

JUDGMENT

P.K. Goswami,J.

1. This appeal by special leave is directed against the judgment and order of the High Court of Kerala of June 13, 1977, sanctioning a complaint against the appellant along with two others, who are not before us, for an offence under Section 193 I.P.C. after making an enquiry under Section 340(1) CrPC, 1973. At the time of granting special leave this Court ordered for impleading the State of Kerala and the State is represented before us by its Advocate General who adopts the arguments of the appellant's counsel, Mr. Debabrata Mookerjee, and also addressed us in support of the appeal.

2. This particular proceeding is an off- shoot out of a habeas corpus application instituted on March 25, 1977, in the High Court of Kerala by T. V. Eachara Warrier who is a retired Professor of Hindi of the Government Arts and Science College, Calicut. His son Rajan who was a final year student in the Regional Engineering College, Calicut, was a resident of the College Hostel. Shri Warrier received a registered letter from the Principal of the College informing him that his son, Rajan, was arrested and taken into police custody on March 1, 1976.

3. This was a time when the proclamation of emergency had been in force in the country since June 25, 1975. Nothing, therefore, could be done in the courts in view of the majority decision of the Constitution Bench of this Court (Khanna, J. dissenting) that challenge of even mala fide orders of detention could not be entertained under Article 226 of the Constitution (see Additional District Magistrate, Jabalpur v. S.S. Shukla etc. etc. [1976] Suppl. S.C.R. 172.

4. The heart- broken father had to make numerous efforts and entreaties in appropriate quarters, high, and low, to anyhow ascertain the whereabouts of his son. The point that is, relevant is that Shri Warrier also saw and met the appellant (Shri Karunakaran) who was then the Home Minister

of Kerala, on March 10, 1976, after nine days of the arrest. We are referring to this fact since it will assume some importance as will appear hereinafter on account of omission by Shri Warrier to mention about this interview with Shri Karunakaran in the original writ application. Shri Warrier also met the then Chief Minister Shri V. Achutha Menon, several times and on the last occasion when he had met him "he expressed his helplessness in the matter and said that the same was being dealt with by Shri Karunakaran, Minister for Home Affairs". There was also a written representation by Shri Warrier to the Home Minister, Government of India, on August 24, 1976, with copy to all Members of Parliament from Kerala. There was a reminder to him on October 22, 1976. Certain Members of Parliament also took the matter up with. Shri Karunakaran in November, 1976. It is sufficient to state that Shri Warrier did not receive any answer to his piteous queries about the whereabouts of his son. This is how the matter had been dragging keeping the parents in great suspense, misery and distress which can only be imagined.

5. It so happened that the Lok Sabha was dissolved on January 18, 1977, and elections to Parliament and the Kerala State Assembly were to take place on March 19, 1977. Emergency was also necessarily relaxed. Finding all his efforts to trace the whereabouts of his son unavailing, the appellant ultimately printed out a leaflet inviting attention of the general public in Kerala about his utter distress at the time when the people were about to go to the polls. In the leaflet Shri Warrier had detailed that his son was kept in illegal custody without even informing him and the members of his family his whereabouts. It was mentioned in his original habeas corpus application that during the election Shri Karunakaran, then, Home Minister, had addressed several public meetings in various constituencies of the State and that he had stated during his speeches that Rajan was involved as an accused in a murder case and that was why he was kept in detention. Shri Karunakaran and his party won in the State Assembly elections and Shri Karunakaran became the Chief Minister in March 1977.

6. On March 25, 1977, which was a Friday, Shri Warrier filed in the High Court the habeas corpus application for production of his son, impleading the Home Secretary, Kerala, the Inspector General of Police, Kerala, and the Deputy Inspector General of Police, Crime Branch, Kerala, as the first three respondents. The application was moved on the next working day, namely, March 28, 1977, and the learned Advocate General took notice on behalf of the respondents in the petition and, the case was posted to March 30, 1977, for stowing cause as to why the application should not be granted.

7. Meanwhile Shri Karunakaran, who was by then the Chief Minister, stated on the floor of the State Assembly that Shri Rajan had never been arrested, and that was published in all the papers. That led to the application by Shri Warrier on March 30, 1977, to implead Shri Karunakaran and the District Superintendent of Police, Kozhikode, as additional respondents to his petition. The learned Additional Advocate General took notice of this petition and the same was allowed by the High Court on that very day.

8. Counter affidavits by the respondents, including Shri karunakaran's, were sworn on March 31, 1977 and filed on April 4, 1977, and the case was posted to April 6, 1977. On April 6, 1977, Shri Warrier filed a reply affidavit. Along with it affidavits of 12 persons were also filed in support of his case that Rajan had been taken into police custody on March 1, 1976.

9. Shri Warrier as well as most of the deponents of the affidavits offered themselves for cross-examination and although some of them were cross- examined, the Additional Advocate General declined to cross- examine Shri Warrier. However, the Principal of the Engineering College, who had informed Shri Warrier about Rajan's arrest, was also examined as a witness. The learned Additional Advocate General was candid enough not to question his veracity except to point out that he had no direct knowledge about the arrest of Rajan which he came to know from the warden and the students. After a full hearing of the matter the High Court delivered its Judgment in the habeas corpus application on April 13, 1977, but in the nature of things the proceedings were not closed: The High Court, faced with a unique situation, ordered as follows :-

We hereby issue a writ of Habeas Corpus to the respondents directing them to produce Sri Rajan in this Court on the 21st of April, 1977.

If, for any reason the respondents think that the) will not be able to produce the said Sri Rajan on that day their counsel may file a Memo submitting this information before the Registrar of the High Court on 19th April, 1977, in which case the case will stand posted to 23- 5- 1977, the date of reopening of the Courts after the, midsummer recess, ' On that day the respondents may furnish to the Court detailed information as to the steps taken by the respondents to comply with the order of this Court, and particularly to locate Sri Rajan. Thereupon it will be open to this Court to pass further orders on this petition and to that extent this order need not be taken to/ have closed the case.

10. The Advocate General filed a Memorandum as ordered by the High Court on April 19, 1977, on behalf of respondents, 1, 2 and - 4, the Home Secretary, Inspector General of Police and Shri Karunakaran respectively, stating that these respondents were not able to produce Rajan "since the said Rajan is not in the illegal detention or in the custody or control of the respondents anywhere in the State or outside". It was also stated that police sources in Kerala as well as outside were alerted to locate the said Rajan. It was further mentioned in the Memo that certain police officers were placed under suspension by the Government and the Deputy Inspector General of Police was relieved from the Crime Branch on transfer. It was also disclosed that Criminal Case No. 304/77 under Sections 342, 323, 324 read with Section 34 IPC has been registered in the Crime Branch C.I.D. based on the observations in the judgment of the High Court in the above habeas corpus petition, The Memo closed as follows :-

From the efforts so far made the said Rajan remains untraced. The efforts to locate him continue unabated and no efforts will be spared to trace him.

11. The above Memo was filed in the High Court on April 19, 1977, as stated earlier. It also appears that the petition for leave to appeal to the Supreme Court against the judgment was rejected by the High Court on April 23, 1977. Later, the petition for special leave to appeal against the judgment and order in the habeas corpus application was also rejected by this Court on April 25, 1977.

12. It appears that Shri Karunakaran resigned as Chief Minister after the judgment of the High Court in the habeas corpus petition on April 26, 1977. On May 22, 1977, Shri Karunakaran filed his second affidavit before the High Court, this time describing himself as a Member of the Legislative Assembly, Kerala State. In para 5 of this affidavit he stated as follows :-

To the best of my knowledge and information now available, Sri Rajan after he was taken into custody by the police was belaboured by the police and there is every reason to think that he met with his death while in police custody. It is humbly submitted that in the circumstances stated above, I am not able to comply with the writ of Habeas Corpus issued to me since compliance with the writ has become impossible on account of Sri Rajan having died as a result of police torture at the Kakkayam Investigation Camp on 2- 3- 1976, while in unlawful custody of the police as disclosed in the report dated 17- 5- 1977 of the investigating Officer.

13. It will be of relevance now, as indicated at the outset, to refer to the affidavit of Shri Warrier of March 30, 1977, in support of his application for impleading Shri Karunakaran and it may be appropriate to quote paragraph 2 therefrom :

I met the present Chief Minister Sri K. Karunakaran on the 10th of March, 1976 at the Man Mohan Palace at Trivandrum (His Official residence then) and Sri Karunakaran told me) then that my son Rajan had been arrested from his college for involvement in some serious case and he will do his level best to look into the matter and help the petitioner.

Shri Karunakaran as Chief Minister made his first affidavit on March; 31, 1977, and in reply to the above quoted paragraph 1 he stated- in that affidavit as follows :-

The allegation made in paragraph 2 of the additional affidavit that I told the petitioner on 10th March, 1976, that his son Rajan had been arrested from his College for involvement in some serious cases and he will do his level best to look into the matter and help the petitioner is absolutely incorrect. I have never told the petitioner that his son Rajan was in police custody at any time and so far, I have no knowledge that the said Rajan has been in Police custody at any time.

He also denied as false in this affidavit about any reference to Rajan's arrest in his speeches during the election campaign. In his second affidavit of May 22, 1977, referred to above, he made reference to the interview with Shri Warrier of 10th March, 1976, and stated- as follows in para 8 therein :

Shri T. V. Eachara Warrier, the petitioner in the Original Petition had met me on or about 10th March, 1976 and told me that he suspected that his son is involved in the criminal case registered in connection with the attack by some persons on Kakkayam Police Station on 29- 2- 1976 and that he wanted me to use my good offices to exclude his son from that case. I told him this was a crime under investigation by the police and that it would not be proper for me as the Home Minister to interfere with the investigation by the police by issuing directions to them.

He also stated in paragraph 9 as under :-

I had stated in the Legislative Assembly that Sri Rajan had not been in police custody on the basis of the report of the Inspector General of Police dated 7- 1- 1977. Apart from this report I had no other source of information on this matter. I had no means whatever to doubt the correctness of the facts stated in the report of the Inspector General of Police.

He added in paragraph 10 as follows :-

It is a matter of intense agony and anguish for me., as the Minister for Home, Government of Kerala, at that time, that Sri Rajan, the son of the petitioner who was taken into custody by the police on 1- 3- 1976 happened to be tortured while in police custody at the Kakkayam camp as a result of which he breathed his last while in such custody at the camp on the evening of 2- 3- 1976 as it has now, been revealed by the investigation of Crime No. 304/77 of Crime Branch CID I may be permitted to say in retrospect that the judgment of this Hon'ble Court dated 13- 4- 1977 had helped me as Chief Minister to apply my pointed attention to this matter and take certain expeditious steps to bring to light the true facts.

14. In the above backdrop, Shri Warrier filed an application under Section 340(1) Cr.P.C. before the High Court for taking action against Shri Karunakaran and others for perjury.

15. Lie tends to become almost a style of life. Lies are resorted to by the high and the low being faced with inconvenient situations which require a Mahatma Gandhi to own up Himalayan blunders and unfold unpleasant truths truthfully. But when principles are sacrificed at the altar of individuals, selfishness of man, desire to continue in position and power, lining up with the high and mighty, lead to lies, euphemistically prevarication. But all lies made, here and there, ignored by the people or exposed on their own to nudity, are not subject matters for the Court to take action. When the Court takes action it is a species of falsehood clearly defined under Section 191 IPC and punishable under Section 193 IPC.

16. The High Court after hearing the said application has come to the conclusion that a prima facie case has been made out under Section 193 IPC and that it is expedient in the interest of justice to lay a complaint against Shri Karunakaran under that section before the appropriate court. The High Court also passed similar orders against the Deputy Inspector General of Police, Crime Branch and the Superintendent of Police, respondents 3 and 5 respectively in the original

application. The High Court, however, declined to take action against the Home Secretary and the Inspector General of Police for certain reasons recorded by it.

17. It is submitted by Mr. Debabrata Mookerjee, on behalf of the appellant, that the High Court had no legal justification to make a distinction between Shri Karunakaran on the one hand and the Home Secretary and the Inspector General of Police on the other. All the three had no direct knowledge of Rajan's arrest, says counsel. Counsel submits that Shri Karunakaran as Chief Minister could only rely on the official channel of information and he submitted before the Court all the information and he truly derived from the report of the Inspector General of Police of January 7, 1977. Mr. Mookerjee strenuously contends that no prima facie case has been made out against Shri Karunakaran, nor is it expedient in the interest of justice to lay a complaint for perjury against him.

18. On the other hand Mr. Niren De, on behalf of Shri Warrier. submits that in an appeal by special leave under Article 136 of the Constitution it will be most inappropriate in a case of this nature to interfere with the discretion exercised by the High Court in laying a complaint under Section 193 IPC after a regular enquiry carefully made under Section 340 Cr. P.C. According to Mr. De a prima facie case has been made out and it is expedient in the interest of justice that Shri Karunakaran should face a trial in accordance with law.

19. Chapter XXVI of the CrPC 1973 makes provisions as to offences affecting the administration of justice. Section 340 Cr.P.C. with which the chapter opens is the equivalent of the old Section 476, Criminal Procedure Code, 1898. The chapter has undergone one significant change with regard to the [provision of appeal which was there under the old Section 476B CrP.C. Under Section 476B Cr.P.C. (old) there was a right of appeal from the order of a subordinate Court to the superior Court to which appeals ordinarily lay from an appealable decree or sentence of such former Court Under Section 476B (old) there would have ordinarily [been a right of appeal against the order of the High Court to this Court. There is, however, a distinct departure from that position under Section 341 Cr.P.C. (new) with regard to an appeal against the order of a High Court under Section 340 to this Court. An order of the High Court made under Sub- section (1) or Sub- section (2) of Section 340 is specifically excluded for the purpose of appeal to the superior court under Section 341(1) Cr.P.C. (new). This is, therefore, a new restriction in the way of the appellant when he approaches this Court under Article 136 of the Constitution.

20. Whether, suo moto, or on an application by a party under Section 340(1) Cr. P.C., a Court having been already seized of a matter may be tentatively of opinion that further action against some party or witness may be necessary in the interest of justice. In a proceeding under Section 340(1) Cr.P.C. the reasons recorded in the principal case, in which a false statement has been made, have a great bearing and indeed action is taken having regard to the overall opinion formed by the Court in the earlier proceedings.

21. At an enquiry held by the court under Section 340(1) Cr.P.C, irrespective of the result of the main case, the only question, is whether a prima facie case is made out which, if unrebutted, may have a reasonable likelihood to establish the specified offence and whether it is also expedient in the interest of justice to take such action.

22. The party may choose to place all its materials before the court at that stage, but if it does not, it will not be estopped from doing so later in the trial, in case prosecution is sanctioned by the court.

23. In this case the High Court came to the conclusion in the enquiry that Shri Karunakaran's first affidavit of 31st March, 1977 filed on 4th April, 1977, contained a false statement to the effect that he had no knowledge that Rajan was in police custody at any time and that "he could not have believed it to be true". It is only on that basis that the High Court held that an offence under Section 193 IPC was prima facie made out. Having regard to the second affidavit of 22nd May, 1977 and for any other reasons recorded by it the aforesaid statement in that behalf was considered by the High Court as "deliberately" made.

24. We should make it clear that when the trial of the appellant commences under Section 193 IPC the reasons given in the main judgment of the High Court or those in the order passed under Section 340(1) Cr.P.C, should not weigh with the criminal] court in coming to its independent conclusion whether the offence under Section 193 IPC has been fully established (against the appellant beyond reasonable doubt It will be for the Prosecution to establish all the ingredients of the offence under Section 193 IPC against the appellant and the decision will be based only on the evidence and the materials produced before the criminal court during the trial and the conclusion of the court will be independent of opinions formed by the High Court in the habeas corpus proceeding and also in the enquiry under Section 340(1) Cr.P.C.

25. An enquiry, when made, under Section 340(1) Cr.P.C. is really in the nature of affording a locus poenitentiae to a person and if at that stage the court chooses to take action, it does not mean that he will not have full and adequate opportunity in due course of the process of justice to establish his innocence.

26. It is well- settled that this Court under Article 136 of the Constitution would come to the aid of a party when any gross injustice is manifestly committed by a court whose order gives rise to the cause for grievance before this Court. Even when two views are possible in the matter it will not be expedient in the interest of justice to interfere with the order of the High Court unless we are absolutely certain that the two pre- conditions which are necessary for laying a complaint after an enquiry under Section 340 are completely absent. The two pre- conditions are that the materials produced before the High Court make put a prima facie case for a complaint and secondly that it is expedient in the interest of justice to permit the prosecution under Section 193 IPC.

27. We should bear in mind an important aspect. We are not dealing with a case of conviction of an accused under Section 193 IPC. The appellant is still to be tried. We are invited to quash the complaint made by the High Court prior to its regular trial. That can, be only on the basis that the order of the High Court's prima facie view that a complaint should be laid under Section 193 IPC is so manifestly perverse, so grossly erroneous and so palpably unjust that this Court must interfere in the interest of justice and fair play.

28. There is another anxiety on our part not to speak more than what is absolutely necessary in this appeal as any expression or observation on any facet of the case may prejudice either party in the trial which must be free and impartial wherein no party should have any feeling of misgiving, suspicion or embarrassment.

29. We have seen in the judgment of the High Court that it has taken good care not to express on the merits of certain aspects which it has expressly enumerated. We will only add that even in those aspects where the High Court may be said to have even remotely expressed some views, these shall not certainly weigh with the trial court. We read in the judgment of the High Court their natural anxiety on this score and we are only clarifying the true position so that there need be no embarrassment or apprehension in any quarters about the trial. It is for this very reason that although arguments were heard at length of both sides on every conceivable aspect of the case, we deliberately refrain ourselves from making any observation thereon. We feel that any observation one way or the other in respect of certain submissions made before us may have unintended likelihood of prejudicing some party or the other at the trial. Even a remote possibility of this nature must be avoided at all costs.

30. The fact that a prima facie case has been made out for laying a complaint does not mean that the charge has been established against a person beyond reasonable doubt. That will be thrashed out in the trial itself where the parties will have opportunity to produce evidence and controvert each other's case exhaustively without any reservation. There may be often a constraint on the part of a. person sought to be proceeded against under Section 340 Cr.P.C. to come out with all materials in the preliminary enquiry. That constraint will not be there in a regular trial where he will have ample opportunity to defend himself and produce all materials to show that an offence under Section 193 IPC has not been made out. That section contemplates that making of a false statement is not enough. It has to be made intentionally. The accused in a trial under Section 193 will be able to place all circumstances bearing upon the ingredient of the intention attributed to him.

31. After giving our anxious consideration to all the submissions made by counsel of both sides we do not feel justified in interfering with the order of the High Court to scotch the complaint against the appellant at the threshold.

32. It is true, we are dealing with the former Chief Minister of a State who happened to be the Home Minister at the time of the incident. Even the time was singularly unique when the occurrence took place and such cases give rise to emotions and feelings of bitterness. It is also true that a person cannot swear a falsehood in the court as a minister with impunity and come out with the truth only as a commoner. When, however, the court is called upon to ultimately try an offence we do not have any doubt that the matters germane to the offence under Section 193 IPC alone will be taken into consideration on the materials produced by the parties and justice will be done in accordance with law.

33. Where a Chief Minister, for reasons best known to him, relying entirely on the official channel of information denied knowledge of an event, people were humming about, it is a matter which must go forward for a trial in public interest. Truth does not lie between two lights.

34. Whether the appellant made a false statement before the High Court and intentionally did so will be an issue at large for trial in the criminal court. We decline to put the lid on the controversy, out of hand, since that way does not point to justice according to law. We close by saying ne quid nimis.

35. The appeal is dismissed.

MANU/SC/0192/1981

Back to Section 362 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal Nos. 197 and 198 of 1981

Decided On: 24.04.1981

Naresh and Ors. Vs. State of Uttar Pradesh

Hon'ble Judges/Coram:

A.N. Sen, Baharul Islam and O. Chinnappa Reddy, JJ.

JUDGMENT

1. We are afraid we have to voice our grave concern and express our serious displeasure at the course of events in the High Court in the present case. We consider it our duty to do so. We are not a little disturbed by what has been done in the High Court. The High Court, some weeks after pronouncing its judgment in a Criminal appeal, altered a conviction under Section 302 Indian Penal Code which it had confirmed to one under Section 304 Indian Penal Code, ostensibly exercising its power to correct clerical errors but ignoring Section 362 of the CrPC 1973 which expressly provides "Save as otherwise provided by this Cede or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."

2. Naresh, one of the appellants, was convicted by the Trial Court of an offence under Section 302 Indian Penal Code and the rest of the appellants were convicted under Section 302 read with. Section 149 Indian Penal Code. All of them were sentenced to imprisonment for life. The accused preferred appeals to the High Court. J.P. Chaturvedi and R.C. Srivastava JJ who heard the appeals, while discussing the question of the culpability of the appellant Naresh observed as follows : "It may be pointed out that Bahadur (deceased) had a single injury on his head. This blow was inflicted by Naresh appellant and it resulted in fractures of frontal and parietal bones into eight pieces. The blow was very effective and powerful and as such, so far as Naresh appellant is concerned, we have no doubt that he intended to kill Bahadur and therefore, committed an offence punishable under Section 302 Indian Penal Code." After recording this categoric finding about the culpability of Naresh, the High Court proceeded to discuss the case against the rest of the accused. Then, in the ultimate paragraph of the judgment, which we may call the operative part of the judgement, the High Court again said about Naresh : "His conviction under Section 302 Indian Penal Code and sentence of imprisonment for life awarded thereunder are affirmed." The judgment of the High Court was pronounced on February 25, 1980. Thereafter on an application filed by the" appellant Naresh, the High Court made the following order on April 14, 1980 :

The application is allowed as there is a clerical mistake in the operative part of the judgment in Criminal Appeal No. 674 of 1975 regarding the conviction and sentence of appellant Naresh. The sentence, 'but his conviction under Section 302 I.P.C. and sentence of imprisonment for life awarded thereunder are affirmed' be substituted by the sentence 'He is convicted under Section 304(Part I) I.P.C. instead of Section 302 I.P.C. and sentenced to undergo rigorous imprisonment for seven years.

We are entirely at a loss to understand the order dated April 14, 1980. In their judgment dated February 25, 1980 while discussing the case against Naresh the learned Judges had given a specific and express finding that he intended to kill the deceased Bahadur and, therefore, had committed an offence punishable under Section 302 Indian Penal Code. The operative part of the judgment also said the same thing. We do not understand what the learned Judges mean when they state in their order dated April 14, 1980, "there is a clerical mistake in the operative part of the judgment." The High Court was wholly wrong in altering the judgment pronounced by them disposing of the Criminal Appeals. That was clearly in contravention of the provisions of Section 362 CrPC. What was worse, the High Court acted in purported exercise of the power to correct clerical mistakes when in fact there was none. The conviction under Section 302 Indian Penal Code was perfectly correct and the conviction had been rightly affirmed by the High Court in the first instance. There was no occasion at all for the purported exercise of power to correct a clerical mistake and alter the conviction under Section 302 to one under Section 304 Indian Penal Code. We are greatly concerned that the High Court should have committed this grievous error. There is, however, nothing that we can do about it at this juncture as the State has not chosen to file any appeal against the order dated April 14, 1980.

3. Shri S.P. Singh has taken us through the relevant evidence. We are unable to find any reason to reject the evidence of the four eye witnesses. Their evidence has been accepted by both the Trial Court and the High Court. The questions raised relate to appreciation of evidence and we find no ground for interference under Article 136 of the Constitution. Criminal Appeal No. 197 and 198 of 1981 are accordingly dismissed.

MANU/SC/0331/1975

Back to Section 367 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 301 of 1975

Decided On: 11.11.1975

Balwant Singh Vs. State of Punjab

Hon'ble Judges/Coram:

N.L. Untwalia and P.K. Goswami, JJ.

JUDGMENT

N.L. Untwalia, J.

1. Balwant Singh, the sole appellant in this appeal was convicted under Section 302 of the Penal Code and sentenced to death by the Trial Court. He conviction and sentence have been confirmed by the High Court of Punjab and Haryana. Special leave to appeal was granted by this Court limited to the question of sentence only. We have, therefore, to see whether on the facts of this case the High Court was right in confirming the death sentence imposed upon the appellant or was it a case where the lessor sentence of life imprisonment ought to have been awarded.

2. The appellant was aged about 60 years at the lime of the occurrence. He was working as a Granthi of a Gurudwara in village Salihna District Faridkot. Mohan Singh the deceased was a member of the Managing Committee of the Gurudwara. He made certain complaints against the appellant to the President of the Managing Committee and asked, for the removal from the post of the Granthi. The appellant, therefore, bore a grudge against the deceased. In the early hours of April 13, 1974 the appellant gave Karan Parshad of Granthi Sahib to Mohan Singh mixing opium in it. As soon as Mohan Singh took the Parshad he felt sick and his heart began to sink. Inspite of the medical aid he could not survive and died about 4 hours after the administering of the poison to him by the appellant. On the facts found by the learned Sessions Judge and as affirmed by the High Court, the appellant was convicted under Section 302 of the Penal Cole. The question for consideration is whether the sentence of death was rightly passed. It may be noticed that the occurrence took place on April 13, 1974 after coming into force of the Criminal Procedure Code, 1973 on and from April 1, 1974. Provisions of Section 354(3) of the new Code, as noticed by the High Court, governed this case. Yet the High Court confirmed the sentence of death relying upon two decisions of this Court which were not concerned with the application of law engrafted in Section 354(3) of the CrPC, 1973 but were given with reference to the CrPC Code, 1898 as it stood at the relevant time.

3. It is well- known that in many parts of the world an agitation has been going on against the imposition of death penalty even in murder cases. And in many countries or States death penalty has been abolished. In India the Legislature in this wisdom has not thought it fit and proper to abolish the death penalty altogether but there has been a gradual swing against the imposition of such penalty. Under the CrPC, 1898 as it stood before the amendment by Act 26 of 1955, Sub-section (5) of Section 367 required:

If the accused is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall in its judgment state the reason why sentence of death was not passed:

Under the provision aforesaid if an accused was convicted for an offence punishable with death then imposition of death sentence was the rule and awarding of a lesser sentence was an exception and the Court had to state the reasons for not passing the sentence of death. By the Amending Act 26 of 1955 the said provision was deleted. Thereafter it was left to the direction of the Court, on the facts of each case, to pass the sentence of death or to award the lesser sentence. In the context of the changed law if in a given case the passing of the death sentence was not called for or there were extenuating circumstances to justify the passing of the lesser sentence then the lesser sentence was awarded and not the death sentence.

4. Section 354(3) of the new Criminal Procedure Code says:

When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.

Under this provision the Court is required to state the reasons for the sentence awarded and in the case of sentence of death, special reasons are required to be stated. It would thus be noticed that awarding of the sentence other than the sentence of death is the general rule now and only special reasons, that is to say, special facts and circumstances in the given case, will warrant the passing of the death sentence. It is unnecessary nor is it possible to make a catalogue of the special reasons which may justify the passing of the death sentence in a case.

But we may indicate just a few, such as, the crime has been committed by a professional or a hardened criminal, or it has been committed in a very brutal manner or on a helpless child or a woman or the like. On the facts of this case, it is true that the appellant had a motive to commit the murder and he did it with an intention to kill the deceased. His conviction under Section 302 of the Penal Code was justified but the facts found were not such as to enable the Court to say that there were special reasons for passing the sentence of death in this case.

5. The High Court has referred to the two decisions of this Court namely in Mangal Singh v. State of U.P. MANU/SC/0166/1974 : 1975CriLJ36 and in Perumal v. The State of Kerala MANU/SC/0183/1974 : AIR1975SC95 and has then said "There are no extenuating circumstances in this case and the death sentence awarded to Balwant Singh appellant by the Sessions Judge is confirmed...." As we have said above, even after noticing the provisions of Section 354(3) of the new Criminal Procedure Code the High Court committed an error in relying upon the two decisions of this Court in which the trials were held under the old Code. It wrongly relied upon the principle of extenuating circumstances a principle which was applicable after the amendment of the old Code from January 1, 1956 until the Coming into force of the new Code from April 1, 1974. In our judgment there is no special reason nor any has been recorded by the High Court for confirming the death sentence in this case. We accordingly allow the appeal on the question of sentence and commute the death sentence imposed upon the appellant to one for imprisonment for life.

MANU/SC/0120/1980

Back to Section 378 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 97 of 1974

Decided On: 18.01.1980

Dinanath Singh and Ors. Vs. State of Bihar

Hon'ble Judges/Coram:

A.D. Koshal and S. Murtaza Fazal Ali, JJ.

JUDGMENT

S. Murtaza Fazal Ali, J.

1. This appeal under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act is directed against a judgment of the Patna High Court convicting all the five appellants under Section 302/34 and sentencing them to imprisonment for life. The Sessions Judge acquitted all the accused of the charges framed against them. The State filed an appeal before the High Court in which the High Court reversed the order of acquittal passed by the Sessions Judge and convicted the appellants as indicated above. To have been taken through the judgment of the High Court, Sessions Judge and also the relevant evidence in the case We are clearly of the opinion after perusing the evidence that this was not a fit case in which the High Court ought to have interfered with the order of acquittal passed by the Sessions Judge. It is now well settled by long course of decisions of this Court that where the view taken by the trial Court in acquitting the accused is reasonably possible, even if the High Court were to take a different view on the evidence, that is no ground for reversing the order of acquittal. In the instant case after going through the evidence we feel that the view taken by the Sessions Judge was not only a reasonably possible view but the only reasonable view which could be taken on the evidence produced by the prosecution.

2. According to the prosecution on 12th December, 1968 at about 11.30 A.M. the accused persons had a scuffle with the deceased in Lallam Hotel and at the exhortation of accused 3 and 4, Bhagwati Pandey gave a knife injury to the deceased which resulted in his death. Immediately thereafter some of the accused were found running away but could not be apprehended. The solitary eye witness, who has been examined by the prosecution to prove the actual assault, is PW 10 Bhagwan Singh. To begin with, the evidence of this witness suffers from several infirmities In the first place the witness was examined by the police as late on the 25th December, 1955 i.e. to say 13 days after the occurrence. Far from giving any reasonable explanation for the delay in his examination by the police, the witness admits that although the Investigating Officers or other police constables were scorching for him, he kept himself concealed due to fear for 12 days. The witness does cot at all state in his evidence that either at the time of occurrence of sometime later

any of the accused gave any threat to the witness not to depose against them. Thus the theory of fear appears to be clearly an after- thought. Other witnesses were declared hostile as they appeared to have been gained over as alleged by the prosecution, as a result of which the sheet anchor of the prosecution was the solitary testimony of PW 10.

3. Mr. Shambhu Prasad Singh, Sr. Advocate for the respondent submitted that the evidence of PW 10 though belated stands corroborated by the evidence of PW 3, PW 4 and PW 13. PW 3 undoubtedly says that is found some persons running away and same of Raj Nath and Bhagwati Pandey was taken. He, however, admits in Para 10 of his evidence that Shri Bhagwan Singh PW 10 had told him at Mahadeva Mor i.e. the place of occurrence, that the scuffle took place between Rajnath and Vidyadhar Chaubey and Rajnath caught Vidyadhar Chaubey from the front. Thereafter Bhagwati Pandey took out a CHHURA from his waist and stabbed the deceased. Bhagwan Singh PW 10 however has made no such statement in his evidence. He never claims to have made any such statement to PW 3. Thus PW 3 seems to be more loyal than the King is attributing a statement to Bhagwan Singh which in fact were never made to him, and thus if PW 10 is to be believed then evidence of PW 3 is hearsay and therefore, inadmissible. Similarly PW 4 in his evidence, has admitted that he did not know the deceased but he knew Rabindra Bihari Pandey. He merely says that Shri Bhagwan Singh told him at the place of occurrence that Bhagwati Pandey stabbed Vidyadhar Chaubey and Rajnath was holding the deceased while Bhagwati Pandey stabbed him. This also is a false statement because PW 10 does not say that he mentioned this fact to PW 4. On the other hand it appears from the evidence of PW 10 that in spite of the fact that a number of persons assembled at the spot, including an Advocate, the supposed eye witness PW 10 did not disclose the names of the assailants of the deceased to any one of them. In view of this infirmity the trial Court was fully justified in not placing reliance on the solitary eye witness who concealed himself for 12 days after the occurrence. Reliance was placed by Mr. Singh on the fact that there was some defect in investigation as a result of which PW 10 could not have been examined earlier. Even if there was any defect or jacuna in the investigation, the prosecution cannot get any benefit of the same. Moreover PW 10 himself clearly admits that there was no lapse on the part of the police at all because the police were trying to search him but he concealed himself and did not allow himself to be examined by the police. Taking the totality of the circumstances we are not impressed with the evidence of PW 10. If the evidence of PW 10, the solitary eye witness is excluded from consideration then the evidence of other witnesses showing that some of the accused were running away, by itself does not prove participation of the accused in the murderous assault on the deceased. The High Court seems to have reappraised the evidence and accepted the evidence of PW 10 but has not tried to consider the effect of the infirmities indicated above.

4. For these reasons, therefore, we are satisfied that the learned Sessions Judge in acquitting the appellants took a very reasonable view and the High Court was in error in disturbing the judgment of the trial Court. The appeal is accordingly allowed the conviction and sentence passed on the appellants are set aside and they are acquitted of the charges framed against them. The appellants shall now be discharged from their bail bonds.

MANU/SC/0068/1977

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 124 of 1977

Decided On: 29.07.1977

Amar Nath and Ors. Vs. State of Haryana and Ors.

Back to Section 397 of Code of Criminal Procedure, 1973

Back to Section 482 of Code of Criminal Procedure, 1973

Hon'ble Judges/Coram:

N.L. Untwalia and S. Murtaza Fazal Ali, JJ.

JUDGMENT

S. Murtaza Fazal Ali, J.

1. This appeal by special leave involves an important question as to the interpretation scope, ambit and connotation word "interlocutory order" as appearing in Sub- section (2) of Section 397 of the CrPC 1973. For the purpose of brevity, we shall refer to the CrPC, 1898 as "the 1898 Code", to the CrPC, 1898 as amended in 1955 as "the 1955 Amendment" and to, the CrPC, 1973 as "the 1973 Code". The appeal arises in the following circumstances.

2. An incident took place in village Amin on April 23, 1976 in the course of which three persons died and, F. I. R. No. 139 dated April 23, 1976 was filed at police station Butana, District Kamal at about 5- 30 P. M. The F. I. R. mentioned a number of accused persons including the appellants as having participated in the occurrence which resulted in the death of the deceased. The police, after holding investigations, submitted a charge- sheet against the other accused persons except the appellants against whom the police opined that no case at all was made out as no weapon was recovered nor was there any clear evidence about the participation of the appellants. The police thus submitted its final report under Section 173 of the 1973 Code in so far as the appellants were concerned. The report was placed before Mr. B.K. Gupta the Judicial Magistrate 1st Class, Karnal, who after perusing the same set the appellants at liberty after having accepted the report. It appears that the complainant filed a revision petition, before the Additional Sessions Judge, karnal against the order of the Judicial Magistrate, 1st Class, Karnal releasing the appellants, but the same was dismissed on July 3, 1976. The informant filed a regular complaint before the Judicial Magistrate, 1st Class, on July 1, 1976 against all the 11 accused including the appellants. The learned Magistrate, after having examined the complainant and going through the record, dismissed the complaint as he was satisfied that no case was made out against the appellants. Thereafter the complainant took up the matter in revision before the Sessions Judge, Karnal, who this time accepted the revision petition and remanded the case to the Judicial Magistrate for further enquiry. On November 15, 1976, the learned Judicial Magistrate, on receiving the order of the Sessions Judge, issued summons to the appellants straightway. The appellants then moved the High Court under Section 482 and Section 397 of the 1973 Code for quashing the order of the

Judicial Magistrate mainly on the ground that the Magistrate had issued the summons in a mechanical manner without applying his judicial mind to the facts of the case. The High Court dismissed the petition in limine and refused to entertain it on the ground that as the order of the Judicial Magistrate dated November 15, 1976 summoning the appellants was an interlocutory order, a revision to the High Court was barred by virtue of Sub- section (2) of Section 397 of the 1973 Code. The learned Judge further held that as the revision was barred, the Court could not take up the case under Section 482 in order to quash the very order of the Judicial Magistrate under Section 397(1) of the 1973 Code otherwise, the very object of Section 397(2) would be defeated.

3. While we fully agree with the view taken by the learned Judge that where a revision to the High Court against the order of the Subordinate Judge is expressly barred under Sub- section (2) of Section 397 of the 1973 Code the inherent powers contained in Section 482 would not be available to defeat the bar contained in Section 397(2). Section 482 of the 1973 Code contains the inherent powers of the Court and does not confer any new powers but preserves the powers which the High Court already possessed. A harmonious construction of Sections 397 and 482 would lead to the irresistible conclusion that where a particular order is expressly barred under Section 397(2) and cannot be the subject of revision by the High Court, then to such a case the provisions of Section 482 would not apply. It is well settled that the inherent powers of the Court can ordinarily be exercised when there is no express provision on the subject- matter. Where there is an express, provision, barring a particular remedy, the Court cannot (sic) to the exercise of inherent powers.

4. So far as the second plank of the view of the learned Judge that the order of the Judicial Magistrate in the instant case was an interlocutory order is concerned, it is a matter which merits serious consideration. A history of the criminal legislation in India would manifestly reveal that so far the CrPC is concerned both in the 1898 Code and 1955 amendment the widest possible powers of revision had been given to the High Court under Sections 435 and 439 of those Codes. The High Court could examine the propriety of any order - - whether final or interlocutory- - passed by any Subordinate Court in a criminal matter. No limitation and restriction on the powers of the High Court were placed. But this Court as also the various High Courts in India, by a long course of decisions, confined the exercise of revisional powers only to cases where the impugned order suffered from any error of law or any legal infirmity causing injustice or prejudice to the accused or was manifestly foolish or perverse. These restrictions were placed by the case law, merely as a rule of prudence rather than a rule of law and in suitable cases the High Courts had the undoubted power to interfere with the impugned order even on facts. Sections 435 and 439 being identical in the 1898 Code and 1955 insofar as they are relevant run thus:

435 (1) The High Court or any Sessions Judge or District Magistrate, or any Sub- divisional Magistrate empowered by the State Govt. in this behalf, may call for and examine the record of any proceeding before any inferior criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety

of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court....

439. (1) In the case of any proceeding the record of which has been called for by itself or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of appeal by Sections 423, 426, 427 and 428 or on a Court by Section 338, and may enhance, the sentence; and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in manner provided by Section 429.

(2) No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence." In fact the only rider that was put under Section 439 was that where the Court enhanced the sentence the accused had to be given an opportunity of being heard.

5. The concept of an interlocutory order qua the revisional jurisdiction of the High Court, therefore, was completely foreign to the earlier Code. Subsequently it appeals that there had been large number of arrears and the High Courts were flooded with revisions of all kinds against interim or interlocutory orders which led to enormous delay in the disposal of cases and exploitation of the poor accused by the affluent prosecutors. Sometimes interlocutory orders caused harassment to the accused by unnecessarily protracting the trials. It was in the background of these facts that the Law Commission dwelt on this aspect of the matter and in the 14th and 41st reports submitted by the commission which formed the basis of the 1973 Code the said commission suggested revolutionary changes to be made in the powers of the High Courts. The recommendations of the commission were examined carefully by the Government, keeping in view, the following basic considerations:

(i) an accused person should get a fair trial in accordance with the accepted principles of natural justice;

(ii) every effort should be made to avoid delay in investigation and trial which is harmful not only to the individuals involved but also to society; and

(iii) the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community.

This is clearly mentioned in the Statement of Objects and Reasons accompanying the 1973 Code. Clause (d) of Paragraph 5 of the Statement of Objects and Reasons runs thus:

the powers of revision against interlocutory orders are being taken away, as it has been found to be one of the main contributing factors in the delay of disposal of criminal cases.

Similarly, replying to the debate in the Lok Sabha on Sub- clause (2) of Clause 397, Shri Ram Niwas Mirdha, the Minister concerned, observed as follows:

It was stated before the Select Committee that a large number of appeals against interlocutory orders are filed with the result that the appeals got delayed considerably. Some of the more notorious cases concern big business persons. So, this new provision was also welcomed by most of the witnesses as well as the Select Committee.... This was a well- thought out measure so we do not want to delete it.

Thus it would appear that Section 397(2) was incorporated in the 1973 Code with the avowed purpose of cutting out delays and ensuring that the accused persons got a fair trial without much delay and the procedure was not made complicated. Thus the paramount object in inserting this new provision of Sub- section (2) of Section 397 was to safeguard the interest of the accused.

6. Let us now proceed to interpret the provisions of Section 397 against the historical background of these facts. Sub- section (2) of Section 397 of the 1973 Code may be extracted thus:

The powers of revision conferred by Sub- section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

The main question which falls for determination in this appeal is as to what is the connotation of the term "interlocutory order" as appearing in Sub- section (2) of Section 397 which bars any revision of such an order by the High Court. The term "interlocutory order" is a term of well-known legal significance and does not present any serious difficulty. It has been used in various statutes including the CPC, Letters Patent of the High Courts and other like statutes. In Webster's New World Dictionary "interlocutory" has been defined as an order other than final decision. Decided cases have laid down that interlocutory orders to be appealable must be those which decide the rights and liabilities of the parties concerning a particular aspect. It seems to us that the term "interlocutory order" in Section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the rights of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the 1973 Code.

Thus, for instance, orders summoning witnesses adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under Section 397(2) of the 1973 Code.

But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the re- visional jurisdiction of the High Court.

7. In Central Bank of India v. Gokal Chand MANU/SC/0053/1966 : [1967]1SCR310 this Court while describing the incidents of an interlocutory order, observed as follows:

In the context of Section 38(1), the words "every order of the Controller made under this Act", though very wide, do not include interlocutory orders, which are merely procedural and do not affect the rights or liabilities of the parties. In a pending proceeding, the Controller, may pass many interlocutory orders under Sections 36 and 37, such as orders regarding the summoning of witnesses, discovery, production and inspection of documents, issue of a commission for examination of witnesses, inspection of premises, fixing a date of hearing and the admissibility of a document or the relevancy of a question. All these interlocutory orders are steps taken towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceeding; they regulate the procedure only and do not affect any right or liability of the parties." The aforesaid decision clearly illustrates the nature and incidents of an interlocutory order and the incidents given by this Court constitute sufficient guidelines to interpret the connotation of the word "interlocutory order" as appearing in Sub- section (2) of Section 397 of the 1973 Code.

8. Similarly in a later case in Mohan Lal Magan Lal Thacker v. State of Gujarat MANU/SC/0071/1967 : 1968CriLJ876 this Court pointed out that the finality of an order could not be judged by correlating that order with the controversy in the complaint. The fact that the controversy still remained alive was irrelevant. In that case this Court held that even though it was an interlocutory order, the order was a final order.

9. Similarly in Baldevdas v. Filmistan Distributors (India) Pvt. Ltd. MANU/SC/0489/1969 : [1970]1SCR435 while interpreting the import of the words "case decided" appearing in Section 115 of the CPC, this Court observed as follows:

A case may be said to be decided, if the Court adjudicates for the purposes of the suit some right or obligation of the parties in controversy." Apart from this it would appear that under the various provisions of the Letters Patent of the High Courts in India, an appeal lies to a Division Bench from an order passed by a single Judge and some High Courts have held that even though the order may appear to be an interlocutory one where it does decide one of the aspect of the rights of the parties it is, appealable. For instance, an order of a single Judge granting a temporary injunction was held by a Full Bench of Allahabad High Court in Standard Class Beads Factory v. Shri Dhar MANU/UP/0198/1960 : AIR1960All692 as not being an interlocutory order having decided some rights of the parties and was, therefore, appealable. To the same effect are the decisions of the Calcutta High Court in Union of India v. Khetra Mohan Banerjee MANU/WB/0050/1960 : AIR1960Cal190 of the Lahore High Court in Gokal Chand v. Sanwal Das AIR 1920 Lah 326 of the Delhi High Court in Begum Aftab Zamani v. Shri Lal Chand Khanna

AIR 1969 Del 85 and of the Jammu & Kashmir High Court in Har Parshad Wali v. Naranjan Nath Matoo AIR 1959 J & K 139.

10. Applying the aforesaid tests, let us now see whether the order impugned in the instant case can be said to be an interlocutory order as held by the High Court. In the first place, so far as the appellants are concerned, the police had submitted its final report against them and they were released by the Judicial Magistrate. A revision against that order to the Additional Sessions Judge preferred by the complainant had failed. Thus the appellants, by virtue of the order of the Judicial Magistrate as affirmed by the Additional Sessions Judge acquired a valuable right of not being put on trial unless a proper order was made against them. Then came the complaint by respondent No. 2 before the Judicial Magistrate which was also dismissed on merits. The Sessions Judge in revision however, set aside the order dismissing the complaint and ordered further inquiry. The Magistrate on receiving the order of the Sessions Judge summoned the appellants straightway which meant that the appellants were to be put on trial. So long as the Judicial Magistrate had not passed this order, no proceedings were started against the appellants, nor were any such proceedings pending against them. It was only with the passing of the impugned order that the proceedings started and the question of the appellants being put up for trial arose for the first time. This was undoubtedly a valuable right which the appellants possessed and which was being denied to them by the impugned order. It cannot, therefore, be said that the appellants were not at all prejudiced, or that any right of their's was not involved by the impugned order. It is difficult to hold that the impugned order summoning the appellants straightway was merely an interlocutory order which could not be revised by the High Court under Sub- sections (1) and (2) of Section 397 of the 1973 Code. The order of the Judicial Magistrate summoning the appellants in the circumstances of the present case, particularly having regard to what had preceded was undoubtedly a matter of moment, and a valuable right of the appellants had been taken away by the Magistrate in passing an order prima facie in sheer mechanical fashion without applying his mind. We are, therefore satisfied that the order impugned was one which was a matter of moment and which did involve a decision regarding the rights of the appellants. If the appellants were not summoned, then they could not have faced the trial at all, but by compelling the appellants to face a trial without proper application of mind cannot be held to be an interlocutory matter but one which decided a serious question as to the rights of the appellants to be put on trial.

11. For these reasons, the order of the Judicial Magistrate, 1st Class, Karnal dated November 15, 1976 cannot be said to be an interlocutory order and does not fall within the mischief of Sub-section (2) of Section 397 of the 1973 Code and is not covered by the same. That being the position, a revision against this order was fully competent under Section 397(1) or under Section 482 of the 1973 Code, because the scope of both these sections in a matter of this kind is more ear less the same.

12. As we propose to remand this case to the High Court to decide the revision on merits, we refrain from making any observation regarding the merits of the case. The appeal is, therefore, allowed, the order of the High Court dated February 14, 1977 refusing to entertain the revision petition of the appellants is set aside. The High Court is directed to admit the revision petition filed by the appellants and to decide it on merits in accordance with the law.

MANU/SC/0029/1951

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 17 of 1951

Decided On: 24.05.1951

Logendra Nath Jha and Ors. Vs. Polailal Biswas

Back to Section 401 of Code of Criminal Procedure, 1973

Back to Section 423 of Code of Criminal Procedure, 1973

Back to Section 439 of Code of Criminal Procedure, 1973

Hon'ble Judges/Coram:

H.J. Kania, C.J., M. Patanjali Sastri, Sudhi Ranjan Das and Vivian Bose, JJ.

JUDGMENT

M. Patanjali Sastri, J.

1. This is an appeal by special leave from an order of the High Court of Judicature at Patna setting aside an order of acquittal of the appellants by the Sessions Judge, Purnea, and directing their retrial.

2. The appellants were prosecuted for alleged offences under sections 147, 148, 323, 324, 326, 302 and 302/149 of the Indian Penal Code at the instance of one Polai Lal Biswas who lodged a complaint against them before the police. The prosecution case was that, while the complainant was harvesting the paddy crop on his field at about 10 a.m. on 29th November, 1949, a mob of about fifty persons came on to the field armed with ballams, lathis and other weapons and that the first appellant Logendranath Jha, who was leading the mob, demanded a settlement of all outstanding disputes with the complainant and said he would not allow the paddy to be removed unless the disputes were settled. An altercation followed as a result of which Logendra ordered an assault by his men. Then Logendra and one of his men, Harihar, gave ballam blows to one of the abourers, Kangali, who fell down and died on the spot. Information was given to the police who investigated the case and submitted the charge- sheet. The committing Magistrate found that a prima facie case was made out and committed the appellants to the Court of Sessions for trial.

3. The appellants pleaded not guilty alleging inter alia, that Mohender and Debender, the brothers of Logendra (appellants 2 and 3) were not present in the village of Dandkhora with which they had no concern, as all the lands in that village had been allotted to Logendra at a previous partition, that Logendra himself was not in the village at the time of the occurrence but arrived soon after and was dragged to the place at the instance of his enemies in the village and was placed under arrest by the Assistant Sub- Inspector of Police who had arrived there previously. It was also alleged that there were two factions in the village, one of which was led by one Harimohan, a relation of the complainant, and the other by Logendra and there had been

numerous revenue and criminal proceedings and long- standing enmity between the families of these leaders as a result of which this false case was foisted upon the appellants.

4. The learned Sessions Judge examined the evidence in great detail and found that the existence of factions as alleged by the appellants was true. He found, however, that the appellants' plea of alibi was not satisfactorily made out, "but the truth of the prosecution", he proceeded to observe,

"cannot be judged by the falsehood of the defence nor can the prosecution derive its strength from the weakness of the defence. Prosecution must stand on its own legs and must prove the story told by it at the very first stage. The manner of occurrence alleged by the prosecution must be established beyond doubt before the accused persons can be convicted".

Approaching the case in this manner and seeing that the basis of the prosecution case was that Polai had batai settlement of the disputed land and had raised the paddy crop which he was harvesting when the occurrence took place, the learned Sessions Judge examined the evidence of the prosecution witnesses who belonged to the opposite faction critically and found that the story of the prosecution was not acceptable. Polai, who was alleged to have taken the land on batai settlement from his own maternal grandmother Parasmani who brought him up from his childhood, was only 19 years old and unmarried and was still living with his grandmother. He did not claim to be a bataidar of any other person. "In these circumstances", said the learned Judge,

"it does not appear to me to be probable that Polai would have been allowed to maintain himself by running adhi cultivation of his mamu's land in the lifetime of his nani who has brought him up from his infancy like her own child. Nor does it appeal to me that the unmarried boy Polai would have undertaken upon himself the task of running batai cultivation of the lands of his mamu where he has been living since his childhood without any trouble, more particularly in view of the heavy expenses of cultivation brought out by the evidence of Tirthanand (P.W. 14)".

He, therefore, disbelieved the whole story that Polai had taken the lands of his grandmother or his uncles as bataidar for cultivation and that he was engaged in harvesting the paddy crop on the lands at the time of the occurrence. This false story, in his opinion, "vitally affected the prosecution case regarding the alleged manner of the occurrence". He also found a number of discrepancies and contradictions in the evidence of the prosecution witnesses, which, in his view, tended to show that the prosecution was guilty of concealment of the real facts. "In view of such concealment of real facts," the learned Judge concluded,

"it does not appear to me to be possible to apportion liability and to decide which of the two parties commenced the fight and which acted in self- defence. Such being the position, it is not possible at all to hold either party responsible for what took place. In such a view of the matter coupled with the fact that the manner of occurrence alleged by the prosecution has not been established to be true beyond doubt, I think that the accused persons cannot be safely convicted of any of the offences for which they have been charged."

The learned Judge accordingly acquitted the appellants of all the charges framed against them.

5. Against that order the complainant Polai preferred a revision petition to the High Court under section 439 of the Criminal Procedure Code. The learned Judge who heard the petition reviewed the evidence at some length and came to the conclusion that the judgment of the learned Sessions Judge could not be allowed to stand as the acquittal of the appellants was "perverse". In his opinion, "the entire judgment displays a lack of true perspective in a case of this kind. The Sessions Judge had completely misdirected himself in looking to the minor discrepancies in the case and ignoring the essential matters so far as the case is concerned," and there was no justifiable ground for rejecting the prosecution evidence regarding the cultivation and harvesting by Polai. And he concluded with the warning:

"I would, however, make it perfectly clear that when the case is re- tried, which I am now going to order, the Judge proceeding with the trial will not be in the least influenced by any expression of opinion which I may have given in this judgment."

6. On behalf of the appellants Mr. Sinha raised two contentions. In the first place, he submitted that having regard to section 417 of the Criminal Procedure Code which provides for an appeal to the High Court from an order of acquittal only at the instance of the Government, a revision petition under section 439 at the instance of a private party was incompetent, and secondly, that sub- section (4) of section 439 clearly showed that the High Court exceeded its powers of revisions in the present case in upsetting the findings of fact of the trial Judge. We think it is unnecessary to express any opinion on the first contention of Mr. Sinha especially as the respondent is unrepresented, as we are of opinion that his second and alternative contention must prevail.

7. It will be seen from the judgment summarised above that the learned Judge in the High Court re- appraised the evidence in the case and disagreed with the Sessions Judge's findings of fact on the ground that they were perverse and displayed a lack of true perspective. He went further and, by way of "expressing in very clear terms as to how perverse the judgment of the court below is", he indicated that the discrepancies in the prosecution evidence and the circumstances of the case which led the Sessions Judge to discredit the prosecution story afforded no justifiable ground for the conclusion that the prosecution failed to establish their case. We are of opinion that the learned Judge in the High Court did not properly appreciate the scope of inquiry in revision against an order of acquittal. Though sub- section (1) of section 439 authorises the High Court to exercise, in its discretion, any of the powers conferred on a court of appeal by section 423, sub-section (4) specifically excludes the power to "convert a finding of acquittal into one of conviction". This does not mean that in dealing with a revision petition by a private party against an order of acquittal, the High Court could in the absence of any error on a point of law re-appraise the evidence and reverse the findings of facts on which the acquittal was based, provided only it stopped short of finding the accused guilty and passing sentence on him.

By merely characterising the judgment of the trial Court as "perverse" and "lacking in perspective", the High Court cannot reverse pure findings of fact based on the trial Court's

appreciation of the evidence in the case. That is what the learned Judge in the court below has done, but could not, in our opinion, properly do on an application in revision filed by a private party against acquittal. No doubt, the learned Judge formally complied with sub- section (4) by directing only a re- trial of the appellants without convicting them, and warned that the courts retrying the case should not be influenced by any expression of opinion contained in his judgment. But there can be little doubt that he loaded the dice against the appellants, and it might prove difficult for any subordinate judicial officer dealing with the case to put aside altogether the strong views expressed in the judgment as to the credibility of the prosecution witnesses and the circumstances of the case in general.

8. We are of opinion that the learned Judge in the High Court exceeded his powers of revision in dealing with the case in the manner he did, and we set aside his order for retrial of the appellants and restore the order of acquittal passed by the Sessions Judge.

MANU/SC/0194/1976

Back to Section 428 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 381 of 1975

Decided On: 02.02.1976

Suraj Bhan Vs. Om Prakash and Ors.

Hon'ble Judges/Coram:

Raja Jaswant Singh, P.K. Goswami and P.N. Shinghal, JJ.

JUDGMENT

P.K. Goswami, J.

1. On April, 19, 1975, the respondent Om Parkash (hereinafter to be described as the accused) inflicted as many as five stab wounds on the appellant Suraj Bhan. The injuries were very severe as will be found from the description given below :

1. Incised wounds 5 cm x 2 cm oblique spindle shape on the left side of the front of abdomen, 8 cm below the xiphisternum and 6 cm to the left of mid line. Depth not probed edges were fresh.

2. Incised wound 21/2 cm x 1 cm oblique, 6 cm on the left and 2 cm above injury No. 1, spindle shaped. Edges were fresh and depth was not probed.

3. Incised wound 21/2 cm x 1 cm horizontal, spindle shaped 6 cm above the left anterior superior iliac spine. Depth was not probed and edges were fresh.

4. Incised wound 1 cm x 1/4 cm x 2 mm deep, horizontal 5 cm inner to end at the level of left anterior superior iliac spin edges were fresh.

5. Penetrating wound 5 cm x 21/2 cm x cavity deep, horizontal on the front of abdomen 2 cm to the right of mid line 10 cm below the level of xiphisternum, edges were clean cut and fresh the coils of small intestine protruding through the wound.

The appellant had also to under go an operation. There is no doubt that prompt and proper medical attention alone saved the appellant from death.

2. The accused was convicted under Section 307 IPC by the trial court by its judgment dated February 26, 1974 and sentenced to 10 years rigorous imprisonment & also to a fine of Rs. 200/- in default rigorous imprisonment for one year. Although the accused gave his age as 19 years, according to the trial court he appeared to be aged about 23 years.

3. The accused appealed to the High Court against his conviction and sentence. The appeal was numbered as Criminal Appeal No. 442 of 1974, The injured Suraj Bhan also filed a Criminal Revision Application being numbered as 606 of 1974 for enhancement of the sentence passed on the accused. The appeal was decided by a learned single judge of the High Court of Punjab and Haryana on January 10, 1975. It appears from the judgment of the High Court in that appeal that conviction of the accused was not challenged. The only point that was argued was that the accused was entitled to set off the period of his detention as an under trial prisoner against the period of imprisonment imposed upon him under Section 423 of the Criminal Procedure Code 1973 (Act No. 2 of 1974) which came into force from April 1, 1974 It appears also from the judgment that the State did not oppose the aforesaid submission on behalf of the accused. The learned single Judge, therefore, passed the order in the following terms :

There is force in this submission of the learned Counsel which is not opposed by the State counsel. I am of the view that the ends of justice will be met if the term of imprisonment of the convict appellant is reduced to that already undergone by him.

Having said so the learned single Judge dismissed the appeal maintaining the conviction and reduced the accused's term of imprisonment to that already undergone by him and also maintained and the sentence of fine. Including the pre- conviction detention the accused served only one year and eight months of the sentence.

4. It appears the State did not choose to prefer any appeal against the grossly inadequate sentence passed by the High Court. On the other hand the injured Suraj Bhan made an application to the High Court for a certificate of fitness for leave to appeal to this Court under Article 134(1)(c) of the Constitution without success and thereafter obtained special leave from this Court after notice to the respondents including the State to show cause why special leave to appeal should not be granted.

5. We have described the above facts in some detail as we fail to appreciate why the State in this case should have ordinarily ignored to take notice of such a grossly lenient sentence.

6. The order of the High Court was clearly unsustainable even in terms of Section 428, Criminal Procedure Code, as the only set off which was urged for under the section and which was admissible, was a period of about nine months which the accused had served as an under trial prisoner prior to the conviction.

7. It is also clear from Section 428, Criminal Procedure Code itself even though the conviction was prior to the enforcement of the CrPC, benefit of Section 428 would be available to such a conviction. Indeed Section 428 does not contemplate any challenge to a conviction or a sentence. It confers a benefit on a conviction reducing his liability to undergo imprisonment out of the sentence imposed for the period which he had already served as an under trial prisoner. The procedure to invoke Section 428, Criminal Procedure Code, could be a miscellaneous application by the accused to the court at any time while the sentence runs for passing an appropriate order for reducing the term of imprisonment which is the mandate of the section.

8. In the appeal before the High Court there was no scope for the High Court to reduce the sentence only to the period already undergone under Section 428, Criminal Procedure Code, in view of the only point argued before it.

9. Since in an attempt to murder hurt was caused, the maximum punishment under the second part of Section 307, IPC would be imprisonment for life. The injured was not satisfied with the maximum punishment of ten years contained in the first part of the section and moved the High Court in revision for enhancement of the sentence. The revision was separately dismissed by the High Court for the "reasons recorded in Criminal Appeal No. 442 of 1974" and it is against this order of the High Court in revision that special leave was obtained by the appellant.

10. In the absence of an appeal against the judgment of the High Court in Criminal Appeal No. 442 of 1974, either by the State or by the injured, that judgment has become final which means that the accused's sentence remains to be for a period of one year and eight months and a fine of Rs. 200/- , in default rigorous imprisonment for one year.

11. The scope of the criminal revision before the High Court was whether the sentence of ten years should be further enhanced but that sentence itself disappeared by virtue of the judgment of the High Court in the criminal appeal. The criminal revision therefore, became infructuous and we can do nothing about it while the judgment of the High Court remains operative. Unfortunately that judgment in the criminal appeal is not before us in this Court. Although, therefore, we cannot approve of such a grossly lenient sentence in the present case, we have no other alternative than to dismiss the present appeal. The appeal is, therefore, dismissed.

MANU/SC/0406/1991

Back to Section 433A of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Writ Petition (Criminal) No. 96 of 1989

Decided On: 10.07.1991

Ashok Kumar Vs. Union of India (UOI) and Ors.

Hon'ble Judges/Coram:

A.M. Ahmadi, P.B. Sawant and S.C. Agrawal, JJ.

ORDER

A.M. Ahmadi, J.

1. Liberty is the life line of every human being. Life without liberty is 'lasting' but not 'living'. Liberty is, therefore, considered one of the most precious and cherished possessions of a human being. Any attempt to take liberties with the liberty of a human being is visited with resistance. Since no human being can tolerate fetters on his personal liberty it is not surprising that the petitioner Ashok Kumar alias Golu continues to struggle for his liberty, premature release, not fully content with the enunciation of the law in this behalf by this Court in Maru Ram v. Union of India MANU/SC/0159/1980 : 1980CriLJ1440 .

2. The questions of law which are raised in this petition brought under Article 32 of the Constitution arise upon facts of which we give an abridged statement. On the basis of a FIR lodged on October 21, 1977, the petitioner was arrested on the next day and he along with others was chargesheeted for the murder of one Prem Nagpal. The petitioner was tried and convicted for murder on December 20, 1978 in Sessions Case No. 32 of 1978 by the learned Sessions Judge, Ganganagar, and was ordered to suffer imprisonment for life. His appeal, Criminal Appeal No. 40 of 1979, was dismissed by the High Court of Rajasthan. Since then he is serving time. It appears that he filed a Habeas Corpus Writ Petition No. 2963 of 1987 in the High Court of Rajasthan at Jodhpur for premature release on the plea that he was entitled to be considered for such release under the relevant rules of Rajasthan Prisons (Shortening of Sentences) Rules, 1958, (hereinafter alluded to as 'the 1958 Rules') notwithstanding the insertion of Section 433A in the CrPC, 1973 (hereinafter called 'the Code') with effect from December 18, 1978, just two days before his conviction. His grievance was that he was being denied the benefit of early release under the 1958 Rules under the garb of the newly added Section 433A, on the ground that it places a statutory embargo against the release of such a convict 'unless he has served atleast 14 years of imprisonment'. He contended that the said provision could not curtail the constitutional power vested in the Governor by virtue of Article 161 of the Constitution which had to be exercised on the advice of the Council of Ministers which advice could be based on a variety of considerations including the provisions of the 1958 Rules. The writ petition was, however, dismissed by the High

Court on October 31, 1988, on the ground that it was premature inasmuch as the petitioner's two representations, one to the Governor and another to the State Home Minister, were pending consideration. The High Court directed that they should be disposed of within one month. In this view of the matter the High Court did not deem it necessary to consider the various questions of law raised in the petition on merits. After the rejection of his writ petition by the High Court, the petitioner through his counsel addressed a letter dated November 28, 1988 to the Governor inviting his attention to the earlier representation dated August 29, 1988 and requesting him to take a decision thereon within a month as observed by the High Court. Failing to secure his early release notwithstanding the above efforts, the petitioner has invoked the extraordinary jurisdiction of this Court under Article 32 of the Constitution.

3. The petitioner's case in a nutshell is that under the provisions of the 1958 Rules, a 'lifer' who has served an actual sentence of about 9 years and 3 months is entitled to be considered for premature release if the total sentence including remissions works out to 14 years and he is reported to be of good behaviour. However, the petitioner contends, his case for premature release is not considered by the concerned authorities in view of the newly added Section 433A of the Code on the interpretation that by virtue of the said provision the case of a 'lifer' cannot be considered for early release unless he has completed 14 years of actual incarceration, the provisions of Sections 432 and 433 of the Code as well as the 1958 Rules notwithstanding. According to him, even if the provisions of Sections 432 and 433 of the Code do not come into play unless a convict sentenced to life imprisonment has completed actual incarceration for 14 years as required by Section 433A, the authorities have failed to realise that Section 433A cannot override the constitutional power conferred by Articles 72 and 161 of the Constitutional on the President and the Governor, respectively, and the State Government i.e., the Council of Ministers, could advise the Governor to exercise power under Article 161 treating the 1958 Rules as guidelines. Since the petitioner had already moved the Governor under Article 161 of the Constitution it was incumbent on the State Government to consider his request for early release, notwithstanding Section 433A, and failure to do so entitled the petitioner to immediate release as his continued detention was, wholly illegal and invalid. In support of this contention the petitioner has placed reliance on the ratio of Maru Ram's decision.

4. The petitioner brands Section 433A of the Code to be a 'legislative fraud' inasmuch as the said provision was got approved by the Parliament on the assurance that the said provision is complementary to the various amendments proposed in the Indian Penal Code. In the alternative it is contended that in any case this Court should by a process of interpretation limit the scope of Section 433A of the Code to those cases only to which it would have been limited had the legislation proposing amendments in the Indian Penal Code gone through. In any case after the decision of this Court in Maru Ram's case, the efficacy of Section 433A is considerably reduced and the petitioner is entitled to early release by virtue of the power contained in Article 161 read with the 1958 Rules even if guidelines are not formulated notwithstanding the subsequent decision of this Court in Kehar Singh v. Union of India MANU/SC/0240/1988 : 1989CriLJ941 . Counsel submitted that after the decision of this Court in Bhagirath v. Delhi Administration MANU/SC/0062/1985 : 1985CriLJ1179 where- under this Court extended the benefit of Section 428 of the Code even to life convicts, the ratio in Gopal Godse v. State of Maharashtra

MANU/SC/0156/1961 : 1961CriLJ736a had undergone a change. On this broad approach, counsel for the petitioner, formulated questions of law which may be stated as under:

1. Whether the insertion of Section 433A in the Code was a legislative fraud inasmuch as the connected legislation, namely, the Indian Penal Code (Amendment) Bill XLII of 1972 did not become law although passed by the Rajya Sabha as the I.P.C. (Amendment) Act, 1978, on November 23, 1978?

2. Whether on the ratio of Maru Ram's decision, in the absence of any guidelines formulated by the State under Article 72 or 161 of the Constitution, Section 433A of the Code would not apply to life convicts and the 1958 Rules will prevail for the purpose of exercise of power under Article 72 or 161 of the Constitution?

Inter- connected with this question, the following questions were raised:

a) Whether Maru Ram's decision is in conflict with Kehar Singh's Judgment on the question of necessity or otherwise of guidelines for the exercise of power under Article 72 and 161 of the Constitution?

b) Whether the use of two expressions "remission" and "remit" in Articles 72 and 161 convey two different meanings and if yes, whether the content of power in the two expressions is different?

c) Whether the persons sentenced to death by Courts, whose death sentence has been commuted to life imprisonment by executive clemency, form a distinct and separate class for the purpose of application of Section 433A of the Code as well as for the purpose of necessity (or not) of guidelines for premature release in exercise of power under Articles 72 and 161, from the persons who at the initial stage itself were sentenced to life imprisonment by court verdict? And whether in the latter case guide lines are mandatory under Article 72 and 161 and a well designed scheme of remission must be formulated if the constitutional guarantee under Articles 14 and 21 is to be preserved?

d) Whether the whole law of remission needs to be reviewed after Bhagirath's case wherein this Court held that imprisonment for life is also an imprisonment for a term and that a life convict is entitled to set off under Section 428 Cr.P.C.?

e) Whether it is permissible in law to grant conditional premature release to a life convict even before completion of 14 years of actual imprisonment notwithstanding Section 433A of the Code?

If yes, whether the grant of such conditional release will be treated as the prisoner actually serving time for the purpose of Section 433A of the Code?

5. First the legislative history. The Law Commission had in its 42nd Report submitted in June, 1971 suggested numerous changes in the Indian Penal Code (I.P.C.). Pursuant thereto an Amendment Bill No. XLII of 1972 was introduced in the Rajya Sabha on December 11, 1972 proposed wide ranging changes in the I.P.C. One change proposed was to bifurcate Section 302, I.P.C. into two parts, the first part providing that except in cases specified in the second part, the punishment for murder will be imprisonment for life whereas for the more heinous crimes enumerated in Clauses (a) to (c), of Sub- section (2) the punishment may be death or imprisonment for life. A motion for reference of the Bill to the Joint Committee of both the Houses was moved in the Rajya Sabha on December 14, 1972 by the then Minister of State in the Ministry of Home Affairs and was adopted on the same day. The Lok Sabha concurred in the motion of the Rajya Sabha on December 21, 1972. The Joint Parliamentary Committee presented its report to the Rajya Sabha on January 29, 1976 recommending changes in several clauses of the Bill. While retaining the amendment proposed in Section 302, I.P.C., it recommended inclusion of one more Clause (d) after Clause (c) in Sub- section (2) thereof and at the same time recommended deletion of Section 303, I.P.C. It also recommended substitution of the existing Section 57, I.P.C., by a totally new section, the proviso whereto has relevance. The proposed proviso was as under:

Provided that where a sentence of imprisonment for life is imposed on conviction of a person for a capital offence, or where a sentence of death imposed on a person has been commuted into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.

The reason which impelled the Committee to introduce the above proviso was "that sometimes due to grant of remission even murderers sentenced or commuted to life imprisonment were released at the end of 5 to 6 years." The Committee, therefore, felt that such a convict should not be released unless he has served atleast 14 years of imprisonment. It is evident from the scheme of the aforesaid recommendations that the proviso was intended to apply to only those convicts who were convicted for a capital offence (this expression was defined by Clause 15 of the Bill recommending substitution of Section 40, I.P.C., as 'an offence for which death is one of the punishments provided by law') or whose sentence of death was commuted into one of imprisonment for life and not to those who were governed by the first part of the proposed Section 302, I.P.C. It was pointed out by counsel that similar benefit would have accrued to offenders convicted for offences covered under Section 305, 307 or 396 if the proposed Sections 305, 307(b) and 396(b) had come into being. That, contends the petitioner's counsel, would have considerably narrowed down the scope of the proposed proviso to Section 57, I.P.C., and consequently the rigour of the said provision would have fallen on a tiny minority of offenders guilty of a capital offence. Pursuant to the recommendations made by the Committee, two bills, namely, the I.P.C. (Amendment) Bill, 1978 and the CrPC (Amendment) Bill, 1978, came to be introduced, the former was passed with changes by the Rajya Sabha on November 23, 1978 while the latter was introduced in the Lok Sabha on November 28, 1978, and in the Rajya Sabha on

December 5, 1978. The proposal to add a proviso to the proposed Section 57, I.P.C. did not find favour as it was thought that the said subject matter appropriately related to Chapter XXXII of the Code and accordingly the said provision was introduced as Section 433A in the Code. While the amendments to the Code became law with effect from December 18, 1978, the I.P.C. amendments, though passed by the Rajya Sabha could not be got through the Lok- Sabha and lapsed. It may here be mentioned that the I.P.C. Bill as approved by the Rajya Sabha contained the proposal to divide Section 302 into two parts, in fact an additional clause was sought to be introduced in the second part thereof and Sections 305, 307 and 396 were also sought to be amended as proposed by the Committee. This in brief is the legislative history.

6. In the backdrop of the said legislative history, counsel for the petitioner argued that a legislative fraud was practised by enacting Section 433A of the Cede and failing to carry out the corresponding changes in Sections 302, 305, 307, 396, etc., assured by the passing of the Indian Penal Code (Amendment) Act, 1978, by the Rajya Sabha on November 23, 1978. According to him it is evident from the scheme of the twin Amendment Bills that the legislative intent was to apply the rigour of Section 433A of the Code to a small number of heinous crimes which fell within the meaning of the expression capital offence. It was to achieve this objective that Section 302, I.P.C. was proposed to be bifurcated so that a large number of murders would fall within the first part of the proposed provision which prescribed the punishment of life imprisonment only and thus fell beyond the mischief of Section 433A of the Code. To buttress his submission our attention was invited to Annexure II to the petition which is a copy of the letter dated July 10, 1979, written by the Joint- Secretary in the Ministry of Home Affairs to Home Secretaries of all the concerned State Governments explaining the purport of the newly added Section 433A. After explaining that Section 57, I.P.C., had a limited scope, namely, calculating fractions of terms of imprisonment only, he proceeds to state in paragraph 3 of the letter as under:

The restrictions imposed by Section 433A applies only to those life convicts who are convicted for offences for which death is one of the punishments prescribed by law. In the Indian Penal Code (Amendment) Bill, 1978 as passed by the Rajya Sabha and now pending in the Lok Sabha, Section 302 is proposed to be amended so as to provide that the normal punishment for murder shall be imprisonment for life and that only in certain cases of aggravating circumstances will the court have discretion to award death sentences.

Then in paragraph 4 he proceeds to clarify as under:

Even regarding these convicts the restriction imposed by Section 433A is not absolute for, the Constitutional power of the Governor under Article 161 to commute and remit sentences remains unaffected and can be exercised in each case in which the exercise of this power is considered suitable.

In paragraph 6 of the detailed note appended to the said letter, the legal position was explained thus:

It may be pointed out that the restriction introduced by Section 433A does not apply to all life convicts. It applies only to those prisoners who are convicted of a capital offence i.e. an offence for which death is one of the punishments prescribed by law. Once the Indian Penal Code (Amendment) Bill becomes the law, offenders sentenced under proposed Section 302(i) will not be covered by this provision as the offence will not be a capital offence. Thus in future the restriction introduced by Section 433A will not be applicable to them and will, in effect, cover only a very small number of cases. Even in this small number of cases the restriction will not in any way curb the Constitutional power to grant remission and commutation vested in the President or the Governor by virtue of Articles 72 and 161.

There can be no doubt that by this letter it was clarified that Section 433A of the Code will apply to only those convicted of a capital offence and not to all life convicts. It is equally clear that the said provision was expected to apply to exceptionally heinous offences falling within the definition of 'capital offence' once the Indian Penal Code (Amendment) Bill became law. Section 433A was, therefore, expected to deny premature release before completion of actual 14 years of incarceration to only those limited convicts convicted of a capital offence, i.e., an exceptionally heinous crime specified in the second part of the proposed Section , I.P.C. Lastly it clarifies that Section 433A cannot and does not in any way affect the constitutional power conferred on the President/Governor under Article 72/161 of the Constitution. It cannot, therefore, be denied that this letter and the accompanying note does give an impression that certain provisions of the Indian Penal Code (Amendment) Bill were interlinked with Section 433A of the Code.

7. Assuming the Criminal Procedure Code (Amendment) Bill and the Indian Penal Code (Amendment) Bill were intended to provide an integrated scheme of legislation, can it be said that the failure on the part of the Lok Sabha to pass the letter renders the enactment of the former by which Section 433A was introduced in the Code, 'a legislative fraud' as counsel has liked to call it or to use a more familiar expression 'colourable exercise of legislative power'? Counsel submitted that Section 433A was got introduced on the statute book by deception, in that, when the former Bill was made law an impression was given that the twin legislation which had already been cleared by the Rajya Sabha on November 23, 1978 would in due course be cleared by the Lok Sabha also so that the application of Section 433A would be limited to capital offences only and would have no application to a large number of 'lifers'. It must be conceded that such would have been the impact if the Indian Penal Code (Amendment) Bill was passed by the Lok Sabha in the form in which the Rajya Sabha had approved it.

8. This is not a case of legislative incompetence to enact Section 433A. No such submission was made. Besides the question of vires of Section 433A of the Code has been determined by the Constitution Bench of this Court in Maru Ram's case. This Court repelled all the thrusts aimed at challenging the constitutional validity of Section 433A. But counsel submitted that the question

was not examined from the historical perspective of the twin legislations. Counsel for the State submitted that it was not permissible for us to reopen the challenge closed by the Constitution Bench on the specious plea that a particular argument or plea was not canvassed or made before that Bench. The objection raised by counsel for the State Government is perhaps not without substance but we do not propose to deal with it because even otherwise we see no merit in the submission of the petitioner's counsel. It is only when a legislature which has no power to legislate frames a legislation so camouflaging it as to appear to be within its competence when it knows it is not, it can be said that the legislation so enacted is colourable legislation. In K.C. Gajapati Narayan Deo v. State of Orissa, [1954] 1SCR 1950, was challenged on the ground of colourable legislation or a fraud on the Constitution as its real purpose was to effect a drastic reduction in the amount of compensation payable under the Orissa Estates Abolition Act, 1952. The facts were that a Bill relating to the Orissa Estates Abolition Act, 1952 was published in the Gazette on January 3, 1950. It provided that any sum payable for agricultural income- tax for the previous year should be deducted from the gross asset of an estate for working out the net income on the basis whereof compensation payable to the estate owner could be determined. Thereafter on January 8, 1950, a Bill to amend the Orissa Agricultural Income- tax, 1947, was introduced to enhance the highest rate of tax from 3 annas to 4 annas in a rupee and to reduce the highest slab from Rs. 30,000 to Rs. 20,000. The next Chief Minister, however, dropped this Bill and introduced a fresh Bill enhancing the highest rate to 12 annas 6 pies in a rupee and reducing the highest slab to Rs. 15,000 only. On the same becoming law it was challenged on the ground that the real purpose of the legislation was to drastically reduce the compensation payable to the estate owners. Mukherjea, J., who spoke for the Court observed as under:

It may be made clear at the outset that the doctrine of colourable legislation does not involve any question of bona fides or mala fides on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the legislature lacks competency, the question of motive does not arise at all. Whether a statute is constitutional or not is thus always a question of power.

Thus the whole doctrine resolves itself into a question of competency of the concerned legislature to enact the impugned legislation. If the legislature has transgressed the limits of its powers and if such transgression is indirect, covert or disguised, such a legislation is described as colourable in legal parlance. The idea conveyed by the use of the said expression is that although apparently a legislature in passing the statute purported to act within the limits of its powers, it had in substance and reality transgressed its powers, the transgression being veiled by what appears on close scrutiny to be a mere pretence or disguise. In other words if in pith and substance the legislation does not belong to the subject falling within the limits of its power but is outside it, the mere form of the legislation will not be determinate of the legislative competence. In Sonapur Tea Co. Ltd. v. Must. Mazirunnessa MANU/SC/0069/1961 : [1962]1SCR724 it was reiterated relying on Gajapati's case that the doctrine of colourable legislation really postulates that legislation attempts to do indirectly what it cannot do directly. Such is not the case before us. It is no body's contention that Parliament was not competent to amend the Criminal Procedure Code by which Section 433A was inserted. Whether or not the connecting Indian Penal Code (Amendment) Bill ought to have been cleared or not was a matter left to the wisdom of the Lok Sabha. Merely

because the Criminal Procedure Bill was made law and the Indian Penal Code (Amendment) Bill was passed by the Rajya Sabha did not obligate the Lok Sabha to clear it. The Lok Sabha could have its own views on the proposed Indian Penal Code amendments. It may agree with the executive's policy reflected in the Bill, with or without modifications, or not at all. Merely because in the subsequent instructions issued by the letter of July 10, 1979 and the accompanying note (Annex. II) the Joint- Secretary had interlinked the two Bills, the Lok Sabha was under no obligation to adopt the measure as such representation could not operate as estoppel against it. Even the indirect attempt on the part of the High Court of Himachal Pradesh in the ragging case to force the State Government to legislate, State of Himachal Pradesh v. A Parent of a student of Medical College, Simla MANU/SC/0046/1985 : [1985]3SCR676 was disapproved by this Court as a matter falling, outside the functions and duties of the judiciary. It is, therefore, obvious that no question of mala fides on the part of the legislature was involved in the enactment of one legislation and failure to enact another. There is no question of 'legislative fraud' or 'colourable legislation' involved in the backdrop of the legislative history of Section 433A of the Code as argued on behalf of the petitioner.

9. Counsel for the petitioner, however, tried to seek support from the Privy Council decision in W.R. Moram v. Deputy Commissioner of Taxation for N.S.W. [1940] AC 838 Wherein the question to be considered was whether the legislative scheme was a colourable one forbidden by Section 5(ii) of the Australian Constitution. There was no attempt to disguise the scheme as it was fully disclosed. The Privy Council, while holding that the scheme was not a colourable legislation, observed that 'where there is admittedly a scheme of proposed legislation, it seems to be necessary when the 'pith and substance' or 'scope and effect' of any one of the Acts is under consideration, to treat them together and to see how they interact'. But that was a case where the scheme was carried out through enactments passed by the concerned legislatures. It is in that context that the above observations must be read and understood. In the present case also if both the Bills had become law, counsel would perhaps have been justified in demanding that in understanding or construing one legislation or the other, the scheme common to both must be kept in view and be permitted to interact. But where the linkage does not exist on account of the Indian Penal Code (Amendment) Bill not having become law we are unable to appreciate how Section 433A can be read down to apply to only those classes of capital offences to which it would have applied had the said Bill been passed by the Lok Sabha in the terms in which it was approved by the Rajya Sabha. The language of Section 433A is clear and unambiguous and does not call for extrinsic aid for its interpretation. To accept the counsel's submission to read down or interpret Section 433A of the Code with the aid of the changes proposed by the Indian Penal Code (Amendment) Bill would tantamount to treating the provisions of the said Bill as forming part of the Indian Penal Code which is clearly impermissible. To put such an interpretation with the aid of such extrinsic material would result in violence to the plain language of Section 433A of the Code. We are, therefore, unable to accept even this second limb of the contention.

10. The law governing suspension, remission and commutation of sentence is both statutory and constitutional. The stage for the exercise of this power generally speaking is post judicial, i.e., after the judicial process has come to an end. The duty to judge and to award the appropriate punishment to the guilty is a judicial function which culminates by a judgment pronounced in accordance with law. After the judicial function thus ends the executive function of giving effect

to the judicial verdict commences. We first refer to the statutory provisions. Chapter III of I.P.C. deals with punishments. The punishments to which the offenders can be liable are enumerated in Section 53, namely, (i) death (ii) imprisonment for life (iii) imprisonment of either description, namely, rigorous or simple (iv) forfeiture of property and (v) fine. Section 54 empowers the appropriate government to commute the punishment of death for any other punishment. Similarly Section 55 empowers the appropriate government to commute the sentence of imprisonment for life for imprisonment of either description for a term not exceeding 14 years. Chapter XXXII of the Code, to which Section 433A was added, entitled 'Execution, Suspension, Remission and Commutation of sentences' contains Sections 432 and 433 which have relevance; the former confers power on the appropriate government to suspend the execution of an offender's sentence or to remit the whole or any part of the punishment to which he has been sentenced while the latter confers power on such Government to commute (a) a sentence of death for any other punishment (b) a sentence of imprisonment for life, for imprisonment for a term not exceeding 14 years or for fine (c) a sentence of rigorous imprisonment for simple imprisonment or for fine and (d) a sentence of simple imprisonment for fine. It is in the context of the aforesaid provisions that we must read Section 433A which runs as under:

433A. Restriction on powers of remission or commutation in certain cases- Notwithstanding anything contained in Section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under Section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.

The section begins with a non- obstante clause notwithstanding anything contained in Section 432 and proceeds to say that where a person is convicted for an offence for which death is one of the punishments and has been visited with the lesser sentence of imprisonment for life or where the punishment of an offender sentenced to death has been commuted under Section 433 into one of imprisonment for life, such offender will not be released unless he has served at least 14 years of imprisonment. The reason which impelled the legislature to insert this provision has been stated earlier. Therefore, one who could have been visited with the extreme punishment of death but on account of the sentencing court's generosity was sentenced to the lesser punishment of imprisonment for life and another who actually was sentenced to death but on account of executive generosity his sentence was commuted under Section 433(a) for imprisonment for life have been treated under Section 433A as belonging to that class of prisoners who do not deserve to be released unless they have completed 14 years of actual incarceration. Thus the effect of Section 433A is to restrict the exercise of power under Sections 432 and 433 by the stipulation that the power will not be so exercised as would enable the two categories of convicts referred to in Section 433A to freedom before they have completed 14 years of actual imprisonment. This is the legislative policy which is clearly discernible from the plain language of Section 433A of the Code. Such prisoners constitute a single class and have, therefore, been subjected to the uniform requirement of suffering atleast 14 years of internment.

11. Counsel for the petitioner next submitted that after this Court's decision in Bhagirath's case permitting the benefit of set off under Section 428 in respect of the detention period as an undertrial, the ratio of the decision in Godse's case must be taken as impliedly disapproved. We see no basis for this submission. In Godse's case the convict who was sentenced to transportation for life had earned remission for 2963 days during his internment. He claimed that in view of Section 57 read with Section 53A, I.P.C., the total period of his incarceration could not exceed 20 years which he had completed, inclusive of remission, and, therefore, his continued detention was illegal. Section 57, I.P.C. reads as follows:

57. Fractions of terms of punishment- In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years.

The expression 'imprisonment for life' must be read in the context of Section 45, I.P.C. Under that provision the word 'life' denotes the life of a human being unless the contrary appears from the context. We have seen that the punishments are set out in Section 53, imprisonment for life being one of them. Read in the light of Section 45 it would ordinarily mean imprisonment for the full or complete span of life.

Does Section 57 convey to the contrary? Dealing with this contention based on the language of Section 57, this Court observed in Godse's case at pages 444- 45 as under:

Section 57 of the Indian Penal Code has no real bearing on the question raised before us. For calculating fractions of terms of punishment the section provides that transportation for life shall be regarded as equivalent to imprisonment for twenty years. It does not say that transportation for life shall be deemed to be transportation for twenty years for all purposes; nor does the amended section which substitutes the words "imprisonment for life" for "transportation for life" enable the drawing of any such all- embracing fiction. A sentence of transportation for life or imprisonment for life must prima facie be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life.

This interpretation of Section 57 gets strengthened if we refer to Sections 65, 116, 119, 120 and 511, of the Indian Penal Code which fix the term of imprisonment thereunder as a fraction of the maximum fixed for the principal offence. It is for the purpose of working out this fraction that it became necessary to provide that imprisonment for life shall be reckoned as equivalent to imprisonment for 20 years. If such a provision had not been made it would have been impossible to work out the fraction of an in- definite term. In order to work out the fraction of terms of punishment provided in sections such as those enumerated above, it was imperative to lay down the equivalent term for life imprisonment.

12. The second contention urged before the Court in Godse's case was based on the Bombay Rules governing the remission system framed in virtue of the provisions contained in the Prisons Act,

1894. This Court pointed out that the Prisons Act did not confer on any authority a power to commute or remit sentences. The Remission Rules made thereunder had, therefore, to be confined to the scope and ambit of that statute and could not be extended to other statutes. Under the Bombay Rules three types of remissions for good conduct were allowed and for working them out transportation for life was equated to 15 years of actual imprisonment. Dealing with Godse's plea for premature release on the strength of these rules this Court observed at page 447 as under:

The rules framed under the Prisons Act enable such a person to remission ordinary, special and State- and the said remissions will be given credit towards his term of imprisonment. For the purpose of working out the remissions the sentence of transportation for life is ordinarily equated with a definite period, but it is only for that particular purpose and not for any other purpose. As the sentence of transportation for life or its prison equivalent the life imprisonment is one of indefinite duration, the remissions so earned do not in practice help such a convict as it is not possible to predicate the time of his death. That is why the rules provide for a procedure to enable an appropriate Government to remit the sentence under Section 401 (now Section 432) of the CrPC on a consideration of the relevant factors including the period of remissions earned. The question of remission is exclusively within province of the appropriate Government; and in this case it is admitted that though the appropriate Government made certain remissions under Section 401 of the CrPC, it did not remit the entire sentence.

On this line of reasoning the submission of counsel that if the Court were to take the view that transportation for life or imprisonment for life enures till the last breath of the convict passes out, the entire scheme of remissions framed under the Prisons Act or any like statute and the whole exercise of crediting remissions to the account of the convict would collapse, was spurned. This Court came to the conclusion that the Remission Rules have a limited scope and in the case of a convict undergoing sentence of transportation for life or imprisonment for life it acquires significance only if the sentence is commuted or remitted, subject to Section 433A of the Code or in exercise of constitutional power under Articles 72/161.

13. In Maru Ram's case the Constitution Bench reaffirmed the ratio of Godse's case and held that the nature of a life sentence is incarceration until death; judicial sentence for imprisonment for life cannot be in jeopardy merely because of long accumulation of remissions. Release would follow only upon an order under Section 401 of the Criminal Procedure Code, 1898 by the appropriate Government or on a clemency order in exercise of power under Articles 72/161 of the Constitution. At page 1220 the Constitution Bench expressed itself thus:

Ordinary where a sentence is for a definite term, the calculus of remissions may benefit the prisoner to instant release at that point where the subtraction result is zero. Here, we are concerned with life imprisonment and so we come upon another concept bearing on the nature of sentence which has been highlighted in Godse's case. Where the sentence is indeterminate or of uncertain duration, the result of subtraction from an uncertain quantity is still an uncertain

quantity and release of the prisoner cannot follow except on some fiction of quantification of a sentence of uncertain duration.

Referring to the facts of Godse's case and affirming the view that the sentence of imprisonment for life enures upto the last breath of the convict, this Court proceeded to state as under:

Since death was uncertain, deduction by way of remission did not yield any tangible date for release and so the prayer of Godse was refused. The nature of a life sentence is incarceration until death, judicial sentence of imprisonment for life cannot be in jeopardy merely because of the long accumulation of remissions.

It is, therefore, clear from the aforesaid observations that unless the sentence for life imprisonment is commuted or remitted as stated earlier by the appropriate authority under the provisions of the relevant law, a convict is bound in law to serve the entire life term in prison; the rules framed under the Prisons Act or like statute may enable such a convict to earn remissions but such remissions will not entitle him to release before he has completed 14 years of incarceration in view of Section 433A of the Code unless of course power has been exercised under Article 72/161 of the Constitution.

14. It will thus be seen from the ratio laid down in the aforesaid two cases that where a person has been sentenced to imprisonment for life the remissions earned by him during his internment in prison under the relevant remission rules have a limited scope and must be confined to the scope and ambit of the said rules and do not acquire significance until the sentence is remitted under Section 432, in which case the remission would be subject to limitation of Section 433A of the Code, or constitutional power has been exercised under Articles 72/161 of the Constitution. In Bhagirath's case the question which the Constitution Bench was required to consider was whether a person sentenced to imprisonment for life can claim the benefit of Section 428 of the Code which, inter alia provides for setting off the period of detention undergone by the accused as an undertrial against the sentence of imprisonment ultimately awarded to him.

Referring to Section 57, I.P.C., the Constitution Bench reiterated the legal position as under:

The provision contained in Section 57 that imprisonment for life has to be reckoned as equivalent to imprisonment for 20 years is for the purpose of calculating fractions of terms of punishment. We cannot press that provision into service for a wider purpose.

These observations are consistent with the ratio laid down in Godse and Maru Ram's cases. Coming next to the question of set off under Section 428 of the Code, this Court held:

The question of setting off the period of detention undergone by an accused as an undertrial prisoner against the sentence of life imprisonment can arise only if an order is passed by the appropriate authority under Section 432 or Section 433 of the Code. In the absence or such order, passed generally or specially, and apart from the provisions, if any of the relevant Jail Manual, imprisonment for life would mean, according to the rule in Gopal Vinayak Godse, imprisonment for the remainder of life.

We fail to see any departure from the ratio of Godse's case; on the contrary the afore- quoted passage clearly shows approval of that ratio and this becomes further clear from the final order passed by the Court while allowing the appeal/writ petition. The Court directed that the period of detention undergone by the two accused as undertrial prisoners would be set off against the sentence of life imprisonment imposed upon them, subject to the provisions contained in Section 433A and, 'provided that orders have been passed by the appropriate authority under Section 433 of the CrPC'. These directions make it clear beyond any manner of doubt that just as in the case of remissions so also in the case of set off the period of detention as undertrial would enure to the benefit of the convict provided the appropriate Government has chosen to pass an order under Sections 432/433 of the Code. The ratio of Bhagirath's case, therefore, does not run counter to the ratio of this Court in the case of Godse or Maru Ram.

15. Under the Constitutional Scheme the President is the Chief Executive of the Union of India in whom the executive power of the Union vests. Similarly, the Governor is the Chief Executive of the concerned State and in him vests the executive power of that State. Articles 72 and 161 confer the clemency power of pardon, etc., on the President and the State Governors, respectively. Needless to say that this constitutional power would override the statutory power contained in Sections 432 and 433 and the limitation of Section 433A of the Code as well as the power conferred by Sections 54 and 55, I.P.C. No doubt, this power has to be exercised by the President/Governor on the advice of his Council of Ministers. How this power can be exercised consistently with Article 14 of the Constitution was one of the questions which this Court was invited to decide in Maru Ram's case. In order that there may not be allegations of arbitrary exercise of this power this Court observed at pages 1243- 44 as under:

The proper thing to do, if Government is to keep faith with the founding fathers, is to make rules for its own guidance in the exercise of the pardon power keeping, of course, a large residuary power to meet special situations or sudden developments. This will exclude the vice of discrimination such as may arise where two persons have been convicted and sentenced in the same case for the same degree of guilt but one is released and the other refused, for such irrelevant reasons as religion, caste, colour or political loyalty.

Till such rules are framed this Court thought that extant remission rules framed under the Prisons Act or under any other similar legislation by the State Governments may provide effective guidelines of a recommendatory nature helpful to the Government to release the prisoner by remitting the remaining term. It was, therefore, suggested that the said rules and remission

schemes be continued and benefit thereof be extended to all those who come within their purview. At the same time the Court was aware that special cases may require different considerations and 'the wide power of executive clemency cannot be bound down even by self-created rules'. Summing up its finding in paragraph 10 at page 1249, this Court observed:

We regard it as fair that until fresh rules are made in keeping with the experience gathered, current social conditions and accepted penological thinking- a desirable step, in our view- the present remissions and release Schemes may usefully be taken as guidelines under Articles 72/161 and orders for release passed. We cannot fault the Government, if in some intractably savage delinquents, Section 433A is itself treated as a guideline for exercise of Articles 72/161. These observations of ours are recommendatory to avoid a hiatus, but it is for Government, Central or State, to decide whether and why the current Remission Rules should not survive until replaced by a more wholesome scheme.

It will be obvious from the above that the observations were purely recommendatory in nature.

16. In Kehar Singh's case on the question of laying down guidelines for the exercise of power under Article 72 of the Constitution this Court observed in paragraph 16 as under:

It seems to us that there is sufficient indication in the terms of Article 72 and in the history of the power enshrined in that provision as well as existing case- law, and specific guidelines need not be spelled out. Indeed, it may not be possible to lay down any precise, clearly defined and sufficiently channelised guidelines, for we must remember that the power under Article 72 is of the widest amplitude, can contemplate a myriad kinds of and categories of cases with facts and situations varying from case to case, in which the merits and reasons of State may be profoundly assisted by prevailing occasion and passing time. And it is of great significance that the function itself enjoys high status in the constitutional scheme.

These observations do indicate that the Constitution Bench which decided Kehar Singh's case was of the view that the language of Article 72 itself provided sufficient guidelines for the exercise of power and having regard to its wide amplitude and the status of the function to be discharged thereunder, it was perhaps unnecessary to spell out specific guidelines since such guidelines may not be able to conceive of all myriad kinds and categories of cases which may come up for the exercise of such power. No doubt in Maru Ram's case the Constitution Bench did recommend the framing of guidelines for the exercise of power under Articles 72/161 of the Constitution. But that was a mere recommendation and not a ratio decidendi having a binding effect on the Constitution Bench which decided Kehar Singh's case. Therefore, the observation made by the Constitution Bench in Kehar Singh's case does not upturn any ratio laid down in Maru Ram's case. Nor has the Bench in Kehar Singh's case said anything with regard to using the provisions of extent Remission Rules as guidelines for the exercise of the clemency powers.

17. It is true that Articles 72/161 make use of two expressions 'remissions' with regard to punishment and 'remit' in relation to sentence but we do not think it proper to express any opinion as to the content and amplitude of these two expressions in the abstract in the absence of a fact- situation. We, therefore, express no opinion on this question formulated by the learned Counsel for the petitioner.

18. Lastly the learned Counsel for the petitioner raised a hypothetical question whether it was permissible in law to grant conditional premature release to a life convict even before completion of 14 years of actual imprisonment, which release would tantamount to the prisoner serving time for the purpose of Section 433A of the Code? It is difficult and indeed not advisable to answer such a hypothetical question without being fully aware of the nature of conditions imposed for release. We can do no better than quote the following observations made at page 1247 in Maru Ram's case:

...the expression 'prison' and 'imprisonment' must receive a wider connotation and include any place notified as such for detention purposes. 'Stone- walls and iron bars do not a prison- make': nor are 'stone walls and iron bars' a sine qua non to make a jail. Open jails are capital instances. Any life under the control of the State whether within high- walled or not may be a prison if the law regards it as such. House detentions, for example, Palaces, where Gandhiji was detained were prisons. Restraint on freedom under the prison law is the test. Licensed releases where instant re-capture is sanctioned by the law and likewise parole, where the parole is no free agent, and other categories under the invisible fetters of the prison law may legitimately be regarded as imprisonment. This point is necessary to be cleared even for computation of 14 years under Section 433A.

Therefore, in each case, the question whether the grant of conditional premature release answers the test laid down by this Court in the afore- quoted passage, would depend on the nature of the conditions imposed and the circumstances in which the order is passed and is to be executed. No general observation can be made and we make none.

19. In paragraph 10 of the memorandum of the Writ Petition., three reasons have been assigned for invoking this Court's jurisdiction under Article 32 of the Constitution, viz., (i) the questions involved in this petition will affect the right of a large body of life convicts seeking premature release; (ii) this Court's judgment in Bhagirath's case deviated from the ratio laid down in Godse's case and, therefore, the entire law of remissions needed a review; and (iii) the High Court of Rajasthan had refused to examine the merits of the various important questions of law raised before it. It is on account of the fact that this petition was in the nature of a representative petition touching the rights of a large number of convicts of the categories referred to in Sections 433A of the Code, that we have dealt with the various questions of law in extenso. Otherwise the petition could have been disposed of on the narrow ground that even though in view of Sections 433A of the Code, premature release could not be ordered under Sections 432/433 of the Code read with

the 1958 Rules until the petitioner had completed 14 years of actual imprisonment, his release could be considered in exercise of powers under Articles 72/161 of the Constitution treating the 1958 Rules guidelines, if necessary.

20. The relief claimed in the petition is two- fold, namely, (a) to grant a mandamus to the appropriate Government for the premature release of the petitioner by exercising constitutional power with the aid of 1958 Rules and (b) to declare the petitioner's continued detention as illegal and void. The petitioner has not completed 14 years of actual incarceration and as such he cannot invoke Sections 432 and 433 of the Code. His continued detention is consistent with Section 433A of the Code and there is nothing on record to show that it is otherwise illegal and void. The outcome of his clemency application under the Constitution is not put in issue in the present proceedings if it has been rejected and if the same is pending despite the directive of the High Court it would be open to the petitioner to approach the High Court for the compliance of its order. Under the circumstance no mandamus can issue. The writ petition must, therefore, fail. It is hereby dismissed. Rule discharged.

MANU/SC/0255/2009

Back to Section 436 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 343 of 2009 (Arising out of SLP (Crl.) No. 4008 of 2008

Decided On: 20.02.2009

Rasiklal Vs. Kisore

Hon'ble Judges/Coram:

R.V. Raveendran and J.M. Panchal, JJ.

JUDGMENT

J.M. Panchal, J.

1. Leave granted.

2. The appellant is accused in Criminal Complaint No. 1604 of 2005 filed in the court of learned Judicial Magistrate First Class, Indore, M.P., for alleged commission of offences punishable under Sections 499 and 500 of the Indian Penal Code and assails the order dated March 24, 2008, rendered by the learned Single Judge of High Court of Madhya Pradesh, Bench at Indore, in Criminal Revision No. 1362 of 2006 by which bail granted to the appellant by the learned Judicial Magistrate First Class, Indore, M.P. on December 1, 2006 is cancelled on the ground that the order granting bail was passed by the learned Judicial Magistrate First Class, Indore, without hearing the original complainant and was, therefore, bad for violation of principles of natural justice.

3. It is the case of the respondent that the appellant gave an interview on December 15, 2004 on Star News TV Channel and defamed him. The respondent, therefore, filed a Criminal Complaint No. 1604 of 2005 in the court of learned Judicial Magistrate First Class, Indore, M.P. on January 27, 2005 for alleged commission of offences punishable under Sections 499 and 500 of the Indian Penal Code. The learned Judicial Magistrate examined the respondent on oath as required by Section 200 of the Code of Criminal Procedure, 1973 and issued summons to the appellant for commission of alleged offences under Sections 499 and 500 of the Indian Penal Code vide order dated May 9, 2006. The appellant appeared before the court on November 20, 2006 and submitted an application under Section 317 of the Code of .Criminal Procedure, 1973 seeking exemption for personal appearance along with vakalatnama of his counsel. In the said application prayer for grant of bail was also made. The application was fixed for hearing on December 26, 2006. However, on December 1, 2006 the appellant filed an application mentioning his appearance before the court and to consider his prayer for grant of bail under Section 436 of the Code of Criminal Procedure, 1973 as offences alleged to have been committed by him under Sections 499 and 500 of the Indian Penal Code are bailable. The application was heard on the day on which it

was filed. The learned Magistrate noticed that the offences alleged to have been committed by the appellant were bailable. Therefore, the appellant was admitted to bail on his furnishing a surety in the sum of Rs. 5,000/- and also furnishing a bond of the same amount. While enlarging the appellant on bail the learned Magistrate imposed a condition on the appellant that he would appear before the court on each date of hearing or else he would be taken into custody and sent to jail. The order dated December 1, 2006 passed by the learned Judicial Magistrate further indicates that in compliance of the direction issued by the court the appellant furnished a bail bond in the sum of Rs. 5,000/- and also executed a bond for the said amount and that the bail bonds were accepted by the court after which the appellant was released on bail.

4. The respondent, who is original complainant, filed Criminal Revision No. 1362 of 2006 in the High Court of Madhya Pradesh, Bench at Indore, on December 26, 2006 for cancelling the bail granted to the appellant by the learned Judicial Magistrate First Class, Indore, on the ground that he was not heard and, therefore, the order was violative of principles of natural justice. The learned Single Judge, before whom the revision application was notified for hearing, had issued notice to the appellant but the appellant did not remain present before the High Court. The revision application filed by the respondent was taken up for final disposal on March 24, 2008. The learned Single Judge, by order dated March 24, 2008, has cancelled the bail granted to the appellant by the learned Judicial Magistrate on the ground that the respondent, who was original complainant, was not heard and, therefore, the order granting bail violates the principles of natural justice. After cancelling the bail granted to the appellant the learned Single Judge remitted the matter to the court below with a direction that the matter be taken up according to law between the parties relating to the grant of bail to the appellant. Feeling aggrieved the appellant has invoked appellate jurisdiction of this Court under Article 136 of the Constitution.

5. This Court has heard the learned Counsel for the parties and taken into consideration the documents forming part of the appeal.

6. As is evident, the appellant is being tried for alleged commission of offences punishable under Sections 499 and 500 of the Indian Penal Code. Admittedly, both the offences are bailable. The grant of bail to a person accused of bailable offence is governed by the provisions of Section 436 of the Code of Criminal Procedure, 1973. The said section reads as under:

436 - In what cases bail to be taken - (1) When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail, such person shall be released on bail:

Provided that such officer or Court, if he or it thinks fit, may, and shall, if such person is indigent and is unable to furnish surety, instead of taking bail from such person, discharge him on his executing a bond without sureties for his. appearance as hereinafter provided:

Explanation. - Where a person is unable to give bail within a week of the date of his arrest, it shall be a sufficient ground for the officer or the Court to presume that he is an indigent person for the purposes of this proviso.

Provided further that nothing in this section shall be deemed to affect the provisions of Sub-section (3) of Section 116 or Section 446A.

(2) Notwithstanding anything contained in Sub- section (1), where a person has failed to comply with the conditions of the bail- bond as regards the time and place of attendance, the Court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the Court or is brought in custody and any such refusal shall be without prejudice to the powers of the Court to call upon any person bound by such bond to pay the penalty thereof under Section 446.

There is no doubt that under Section 436 of the Code of Criminal Procedure a person accused of a bailable offence is entitled to be released on bail pending his trial. As soon as it appears that the accused person is prepared to give bail, the police officer or the court before whom he offers to give bail, is bound to release him on such terms as to bail as may appear to the officer or the court to be reasonable. It would even be open to the officer or the court to discharge such person on his executing a bond as provided in the Section instead of taking bail from him. The position of persons accused of non- bailable offence is entirely different. The right to claim bail granted by Section 436 of the Code in a bailable offence is an absolute and indefeasible right. In bailable offences there is no question of discretion in granting bail as the words of Section 436 are imperative. The only choice available to the officer or the court is as between taking a simple recognizance of the accused and demanding security with surety. The persons contemplated by Section 436 cannot be taken into custody unless they are unable or willing to offer bail or to execute personal bonds. There is no manner of doubt that bail in a bailable offence can be claimed by accused as of right and the officer or the court, as the case may be, is bound to release the accused on bail if he is willing to abide by reasonable conditions which may be imposed on him.

7. There is no express provision in the Code prohibiting the court from re- arresting an accused released on bail under Section 436 of the Code. However, the settled judicial trend is that the High Court can cancel the bail bond while exercising inherent powers under Section 482 of the Code. According to this Court a person accused of a bailable offence is entitled to be released on bail pending his trial, but he forfeits his right to be released on bail if his conduct subsequent to his release is found to be prejudicial to a fair trial. And this forfeiture can be made effective by invoking the inherent powers of the High Court under Section 482 of the Code. See: Talab Haji

Hussain v. Madhukar Purushottam Mondkar and Anr. MANU/SC/0028/1958 : 1958CriLJ701 reiterated by a Constitution Bench in Ratilal Bhanji Mithani v. Asstt. Collector of Customs and Anr. MANU/SC/0077/1967 : 1967CriLJ1576 .

8. It may be noticed that Sub- section (2) of Section 436 of the 1973 Code empowers any court to refuse bail without prejudice to action under Section 446 where a person fails to comply with the conditions of bail bond giving effect to the view expressed by this Court in the above mentioned case. However, it is well settled that bail granted to an accused with reference to bailable offence can be cancelled only if the accused (1) misuses his liberty by indulging in similar criminal activity, (2) interferes with the course of investigation, (3) attempts to tamper with evidence of witnesses, (4) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (5) attempts to flee to another country, (6) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (7) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive. However, a bail granted to a person accused of bailable offence cannot be cancelled on the ground that the complainant was not heard. As mandated by Section 436 of the Code what is to be ascertained by the officer or the court is whether the offence alleged to have been committed is a bailable offence and whether he is ready to give bail as may be directed by the officer or the court. When a police officer releases a person accused of a bailable offence, he is not required to hear the complainant at all. Similarly, a court while exercising powers under Section 436 of the Code is not bound to issue notice to the complainant and hear him.

9. The contention raised by the learned Counsel for the respondent on the basis of decision of this Court in Arun Kumar v. State of Bihar and Anr. MANU/SC/7168/2008 : 2008CriLJ1924 , that the complainant should have been heard by the Magistrate before granting bail to the appellant, cannot be accepted. In the decision relied upon by the learned Counsel for the respondent challenge was to the order passed by a learned Single Judge of the Patna High Court quashing the order passed by the learned Fast Track Court holding that the respondent No. 2 therein was not juvenile and, therefore, there was no need to refer his case to the Juvenile Justice Board for ascertaining his age and then for trial. The High Court was of the view that the prayer was rejected only on the ground that two or three witnesses were examined and though the accused was in possession of school leaving certificate, mark sheet, etc. to show that he was a juvenile, the prayer could not have been rejected. This Court found that the High Court in a very cryptic manner had observed that the application of the accused deserved to be allowed and directed the court below to consider the accused as a juvenile and proceed accordingly. Before this Court it was submitted by the learned Counsel for the informant that the documents produced had been analysed by the trial court and it was found at the time of framing charge that he was major' without any doubt. The grievance was made on behalf of the informant before this Court that the High Court did not even consider as to how the conclusions of the trial court suffered from any infirmity and merely referring to the stand of the accused and even without analyzing the correctness or otherwise of the observations and conclusions made by the trial court the learned Single Judge came to the conclusion that the accused was a juvenile. This Court concluded that the High Court had failed to notice several relevant factors and no discussion was made as to how the conclusions of the trial court suffered from any infirmity. It was also noticed by this Court that no notice was issued to the appellant before the matter was disposed of. In view of the above position the order

impugned in the appeal was set aside by this Court. To say the least, the facts of the present case are quite different from those mentioned in the above reported decision. Therefore the ratio laid down in the said decision cannot be applied to the fact of the instant case.

10. Even if notice had been issued to the respondent before granting bail to the appellant, the respondent could not have pointed out to the court that the appellant had allegedly committed non- bailable offences. As observed earlier, what has to be ascertained by the officer or the court is as to whether the person accused is alleged to have committed bailable offences and if the same is found to be in affirmative, the officer or the court has no other alternative but to release such person on bail if he is ready and willing to abide by reasonable conditions, which may be imposed on him. Having regard to the facts of the case this Court is of the firm opinion that the bail granted to the appellant for alleged commission of bailable offence could not have been cancelled by the High Court on the ground that the complainant was not heard and, thus, principles of natural justice were violated. Principles of natural justice is not a 'mantra' to be applied in vacuum in all cases. The question as to what extent, the principles of natural justice are required to be complied with, will depend upon the facts of the case. They are not required to be complied with when it will lead to an empty formality See State Bank of Patiala v. S.K. Sharma MANU/SC/0438/1996 : (1996)IILLJ296SC and Karnataka State Road Transport Corporation v. S.G. Kotturappa MANU/SC/0177/2005 : (2005)IILLJ161SC . The impugned order is, therefore, liable to be set aside.

11. For the foregoing reasons the appeal succeeds. The order dated March 24, 2008, passed by the learned Single Judge of High Court of Madhya Pradesh, Bench at Indore, in Criminal Revision No. 1362 of 2006 cancelling the bail granted to the appellant by the learned Judicial Magistrate is hereby set aside and order dated December 1, 2006, passed by the learned Judicial Magistrate First Class, Indore, M.P., in Criminal Complaint No. 1604 of 2005 is hereby restored.

12. The appeal accordingly stands disposed of.

MANU/SC/0851/2022

Neutral Citation: 2022/INSC/690

Back to Section 436 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Miscellaneous Application No. 1849 of 2021 in SLP (Crl.) No. 5191 of 2021 and Miscellaneous Application Dairy No. 29164 of 2021 in SLP (Crl.) No. 5191 of 2021

Decided On: 11.07.2022

Satender Kumar Antil Vs. Central Bureau of Investigation and Ors.

Hon'ble Judges/Coram:

Sanjay Kishan Kaul and M.M. Sundresh, JJ.

JUDGMENT

M.M. Sundresh, J.

Liberty is one of the most essential requirements of the modern man. It is said to be the delicate fruit of a mature civilization. It is the very quintessence of civilized existence and essential requirement of a modern man

- John E.E.D. in "Essays on Freedom and Power"

1. Taking note of the continuous supply of cases seeking bail after filing of the final report on a wrong interpretation of Section 170 of the Code of Criminal Procedure (hereinafter referred to as "the Code" for short), an endeavour was made by this Court to categorize the types of offenses to be used as guidelines for the future. Assistance was sought from Shri Sidharth Luthra, learned Senior Counsel, and learned Additional Solicitor General Shri S.V. Raju. After allowing the application for intervention, an appropriate Order was passed on 07.10.2021. The same is reproduced as under:

We have been provided assistance both by Mr. S.V. Raju, learned Additional Solicitor General and Mr. Sidharth Luthra, learned Senior Counsel and there is broad unanimity in terms of the suggestions made by learned ASG. In terms of the suggestions, the offences have been categorized and guidelines are sought to be laid down for grant of bail, without fettering the discretion of the courts concerned and keeping in mind the statutory provisions.

We are inclined to accept the guidelines and make them a part of the order of the Court for the benefit of the Courts below. The guidelines are as under:

Categories/Types of Offences

A) Offences punishable with imprisonment of 7 years or less not falling in category B & D.

B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.

C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (Section 37), PMLA (Section 45), UAPA (Section 43D(5), Companies Act, 212(6), etc.

D) Economic offences not covered by Special Acts.

REQUISITE CONDITIONS

1) Not arrested during investigation.

2) Cooperated throughout in the investigation including appearing before Investigating Officer whenever called.

(No need to forward such an Accused along with the chargesheet (Siddharth v. State of UP, MANU/SC/0600/2021)

CATEGORY A

After filing of chargesheet/complaint taking of cognizance

a) Ordinary summons at the 1st instance/including permitting appearance through Lawyer.

b) If such an Accused does not appear despite service of summons, then Bailable Warrant for physical appearance may be issued.

c) NBW on failure to failure to appear despite issuance of Bailable Warrant.

d) NBW may be cancelled or converted into a Bailable Warrant/Summons without insisting physical appearance of Accused, if such an application is moved on behalf of the Accused before execution of the NBW on an undertaking of the Accused to appear physically on the next date/s of hearing.

e) Bail applications of such Accused on appearance may be decided w/o. the Accused being taken in physical custody or by granting interim bail till the bail application is decided.

CATEGORY B/D

On appearance of the Accused in Court pursuant to process issued bail application to be decided on merits.

CATEGORY C

Same as Category B & D with the additional condition of compliance of the provisions of Bail under NDPS Section 37, 45 PMLA, 212(6) Companies Act 43D(5) of UAPA, POSCO etc.

Needless to say that the category A deals with both police cases and complaint cases.

The trial Courts and the High Courts will keep in mind the aforesaid guidelines while considering bail applications. The caveat which has been put by learned ASG is that where the Accused have not cooperated in the investigation nor appeared before the Investigating Officers, nor answered summons when the Court feels that judicial custody of the Accused is necessary for the completion of the trial, where further investigation including a possible recovery is needed, the aforesaid approach cannot give them benefit, something we agree with.

We may also notice an aspect submitted by Mr. Luthra that while issuing notice to consider bail, the trial Court is not precluded from granting interim bail taking into consideration the conduct of the Accused during the investigation which has not warranted arrest. On this aspect also we would give our imprimatur and naturally the bail application to be ultimately considered, would be guided by the statutory provisions.

The suggestions of learned ASG which we have adopted have categorized a separate set of offences as "economic Offences" not covered by the special Acts. In this behalf, suffice to say on the submission of Mr. Luthra that this Court in Sanjay Chandra v. CBI, MANU/SC/1375/2011 : (2012) 1 SCC 40 has observed in para 39 that in determining whether to grant bail both aspects have to be taken into account:

a) seriousness of the charge and

b) severity of punishment.

Thus, it is not as if economic offences are completely taken out of the aforesaid guidelines but do form a different nature of offences and thus the seriousness of the charge has to be taken into account but simultaneously, the severity of the punishment imposed by the statute would also be a factor.

We appreciate the assistance given by the learned Counsels and the positive approach adopted by the learned ASG.

The SLP stands disposed of and the matter need not be listed further.

A copy of this order be circulated to the Registrars of the different High Courts to be further circulated to the trial Courts so that the unnecessary bail matters do not come up to this Court.

This is the only purpose for which we have issued these guidelines, but they are not fettered on the powers of the Courts.

2. Two more applications, being M.A. No. 1849/2021 and M.A. Diary No. 29164/2021, were filed seeking a clarification referring to category 'C' wherein, inadvertently, Section 45 of the Prevention of Money Laundering Act, 2002 despite being struck down, found a place, thus came the Order dated 16.12.2021:

Learned Senior Counsels for parties state that they will endeavour to work out some of the fine tuning which is required to give meaning to the intent of our order dated 07.10.2021.

We make it clear that our intent was to ease the process of bail and not to restrict it. The order, in no way, imposes any additional fetters but is in furtherance of the line of judicial thinking to enlarge the scope of bail.

At this stage, suffice for us to say that while referring to category 'C', inadvertently, Section 45 of Prevention of Money laundering Act (PMLA) has been mentioned which has been struck down by this Court. Learned ASG states that an amendment was made and that is pending challenge before this Court before a different Bench. That would be a matter to be considered by that Bench.

We are also putting a caution that merely by categorizing certain offences as economic offences which may be non- cognizable, it does not mean that a different meaning is to be given to our order.

We may also clarify that if during the course of investigation, there has been no cause to arrest the Accused, merely because a charge sheet is filed, would not be an ipso facto cause to arrest the Petitioner, an aspect in general clarified by us in Criminal Appeal No. 838/2021 Siddharth v. State of Uttar Pradesh and Anr. dated 16.08.2021.

3. Some more applications have been filed seeking certain directions/clarifications, while impressing this Court to deal with the other aspects governing the grant of bail. We have heard Shri Amit Desai, learned Senior Counsel, Shri Sidharth Luthra, learned Senior Counsel, and learned Additional Solicitor General Shri S.V. Raju.

4. Having found that special leave petitions pertaining to different offenses, particularly on the rejection of bail applications are being filed before this Court, despite various directions issued from time to time, we deem it appropriate to undertake this exercise. We do make it clear that all our discussion along with the directions, are meant to act as guidelines, as each case pertaining to a bail application is obviously to be decided on its own merits.

PREVAILING SITUATION

5. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offense, being charged with offenses punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offense being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the Investigating Agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a

democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.

DEFINITION OF TRIAL

6. The word 'trial' is not explained and defined under the Code. An extended meaning has to be given to this word for the purpose of enlargement on bail to include, the stage of investigation and thereafter. Primary considerations would obviously be different between these two stages. In the former stage, an arrest followed by a police custody may be warranted for a thorough investigation, while in the latter what matters substantially is the proceedings before the Court in the form of a trial. If we keep the above distinction in mind, the consequence to be drawn is for a more favourable consideration towards enlargement when investigation is completed, of course, among other factors.

7. Similarly, an appeal or revision shall also be construed as a facet of trial when it comes to the consideration of bail on suspension of sentence.

DEFINITION OF BAIL

8. The term "bail" has not been defined in the Code, though is used very often. A bail is nothing but a surety inclusive of a personal bond from the Accused. It means the release of an Accused person either by the orders of the Court or by the police or by the Investigating Agency.

9. It is a set of pre- trial restrictions imposed on a suspect while enabling any interference in the judicial process. Thus, it is a conditional release on the solemn undertaking by the suspect that he would cooperate both with the investigation and the trial. The word "bail" has been defined in the Black's Law Dictionary, 9th Edn., pg. 160 as:

A security such as cash or a bond; esp., security required by a court for the release of a prisoner who must appear in court at a future time.

10. Wharton's Law Lexicon, 14th Edn., pg. 105 defines bail as:

to set at liberty a person arrested or imprisoned, on security being taken for his appearance on a day and at a place certain, which security is called bail, because the party arrested or imprisoned is delivered into the hands of those who bind themselves or become bail for his due appearance

when required, in order that he may be safely protected from prison, to which they have, if they fear his escape, etc., the legal power to deliver him.

BAIL IS THE RULE

11. The principle that bail is the Rule and jail is the exception has been well recognised through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India. This Court in Nikesh Tarachand Shah v. Union of India, MANU/SC/1480/2017 : (2018) 11 SCC 1, held that:

19. In Gurbaksh Singh Sibbia v. State of Punjab [Gurbaksh Singh Sibbia v. State of Punjab, MANU/SC/0215/1980 : (1980) 2 SCC 565 : 1980 SCC (Cri.) 465], the purpose of granting bail is set out with great felicity as follows: (SCC pp. 586- 88, paras 27- 30)

27. It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra Nath Chakravarti, In re [Nagendra Nath Chakravarti, In re, MANU/WB/0119/1923 : AIR 1924 Cal 476 : 1924 Cri. LJ 732], AIR pp. 479- 80 that the object of bail is to secure the attendance of the Accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the "Meerut Conspiracy cases" observations are to be found regarding the right to bail which deserve a special mention. In K.N. Joglekar v. Emperor [K.N. Joglekar v. Emperor, MANU/UP/0060/1931 : AIR 1931 All 504 : 1932 Cri. LJ 94] it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the Court that there was no hard- and- fast Rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In Emperor v. H.L. Hutchinson [Emperor v. H.L. Hutchinson, MANU/UP/0014/1931 : AIR 1931 All 356 : 1931 Cri. LJ 1271], AIR p. 358 it was said that it was very unwise to make an attempt to lay down any particular Rules which will bind the High Court, having regard to the fact that the legislature itself left the discretion of the court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It was observed that the principle to be deduced from the various Sections in the Code of Criminal Procedure was that grant of bail is the Rule and refusal is the exception. An Accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore

entitled to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.

28. Coming nearer home, it was observed by Krishna Iyer, J., in Gudikanti Narasimhulu v. State [Gudikanti Narasimhulu v. State, MANU/SC/0089/1977 : (1978) 1 SCC 240 : 1978 SCC (Cri.) 115] that: (SCC p. 242, para 1)

'1. ... the issue [of bail] is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process. ... After all, personal liberty of an Accused or convict is fundamental, suffering lawful eclipse only in terms of "procedure established by law". The last four words of Article 21 are the life of that human right.'

29. In Gurcharan Singh v. State (UT of Delhi) [Gurcharan Singh v. State (UT of Delhi), MANU/SC/0420/1978 : (1978) 1 SCC 118 : 1978 SCC (Cri.) 41] it was observed by Goswami, J., who spoke for the Court, that: (SCC p. 129, para 29)

'29. ... There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail.'

30. In AMERICAN JURISPRUDENCE (2nd, Vol. 8, p. 806, para 39), it is stated:

'Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the Accused is to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end.'

It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.

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24. Article 21 is the Ark of the Covenant so far as the Fundamental Rights Chapter of the Constitution is concerned. It deals with nothing less sacrosanct than the rights of life and personal liberty of the citizens of India and other persons. It is the only Article in the Fundamental Rights Chapter (along with Article 20) that cannot be suspended even in an emergency [see Article 359(1) of the Constitution]. At present, Article 21 is the repository of a vast number of substantive and procedural rights post Maneka Gandhi v. Union of India [Maneka Gandhi v. Union of India, MANU/SC/0133/1978 : (1978) 1 SCC 248].

12. Further this Court in Sanjay Chandra v. CBI MANU/SC/1375/2011 : (2012) 1 SCC 40, has observed that:

21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the Accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an Accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the Accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

PRESUMPTION OF INNOCENCE

13. Innocence of a person Accused of an offense is presumed through a legal fiction, placing the onus on the prosecution to prove the guilt before the Court. Thus, it is for that agency to satisfy the Court that the arrest made was warranted and enlargement on bail is to be denied.

14. Presumption of innocence has been acknowledged throughout the world. Article 14(2) of the International Covenant on Civil and Political Rights, 1966 and Article 11 of the Universal Declaration of Human Rights acknowledge the presumption of innocence, as a cardinal principle of law, until the individual is proven guilty.

15. Both in Australia and Canada, a prima facie right to a reasonable bail is recognized based on the gravity of offence. In the United States, it is a common practice for bail to be a cash deposit. In the United Kingdom, bail is more likely to consist of a set of restrictions.

16. The Supreme Court of Canada in Corey Lee James Myers v. Her Majesty the Queen, 2019 SCC 18, has held that bail has to be considered on acceptable legal parameters. It thus confers adequate discretion on the Court to consider the enlargement on bail of which unreasonable delay is one of the grounds. Her Majesty the Queen v. Kevin Antic and Ors., MANU/SCCN/0024/2017 : 2017 SCC 27:

The right not to be denied reasonable bail without just cause is an essential element of an enlightened criminal justice system. It entrenches the effect of the presumption of innocence at the pre- trial stage of the criminal trial process and safeguards the liberty of Accused persons. This right has two aspects: a person charged with an offence has the right not to be denied bail without just cause and the right to reasonable bail. Under the first aspect, a provision may not deny bail without "just cause" there is just cause to deny bail only if the denial occurs in a narrow set of circumstances, and the denial is necessary to promote the proper functioning of the bail system and is not undertaken for any purpose extraneous to that system. The second aspect, the right to reasonable bail, relates to the terms of bail, including the quantum of any monetary component and other restrictions that are imposed on the Accused for the release period. It protects Accused persons from conditions and forms of release that are unreasonable.

While a bail hearing is an expedited procedure, the bail provisions are federal law and must be applied consistently and fairly in all provinces and territories. A central part of the Canadian law of bail consists of the ladder principle and the authorized forms of release, which are found in Section 515(1) to (3) of the Criminal Code. Save for exceptions, an unconditional release on an undertaking is the default position when granting release. Alternative forms of release are to be imposed in accordance with the ladder principle, which must be adhered to strictly: release is favoured at the earliest reasonable opportunity and on the least onerous grounds. If the Crown proposes an alternate form of release, it must show why this form is necessary for a more restrictive form of release to be imposed. Each rung of the ladder must be considered individually and must be rejected before moving to a more restrictive form of release. Where the parties disagree on the form of release, it is an error of law for a judge to order a more restrictive form without justifying the decision to reject the less onerous forms. A recognizance with sureties is one of the most onerous forms of release, and should not be imposed unless all the less onerous forms have been considered and rejected as inappropriate. It is not necessary to impose cash bail

on Accused persons if they or their sureties have reasonably recoverable assets and are able to pledge those assets to the satisfaction of the court. A recognizance is functionally equivalent to cash bail and has the same coercive effect. Cash bail should be relied on only in exceptional circumstances in which release on a recognizance with sureties is unavailable. When cash bail is ordered, the amount must not be set so high that it effectively amounts to a detention order, which means that the amount should be no higher than necessary to satisfy the concern that would otherwise warrant detention and proportionate to the means of the Accused and the circumstances of the case. The judge is under a positive obligation to inquire into the ability of the Accused to pay. Terms of release Under Section 515(4) should only be imposed to the extent that they are necessary to address concerns related to the statutory criteria for detention and to ensure that the Accused is released. They must not be imposed to change an Accused person's behaviour or to punish an Accused person. Where a bail review is requested, courts must follow the bail review process set out in R. v. St- Cloud, MANU/SCCN/0023/2015 : 2015 SCC 27 : [2015] 2 S.C.R. 328.

17. We may only state that notwithstanding the special provisions in many of the countries world-over governing the consideration for enlargement on bail, courts have always interpreted them on the accepted principle of presumption of innocence and held in favour of the Accused.

18. The position in India is no different. It has been the consistent stand of the courts, including this Court, that presumption of innocence, being a facet of Article 21, shall inure to the benefit of the Accused. Resultantly burden is placed on the prosecution to prove the charges to the court of law. The weightage of the evidence has to be assessed on the principle of beyond reasonable doubt.

PROVISIONS OF THE CODE OF CRIMINAL PROCEDURE

An uncontrolled power is the natural enemy of freedom

- Harold Laski in 'Liberty in the Modern State'

19. The Code of Criminal Procedure, despite being a procedural law, is enacted on the inviolable right enshrined Under Article 21 and 22 of the Constitution of India. The provisions governing clearly exhibited the aforesaid intendment of the Parliament.

20. Though the word 'bail' has not been defined as aforesaid, Section 2A defines a bailable and non- bailable offense. A non- bailable offense is a cognizable offense enabling the police officer to arrest without a warrant. To exercise the said power, the Code introduces certain embargoes by way of restrictions.

Section 41, 41A and 60A of the Code

CHAPTER V

ARREST OF PERSONS

41. When police may arrest without warrant.- - (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person- -

(a) who commits, in the presence of a police officer, a cognizable offence;

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary- -

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this Sub- section, record the reasons in writing for not making the arrest.

(ba) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence;

(c) who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(h) who, being a released convict, commits a breach of any Rule made Under Sub- section (5) of Section 356; or

(i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other

cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Subject to the provisions of Section 42, no person concerned in a non- cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.

41A. Notice of appearance before police officer.- - (1) [The police officer shall], in all cases where the arrest of a person is not required under the provisions of Sub- section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.

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60A. Arrest to be made strictly according to the Code.- - No arrest shall be made except in accordance with the provisions of this Code or any other law for the time being in force providing for arrest.

21. Section 41 Under Chapter V of the Code deals with the arrest of persons. Even for a cognizable offense, an arrest is not mandatory as can be seen from the mandate of this provision. If the officer is satisfied that a person has committed a cognizable offense, punishable with imprisonment for a term which may be less than seven years, or which may extend to the said period, with or without fine, an arrest could only follow when he is satisfied that there is a reason to believe or suspect, that the said person has committed an offense, and there is a necessity for an arrest. Such necessity is drawn to prevent the committing of any further offense, for a proper investigation,

and to prevent him/her from either disappearing or tampering with the evidence. He/she can also be arrested to prevent such person from making any inducement, threat, or promise to any person according to the facts, so as to dissuade him from disclosing said facts either to the court or to the police officer. One more ground on which an arrest may be necessary is when his/her presence is required after arrest for production before the Court and the same cannot be assured.

22. This provision mandates the police officer to record his reasons in writing while making the arrest. Thus, a police officer is duty- bound to record the reasons for arrest in writing. Similarly, the police officer shall record reasons when he/she chooses not to arrest. There is no requirement of the aforesaid procedure when the offense alleged is more than seven years, among other reasons.

23. The consequence of non- compliance with Section 41 shall certainly inure to the benefit of the person suspected of the offense. Resultantly, while considering the application for enlargement on bail, courts will have to satisfy themselves on the due compliance of this provision. Any non-compliance would entitle the Accused to a grant of bail.

24. Section 41A deals with the procedure for appearance before the police officer who is required to issue a notice to the person against whom a reasonable complaint has been made, or credible information has been received or a reasonable suspicion exists that he has committed a cognizable offence, and arrest is not required Under Section 41(1). Section 41B deals with the procedure of arrest along with mandatory duty on the part of the officer.

25. On the scope and objective of Section 41 and 41A, it is obvious that they are facets of Article 21 of the Constitution. We need not elaborate any further, in light of the judgment of this Court in Arnesh Kumar v. State of Bihar, MANU/SC/0559/2014 : (2014) 8 SCC 273:

7.1. From a plain reading of the aforesaid provision, it is evident that a person Accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the Accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer; or unless such Accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.

7.2. The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. The law further requires the police officers to record the reasons in writing for not making the arrest.

7.3. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the Accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by Sub- clauses (a) to (e) of Clause (1) of Section 41 Code of Criminal Procedure.

8. An Accused arrested without warrant by the police has the constitutional right Under Article 22(2) of the Constitution of India and Section 57 Code of Criminal Procedure to be produced before the Magistrate without unnecessary delay and in no circumstances beyond 24 hours excluding the time necessary for the journey:

8.1. During the course of investigation of a case, an Accused can be kept in detention beyond a period of 24 hours only when it is authorised by the Magistrate in exercise of power Under Section 167 Code of Criminal Procedure. The power to authorise detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution. Our experience tells us that it is not exercised with the seriousness it deserves. In many of the cases, detention is authorised in a routine, casual and cavalier manner.

8.2. Before a Magistrate authorises detention Under Section 167 Code of Criminal Procedure, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested are satisfied. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty- bound not to authorise his further detention and release the Accused. In other words, when an Accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that the condition precedent for arrest Under Section 41 Code of Criminal Procedure has been satisfied and it is only thereafter that he will authorise the detention of an Accused.

8.3. The Magistrate before authorising detention will record his own satisfaction, may be in brief but the said satisfaction must reflect from his order. It shall never be based upon the ipse dixit of the police officer, for example, in case the police officer considers the arrest necessary to prevent such person from committing any further offence or for proper investigation of the case or for preventing an Accused from tampering with evidence or making inducement, etc. the police

officer shall furnish to the Magistrate the facts, the reasons and materials on the basis of which the police officer had reached its conclusion. Those shall be perused by the Magistrate while authorising the detention and only after recording his satisfaction in writing that the Magistrate will authorise the detention of the Accused.

8.4. In fine, when a suspect is arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether specific reasons have been recorded for arrest and if so, prima facie those reasons are relevant, and secondly, a reasonable conclusion could at all be reached by the police officer that one or the other conditions stated above are attracted. To this limited extent the Magistrate will make judicial scrutiny.

9. ...The aforesaid provision makes it clear that in all cases where the arrest of a person is not required Under Section 41(1) Code of Criminal Procedure, the police officer is required to issue notice directing the Accused to appear before him at a specified place and time. Law obliges such an Accused to appear before the police officer and it further mandates that if such an Accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged Under Section 41 Code of Criminal Procedure has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

10. We are of the opinion that if the provisions of Section 41 Code of Criminal Procedure which authorises the police officer to arrest an Accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 Code of Criminal Procedure for effecting arrest be discouraged and discontinued.

11. Our endeavour in this judgment is to ensure that police officers do not arrest the Accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case Under Section 498- A Indian Penal Code is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 Code of Criminal Procedure;

11.2. All police officers be provided with a check list containing specified Sub- clauses Under Section 41(1)(b)(ii);

11.3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the Accused before the Magistrate for further detention;

11.4. The Magistrate while authorising detention of the Accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

11.5. The decision not to arrest an Accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.6. Notice of appearance in terms of Section 41- A Code of Criminal Procedure be served on the Accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.

11.8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

12. We hasten to add that the directions aforesaid shall not only apply to the cases Under Section 498- A Indian Penal Code or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine.

26. We only reiterate that the directions aforesaid ought to be complied with in letter and spirit by the investigating and prosecuting agencies, while the view expressed by us on the non-compliance of Section 41 and the consequences that flow from it has to be kept in mind by the Court, which is expected to be reflected in the orders.

27. Despite the dictum of this Court in Arnesh Kumar (supra), no concrete step has been taken to comply with the mandate of Section 41A of the Code. This Court has clearly interpreted Section 41(1)(b)(i) and (ii) inter alia holding that notwithstanding the existence of a reason to believe qua

a police officer, the satisfaction for the need to arrest shall also be present. Thus, Sub- clause (1)(b)(i) of Section 41 has to be read along with Sub- clause (ii) and therefore both the elements of 'reason to believe' and 'satisfaction qua an arrest' are mandated and accordingly are to be recorded by the police officer.

28. It is also brought to our notice that there are no specific guidelines with respect to the mandatory compliance of Section 41A of the Code. An endeavour was made by the Delhi High Court while deciding Writ Petition (C) No. 7608 of 2017 vide order dated 07.02.2018, followed by order dated 28.10.2021 in Contempt Case (C) No. 480 of 2020 & CM Application No. 25054 of 2020, wherein not only the need for guidelines but also the effect of non- compliance towards taking action against the officers concerned was discussed. We also take note of the fact that a standing order has been passed by the Delhi Police viz., Standing Order No. 109 of 2020, which provides for a set of guidelines in the form of procedure for issuance of notices or orders by the police officers. Considering the aforesaid action taken, in due compliance with the order passed by the Delhi High Court in Writ Petition (C) No. 7608 of 2017 dated 07.02.2018, this Court has also passed an order in Writ Petition (Crl.) 420 of 2021 dated 10.05.2021 directing the State of Bihar to look into the said aspect of an appropriate modification to give effect to the mandate of Section 41A. A recent judgment has also been rendered on the same lines by the High Court of Jharkhand in Cr.M.P. No. 1291 of 2021 dated 16.06.2022.

29. Thus, we deem it appropriate to direct all the State Governments and the Union Territories to facilitate standing orders while taking note of the standing order issued by the Delhi Police i.e., Standing Order No. 109 of 2020, to comply with the mandate of Section 41A. We do feel that this would certainly take care of not only the unwarranted arrests, but also the clogging of bail applications before various Courts as they may not even be required for the offences up to seven years.

30. We also expect the courts to come down heavily on the officers effecting arrest without due compliance of Section 41 and Section 41A. We express our hope that the Investigating Agencies would keep in mind the law laid down in Arnesh Kumar (Supra), the discretion to be exercised on the touchstone of presumption of innocence, and the safeguards provided Under Section 41, since an arrest is not mandatory. If discretion is exercised to effect such an arrest, there shall be procedural compliance. Our view is also reflected by the interpretation of the specific provision Under Section 60A of the Code which warrants the officer concerned to make the arrest strictly in accordance with the Code.

Section 87 and 88 of the Code

87. Issue of warrant in lieu of, or in addition to, summons.- - A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest- -

(a) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure

88. Power to take bond for appearance.- - When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court, or any other Court to which the case may be transferred for trial.

31. When the courts seek the attendance of a person, either a summons or a warrant is to be issued depending upon the nature and facts governing the case. Section 87 gives the discretion to the court to issue a warrant, either in lieu of or in addition to summons. The exercise of the aforesaid power can only be done after recording of reasons. A warrant can be either bailable or non-bailable. Section 88 of the Code empowers the Court to take a bond for appearance of a person with or without sureties.

32. Considering the aforesaid two provisions, courts will have to adopt the procedure in issuing summons first, thereafter a bailable warrant, and then a non- bailable warrant may be issued, if so warranted, as held by this Court in Inder Mohan Goswami v. State of Uttaranchal, MANU/SC/7999/2007 : (2007) 12 SCC 1. Despite the aforesaid clear dictum, we notice that non-bailable warrants are issued as a matter of course without due application of mind and against the tenor of the provision, which merely facilitates a discretion, which is obviously to be exercised in favour of the person whose attendance is sought for, particularly in the light of liberty enshrined Under Article 21 of the Constitution. Therefore, valid reasons have to be given for not exercising discretion in favour of the said person. This Court in Inder Mohan Goswami v. State of Uttaranchal, MANU/SC/7999/2007 : (2007) 12 SCC 1, has held that:

50. Civilised countries have recognised that liberty is the most precious of all the human rights. The American Declaration of Independence, 1776, French Declaration of the Rights of Men and the Citizen, 1789, Universal Declaration of Human Rights and the International Covenant of Civil and Political Rights, 1966 all speak with one voice- - liberty is the natural and inalienable right of every human being. Similarly, Article 21 of our Constitution proclaims that no one shall be deprived of his liberty except in accordance with procedure prescribed by law.

51. The issuance of non- bailable warrants involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, the courts have to be extremely careful before issuing non- bailable warrants.

52. Just as liberty is precious for an individual so is the interest of the society in maintaining law and order. Both are extremely important for the survival of a civilised society. Sometimes in the larger interest of the public and the State it becomes absolutely imperative to curtail freedom of an individual for a certain period, only then the non- bailable warrants should be issued.

When non- bailable warrants should be issued

53. Non- bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This could be when:

- it is reasonable to believe that the person will not voluntarily appear in court; or
- the police authorities are unable to find the person to serve him with a summon; or
- it is considered that the person could harm someone if not placed into custody immediately.

54. As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the Accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non- bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the criminal complaint or FIR has not been filed with an oblique motive.

55. In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint. If the Accused seem to be avoiding the summons, the court, in the second instance should issue bailable warrant. In the third instance, when the court is fully satisfied that the Accused is avoiding the court's proceeding intentionally, the process of issuance of the non- bailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non- bailable warrants.

56. The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing

warrants. There cannot be any straitjacket formula for issuance of warrants but as a general rule, unless an Accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non- bailable warrants should be avoided.

57. The court should try to maintain proper balance between individual liberty and the interest of the public and the State while issuing non- bailable warrant.

33. On the exercise of discretion Under Section 88, this Court in Pankaj Jain v. Union of India, MANU/SC/0151/2018 : (2018) 5 SCC 743, has held that:

12. The main issue which needs to be answered in the present appeal is as to whether it was obligatory for the Court to release the Appellant by accepting the bond Under Section 88 Code of Criminal Procedure on the ground that he was not arrested during investigation or the Court has rightly exercised its jurisdiction Under Section 88 in rejecting the application filed by the Appellant praying for release by accepting the bond Under Section 88 Code of Criminal Procedure.

13. Section 88 Code of Criminal Procedure is a provision which is contained in Chapter VI "Processes to Compel Appearance" of the Code of Criminal Procedure, 1973. Chapter VI is divided in four Sections - - A. Summons; B. Warrant of arrest; C. Proclamation and Attachment; and D. Other Rules regarding processes. Section 88 provides as follows:

88. Power to take bond for appearance.- - When any person for whose appearance or arrest the officer presiding in any court is empowered to issue a summons or warrant, is present in such court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such court, or any other court to which the case may be transferred for trial.

14. We need to first consider as to what was the import of the words "may" used in Section 88.

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22. Section 88 Code of Criminal Procedure does not confer any right on any person, who is present in a court. Discretionary power given to the court is for the purpose and object of ensuring appearance of such person in that court or to any other court into which the case may be transferred for trial. Discretion given Under Section 88 to the court does not confer any right on a person, who is present in the court rather it is the power given to the court to facilitate his appearance, which clearly indicates that use of the word "may" is discretionary and it is for the

court to exercise its discretion when situation so demands. It is further relevant to note that the word used in Section 88 "any person" has to be given wide meaning, which may include persons, who are not even Accused in a case and appeared as witnesses.

Section 167(2) of the Code

167. Procedure when investigation cannot be completed in twenty- four hours.- -

(1) xxx xxx xxx

(2) The Magistrate to whom an Accused person is forwarded under this Section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the Accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the Accused to be forwarded to a Magistrate having such jurisdiction:

Provided that- -

(a) the Magistrate may authorise the detention of the Accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the Accused person in custody under this paragraph for a total period exceeding,- -

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the Accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this Sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention of the Accused in custody of the police under this Section unless the Accused is produced before him in person for the first time and subsequently every time till the Accused remains in the custody of the police, but the Magistrate may extend

further detention in judicial custody on production of the Accused either in person or through the medium of electronic video linkage;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I.- - For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in Para (a), the Accused shall be detained in custody so long as he does not furnish bail.

Explanation II.- - If any question arises whether an Accused person was produced before the Magistrate as required under Clause (b), the production of the Accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the Accused person through the medium of electronic video linkage, as the case may be.

Provided further that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution.

34. Section 167(2) was introduced in the year 1978, giving emphasis to the maximum period of time to complete the investigation. This provision has got a laudable object behind it, which is to ensure an expeditious investigation and a fair trial, and to set down a rationalised procedure that protects the interests of the indigent Sections of society. This is also another limb of Article 21. Presumption of innocence is also inbuilt in this provision. An investigating agency has to expedite the process of investigation as a suspect is languishing under incarceration. Thus, a duty is enjoined upon the agency to complete the investigation within the time prescribed and a failure would enable the release of the Accused. The right enshrined is an absolute and indefeasible one, inuring to the benefit of suspect. Such a right cannot be taken away even during any unforeseen circumstances, such as the recent pandemic, as held by this Court in M. Ravindran v. Directorate of Revenue Intelligence, MANU/SC/0788/2020 : (2021) 2 SCC 485:

II. Section 167(2) and the Fundamental Right to Life and Personal Liberty

17. Before we proceed to expand upon the parameters of the right to default bail Under Section 167(2) as interpreted by various decisions of this Court, we find it pertinent to note the observations made by this Court in Uday Mohanlal Acharya [Uday Mohanlal Acharya v. State of Maharashtra, MANU/SC/0222/2001 : (2001) 5 SCC 453 : 2001 SCC (Cri.) 760] on the fundamental right to personal liberty of the person and the effect of deprivation of the same as follows: (SCC p. 472, para 13)

13. ... Personal liberty is one of the cherished objects of the Indian Constitution and deprivation of the same can only be in accordance with law and in conformity with the provisions thereof, as stipulated Under Article 21 of the Constitution. When the law provides that the Magistrate could authorise the detention of the Accused in custody up to a maximum period as indicated in the proviso to Sub- section (2) of Section 167, any further detention beyond the period without filing of a challan by the investigating agency would be a subterfuge and would not be in accordance with law and in conformity with the provisions of the Criminal Procedure Code, and as such, could be violative of Article 21 of the Constitution.

17.1. Article 21 of the Constitution of India provides that "no person shall be deprived of his life or personal liberty except according to procedure established by law". It has been settled by a Constitution Bench of this Court in Maneka Gandhi v. Union of India [Maneka Gandhi v. Union of India, MANU/SC/0133/1978 : (1978) 1 SCC 248], that such a procedure cannot be arbitrary, unfair or unreasonable. The history of the enactment of Section 167(2) Code of Criminal Procedure and the safeguard of "default bail" contained in the proviso thereto is intrinsically linked to Article 21 and is nothing but a legislative exposition of the constitutional safeguard that no person shall be detained except in accordance with Rule of law.

17.2. Under Section 167 of the Code of Criminal Procedure, 1898 ("the 1898 Code") which was in force prior to the enactment of the Code of Criminal Procedure, the maximum period for which an Accused could be remanded to custody, either police or judicial, was 15 days. However, since it was often unworkable to conclude complicated investigations within 15 days, a practice arose wherein investigating officers would file "preliminary charge- sheets" after the expiry of the remand period. The State would then request the Magistrate to postpone commencement of the trial and authorise further remand of the Accused Under Section 344 of the 1898 Code till the time the investigation was completed and the final charge- sheet was filed. The Law Commission of India in Report No. 14 on Reforms of the Judicial Administration (Vol. II, 1948, pp. 758- 760) pointed out that in many cases the Accused were languishing for several months in custody without any final report being filed before the courts. It was also pointed out that there was conflict in judicial opinion as to whether the Magistrate was bound to release the Accused if the police report was not filed within 15 days.

17.3. Hence the Law Commission in Report No. 14 recommended the need for an appropriate provision specifically providing for continued remand after the expiry of 15 days, in a manner that "while meeting the needs of a full and proper investigation in cases of serious crime, will still safeguard the liberty of the person of the individual". Further, that the legislature should prescribe a maximum time period beyond which no Accused could be detained without filing of the police report before the Magistrate. It was pointed out that in England, even a person Accused of grave offences such as treason could not be indefinitely detained in prison till commencement of the trial.

17.4. The suggestion made in Report No. 14 was reiterated by the Law Commission in Report No. 41 on The Code of Criminal Procedure, 1898 (Vol. I, 1969, pp. 76- 77). The Law Commission reemphasised the need to guard against the misuse of Section 344 of the 1898 Code by filing "preliminary reports" for remanding the Accused beyond the statutory period prescribed Under Section 167. It was pointed out that this could lead to serious abuse wherein "the arrested person can in this manner be kept in custody indefinitely while the investigation can go on in a leisurely manner". Hence the Commission recommended fixing of a maximum time- limit of 60 days for remand. The Commission considered the reservation expressed earlier in Report No. 37 that such an extension may result in the 60- day period becoming a matter of routine. However, faith was expressed that proper supervision by the superior courts would help circumvent the same.

17.5. The suggestions made in Report No. 41 were taken note of and incorporated by the Central Government while drafting the Code of Criminal Procedure Bill in 1970. Ultimately, the 1898 Code was replaced by the present Code of Criminal Procedure. The Statement of Objects and Reasons of the Code of Criminal Procedure provides that the Government took the following important considerations into account while evaluating the recommendations of the Law Commission:

3. The recommendations of the Commission were examined carefully by the Government, keeping in view, among others, the following basic considerations:

(i) an Accused person should get a fair trial in accordance with the accepted principles of natural justice;

(ii) every effort should be made to avoid delay in investigation and trial which is harmful not only to the individuals involved but also to society; and

(iii) the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer Sections of the community.

17.6. It was in this backdrop that Section 167(2) was enacted within the present day Code of Criminal Procedure, providing for time- limits on the period of remand of the Accused, proportionate to the seriousness of the offence committed, failing which the Accused acquires the indefeasible right to bail. As is evident from the recommendations of the Law Commission mentioned supra, the intent of the legislature was to balance the need for sufficient time- limits to complete the investigation with the need to protect the civil liberties of the Accused. Section 167(2) provides for a clear mandate that the investigative agency must collect the required evidence within the prescribed time period, failing which the Accused can no longer be detained. This ensures that the investigating officers are compelled to act swiftly and efficiently without misusing the prospect of further remand. This also ensures that the court takes cognizance of the

case without any undue delay from the date of giving information of the offence, so that society at large does not lose faith and develop cynicism towards the criminal justice system.

17.7. Therefore, as mentioned supra, Section 167(2) is integrally linked to the constitutional commitment Under Article 21 promising protection of life and personal liberty against unlawful and arbitrary detention, and must be interpreted in a manner which serves this purpose. In this regard we find it useful to refer to the decision of the three- Judge Bench of this Court in Rakesh Kumar Paul v. State of Assam [Rakesh Kumar Paul v. State of Assam, MANU/SC/0993/2017 : (2017) 15 SCC 67 : (2018) 1 SCC (Cri.) 401], which laid down certain seminal principles as to the interpretation of Section 167(2) Code of Criminal Procedure though the questions of law involved were somewhat different from the present case. The questions before the three- Judge Bench in Rakesh Kumar Paul [Rakesh Kumar Paul v. State of Assam, MANU/SC/0993/2017 : (2017) 15 SCC 67 : (2018) 1 SCC (Cri.) 401] were whether, firstly, the 90- day remand extension Under Section 167(2)(a)(i) would be applicable in respect of offences where the maximum period of imprisonment was 10 years, though the minimum period was less than 10 years. Secondly, whether the application for bail filed by the Accused could be construed as an application for default bail, even though the expiry of the statutory period Under Section 167(2) had not been specifically pleaded as a ground for bail. The majority opinion held that the 90- day limit is only available in respect of offences where a minimum ten year' imprisonment period is stipulated, and that the oral arguments for default bail made by the counsel for the Accused before the High Court would suffice in lieu of a written application. This was based on the reasoning that the court should not be too technical in matters of personal liberty. Madan B. Lokur, J. in his majority opinion, pertinently observed as follows: (SCC pp. 95- 96 & 99, paras 29, 32 & 41)

29. Notwithstanding this, the basic legislative intent of completing investigations within twenty-four hours and also within an otherwise time- bound period remains unchanged, even though that period has been extended over the years. This is an indication that in addition to giving adequate time to complete investigations, the legislature has also and always put a premium on personal liberty and has always felt that it would be unfair to an Accused to remain in custody for a prolonged or indefinite period. It is for this reason and also to hold the investigating agency accountable that time- limits have been laid down by the legislature. ...

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32. ...Such views and opinions over a prolonged period have prompted the legislature for more than a century to ensure expeditious conclusion of investigations so that an Accused person is not unnecessarily deprived of his or her personal liberty by remaining in prolonged custody for an offence that he or she might not even have committed. In our opinion, the entire debate before us must also be looked at from the point of view of expeditious conclusion of investigations and from the angle of personal liberty and not from a purely dictionary or textual perspective as canvassed by the learned Counsel for the State.

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41. We take this view keeping in mind that in matters of personal liberty and Article 21 of the Constitution, it is not always advisable to be formalistic or technical. The history of the personal liberty jurisprudence of this Court and other constitutional courts includes petitions for a writ of habeas corpus and for other writs being entertained even on the basis of a letter addressed to the Chief Justice or the Court.

(emphasis supplied)

Therefore, the courts cannot adopt a rigid or formalistic approach whilst considering any issue that touches upon the rights contained in Article 21.

17.8. We may also refer with benefit to the recent judgment of this Court in S. Kasi v. State [S. Kasi v. State, MANU/SC/0491/2020 : (2021) 12 SCC 1], wherein it was observed that the indefeasible right to default bail Under Section 167(2) is an integral part of the right to personal liberty Under Article 21, and the said right to bail cannot be suspended even during a pandemic situation as is prevailing currently. It was emphasised that the right of the Accused to be set at liberty takes precedence over the right of the State to carry on the investigation and submit a charge- sheet.

17.9. Additionally, it is well- settled that in case of any ambiguity in the construction of a penal statute, the courts must favour the interpretation which leans towards protecting the rights of the Accused, given the ubiquitous power disparity between the individual Accused and the State machinery. This is applicable not only in the case of substantive penal statutes but also in the case of procedures providing for the curtailment of the liberty of the Accused.

17.10. With respect to the Code of Criminal Procedure particularly, the Statement of Objects and Reasons (supra) is an important aid of construction. Section 167(2) has to be interpreted keeping in mind the threefold objectives expressed by the legislature, namely, ensuring a fair trial, expeditious investigation and trial, and setting down a rationalised procedure that protects the interests of indigent Sections of society. These objects are nothing but subsets of the overarching fundamental right guaranteed Under Article 21.

17.11. Hence, it is from the perspective of upholding the fundamental right to life and personal liberty Under Article 21 that we shall clarify and reconcile the various judicial interpretations of Section 167(2) for the purpose of resolving the dilemma that has arisen in the present case.

35. As a consequence of the right flowing from the said provision, courts will have to give due effect to it, and thus any detention beyond this period would certainly be illegal, being an affront to the liberty of the person concerned. Therefore, it is not only the duty of the investigating agency but also the courts to see to it that an Accused gets the benefit of Section 167(2).

Section 170 of the Code:

170. Cases to be sent to Magistrate when evidence is sufficient.- - (1) If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the Accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the Accused or commit him for trial, or, if the offence is bailable and the Accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

36. The scope and ambit of Section 170 has already been dealt with by this Court in Siddharth v. State of U.P., MANU/SC/0600/2021 : (2021) 1 SCC 676. This is a power which is to be exercised by the court after the completion of the investigation by the agency concerned. Therefore, this is a procedural compliance from the point of view of the court alone, and thus the investigating agency has got a limited role to play. In a case where the prosecution does not require custody of the Accused, there is no need for an arrest when a case is sent to the magistrate Under Section 170 of the Code. There is not even a need for filing a bail application, as the Accused is merely forwarded to the court for the framing of charges and issuance of process for trial. If the court is of the view that there is no need for any remand, then the court can fall back upon Section 88 of the Code and complete the formalities required to secure the presence of the Accused for the commencement of the trial. Of course, there may be a situation where a remand may be required, it is only in such cases that the Accused will have to be heard. Therefore, in such a situation, an opportunity will have to be given to the Accused persons, if the court is of the prima facie view that the remand would be required. We make it clear that we have not said anything on the cases in which the Accused persons are already in custody, for which, the bail application has to be decided on its own merits. Suffice it to state that for due compliance of Section 170 of the Code, there is no need for filing of a bail application. This Court in Siddharth v. State of U.P., MANU/SC/0600/2021 : (2021) 1 SCC 676, has held that:

There are judicial precedents available on the interpretation of the aforesaid provision albeit of the Delhi High Court.

5. In High Court of Delhi v. CBI [High Court of Delhi v. CBI, MANU/DE/0026/2004 : (2004) 72 DRJ 629], the Delhi High Court dealt with an argument similar to the contention of the Respondent that Section 170 Code of Criminal Procedure prevents the trial court from taking a

charge- sheet on record unless the Accused is taken into custody. The relevant extracts are as under : (SCC OnLine Del paras 15- 16 & 19- 20)

15. Word "custody" appearing in this Section does not contemplate either police or judicial custody. It merely connotes the presentation of Accused by the investigating officer before the Court at the time of filing of the charge- sheet whereafter the role of the Court starts. Had it not been so the investigating officer would not have been vested with powers to release a person on bail in a bailable offence after finding that there was sufficient evidence to put the Accused on trial and it would have been obligatory upon him to produce such an Accused in custody before the Magistrate for being released on bail by the Court.

16. In case the police/investigating officer thinks it unnecessary to present the Accused in custody for the reason that the Accused would neither abscond nor would disobey the summons as he has been cooperating in investigation and investigation can be completed without arresting him, the IO is not obliged to produce such an Accused in custody.

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19. It appears that the learned Special Judge was labouring under a misconception that in every non- bailable and cognizable offence the police is required to invariably arrest a person, even if it is not essential for the purpose of investigation.

20. Rather the law is otherwise. In normal and ordinary course the police should always avoid arresting a person and sending him to jail, if it is possible for the police to complete the investigation without his arrest and if every kind of cooperation is provided by the Accused to the investigating officer in completing the investigation. It is only in cases of utmost necessity, where the investigation cannot be completed without arresting the person, for instance, a person may be required for recovery of incriminating articles or weapon of offence or for eliciting some information or clue as to his accomplices or any circumstantial evidence, that his arrest may be necessary. Such an arrest may also be necessary if the investigating officer concerned or officer in charge of the police station thinks that presence of the Accused will be difficult to procure because of grave and serious nature of crime as the possibility of his absconding or disobeying the process or fleeing from justice cannot be ruled out.

6. In a subsequent judgment the Division Bench of the Delhi High Court in High Court of Delhi v. State [High Court of Delhi v. State, (2018) 254 DLT 641] relied on these observations in High Court of Delhi [High Court of Delhi v. CBI, MANU/DE/0026/2004 : (2004) 72 DRJ 629] and observed that it is not essential in every case involving a cognizable and non- bailable offence that an Accused be taken into custody when the charge- sheet/final report is filed.

7. The Delhi High Court is not alone in having adopted this view and other High Courts apparently have also followed suit on the proposition that criminal courts cannot refuse to accept a charge- sheet simply because the Accused has not been arrested and produced before the court.

8. In Deendayal Kishanchand v. State of Gujarat [Deendayal Kishanchand v. State of Gujarat, MANU/GJ/0130/1982 : 1983 Cri. LJ 1583], the High Court observed as under : (SCC OnLine Guj paras 2 & 8)

2. ... It was the case of the prosecution that two Accused i.e. present Petitioners 4 and 5, who are ladies, were not available to be produced before the court along with the charge- sheet, even though earlier they were released on bail. Therefore, as the court refused to accept the charge-sheet unless all the Accused are produced, the charge- sheet could not be submitted, and ultimately also, by a specific letter, it seems from the record, the charge- sheet was submitted without Accused 4 and 5. This is very clear from the evidence on record.

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8. I must say at this stage that the refusal by criminal courts either through the learned Magistrate or through their office staff to accept the charge- sheet without production of the Accused persons is not justified by any provision of law. Therefore, it should be impressed upon all the courts that they should accept the charge- sheet whenever it is produced by the police with any endorsement to be made on the charge- sheet by the staff or the Magistrate pertaining to any omission or requirement in the charge- sheet. But when the police submits the charge- sheet, it is the duty of the court to accept it especially in view of the provisions of Section 468 of the Code which creates a limitation of taking cognizance of offence. Likewise, police authorities also should impress on all police officers that if charge- sheet is not accepted for any such reason, then attention of the Sessions Judge should be drawn to these facts and get suitable orders so that such difficulties would not arise henceforth.

9. We are in agreement with the aforesaid view of the High Courts and would like to give our imprimatur to the said judicial view. It has rightly been observed on consideration of Section 170 Code of Criminal Procedure that it does not impose an obligation on the officer- in- charge to arrest each and every Accused at the time of filing of the charge- sheet. We have, in fact, come across cases where the Accused has cooperated with the investigation throughout and yet on the charge- sheet being filed non- bailable warrants have been issued for his production premised on the requirement that there is an obligation to arrest the Accused and produce him before the court. We are of the view that if the investigating officer does not believe that the Accused will abscond or disobey summons he/she is not required to be produced in custody. The word "custody" appearing in Section 170 Code of Criminal Procedure does not contemplate either

police or judicial custody but it merely connotes the presentation of the Accused by the investigating officer before the court while filing the charge- sheet.

10. We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an Accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or Accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it [Joginder Kumar v. State of U.P., MANU/SC/0311/1994 : (1994) 4 SCC 260 : 1994 SCC (Cri.) 1172]. If arrest is made routine, it can cause incalculable harm to the reputation and self- esteem of a person. If the investigating officer has no reason to believe that the Accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the Accused.

11. We are, in fact, faced with a situation where contrary to the observations in Joginder Kumar case [Joginder Kumar v. State of U.P., MANU/SC/0311/1994 : (1994) 4 SCC 260 : 1994 SCC (Cri.) 1172] how a police officer has to deal with a scenario of arrest, the trial courts are stated to be insisting on the arrest of an Accused as a prerequisite formality to take the charge- sheet on record in view of the provisions of Section 170 Code of Criminal Procedure. We consider such a course misplaced and contrary to the very intent of Section 170 Code of Criminal Procedure.

Section 204 and 209 of the Code

204. Issue of process.- - (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be- -

(a) a summons- case, he shall issue his summons for the attendance of the Accused, or

(b) a warrant- case, he may issue a warrant, or, if he thinks fit, a summons, for causing the Accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

209. Commitment of case to Court of Session when offence is triable exclusively by it.- - When in a case instituted on a police report or otherwise, the Accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall- -

(a) commit, after complying with the provisions of Section 207 or Section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the Accused to custody until such commitment has been made;

(b) subject to the provisions of this Code relating to bail, remand the Accused to custody during, and until the conclusion of, the trial;

37. Section 204 of the Code speaks of issue of process while commencing the proceeding before the Magistrate. Sub- section (1)(b) gives a discretion to a Magistrate qua a warrant case, either to issue a warrant or a summons. As this provision gives a discretion, and being procedural in nature, it is to be exercised as a matter of course by following the prescription of Section 88 of the Code. Thus, issuing a warrant may be an exception in which case the Magistrate will have to give reasons.

38. Section 209 of the Code pertains to commitment of a case to a Court of Sessions by the Magistrate when the offence is triable exclusively by the said court. Sub- sections (a) and (b) of Section 209 of the Code give ample power to the Magistrate to remand a person into custody during or until the conclusion of the trial. Since the power is to be exercised by the Magistrate on a case- to- case basis, it is his wisdom in either remanding an Accused or granting bail. Even here, it is judicial discretion which the Magistrate has to exercise. As we have already dealt with the definition of bail, which in simple parlance means a release subject to the restrictions and conditions, a Magistrate can take a call even without an application for bail if he is inclined to do so. In such a case he can seek a bond or surety, and thus can take recourse to Section 88. However, if he is to remand the case for the reasons to be recorded, then the said person has to be heard. Here again, we make it clear that there is no need for a separate application and Magistrate is required to afford an opportunity and to pass a speaking order on bail.

Section 309 of the Code

39. This provision has been substituted by Act 13 of 2013 and Act 22 of 2018. It would be appropriate to reproduce the said provision for better appreciation:

309. Power to postpone or adjourn proceedings. - - (1) In every inquiry or trial the proceedings shall be continued from day- to- day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded:

Provided that when the inquiry or trial relates to an offence Under Section 376, [Section 376A, Section 376AB, Section 376B, Section 376C, Section 376D, Section 376DA or Section 376DB of the

Indian Penal Code (45 of 1860), the inquiry or trial shall] be completed within a period of two months from the date of filing of the charge sheet.

(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the Accused if in custody:

Provided that no Magistrate shall remand an Accused person to custody under this Section for a term exceeding fifteen days at a time:

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing:

Provided also that no adjournment shall be granted for the purpose only of enabling the Accused person to show cause against the sentence proposed to be imposed on him.

[Provided also that- -

(a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

(b) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment;

(c) where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross- examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination- in- chief or cross- examination of the witness, as the case may be.]

Explanation 1.- - If sufficient evidence has been obtained to raise a suspicion that the Accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation 2.- - The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the Accused.

40. Sub- section (1) mandates courts to continue the proceedings on a day- to- day basis till the completion of the evidence. Therefore, once a trial starts, it should reach the logical end. Various directions have been issued by this Court not to give unnecessary adjournments resulting in the witnesses being won over. However, the non- compliance of Section 309 continues with gay abandon. Perhaps courts alone cannot be faulted as there are multiple reasons that lead to such adjournments. Though the Section makes adjournments and that too not for a longer time period as an exception, they become the norm. We are touching upon this provision only to show that any delay on the part of the court or the prosecution would certainly violate Article 21. This is more so when the Accused person is under incarceration. This provision must be applied inuring to the benefit of the Accused while considering the application for bail. Whatever may be the nature of the offence, a prolonged trial, appeal or a revision against an Accused or a convict under custody or incarceration, would be violative of Article 21. While the courts will have to endeavour to complete at least the recording of the evidence of the private witnesses, as indicated by this Court on quite a few occasions, they shall make sure that the Accused does not suffer for the delay occasioned due to no fault of his own.

41. Sub- section (2) has to be read along with Sub- section (1). The proviso to Sub- section (2) restricts the period of remand to a maximum of 15 days at a time. The second proviso prohibits an adjournment when the witnesses are in attendance except for special reasons, which are to be recorded. Certain reasons for seeking adjournment are held to be permissible. One must read this provision from the point of view of the dispensation of justice. After all, right to a fair and speedy trial is yet another facet of Article 21. Therefore, while it is expected of the court to comply with Section 309 of the Code to the extent possible, an unexplained, avoidable and prolonged delay in concluding a trial, appeal or revision would certainly be a factor for the consideration of bail. This we hold so notwithstanding the beneficial provision Under Section 436A of the Code which stands on a different footing.

Precedents:

• Hussainara Khatoon and Ors. v. Home Secretary, State of Bihar, MANU/SC/0119/1979 : 1980 (1) SCC 81:

2. Though we issued notice to the State of Bihar two weeks ago, it is unfortunate that on February 5, 1979, no one has appeared on behalf of the State and we must, therefore, at this stage proceed on the basis that the allegations contained in the issues of the Indian Express dated January 8 and 9, 1979 which are incorporated in the writ petition are correct. The information contained in these newspaper cuttings is most distressing and it is sufficient to stir the conscience and disturb the equanimity of any socially motivated lawyer or judge. Some of the undertrial prisoners whose

names are given in the newspaper cuttings have been in jail for as many as 5, 7 or 9 years and a few of them, even more than 10 years, without their trial having begun. What faith can these lost souls have in the judicial system which denies them a bare trial for so many years and keeps them behind bars, not because they are guilty, but because they are too poor to afford bail and the courts have no time to try them. It is a travesty of justice that many poor Accused, "little Indians, are forced into long cellular servitude for little offences" because the bail procedure is beyond their meagre means and trials don't commence and even if they do, they never conclude. There can be little doubt, after the dynamic interpretation placed by this Court on Article 21 in Maneka Gandhi v. Union of India MANU/SC/0133/1978 : [(1978) 2 SCR 621 : (1978) 1 SCC 248] that a procedure which keeps such large numbers of people behind bars without trial so long cannot possibly be regarded as 'reasonable, just or fair"' so as to be in conformity with the requirement of that article. It is necessary, therefore, that the law as enacted by the legislature and as administered by the courts must radically change its approach to pre- trial detention and ensure 'reasonable, just and fair' procedure which has creative connotation after Maneka Gandhi case MANU/SC/0133/1978 : [(1978) 2 SCR 621 : (1978) 1 SCC 248].

3. Now, one reason why our legal and judicial system continually denies justice to the poor by keeping them for long years in pre- trial detention is our highly unsatisfactory bail system. It suffers from a property oriented approach which seems to proceed on the erroneous assumption that risk of monetary loss is the only deterrent against fleeing from justice. The Code of Criminal Procedure, even after its re- enactment, continues to adopt the same antiquated approach as the earlier Code enacted towards the end of the last century and where an Accused is to be released on his personal bond, it insists that the bond should contain a monetary obligation requiring the Accused to pay a sum of money in case he fails to appear at the trial. Moreover, as if this were not sufficient deterrent to the poor, the courts mechanically and as a matter of course insist that the Accused should produce sureties who will stand bail for him and these sureties must again establish their solvency to be able to pay up the amount of the bail in case the Accused fails to appear to answer the charge. This system of bails operates very harshly against the poor and it is only the non- poor who are able to take advantage of it by getting themselves released on bail. The poor find it difficult to furnish bail even without sureties because very often the amount of the bail fixed by the courts is so unrealistically excessive that in a majority of cases the poor are unable to satisfy the police or the Magistrate about their solvency for the amount of the bail and where the bail is with sureties, as is usually the case, it becomes an almost impossible task for the poor to find persons sufficiently solvent to stand as sureties. The result is that either they are fleeced by the police and revenue officials or by touts and professional sureties and sometimes they have even to incur debts for securing their release or, being unable to obtain release, they have to remain in jail until such time as the court is able to take up their cases for trial, leading to grave consequences, namely, (1) though presumed innocent, they are subjected to psychological and physical deprivations of jail life, (2) they are prevented from contributing to the preparation of their defence, and (3) they lose their job, if they have one, and are deprived of an opportunity to work to support themselves and their family members with the result that the burden of their detention almost invariably falls heavily on the innocent members of the family. It is here that the poor find our legal and judicial system oppressive and heavily weighted against them and a feeling of frustration and despair occurs upon them as they find that they are helplessly in a position of inequality with the non- poor. The Legal Aid Committee appointed by the

Government of Gujarat under the chairmanship of one of us, Mr. Justice Bhagwati, emphasised this glaring inequality in the following words:

The bail system, as we see it administered in the criminal courts today, is extremely unsatisfactory and needs drastic change. In the first place it is virtually impossible to translate risk of non-appearance by the Accused into precise monetary terms and even its basic premise that risk of financial loss is necessary to prevent the Accused from fleeing is of doubtful validity. There are several considerations which deter an Accused from running away from justice and risk of financial loss is only one of them and that too not a major one. The experience of enlightened Bail Projects in the United States such as Manhattan Bail Project and D.C. Bail Project shows that even without monetary bail it has been possible to secure the presence of the Accused at the trial in quite a large number of cases. Moreover, the bail system causes discrimination against the poor since the poor would not be able to furnish bail on account of their poverty while the wealthier persons otherwise similarly situate would be able to secure their freedom because they can afford to furnish bail. This discrimination arises even if the amount of the bail is fixed by the Magistrate is not high, for a large majority of those who are brought before the courts in criminal cases are so poor that they would find it difficult to furnish bail even in a small amount.

The Gujarat Committee also pointed out how the practice of fixing the amount of bail with reference to the nature of the charge without taking into account relevant factors, such as the individual financial circumstances of the Accused and the probability of his fleeing before trial, is harsh and oppressive and discriminates against the poor:

The discriminatory nature of the bail system becomes all the more acute by reason of the mechanical way in which it is customarily operated. It is no doubt true that theoretically the Magistrate has broad discretion in fixing the amount of bail but in practice it seems that the amount of bail depends almost always on the seriousness of the offence. It is fixed according to a Schedule related to the nature of the charge. Little weight is given either to the probability that the Accused will attempt to flee before his trial or to his individual financial circumstances, the very factors which seem most relevant if the purpose of bail is to assure the appearance of the Accused at the trial. The result of ignoring these factors and fixing the amount of bail mechanically having regard only to the seriousness of the offence is to discriminate against the poor who are not in the same position as the rich as regards capacity to furnish bail. The courts by ignoring the differential capacity of the rich and the poor to furnish bail and treating them equally produce inequality between the rich and the poor: the rich who is charged with the same offence in the same circumstances is able to secure his release while the poor is unable to do so on account of his poverty. These are some of the major defects in the bail system as it is operated today.

The same anguish was expressed by President Lyndon B. Johnson at the time of signing the Bail Reforms Act, 1966:

Today, we join to recognise a major development in our system of criminal justice: the reform of the bail system.

This system has endured- - archaic, unjust and virtually unexamined - - since the Judiciary Act of 1789.

The principal purpose of bail is to insure that an Accused person will return for trial if he is released after arrest.

How is that purpose met under the present system? The Defendant with means can afford to pay bail. He can afford to buy his freedom. But poorer Defendant cannot pay the price. He languishes in jail weeks, months and perhaps even years before trial.

He does not stay in jail because he is guilty.

He does not stay in jail because any sentence has been passed.

He does not stay in jail because he is any more likely to flee before trial.

He stays in jail for one reason only- - because he is poor....

The bail system, as it operates today, is a source of great hardship to the poor and if we really want to eliminate the evil effects of poverty and assure a fair and just treatment to the poor in the administration of justice, it is imperative that the bail system should be thoroughly reformed so that it should be possible for the poor, as easily as the rich, to obtain pre- trial release without jeopardising the interest of justice.

4. It is high time that our Parliament realises that risk of monetary loss is not the only deterrent against fleeing from justice, but there are also other factors which act as equal deterrents against fleeing. Ours is a socialist republic with social justice as the signature tune of our Constitution and Parliament would do well to consider whether it would not be more consonant with the ethos of our Constitution that instead of risk of financial loss, other relevant considerations such as family ties, roots in the community, job security, membership of stable organisations etc., should be the determinative factors in grant of bail and the Accused should in appropriate cases be released on his personal bond without monetary obligation. Of course, it may be necessary in such a case to provide by an amendment of the penal law that if the Accused wilfully fails to

appear in compliance with the promise contained in his personal bond, he shall be liable to penal action. But even under the law as it stands today the courts must abandon the antiquated concept under which pre- trial release is ordered only against bail with sureties. That concept is outdated and experience has shown that it has done more harm than good. The new insight into the subject of pre- trial release which has been developed in socially advanced countries and particularly the United States should now inform the decisions of our courts in regard to pre- trial release. If the Court is satisfied, after taking into account, on the basis of information placed before it, that the Accused has his roots in the community and is not likely to abscond, it can safely release the Accused on his personal bond. To determine whether the Accused has his roots in the community which would deter him from fleeing, the Court should take into account the following factors concerning the Accused:

1. The length of his residence in the community,

2. his employment status, history and his financial condition,

3. his family ties and relationships,

4. his reputation, character and monetary condition,

5. his prior criminal record including any record of prior release on recognizance or on bail,

6. the identity of responsible members of the community who would vouch for his reliability,

7. the nature of the offence charged and the apparent probability of conviction and the likely sentence insofar as these factors are relevant to the risk of non- appearance, and

8. any other factors indicating the ties of the Accused to the community or bearing on the risk of wilful failure to appear.

If the court is satisfied on a consideration of the relevant factors that the Accused has his ties in the community and there is no substantial risk of non- appearance, the Accused may, as far as possible, be released on his personal bond. Of course, if facts are brought to the notice of the court which go to show that having regard to the condition and background of the Accused, his previous record and the nature and circumstances of the offence, there may be a substantial risk of his non- appearance at the trial, as for example, where the Accused is a notorious bad character

or a confirmed criminal or the offence is serious (these examples are only by way of illustration), the Court may not release the Accused on his personal bond and may insist on bail with sureties. But in the majority of cases, considerations like family ties and relationship, roots in the community, employment status etc. may prevail with the Court in releasing the Accused on his personal bond and particularly in cases where the offence is not grave and the Accused is poor or belongs to a weaker Section of the community, release on personal bond could, as far as possible, be preferred. But even while releasing the Accused on personal bond it is necessary to caution the Court that the amount of the bond which it fixes should not be based merely on the nature of the charge. The decision as regards the amount of the bond should be an individualised decision depending on the individual financial circumstances of the Accused and the probability of his absconding. The amount of the bond should be determined having regard to these relevant factors and should not be fixed mechanically according to a Schedule keyed to the nature of the charge. Otherwise, it would be difficult for the Accused to secure his release even by executing a personal bond. Moreover, when the Accused is released on his personal bond, it would be very harsh and oppressive if he is required to satisfy the Court- - and what we have said here in regard to the court must apply equally in relation to the police while granting bail- - that he is solvent enough to pay the amount of the bond if he fails to appear at the trial and in consequence the bond is forfeited. The inquiry into the solvency of the Accused can become a source of great harassment to him and often result in denial of bail and deprivation of liberty and should not, therefore, be insisted upon as a condition of acceptance of the personal bond. We have no doubt that if the system of bail, even under the existing law, is administered in the manner we have indicated in this judgment, it would go a long way towards relieving hardship of the poor and help them to secure pre- trial release from incarceration. It is for this reason we have directed the undertrial prisoners whose names are given in the two issues of the Indian Express should be released forthwith on their personal bond. We should have ordinarily said that personal bond to be executed by them should be with monetary obligation but we directed as an exceptional measure that there need be no monetary obligation in the personal bond because we found that all these persons have been in jail without trial for several years, and in some cases for offences for which the punishment would in all probability be less than the period of their detention and, moreover, the order we were making was merely an interim order. The peculiar facts and circumstances of the case dictated such an unusual course.

5. There is also one other infirmity of the legal and judicial system which is responsible for this gross denial of justice to the undertrial prisoners and that is the notorious delay in disposal of cases. It is a sad reflection on the legal and judicial system that the trial of an Accused should not even commence for a long number of years. Even a delay of one year in the commencement of the trial is bad enough: how much worse could it be when the delay is as long as 3 or 5 or 7 or even 10 years. Speedy trial is of the essence of criminal justice and there can be no doubt that delay in trial by itself constitutes denial of justice. It is interesting to note that in the United States, speedy trial is one of the constitutionally guaranteed rights. The Sixth Amendment to the Constitution provides that:

In all criminal prosecutions, the Accused shall enjoy the right to a speedy and public trial.

So also Article 3 of the European Convention on Human Rights provides that:

Every one arrested or detained. . . shall be entitled to trial within a reasonable time or to release pending trial.

We think that even under our Constitution, though speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21 as interpreted by this Court in Maneka Gandhi v. Union of India MANU/SC/0133/1978 : [(1978) 2 SCR 621 : (1978) 1 SCC 248]. We have held in that case that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law and it is not enough to constitute compliance with the requirement of that Article that some semblance of a procedure should be prescribed by law, but that the procedure should be "reasonable, fair and just". If a person is deprived of his liberty under a procedure which is not "reasonable, fair or just", such deprivation would be violative of his fundamental right Under Article 21, and he would be entitled to enforce such fundamental right and secure his release. Now obviously procedure prescribed by law for depriving a person of liberty cannot be 'reasonable, fair or just' unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person Accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long- delayed trial in violation of his fundamental right Under Article 21. Would he be entitled to be released unconditionally freed from the charge levelled against him on the ground that trying him after an unduly long period of time and convicting him after such trial would constitute violation of his fundamental right Under Article 21. That is a question we shall have to consider when we hear the writ petition on merits on the adjourned date. But one thing is certain, and we cannot impress it too strongly on the State Government that it is high time that the State Government realized its responsibility to the people in the matter of administration of justice and set up more courts for the trial of cases. We may point out that it would not be enough merely to establish more courts but the State Government would also have to man them by competent Judges and whatever is necessary for the purpose of recruiting competent Judges, such as improving their conditions of service, would have to be done by the State Government, if they want to improve the system of administration of justice and make it an effective instrument for reaching justice to the large masses of people for whom justice is today a meaningless and empty word.

- Hussain and Anr. v. Union of India and Ors., MANU/SC/0274/2017 : 2017 (5) SCC 702:

28. Judicial service as well as legal service are not like any other services. They are missions for serving the society. The mission is not achieved if the litigant who is waiting in the queue does

not get his turn for a long time. The Chief Justices and Chief Ministers have resolved that all cases must be disposed of within five years which by any standard is quite a long time for a case to be decided in the first court. Decision of cases of undertrials in custody is one of the priority areas. There are obstructions at every level in enforcement of right of speedy trial- - vested interests or unscrupulous elements try to delay the proceedings. Lack of infrastructure is another handicap. In spite of all odds, determined efforts are required at every level for success of the mission. Ways and means have to be found out by constant thinking and monitoring. The Presiding Officer of a court cannot rest in a state of helplessness. This is the constitutional responsibility of the State to provide necessary infrastructure and of the High Courts to monitor the functioning of subordinate courts to ensure timely disposal of cases. The first step in this direction is preparation of an appropriate action plan at the level of the High Court and thereafter at the level of each and every individual judicial officer. Implementation of the action plan will require serious efforts and constant monitoring.

29. To sum up:

29.1. The High Courts may issue directions to subordinate courts that- -

29.1.1. Bail applications be disposed of normally within one week;

29.1.2. Magisterial trials, where Accused are in custody, be normally concluded within six months and sessions trials where Accused are in custody be normally concluded within two years;

29.1.3. Efforts be made to dispose of all cases which are five years old by the end of the year;

29.1.4. As a supplement to Section 436- A, but consistent with the spirit thereof, if an undertrial has completed period of custody in excess of the sentence likely to be awarded if conviction is recorded such undertrial must be released on personal bond. Such an assessment must be made by the trial courts concerned from time to time;

29.1.5. The above timelines may be the touchstone for assessment of judicial performance in annual confidential reports.

29.2. The High Courts are requested to ensure that bail applications filed before them are decided as far as possible within one month and criminal appeals where Accused are in custody for more than five years are concluded at the earliest;

29.3. The High Courts may prepare, issue and monitor appropriate action plans for the subordinate courts;

29.4. The High Courts may monitor steps for speedy investigation and trials on administrative and judicial side from time to time;

29.5. The High Courts may take such stringent measures as may be found necessary in the light of judgment of this Court in Harish Uppal [Harish Uppal v. Union of India, MANU/SC/1141/2002 : (2003) 2 SCC 45].

30. Accordingly, we request the Chief Justices of all the High Courts to forthwith take appropriate steps consistent with the directions of this Court in Hussainara Khatoon [Hussainara Khatoon (7) v. State of Bihar, MANU/SC/0760/1995 : (1995) 5 SCC 326 : 1995 SCC (Cri.) 913], Akhtari Bi [Akhtari Bi v. State of M.P., MANU/SC/0188/2001 : (2001) 4 SCC 355 : 2001 SCC (Cri.) 714], Noor Mohammed [Noor Mohammed v. Jethanand, MANU/SC/0073/2013 : (2013) 5 SCC 202 : (2013) 2 SCC (Crv) 754], Thana Singh [Thana Singh v. Central Bureau of Narcotics, MANU/SC/0054/2013 : (2013) 2 SCC 590 : (2013) 2 SCC (Cri.) 818], Supreme Court Legal Aid Committee [Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, MANU/SC/0877/1994 : (1994) 6 SCC 731, para 15 : 1995 SCC (Cri.) 39], Imtiaz Ahmad [Imtiyaz Ahmad v. State of U.P., MANU/SC/0073/2012 : (2012) 2 SCC 688 : (2012) 1 SCC (Cri.) 986], [Imtiyaz Ahmad v. State of U.P., MANU/SC/0007/2017 : (2017) 3 SCC 658 : (2017) 3 SCC 665 : (2017) 2 SCC (Civ) 311 : (2017) 2 SCC (Civ) 318 : (2017) 2 SCC (Cri.) 228 : (2017) 2 SCC (Cri.) 235 : (2017) 1 SCC (L & S) 724 : (2017) 1 SCC (L & S) 731], Harish Uppal [Harish Uppal v. Union of India, MANU/SC/1141/2002 : (2003) 2 SCC 45] and Resolution of Chief Justices' Conference and observations hereinabove and to have appropriate monitoring mechanism in place on the administrative side as well as on the judicial side for speeding up disposal of cases of undertrials pending in subordinate courts and appeals pending in the High Courts.

• Surinder Singh @ Shingara Singh v. State Of Punjab, MANU/SC/0541/2005 : 2005 (7) SCC 387:

8. It is no doubt true that this Court has repeatedly emphasised the fact that speedy trial is a fundamental right implicit in the broad sweep and content of Article 21 of the Constitution. The aforesaid Article confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law. If a person is deprived of his liberty under a procedure which is not reasonable, fair, or just, such deprivation would be violative of his fundamental right Under Article 21 of the Constitution. It has also been emphasised by this Court that the procedure so prescribed must ensure a speedy trial for determination of the guilt of such person. It is conceded that some amount of deprivation of personal liberty cannot be avoided, but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. These are observations made in several decisions of this Court dealing with the subject of speedy trial. In this case, we are

concerned with the case where a person has been found guilty of an offence punishable Under Section 302 Indian Penal Code and who has been sentenced to imprisonment for life. The Code of Criminal Procedure affords a right of appeal to such a convict. The difficulty arises when the appeal preferred by such a convict cannot be disposed of within a reasonable time. In Kashmira Singh v. State of Punjab [MANU/SC/0099/1977 : (1977) 4 SCC 291 : 1977 SCC (Cri.) 559] this Court dealt with such a case. It is observed: (SCC pp. 292- 93, para 2)

The practice not to release on bail a person who has been sentenced to life imprisonment was evolved in the High Courts and in this Court on the basis that once a person has been found guilty and sentenced to life imprisonment, he should not be let loose, so long as his conviction and sentence are not set aside, but the underlying postulate of this practice was that the appeal of such person would be disposed of within a measurable distance of time, so that if he is ultimately found to be innocent, he would not have to remain in jail for an unduly long period. The rationale of this practice can have no application where the Court is not in a position to dispose of the appeal for five or six years. It would indeed be a travesty of justice to keep a person in jail for a period of five or six years for an offence which is ultimately found not to have been committed by him. Can the Court ever compensate him for his incarceration which is found to be unjustified? Would it be just at all for the Court to tell a person: 'We have admitted your appeal because we think you have a prima facie case, but unfortunately we have no time to hear your appeal for quite a few years and, therefore, until we hear your appeal, you must remain in jail, even though you may be innocent?' What confidence would such administration of justice inspire in the mind of the public? It may quite conceivably happen, and it has in fact happened in a few cases in this Court, that a person may serve out his full term of imprisonment before his appeal is taken up for hearing. Would a judge not be overwhelmed with a feeling of contrition while acquitting such a person after hearing the appeal? Would it not be an affront to his sense of justice? Of what avail would the acquittal be to such a person who has already served out his term of imprisonment or at any rate a major part of it? It is, therefore, absolutely essential that the practice which this Court has been following in the past must be reconsidered and so long as this Court is not in a position to hear the appeal of an Accused within a reasonable period of time, the Court should ordinarily, unless there are cogent grounds for acting otherwise, release the Accused on bail in cases where special leave has been granted to the Accused to appeal against his conviction and sentence.

9. Similar observations are found in some of the other decisions of this Court which have been brought to our notice. But, however, it is significant to note that all these decisions only lay down broad guidelines which the courts must bear in mind while dealing with an application for grant of bail to an Appellant before the court. None of the decisions lay down any invariable Rule for grant of bail on completion of a specified period of detention in custody. Indeed in a discretionary matter, like grant or refusal of bail, it would be impossible to lay down any invariable Rule or evolve a straitjacket formula. The court must exercise its discretion having regard to all the relevant facts and circumstances. What the relevant facts and circumstances are, which the court must keep in mind, has been laid down over the years by the courts in this country in a large number of decisions which are well known. It is, therefore, futile to attempt to lay down any invariable Rule or formula in such matters.

10. The counsel for the parties submitted before us that though it has been so understood by the courts in Punjab, the decision of the Punjab and Haryana High Court in Dharam Pal case [(2000) 1 Chan LR 74] only lays down guidelines and not any invariable rule. Unfortunately, the decision has been misunderstood by the Court in view of the manner in which the principles have been couched in the aforesaid judgment. After considering the various decisions of this Court and the difficulties faced by the courts, the High Court in Dharam Pal case [(2000) 1 Chan LR 74] observed: (Chan LR p. 87, para 18)

We, therefore, direct that life convicts, who have undergone at least five years of imprisonment of which at least three years should be after conviction, should be released on bail pending the hearing of their appeals should they make an application for this purpose. We are also of the opinion that the same principles ought to apply to those convicted by the courts martial and such prisoners should also be entitled to release after seeking a suspension of their sentences. We further direct that the period of five years would be reduced to four for females and minors, with at least two years imprisonment after conviction. We, however, clarify that these directions shall not be applicable in cases where the very grant of bail is forbidden by law.

Section 389 of the Code

389. Suspension of sentence pending the appeal; release of Appellant on bail.- - (1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.

Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release:

Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.

(2) The power conferred by this Section on an Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court subordinate thereto.

(3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,- -

(i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or

(ii) where the offence of which such person has been convicted is a bailable one, and he is on bail, order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court Under Sub- section (1), and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(4) When the Appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

42. Section 389 of the Code concerns itself with circumstances pending appeal leading to the release of the Appellant on bail. The power exercisable Under Section 389 is different from that of the one either Under Section 437 or Under Section 439 of the Code, pending trial. This is for the reason that "presumption of innocence" and "bail is the Rule and jail is the exception" may not be available to the Appellant who has suffered a conviction. A mere pendency of an appeal per se would not be a factor.

43. A suspension of sentence is an act of keeping the sentence in abeyance, pending the final adjudication. Though delay in taking up the main appeal would certainly be a factor and the benefit available Under Section 436A would also be considered, the Courts will have to see the relevant factors including the conviction rendered by the trial court. When it is so apparent that the appeals are not likely to be taken up and disposed of, then the delay would certainly be a factor in favour of the Appellant.

44. Thus, we hold that the delay in taking up the main appeal or revision coupled with the benefit conferred Under Section 436A of the Code among other factors ought to be considered for a favourable release on bail.

Precedents:

- Atul Tripathi v. State of U.P. and Anr., MANU/SC/0627/2014 : 2014 (9) SCC 177:

13. It may be seen that there is a marked difference between the procedure for consideration of bail Under Section 439, which is pre- conviction stage and Section 389 Code of Criminal Procedure, which is post- conviction stage. In case of Section 439, the Code provides that only

notice to the public prosecutor unless impractical be given before granting bail to a person who is Accused of an offence which is triable exclusively by the Court of Sessions or where the punishment for the offence is imprisonment for life; whereas in the case of post- conviction bail Under Section 389 Code of Criminal Procedure, where the conviction in respect of a serious offence having punishment with death or life imprisonment or imprisonment for a term not less than ten years, it is mandatory that the appellate court gives an opportunity to the public prosecutor for showing cause in writing against such release.

14. ...in case the appellate court is inclined to consider the release of the convict on bail, the public prosecutor shall be granted an opportunity to show cause in writing as to why the Appellant be not released on bail. Such a stringent provision is introduced only to ensure that the court is apprised of all the relevant factors so that the court may consider whether it is an appropriate case for release having regard to the manner in which the crime is committed, gravity of the offence, age, criminal antecedents of the convict, impact on public confidence in the justice-delivery system, etc. Despite such an opportunity being granted to the Public Prosecutor, in case no cause is shown in writing, the appellate court shall record that the State has not filed any objection in writing. This procedure is intended to ensure transparency, to ensure that there is no allegation of collusion and to ensure that the court is properly assisted by the State with true and correct facts with regard to the relevant considerations for grant of bail in respect of serious offences, at the post- conviction stage.

- Angana v. State of Rajasthan, MANU/SC/0133/2009 : (2009) 3 SCC 767:

14. When an appeal is preferred against conviction in the High Court, the Court has ample power and discretion to suspend the sentence, but that discretion has to be exercised judiciously depending on the facts and circumstances of each case. While considering the suspension of sentence, each case is to be considered on the basis of nature of the offence, manner in which occurrence had taken place, whether in any manner bail granted earlier had been misused. In fact, there is no straitjacket formula which can be applied in exercising the discretion. The facts and circumstances of each case will govern the exercise of judicial discretion while considering the application filed by the convict Under Section 389 of the Criminal Procedure Code.

- Sunil Kumar v. Vipin Kumar MANU/SC/0673/2014 : (2014) 8 SCC 868:

13. We have heard the rival legal contentions raised by both the parties. We are of the opinion that the High Court has rightly applied its discretionary power Under Section 389 Code of Criminal Procedure to enlarge the Respondents on bail. Firstly, both the criminal appeal and criminal revision filed by both the parties are pending before the High Court which means that the convictions of the Respondents are not confirmed by the appellate court. Secondly, it is an admitted fact that the Respondents had been granted bail earlier and they did not misuse the

liberty. Also, the Respondents had conceded to the occurrence of the incident though with a different version.

14. We are of the opinion that the High Court has taken into consideration all the relevant facts including the fact that the chance of the appeal being heard in the near future is extremely remote, hence, the High Court has released the Respondents on bail on the basis of sound legal reasoning. We do not wish to interfere with the decision of the High Court at this stage. The appeal is dismissed accordingly.

45. However, we hasten to add that if the court is inclined to release the Appellant on bail, it has to be predicated on his own bond as facilitated by Sub- section (1).

Section 436A of the Code

436A. Maximum period for which an undertrial prisoner can be detained.- - Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one- half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one- half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.- - In computing the period of detention under this Section for granting bail, the period of detention passed due to delay in proceeding caused by the Accused shall be excluded.

46. Section 436A of the Code has been inserted by Act 25 of 2005. This provision has got a laudable object behind it, particularly from the point of view of granting bail. This provision draws the maximum period for which an undertrial prisoner can be detained. This period has to be reckoned with the custody of the Accused during the investigation, inquiry and trial. We have already explained that the word 'trial' will have to be given an expanded meaning particularly when an appeal or admission is pending. Thus, in a case where an appeal is pending for a longer

time, to bring it Under Section 436A, the period of incarceration in all forms will have to be reckoned, and so also for the revision.

47. Under this provision, when a person has undergone detention for a period extending to one-half of the maximum period of imprisonment specified for that offense, he shall be released by the court on his personal bond with or without sureties. The word 'shall' clearly denotes the mandatory compliance of this provision. We do feel that there is not even a need for a bail application in a case of this nature particularly when the reasons for delay are not attributable against the Accused. We are also conscious of the fact that while taking a decision the public prosecutor is to be heard, and the court, if it is of the view that there is a need for continued detention longer than one- half of the said period, has to do so. However, such an exercise of power is expected to be undertaken sparingly being an exception to the general rule. Once again, we have to reiterate that 'bail is the Rule and jail is an exception' coupled with the principle governing the presumption of innocence. We have no doubt in our mind that this provision is a substantive one, facilitating liberty, being the core intendment of Article 21. The only caveat as furnished under the Explanation being the delay in the proceeding caused on account of the Accused to be excluded. This Court in Bhim Singh v. Union of India, MANU/SC/0786/2014 : (2015) 13 SCC 605, while dealing with the aforesaid provision, has directed that:

5. Having given our thoughtful consideration to the legislative policy engrafted in Section 436- A and large number of undertrial prisoners housed in the prisons, we are of the considered view that some order deserves to be passed by us so that the undertrial prisoners do not continue to be detained in prison beyond the maximum period provided Under Section 436- A.

6. We, accordingly, direct that jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge shall hold one sitting in a week in each jail/prison for two months commencing from 1- 10- 2014 for the purposes of effective implementation of Section 436- A of the Code of Criminal Procedure. In its sittings in jail, the above judicial officers shall identify the undertrial prisoners who have completed half period of the maximum period or maximum period of imprisonment provided for the said offence under the law and after complying with the procedure prescribed Under Section 436- A pass an appropriate order in jail itself for release of such undertrial prisoners who fulfil the requirement of Section 436- A for their release immediately. Such jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge shall submit the report of each of such sittings to the Registrar General of the High Court and at the end of two months, the Registrar General of each High Court shall submit the report to the Secretary General of this Court without any delay. To facilitate compliance with the above order, we direct the Jail Superintendent of each jail/prison to provide all necessary facilities for holding the court sitting by the above judicial officers. A copy of this order shall be sent to the Registrar General of each High Court, who in turn will communicate the copy of the order to all Sessions Judges within his State for necessary compliance.

48. The aforesaid directions issued by this Court if not complied fully, are expected to be complied with in order to prevent the unnecessary incarceration of undertrials, and to uphold the inviolable principle of presumption of innocence until proven guilty.

Section 437 of the Code

437. When bail may be taken in case of non- bailable offence.- - [(1) When any person Accused of, or suspected of, the commission of any non- bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of session, he may be released on bail, but- -

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a cognizable offence punishable with imprisonment for three years or more but not less than seven years:

Provided that the Court may direct that a person referred to in Clause (i) or Clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further that the Court may also direct that a person referred to in Clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:

Provided also that the mere fact that an Accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court:]

Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more, be released on bail by the Court under this Sub- section without giving an opportunity of hearing to the Public Prosecutor.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the Accused has committed a non- bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the Accused shall, subject to the provisions of Section 446A and pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) When a person Accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code (45 of 1860) or abatement of, or conspiracy or attempt to commit, any such offence, is released on bail Under Sub- section (1), the Court shall impose the conditions,- -

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

(b) that such person shall not commit an offence similar to the offence of which he is Accused, or suspected, of the commission of which he is suspected, and

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence, and may also impose, in the interests of justice, such other conditions as it considers necessary.]

(4) An officer or a Court releasing any person on bail Under Sub- section (1) or Sub- section (2), shall record in writing his or its reasons or special reasons for so doing.

(5) Any Court which has released a person on bail Under Sub- section (1) or Sub- section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

(6) If, in any case triable by a Magistrate, the trial of a person Accused of any non- bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

(7) If, at any time, after the conclusion of the trial of a person Accused of a non- bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for

believing that the Accused is not guilty of any such offence, it shall release the Accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

49. Seeking to impeach Warren Hastings for his activities during the colonial period, Sir Edmund Burke made the following famous statement in "The World's Famous Orations" authored by Bryan, William Jennings, published by New York: Funk and Wagnalls Company, 1906:

Law and arbitrary power are in eternal enmity. Name me a magistrate, and I will name property; name me power, and I will name protection. It is a contradiction in terms, it is blasphemy in religion, it is wickedness in politics, to say that any man can have arbitrary power. In every patent of office the duty is included. For what else does a magistrate exist? To suppose for power is an absurdity in idea. Judges are guided and governed by the eternal laws of justice, to which we are all subject. We may bite our chains, if we will, but we shall be made to know ourselves, and be taught that man is born to be governed by law; and he that will substitute will in the place of it is an enemy to God.

50. Section 437 of the Code is a provision dealing with bail in case of non- bailable offenses by a court other than the High Court or a Court of Sessions. Here again, bail is the Rule but the exception would come when the court is satisfied that there are reasonable grounds that the Accused has been guilty of the offense punishable either with death or imprisonment for life. Similarly, if the said person is previously convicted of an offense punishable with death or imprisonment for life or imprisonment for seven years or more or convicted previously on two or more occasions, the Accused shall not be released on bail by the magistrate.

51. Proviso to Section 437 of the Code mandates that when the Accused is under the age of sixteen years, sick or infirm or being a woman, is something which is required to be taken note of. Obviously, the court has to satisfy itself that the Accused person is sick or infirm. In a case pertaining to women, the court is expected to show some sensitivity. We have already taken note of the fact that many women who commit cognizable offenses are poor and illiterate. In many cases, upon being young they have children to take care of, and there are many instances when the children are to live in prisons. The statistics would show that more than 1000 children are living in prisons along with their mothers. This is an aspect that the courts are expected to take note of as it would not only involve the interest of the Accused, but also the children who are not expected to get exposed to the prisons. There is a grave danger of their being inherited not only with poverty but with crime as well.

52. The power of a court is quite enormous while exercising the power Under Section 437. Apart from the general principle which we have discussed, the court is also empowered to grant bail on special reasons. The said power has to be exercised keeping in view the mandate of Section 41

and 41A of the Code as well. If there is a proper exercise of power either by the investigating agencies or by the court, the majority of the problem of the undertrials would be taken care of.

53. The proviso to Section 437 warrants an opportunity to be afforded to the learned Public Prosecutor while considering an offense punishable with death, imprisonment for life, or imprisonment for seven years or more. Though, this proviso appears to be contrary to the main provision contained in Section 437(1) which, by way of a positive direction, prohibits the Magistrate from releasing a person guilty of an offense punishable with either death or imprisonment for life. It is trite that a proviso has to be understood in the teeth of the main provision. Section 437(1)(i) operates in a different field. The object is to exclude the offense exclusively triable by the Court of Sessions. Thus, one has to understand the proviso by a combined reading of Sections 437 and 439 of the Code, as the latter provision reiterates the aforesaid provision to the exclusion of the learned Magistrate over an offense triable exclusively by a Court of Sessions. To make the position clear, if the Magistrate has got the jurisdiction to try an offense for which the maximum punishment is either life or death, when such jurisdiction is conferred on the learned Magistrate, it goes without saying that the power to release the Accused on bail for the offense alleged also can be exercised. This Court in Prahlad Singh Bhati v. NCT, Delhi, MANU/SC/0193/2001 : (2001) 4 SCC 280 has held:

7. Powers of the Magistrate, while dealing with the applications for grant of bail, are regulated by the punishment prescribed for the offence in which the bail is sought. Generally speaking if punishment prescribed is for imprisonment for life and death penalty and the offence is exclusively triable by the Court of Session, the Magistrate has no jurisdiction to grant bail unless the matter is covered by the provisos attached to Section 437 of the Code. The limitations circumscribing the jurisdiction of the Magistrate are evident and apparent. Assumption of jurisdiction to entertain the application is distinguishable from the exercise of the jurisdiction.

54. We wish to place reliance on the judgment of the Bombay High Court in The Balasaheb Satbhai Merchant Coop Bank Ltd. v. The State of Maharashtra and Ors., MANU/MH/1159/2011:

13. At this stage, it may be useful to quote the observations of this Court in "Ambarish Rangshahi Patnigere v. State of Maharashtra" referred supra, which reads thus-

17. It may be noted here that the learned Counsel for intervener contended that the Magistrate did not have jurisdiction to grant bail because the offences Under Sections 467 and 409 Indian Penal Code, carry punishment which may be life imprisonment. According to the learned Counsel, if the offence is punishable with sentence of death or life imprisonment, the Magistrate cannot grant bail Under Section 437(1) Code of Criminal Procedure, unless there are special grounds mentioned therein. He relied upon certain authorities in this respect including Prahlad Sigh Bhati v. NCT, Delhi and Anr. MANU/SC/0193/2001 : JT 2001 (4) SCC 280. In that case, offence was Under Section 302 which is punishable with death sentence or life imprisonment and

is exclusively triable by Court of Sessions. The offence Under Section 409 is punishable with imprisonment for life or imprisonment for 10 years and fine. Similarly, the office Under Section 467 is also punishable with imprisonment for life or imprisonment for 10 years and fine. Even though the maximum sentence which may be awarded is life imprisonment, as per Part I of Schedule annexed to Code of Criminal Procedure, both these offences are triable by a Magistrate of First Class. It appears that there are several offences including Under Sections 326 in the Penal Code, 1860 wherein sentence, which may be awarded, is imprisonment for life or imprisonment for lesser terms and such offences are triable by Magistrate of the First Class. If the Magistrate is empowered to try the case and pass judgment and order of conviction or acquittal, it is difficult to understand why he cannot pass order granting bail, which is interlocutory in nature, in such cases. In fact, the restriction Under Section 437(1) Code of Criminal Procedure is in respect of those offences which are punishable with alternative sentence of death or life imprisonment. If the offence is punishable with life imprisonment or any other lesser sentence and is triable by Magistrate, it cannot be said that Magistrate does not have jurisdiction to consider the bail application. In taking this view, I am supported by the old Judgment of Nagpur Judicial Commissioner's Court in Tularam and Ors. v. Emperor MANU/NA/0031/1926 : 27 Cri.L.J. 1926 page 1063 and also by the Judgment of the Kerala High Court in Satyan v. State MANU/KE/0126/1981 : 1981 Cr.L.J. 1313. In Satyan, the Kerala High Court considered several earlier judgments and observed thus in paras 7 and 8:

7. According to the learned Magistrate Section 437(1) does not empower him to release a person on bail if there are reasonable grounds for believing that he has committed an offence punishable with death or an offence punishable with imprisonment for life. In other words the learned Magistrate has interpreted the expression "offence punishable with death or imprisonment for life" in Section 437(1) to include all offences where the punishment extends to imprisonment for life. This reasoning, no doubt, is seen adopted in an old Rangoon Case H.M. Boudville v. Emperor, MANU/RA/0131/1924 : AIR 1925 129 : (1925) 26 Cri. LJ 427 while interpreting the phrase "an offence punishable with death or transportation for life" in Section 497 Code of Criminal Procedure 1898. But that case was dissented from in Mahammed Eusoof v. Emperor, MANU/RA/0325/1925 : AIR 1926 Rang 51 : (1926) 27 Cri LJ 401). The Rangoon High Court held that the prohibition against granting bail is confined to cases where the sentence is either death or alternative transportation for life. In other words, what the Court held was that the phrase "death or transportation for life" in Section 497 of the old Code did not extend to offences punishable with transportation for life only, it will be interesting to note the following passage from the above judgment:

It is difficult to see what principle, other than pure empiricism should distinguish offences punishable with transportation for life from offences punishable with long terms of imprisonment; why, for instance, the detenu Accused of lurking house trespass with a view to commit theft, for which the punishment is fourteen years imprisonment, should be specially favoured as against the individual who has dishonestly received stolen property, knowing that it was obtained by dacoity, for which the punishment happens to be transportation for life? It cannot seriously be argued that the comparatively slight difference in decree of possible punishment will render it morally less likely that the person arrested will put in an appearance in the one case rather than the other. On the other hand the degree of difference is so great as

between transportation for life and death as to be immeasurable. A prudent Legislature will, therefore, withdraw from the discretion of the Magistracy cases in which, if guilt is probable, even a man of the greatest fortitude may be willing to pay a material price, however, exorbitant, for life.

The above decision has been followed by the Nagpur High Court in the case reported in Tularam v. Emperor, (MANU/NA/0031/1926 : AIR 1927 Nag 53) : (1926) 27 Cri LJ 1063).

8. The reasoning applies with equal force in interpreting the phrase "offence punishable with death or imprisonment for life" So long as an offence Under Section 326 is triable by a Magistrate of the First Class there is no reason why it should be viewed differently in the matter of granting bail from an offence Under Section 420 Indian Penal Code for which the punishment extends imprisonment for 7 years or any other non- bailable offence for which the punishment is a term of imprisonment.

It would be illogical and incomprehensible to say that the magistrate who can hold the trial and pass judgment of acquittal or conviction for the offences punishable with sentence of life imprisonment or lesser term of imprisonment, for example in offences Under Section 326, 409, 467, etc., cannot consider the application for bail in such offences. In fact, it appears that the restriction Under Section 437(1)(a) is applicable only to those cases which are punishable with death sentence or life imprisonment as alternative sentence. It may be noted that in Prahlad Sigh Bhati (supra), in para 6, the Supreme Court held that even though there is no legal bar for a Magistrate to consider an application for grant of bail to a person who is arrested for an offence exclusively triable by a Court of session, yet it would be proper and appropriate that in such a case the Magistrate directs the Accused person to approach the Court of Session for the purposes of getting the relief of bail. This may be applicable to many cases, wherein the sentence, which may be awarded, is not even life imprisonment, but the offence is exclusively triable by court of Sessions for example offences punishable Under Sections 306, 308, 314, 315, 316, 399, 400 and 450. Taking into consideration the legal position, I do not find any substance in the contention of Mr. Bhatt, learned Counsel for the intervener that merely because the offence is Under Section 409 and 467 Indian Penal Code, Magistrate did not have jurisdiction to hear and grant the bail.

14. It may also be useful to refer the observations of this Court in Ishan Vasant Deshmukh v. State of Maharashtra" referred supra, which read thus- -

The observations of the Supreme Court that generally speaking if the punishment prescribed is that of imprisonment for life or death penalty, and the offence is exclusively triable by the Court of Sessions, the Magistrate has no jurisdiction to grant bail, unless the matter is covered by the provisos attached to Section 437 of the Code. Thus, merely because an offence is punishable when imprisonment for life, it does not follow a Magistrate would have no jurisdiction to grant bail, unless offence is also exclusively triable by the Court of Sessions. This, implies that the Magistrate

would be entitled to grant bail in cases triable by him even though punishment prescribed may extend to imprisonment for life. This Judgment in Prahlad Singh Bhati's case had not been cited before Judge, who decided State of Maharashtra v. Rajkumar Kunda Swami. Had this Judgment been noticed by the Hon'ble Judge deciding that case, the observation that the Magistrate may not decide an application for bail if the offence is punishable with imprisonment for life would possibly would not have been made. In view of the observations of the Supreme Court in Prahlad Singh Bhati's case, it is clear that the view taken by J.H. Bhatia, J. in Ambarish Rangshahi Patnigere v. State of Maharashtra, reported at MANU/MH/0806/2010 : 2010 ALL Mr. (Cri.) 2775 is in tune with the Judgment of the Supreme Court and therefore, the Magistrate would have jurisdiction to grant bail.

55. Thus, we would like to reiterate the aforesaid position so that the jurisdictional Magistrate who otherwise has the jurisdiction to try a criminal case which provides for a maximum punishment of either life or death sentence, has got ample jurisdiction to consider the release on bail.

Section 439 of the Code

439. Special powers of High Court or Court of Session regarding bail.- -

(1) A High Court or Court of Session may direct- -

(a) that any person Accused of an offence and in custody be released on bail, and if the offence is of the nature specified in Sub- section (3) of Section 437, may impose any condition which it considers necessary for the purposes mentioned in that Sub- section;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:

Provided that the High Court or the Court of Session shall, before granting bail to a person who is Accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

xxx xxx xxx

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.

56. Section 439 confers a power upon the High Court or a Court of Sessions regarding the bail. This power is to be exercised against the order of the judicial magistrate exercising power Under Section 437 of the Code or in a case triable by the Court of Sessions exclusively. In the former set of cases, the observations made by us would apply to the exercise of power Under Section 439 as well.

57. Interestingly, the second proviso to Section 439 prescribes for the notice of an application to be served on the public prosecutor within a time limit of 15 days on the set of offenses mentioned thereunder. Similarly, proviso to Sub- section (1)(a) makes it obligatory to give notice of the application for bail to the public prosecutor as well as the informant or any other person authorised by him at the time of hearing the application for bail. This being the mandate of the legislation, the High Court and the Court of Sessions shall see to it that it is being complied with.

58. Section 437 of the Code empowers the Magistrate to deal with all the offenses while considering an application for bail with the exception of an offense punishable either with life imprisonment or death triable exclusively by the Court of Sessions. The first proviso facilitates a court to conditionally release on bail an Accused if he is under the age of 16 years or is a woman or is sick or infirm, as discussed earlier. This being a welfare legislation, though introduced by way of a proviso, has to be applied while considering release on bail either by the Court of Sessions or the High Court, as the case may be. The power Under Section 439 of the Code is exercised against an order rejecting an application for bail and against an offence exclusively decided by the Court of Sessions. There cannot be a divided application of proviso to Section 437, while exercising the power Under Section 439. While dealing with a welfare legislation, a purposive interpretation giving the benefit to the needy person being the intendment is the role required to be played by the court. We do not wish to state that this proviso has to be considered favourably in all cases as the application depends upon the facts and circumstances contained therein. What is required is the consideration per se by the court of this proviso among other factors.

Section 440 of the Code

440. Amount of bond and reduction thereof.- - (1) The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case and shall not be excessive.

(2) The High Court or Court of Session may direct that the bail required by a police officer or Magistrate be reduced.

59. Before we deal with the objective behind Section 440, certain precedents and laws adopted in the United States of America are required to be taken note of.

60. In the State of Illinois, a conscious decision was taken to dispense with the requirement of cost as a predominant factor in the execution of a warrant while granting bail, as such a condition is an affront to liberty, and thus, affects the fundamental rights of an arrestee. If an individual is not able to comply with the condition due to the circumstances beyond his control, and thus making it impossible for him to enjoy the fruits of the bail granted, it certainly constitutes an act of injustice. The objective behind granting of bail is different from the conditions imposed. The State of Illinois took note of the fact that a prisoner cannot be made to comply with the deposit of cash as a pre- condition for enlargement, and therefore dispensed with the same.

61. When such an onerous condition was challenged on the premise that it affects a category of persons who do not have the financial wherewithal, making them to continue in incarceration despite a temporary relief being granted, enabling them to conduct the trial as free persons, the Supreme Court of California in In re Kenneth Humphrey, S247278; 482 P.3d 1008 (2021), was pleased to hold that the very objective is lost and would possibly impair the preparation of a defense, as such, the court was of the view that such onerous conditions cannot be sustained in the eye of law. Relevant paras of the judgment are reproduced hereunder:

IV.

....In choosing between pretrial release and detention, we recognize that absolute certainty - - particularly at the pretrial stage, when the trial meant to adjudicate guilt or innocence is yet to occur - - will prove all but impossible. A court making these determinations should focus instead on risks to public or victim safety or to the integrity of the judicial process that are reasonably likely to occur. (See Stack v. Boyle MANU/FENT/0191/1951 : (1951) 342 U.S. 1, 8 (conc. opn. of Jackson, J.) ["Admission to bail always involves a risk that the Accused will take flight. That is a calculated risk which the law takes as the price of our system of justice"]; cf. Salerno, supra, 481 U.S. at p. 751 [discussing an arrestee's "identified and articulable threat to an individual or the community"].)

Even when a bail determination complies with the above prerequisites, the court must still consider whether the deprivation of liberty caused by an order of pretrial detention is consistent with state statutory and constitutional law specifically addressing bail - - a question not resolved here - - and with due process. While due process does not categorically prohibit the government from ordering pretrial detention, it remains true that "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." (Salerno, supra, 481 U.S. at p. 755.)

V.

In a crucially important respect, California law is in line with the federal Constitution: "liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." (Salerno, supra, 481 U.S. at p. 755.) An arrestee may not be held in custody pending trial unless the court has made an individualized determination that (1) the arrestee has the financial ability to pay, but nonetheless failed to pay, the amount of bail the court finds reasonably necessary to protect compelling government interests; or (2) detention is necessary to protect victim or public safety, or ensure the Defendant's appearance, and there is clear and convincing evidence that no less restrictive alternative will reasonably vindicate those interests. (See Humphrey, supra, 19 Cal.App. 5th at p. 1026.) Pretrial detention on victim and public safety grounds, subject to specific and reliable constitutional constraints, is a key element of our criminal justice system. Conditioning such detention on the arrestee's financial resources, without ever assessing whether a Defendant can meet those conditions or whether the state's interests could be met by less restrictive alternatives, is not.

62. Under Section 440 the amount of every bond executed Under Chapter XXXIII is to be fixed with regard to the circumstances of the case and shall not be excessive. This is a salutary provision which has to be kept in mind. The conditions imposed shall not be mechanical and uniform in all cases. It is a mandatory duty of the court to take into consideration the circumstances of the case and satisfy itself that it is not excessive. Imposing a condition which is impossible of compliance would be defeating the very object of the release. In this connection, we would only say that Section 436, 437, 438 and 439 of the Code are to be read in consonance. Reasonableness of the bond and surety is something which the court has to keep in mind whenever the same is insisted upon, and therefore while exercising the power Under Section 88 of the Code also the said factum has to be kept in mind. This Court in Hussainara Khatoon and Ors. v. Home Secretary, State of Bihar, MANU/SC/0119/1979 : 1980 (1) SCC 81, has held that:

8. In regard to the exercise of the judicial power to release a prisoner awaiting trial on bail or on the execution of a personal bond without sureties for his appearance, I have to say this briefly. There is an amplitude of power in this regard within the existing provisions of the Code of Criminal Procedure, and it is for the courts to fully acquaint themselves with the nature and extent of their discretion in exercising it. I think it is no longer possible to countenance a mechanical exercise of the power. What should be the amount of security required or the monetary obligation demanded in a bond is a matter calling for the careful consideration of several factors. The entire object being only to ensure that the undertrial does not flee or hide himself from trial, all the relevant considerations which enter into the determination of that question must be taken into account. [Section 440, Code of Criminal Procedure.] A synoptic impression of what the considerations could be may be drawn from the following provision in the United States Bail Reform Act of 1966:

In determining which conditions of releases will reasonably assure appearance, the judicial officer shall, on the basis of available information, take into account the nature and circumstances of the offence charged, the weight of the evidence against the Accused, the Accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings. [18 US S. 3146(b)]

These are considerations which should be kept in mind when determining the amount of the security or monetary obligation. Perhaps, if this is done the abuses attendant on the prevailing system of pre- trial release in India could be avoided or, in any event, greatly reduced. See Moti Ram v. State of M.P. [MANU/SC/0132/1978 : (1978) 4 SCC 47]

CATEGORIES A & B

63. We have already dealt with the relevant provisions which would take care of categories A and B. At the cost of repetition, we wish to state that, in category A, one would expect a better exercise of discretion on the part of the court in favour of the Accused. Coming to category B, these cases will have to be dealt with on a case- to- case basis again keeping in view the general principle of law and the provisions, as discussed by us.

SPECIAL ACTS (CATEGORY C)

64. Now we shall come to category (C). We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigor imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigor as provided Under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigor, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of Section 309 of the Code.

Precedents

- Union of India v. K.A. Najeeb, MANU/SC/0046/2021 : (2021) 3 SCC 713:

15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India [Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, MANU/SC/0877/1994 : (1994) 6 SCC 731, para 15 : 1995 SCC (Cri.) 39], it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the Accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

• Supreme Court Legal Aid Committee v. Union of India MANU/SC/0877/1994 : (1994) 6 SCC 731:

15. ...In substance the Petitioner now prays that all undertrials who are in jail for the commission of any offence or offences under the Act for a period exceeding two years on account of the delay in the disposal of cases lodged against them should be forthwith released from jail declaring their further detention to be illegal and void and pending decision of this Court on the said larger issue, they should in any case be released on bail. It is indeed true and that is obvious from the plain language of Section 36(1) of the Act, that the legislature contemplated the creation of Special Courts to speed up the trial of those prosecuted for the commission of any offence under the Act. It is equally true that similar is the objective of Section 309 of the Code. It is also true that this Court has emphasised in a series of decisions that Articles 14, 19 and 21 sustain and nourish each other and any law depriving a person of "personal liberty" must prescribe a procedure which is just, fair and reasonable, i.e., a procedure which promotes speedy trial. See Hussainara Khatoon (IV) v. Home Secy., State of Bihar [MANU/SC/0121/1979 : (1980) 1 SCC 98 : 1980 SCC (Cri.) 40], Raghubir Singh v. State of Bihar [MANU/SC/0199/1986 : (1986) 4 SCC 481 : 1986 SCC (Cri.) 511] and Kadra Pahadiya v. State of Bihar [MANU/SC/0757/1981 : (1983) 2 SCC 104 : 1983 SCC (Cri.) 361] to quote only a few. This is also the avowed objective of Section 36(1) of the Act. However, this laudable objective got frustrated when the State Government delayed the constitution of sufficient number of Special Courts in Greater Bombay; the process of constituting the first two Special Courts started with the issuance of notifications Under Section 36(1) on 4- 1- 1991 and Under Section 36(2) on 6- 4- 1991 almost two years from 29- 5- 1989 when Amendment Act 2 of 1989 became effective. Since the number of courts constituted to try offences under the Act were not sufficient and the appointments of Judges to man these courts were delayed, cases piled up and the provision in regard to enlargement on bail being strict the offenders have had to languish in jails for want of trials. As stated earlier Section 37 of the Act makes every offence punishable under the Act cognizable and non- bailable and provides that no person Accused of an offence punishable for a term of five years or more shall be released on bail unless (i) the Public Prosecutor has had an opportunity to oppose bail and (ii) if opposed, the court is satisfied that there are reasonable grounds for believing that he is not guilty of the offence and is not likely to indulge in similar activity. On account of the strict language of the said provision very few persons Accused

of certain offences under the Act could secure bail. Now to refuse bail on the one hand and to delay trial of cases on the other is clearly unfair and unreasonable and contrary to the spirit of Section 36(1) of the Act, Section 309 of the Code and Articles 14, 19 and 21 of the Constitution. We are conscious of the statutory provision finding place in Section 37 of the Act prescribing the conditions which have to be satisfied before a person Accused of an offence under the Act can be released. Indeed, we have adverted to this Section in the earlier part of the judgment. We have also kept in mind the interpretation placed on a similar provision in Section 20 of the TADA Act by the Constitution Bench in Kartar Singh v. State of Punjab [MANU/SC/1597/1994 : (1994) 3 SCC 569 : 1994 SCC (Cri.) 899]. Despite this provision, we have directed as above mainly at the call of Article 21 as the right to speedy trial may even require in some cases quashing of a criminal proceeding altogether, as held by a Constitution Bench of this Court in A.R. Antulay v. R.S. Nayak [MANU/SC/0326/1992 : (1992) 1 SCC 225 : 1992 SCC (Cri.) 93], release on bail, which can be taken to be embedded in the right of speedy trial, may, in some cases be the demand of Article 21. As we have not felt inclined to accept the extreme submission of quashing the proceedings and setting free the Accused whose trials have been delayed beyond reasonable time for reasons already alluded to, we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. It is because of this that we have felt that after the Accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21, which has to be telescoped with the right guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters. What then is the remedy? The offences under the Act are grave and, therefore, we are not inclined to agree with the submission of the learned Counsel for the Petitioner that we should quash the prosecutions and set free the Accused persons whose trials are delayed beyond reasonable time. Alternatively, he contended that such Accused persons whose trials have been delayed beyond reasonable time and are likely to be further delayed should be released on bail on such terms as this Court considers appropriate to impose. This suggestion commends to us. We were told by the learned Counsel for the State of Maharashtra that additional Special Courts have since been constituted but having regard to the large pendency of such cases in the State we are afraid this is not likely to make a significant dent in the huge pile of such cases. We, therefore, direct as under:

(i) Where the undertrial is Accused of an offence(s) under the Act prescribing a punishment of imprisonment of five years or less and fine, such an undertrial shall be released on bail if he has been in jail for a period which is not less than half the punishment provided for the offence with which he is charged and where he is charged with more than one offence, the offence providing the highest punishment. If the offence with which he is charged prescribes the maximum fine, the bail amount shall be 50% of the said amount with two sureties for like amount. If the maximum fine is not prescribed bail shall be to the satisfaction of the Special Judge concerned with two sureties for like amount.

(ii) Where the undertrial Accused is charged with an offence(s) under the Act providing for punishment exceeding five years and fine, such an undertrial shall be released on bail on the term

set out in (i) above provided that his bail amount shall in no case be less than Rs. 50,000 with two sureties for like amount.

(iii) Where the undertrial Accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.

(iv) Where an undertrial Accused is charged for the commission of an offence punishable Under Sections 31 and 31- A of the Act, such an undertrial shall not be entitled to be released on bail by virtue of this order.

The directives in clauses (i), (ii) and (iii) above shall be subject to the following general conditions:

(i) The undertrial Accused entitled to be released on bail shall deposit his passport with the learned Judge of the Special Court concerned and if he does not hold a passport he shall file an affidavit to that effect in the form that may be prescribed by the learned Special Judge. In the latter case the learned Special Judge will, if he has reason to doubt the accuracy of the statement, write to the Passport Officer concerned to verify the statement and the Passport Officer shall verify his record and send a reply within three weeks. If he fails to reply within the said time, the learned Special Judge will be entitled to act on the statement of the undertrial Accused;

(ii) the undertrial Accused shall on being released on bail present himself at the police station which has prosecuted him at least once in a month in the case of those covered under Clause (i), once in a fortnight in the case of those covered under Clause (ii) and once in a week in the case of those covered by Clause (iii), unless leave of absence is obtained in advance from the Special Judge concerned;

(iii) the benefit of the direction in clauses (ii) and (iii) shall not be available to those Accused persons who are, in the opinion of the learned Special Judge, for reasons to be stated in writing, likely to tamper with evidence or influence the prosecution witnesses;

(iv) in the case of undertrial Accused who are foreigners, the Special Judge shall, besides impounding their passports, insist on a certificate of assurance from the Embassy/High Commission of the country to which the foreigner- Accused belongs, that the said Accused shall not leave the country and shall appear before the Special Court as and when required;

(v) the undertrial Accused shall not leave the area in relation to which the Special Court is constituted except with the permission of the learned Special Judge;

(vi) the undertrial Accused may furnish bail by depositing cash equal to the bail amount;

(vii) the Special Judge will be at liberty to cancel bail if any of the above conditions are violated or a case for cancellation of bail is otherwise made out; and

(viii) after the release of the undertrial Accused pursuant to this order, the cases of those undertrials who have not been released and are in jail will be accorded priority and the Special Court will proceed with them as provided in Section 309 of the Code.

16. We may state that the above are intended to operate as one- time directions for cases in which the Accused persons are in jail and their trials are delayed. They are not intended to interfere with the Special Court's power to grant bail Under Section 37 of the Act. The Special Court will be free to exercise that power keeping in view the complaint of inordinate delay in the disposal of the pending cases. The Special Court will, notwithstanding the directions, be free to cancel bail if the Accused is found to be misusing it and grounds for cancellation of bail exist. Lastly, we grant liberty to apply in case of any difficulty in the implementation of this order.

65. We may clarify on one aspect which is on the interpretation of Section 170 of the Code. Our discussion made for the other offences would apply to these cases also. To clarify this position, we may hold that if an Accused is already under incarceration, then the same would continue, and therefore, it is needless to say that the provision of the Special Act would get applied thereafter. It is only in a case where the Accused is either not arrested consciously by the prosecution or arrested and enlarged on bail, there is no need for further arrest at the instance of the court. Similarly, we would also add that the existence of a pari materia or a similar provision like Section 167(2) of the Code available under the Special Act would have the same effect entitling the Accused for a default bail. Even here the court will have to consider the satisfaction Under Section 440 of the Code.

ECONOMIC OFFENSES (CATEGORY D)

66. What is left for us now to discuss are the economic offences. The question for consideration is whether it should be treated as a class of its own or otherwise. This issue has already been dealt with by this Court in the case of P. Chidambaram v. Directorate of Enforcement, MANU/SC/1670/2019 : (2020) 13 SCC 791, after taking note of the earlier decisions governing the field. The gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of, along with the period of sentence. After all, an

economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another. Therefore, it is not advisable on the part of the court to categorise all the offences into one group and deny bail on that basis. Suffice it to state that law, as laid down in the following judgments, will govern the field:

Precedents

• P. Chidambaram v. Directorate of Enforcement, MANU/SC/1670/2019 : (2020) 13 SCC 791:

23. Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the Rule and refusal is the exception so as to ensure that the Accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the Accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the Accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a Rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case- to- case basis on the facts involved therein and securing the presence of the Accused to stand trial.

• Sanjay Chandra v. CBI MANU/SC/1375/2011 : (2012) 1 SCC 40:

39. Coming back to the facts of the present case, both the courts have refused the request for grant of bail on two grounds: the primary ground is that the offence alleged against the Accused persons is very serious involving deep- rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that of the possibility of the Accused persons tampering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the

punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration.

40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the Accused. The primary purposes of bail in a criminal case are to relieve the Accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the Accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.

xxx xxx xxx

46. We are conscious of the fact that the Accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge- sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the Appellants are entitled to the grant of bail pending trial on stringent conditions in order to ally the apprehension expressed by CBI.

ROLE OF THE COURT

67. The rate of conviction in criminal cases in India is abysmally low. It appears to us that this factor weighs on the mind of the Court while deciding the bail applications in a negative sense. Courts tend to think that the possibility of a conviction being nearer to rarity, bail applications will have to be decided strictly, contrary to legal principles. We cannot mix up consideration of a bail application, which is not punitive in nature with that of a possible adjudication by way of trial. On the contrary, an ultimate acquittal with continued custody would be a case of grave injustice.

68. Criminal courts in general with the trial court in particular are the guardian angels of liberty. Liberty, as embedded in the Code, has to be preserved, protected, and enforced by the Criminal Courts. Any conscious failure by the Criminal Courts would constitute an affront to liberty. It is the pious duty of the Criminal Court to zealously guard and keep a consistent vision in safeguarding the constitutional values and ethos. A criminal court must uphold the constitutional thrust with responsibility mandated on them by acting akin to a high priest. This Court in Arnab

Manoranjan Goswami v. State of Maharashtra, MANU/SC/0902/2020 : (2021) 2 SCC 427, has observed that:

67. Human liberty is a precious constitutional value, which is undoubtedly subject to Regulation by validly enacted legislation. As such, the citizen is subject to the edicts of criminal law and procedure. Section 482 recognises the inherent power of the High Court to make such orders as are necessary to give effect to the provisions of Code of Criminal Procedure "or prevent abuse of the process of any court or otherwise to secure the ends of justice". Decisions of this Court require the High Courts, in exercising the jurisdiction entrusted to them Under Section 482, to act with circumspection. In emphasising that the High Court must exercise this power with a sense of restraint, the decisions of this Court are founded on the basic principle that the due enforcement of criminal law should not be obstructed by the Accused taking recourse to artifices and strategies. The public interest in ensuring the due investigation of crime is protected by ensuring that the inherent power of the High Court is exercised with caution. That indeed is one- - and a significant- - end of the spectrum. The other end of the spectrum is equally important : the recognition by Section 482 of the power inhering in the High Court to prevent the abuse of process or to secure the ends of justice is a valuable safeguard for protecting liberty. The Code of Criminal Procedure, 1898 was enacted by a legislature which was not subject to constitutional rights and limitations; yet it recognised the inherent power in Section 561- A. Post- Independence, the recognition by Parliament [Section 482 Code of Criminal Procedure, 1973] of the inherent power of the High Court must be construed as an aid to preserve the constitutional value of liberty. The writ of liberty runs through the fabric of the Constitution. The need to ensure the fair investigation of crime is undoubtedly important in itself, because it protects at one level the rights of the victim and, at a more fundamental level, the societal interest in ensuring that crime is investigated and dealt with in accordance with law. On the other hand, the misuse of the criminal law is a matter of which the High Court and the lower courts in this country must be alive. In the present case, the High Court could not but have been cognizant of the specific ground which was raised before it by the Appellant that he was being made a target as a part of a series of occurrences which have been taking place since April 2020. The specific case of the Appellant is that he has been targeted because his opinions on his television channel are unpalatable to authority. Whether the Appellant has established a case for quashing the FIR is something on which the High Court will take a final view when the proceedings are listed before it but we are clearly of the view that in failing to make even a prima facie evaluation of the FIR, the High Court abdicated its constitutional duty and function as a protector of liberty. Courts must be alive to the need to safeguard the public interest in ensuring that the due enforcement of criminal law is not obstructed. The fair investigation of crime is an aid to it. Equally it is the duty of courts across the spectrum- - the district judiciary, the High Courts and the Supreme Court- - to ensure that the criminal law does not become a weapon for the selective harassment of citizens. Courts should be alive to both ends of the spectrum- - the need to ensure the proper enforcement of criminal law on the one hand and the need, on the other, of ensuring that the law does not become a ruse for targeted harassment. Liberty across human eras is as tenuous as tenuous can be. Liberty survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the Rule of (and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting.

(emphasis supplied)

69. We wish to note the existence of exclusive Acts in the form of Bail Acts prevailing in the United Kingdom and various States of USA. These Acts prescribe adequate guidelines both for investigating agencies and the courts. We shall now take note of Section 4(1) of the Bail Act of 1976 pertaining to United Kingdom:

General right to bail of Accused persons and Ors..

4.- (1) A person to whom this Section applies shall be granted bail except as provided in Schedule 1 to this Act.

70. Even other than the aforesaid provision, the enactment does take into consideration of the principles of law which we have discussed on the presumption of innocence and the grant of bail being a matter of right.

71. Uniformity and certainty in the decisions of the court are the foundations of judicial dispensation. Persons Accused with same offense shall never be treated differently either by the same court or by the same or different courts. Such an action though by an exercise of discretion despite being a judicial one would be a grave affront to Articles 14 and 15 of the Constitution of India.

72. The Bail Act of United Kingdom takes into consideration various factors. It is an attempt to have a comprehensive law dealing with bails by following a simple procedure. The Act takes into consideration clogging of the prisons with the undertrial prisoners, cases involving the issuance of warrants, granting of bail both before and after conviction, exercise of the power by the investigating agency and the court, violation of the bail conditions, execution of bond and sureties on the unassailable principle of presumption and right to get bail. Exceptions have been carved out as mentioned in Schedule I dealing with different contingencies and factors including the nature and continuity of offence. They also include Special Acts as well. We believe there is a pressing need for a similar enactment in our country. We do not wish to say anything beyond the observation made, except to call on the Government of India to consider the introduction of an Act specifically meant for granting of bail as done in various other countries like the United Kingdom. Our belief is also for the reason that the Code as it exists today is a continuation of the pre- independence one with its modifications. We hope and trust that the Government of India would look into the suggestion made in right earnest.

SUMMARY/CONCLUSION

73. In conclusion, we would like to issue certain directions. These directions are meant for the investigating agencies and also for the courts. Accordingly, we deem it appropriate to issue the following directions, which may be subject to State amendments.:

a) The Government of India may consider the introduction of a separate enactment in the nature of a Bail Act so as to streamline the grant of bails.

b) The investigating agencies and their officers are duty- bound to comply with the mandate of Section 41 and 41A of the Code and the directions issued by this Court in Arnesh Kumar (supra). Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.

c) The courts will have to satisfy themselves on the compliance of Section 41 and 41A of the Code. Any non- compliance would entitle the Accused for grant of bail.

d) All the State Governments and the Union Territories are directed to facilitate standing orders for the procedure to be followed Under Section 41 and 41A of the Code while taking note of the order of the High Court of Delhi dated 07.02.2018 in Writ Petition (C) No. 7608 of 2018 and the standing order issued by the Delhi Police i.e. Standing Order No. 109 of 2020, to comply with the mandate of Section 41A of the Code.

e) There need not be any insistence of a bail application while considering the application Under Section 88, 170, 204 and 209 of the Code.

f) There needs to be a strict compliance of the mandate laid down in the judgment of this Court in Siddharth (supra).

g) The State and Central Governments will have to comply with the directions issued by this Court from time to time with respect to constitution of special courts. The High Court in consultation with the State Governments will have to undertake an exercise on the need for the special courts. The vacancies in the position of Presiding Officers of the special courts will have to be filled up expeditiously.

h) The High Courts are directed to undertake the exercise of finding out the undertrial prisoners who are not able to comply with the bail conditions. After doing so, appropriate action will have to be taken in light of Section 440 of the Code, facilitating the release.

i) While insisting upon sureties the mandate of Section 440 of the Code has to be kept in mind.

j) An exercise will have to be done in a similar manner to comply with the mandate of Section 436A of the Code both at the district judiciary level and the High Court as earlier directed by this Court in Bhim Singh (supra), followed by appropriate orders.

k) Bail applications ought to be disposed of within a period of two weeks except if the provisions mandate otherwise, with the exception being an intervening application. Applications for anticipatory bail are expected to be disposed of within a period of six weeks with the exception of any intervening application.

l) All State Governments, Union Territories and High Courts are directed to file affidavits/status reports within a period of four months.

74. The Registry is directed to send copy of this judgment to the Government of India and all the State Governments/Union Territories.

75. As such, M.A. 1849 of 2021 is disposed of in the aforesaid terms. I.A. No. 51315 of 2022, application for intervention is allowed. I.A. Nos. 164761 of 2021, 148421 of 2021 and M.A. Diary No. 29164 of 2021 (I.A. No. 154863 of 2021), applications for clarification/direction are also disposed of. List for compliance after a period of four months from today.

MANU/SC/0215/1980

IN THE SUPREME COURT OF INDIA

Back to Section 437 of Code of Criminal Procedure, 1973

Criminal Appeal Nos. 335, 336, 337, 338, 339, 346, 347, 350, 351, 352, 365, 366, 367, 383, 396, 397, 398, 399, 406, 415, 416, 417, 418, 419, 420, 430, 431, 438, 439, 440, 447, 448, 449, 463, 473, 474, 477, 498, 506, 508, 512, 511 of 1977, 1, 15, 16, 38, 53, 69, 70 of 1978, 469, 499 of 1977, 40, 41, 81, 82, 98, 109, 130, 141, 142, 145, 149, 153 and 154 of 1978. and Special Leave Petitions (Criminal) Nos. 260, 272, 273, 274, 383, 388 & 479 of 1978.

Back to Section 438 of Code of Criminal Procedure, 1973

Decided On: 09.04.1980

Gurbaksh Singh Sibbia and Ors. Vs. State of Punjab

Back to Section 439 of Code of Criminal Procedure, 1973

Hon'ble Judges/Coram:

Y.V. Chandrachud, C.J., O. Chinnappa Reddy, P.N. Bhagwati, R.S. Pathak and N.L. Untwalia, JJ.

JUDGMENT

Y.V. Chandrachud, C.J.

1. These appeals by Special Leave involve a question of great public importance bearing, at once, on personal liberty and the investigational powers of the police. The society has a vital stake in both of these interests, though their relative importance at any given time depends upon the complexion and restraints of political conditions. Our task in these appeals is how best to balance these interests while determining the scope of Section 438 of the CrPC, 1973 (Act No. 2 of 1974).

2. Section 438 provides for the issuance of direction for the grant of bail to a person who apprehends arrest. It reads thus :

438. (1) When any person has reason to believe that he may be arrested on an accusation of having committed a non- bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

(2) When the High Court or the Court of Session makes a direction under Sub- section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under Sub- section (3) of Section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under Sub- Section (1).

3. Criminal Appeal No. 335 of 1975 which is the first of the many appeals before us, arises out of a judgment dated September 13, 1977 of a Full Bench of the High Court of Punjab and Haryana. The appellant herein, Shri Gurbaksh Singh Sibbia, was a Minister of Irrigation and Power in the Congress Ministry of the Government of Punjab. Grave allegations of political corruption were made against him and others whereupon, applications were filed in the High Court of Punjab and Haryana Under Section 438, praying that the appellants be directed to be released on bail, in the event of their arrest on the aforesaid charges. Considering the importance of the matter, a learned Single Judge referred the applications to a Full Bench, which by its judgment dated September 13, 1977 dismissed them.

4. The CrPC, 1898 did not contain any specific provision corresponding to the present Section 438. Under the old Code, there was a sharp difference of opinion amongst the various High Courts on the question as to whether courts had the inherent power to pass an order of bail, in anticipation of arrest, the preponderance of view being that it did not have such power. The need for extensive amendments to the CrPC was felt for a long time and various suggestions were made in different quarters in order to make the Code more effective and comprehensive. The Law Commission of India, in its 41st Report dated September 24, 1969 pointed put the necessity of introducing a provision in the Code enabling the High Court and the Court of Session to grant "anticipate; bail". It observed in paragraph 39.9 of its report (Volume I) :

39.9. The suggestion for directing the release of a person on bail prior to his arrest (commonly known as "anticipatory bail") was carefully considered by us. Though there is a conflict of judicial opinion about the power of a Court to- grant anticipatory bail, the majority view is that there is no such power under the existing provisions of the Code. The necessity for granting anticipatory bail arises mainly because sometimes influential persons try to' implicate their rivals in false cases for the purpose of disgracing them or for other purposes by getting them detained in jail for some days. In recent times, with the accentuation of political rivalry, this tendency is showing signs of steady increase. Apart from false cases, where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail, there seems no justification to require him first to submit to custody, remain in prison for some days and then apply for bail.

We recommend the acceptance of this suggestion. We are further of the view that this special power should be conferred only on the High Court and the Court of Session, and that the order should take effect at the time of arrest or thereafter.

In order to settle the details of this suggestion, the following draft of a, new section is placed for consideration :

497A. (1) When any person has a reasonable apprehension that he would be arrested on an accusation of having committed a non- bailable offence, he may apply to the High Court or the Court of Session for a direction under this section. That Court may, in its discretion, direct that in the event of his arrest, he shall be released on bail.

(2) A Magistrate taking cognizance of an offence against that person shall, while taking steps Under Section 204(1), either issue summons or a bailable warrant as indicated in the direction of the Court under Sub- section (1).

(3) if any person in respect of whom such a direction is made is arrested without warrant by an officer in charge of a police station on an accusation of having committed that; offence, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, such person shall be released on bail.

We considered carefully the question of laying down in the statute certain conditions under which alone anticipatory bail could be granted. But we found that it may not be practicable to exhaustively enumerate those conditions; and moreover, the laying down of such conditions may be construed as prejudging (partially at any rate) the whole case. Hence we would leave it to the discretion, of the; court and prefer not to fetter such discretion in the statutory provision itself. Superior Courts will, undoubtedly, exercise their discretion properly, and not make any

observations in the order granting anticipatory bail which will have a tendency to prejudice the fair trial of the accused.

5. The suggestion made by the Law Commission was, in principle, accepted by the Central Government which introduced Clause 447 in the Draft Bill of the CrPC, 1970 with a view to conferring an express power on the High Court and the Court of Session to grant anticipatory bail. That Clause read thus :

447. (1) When any person has reason to believe that he would be arrested on an accusation of having committed a non- bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

(2) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the lime of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under Sub- section (1).

6. The Law Commission, in paragraph 31 of its 48th Report (1972), made the following comments on the aforesaid Clause.

31. The Bill introduces a provision for the grant of anticipatory bail. This is substantially in accordance with the recommendation made by the previous Commission. We agree that this would be a useful addition, though we must add that it is in very exceptional cases that such a power should be exercised.

We are further of the view that in order to ensure that the provision is not put to abuse at the instance of unscrupulous petitioners, the final order should be made only after notice to the Public Prosecutor. The initial order should only be an interim one. Further, the relevant section should make it clear that the direction can be issued only for reasons to be recorded, and if the court is satisfied that such a direction is necessary in the interests of justice.

It will also be convenient to provide that notice of the interim order as well as of the final orders will be given to the Superintendent of Police forthwith.

Clause 447 of the Draft Bill of 1970 was enacted with certain modifications and became Section 438 of the CrPC, 1973 which we have extracted at the outset of this judgment.

7. The facility which Section 438 affords is generally referred to as 'anticipatory bail', an expression which was used by the Law Commission in its 41st report. Neither the section nor its marginal note so describes it but, the expression 'anticipatory bail' is a convenient mode of conveying that it is possible to apply for bail in anticipation of arrest. Any order of bail can, of course, be effective only from the time of arrest because, to grant bail, as stated in Wharton's Law Lexicon, is to 'set at liberty a person arrested or imprisoned, on security being taken for his appearance'. Thus, bail is basically release from restraint, more particularly, release from the custody of the police. The act of arrest directly affects freedom of movement of the person arrested by the police, and speaking generally, an order of bail gives back to the accused that freedom on condition that he will appear to take his trial. Personal recognizance , suretyship bonds and such other modalities are the means by which an assurance is secured from the accused that though he has been released on bail, he will present himself at the trial of offence or offences of which he is charged and for which he was arrested. The distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and therefore means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore effective at the very moment of arrest. Police custody is an inevitable concomitant of arrest for non- bailable offences. An order of anticipatory bail, constitutes, so to say, an insurance against police custody following upon arrest for offence or offences in respect of which the order is issued. In other words, unlike a post- arrest order of bail, it is a pre- arrest legal process which directs that if the person in whose favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail. Section 46(1) of the CrPC which deals with how arrests are to be made, provides that in making the arrest, the police officer or other person making the arrest "shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action". A direction Under Section 438 is intended to confer conditional immunity from this 'touch' or confinement.

8. No one can accuse the police of possessing a healing touch nor indeed does anyone have misgivings in regard to constraints consequent upon confinement in police custody. But, society has come to accept and acquiesce in all that follows upon a police arrest with a certain amount of sangfroid, in so far as the ordinary rut of criminal investigation is concerned. It is the normal day-to- day business of the police to investigate into charges brought before them and, broadly and generally, they have nothing to gain, not favours at any rate, by subjecting ordinary criminals to needless harassment. But the crimes, the criminals and even the complainants can occasionally possess extra- ordinary features. When the even flow of life becomes turbid, the police can be called upon to inquire into charges arising out of political antagonism. The powerful processes of criminal law can then be perverted for achieving extraneous ends. Attendant upon such investigations, when the police are not free agents within their sphere of duty, is a great amount of inconvenience, harassment and humiliation. That can even take the form of the parading of a respectable person in handcuffs, apparently on way to a court of justice. The foul deed is done when an adversary is exposed to social ridicule and obloquy, no matter when and whether a conviction is secured or is at all possible. It is in order to meet such situations, though not limited to these contingencies, that the power to grant anticipatory bail was introduced into the Code of 1973.

9. Are we right in saying that the power conferred by Section 438 to grant anticipatory bail is "not limited to these contingencies"? In fact that is one of the main points of controversy between the parties. Whereas it is argued by Shri M.C. Bhandare, Shri O.P. Sharma and the other learned Counsel who appear for the appellants that the power to grant anticipatory bail ought to be left to the discretion of the court concerned, depending on the facts and circumstances of each particular case, it is argued by the, learned Additional Solicitor General on behalf of the State Government that the grant of anticipatory bail should at least be conditional upon the applicant showing that he is likely to be arrested for an ulterior motive, that is to say, that the proposed charge or charges are evidently baseless: and are actuated by mala, fides It is argued that anticipatory bail is an extra- ordinary remedy and therefore, whenever it appears that the proposed accusations are prima facie plausible, the applicant should be left to the ordinary remedy of applying for bail Under Section 437 or Section 439, Criminal Procedure Code, after he is arrested.

10. Shri V.M. Tarkunde, appearing on behalf of some of the appellants, while supporting the contentions of the other appellants, said that since the denial of bail amounts to deprivation of personal liberty, court should lean against the imposition of unnecessary restrictions on the scope of Section 438, when no such restrictions are imposed by the legislature in the terms of that Section. The learned Counsel added a new dimension to the argument by invoking Article 21 of the Constitution. He urged that Section 438 is a procedural provision which is concerned with the personal liberty of an individual who has not been convicted of the offence in respect of which he seeks bail and who must therefore be presumed to be innocent. The validity of that section must accordingly be examined by the test of fairness and reasonableness which is implicit in Article 21. If the legislature itself were to impose an unreasonable restriction on the grant of anticipatory bail, such a restriction could have been struck down as being violative of Article 21. Therefore, while determining the scope of Section 438, the court should not impose any unfair or unreasonable limitation on the individual's right to obtain an order of anticipatory bail. Imposition of an unfair or unreasonable limitation, according to the learned Counsel, would be violative of Article 21, irrespective of whether it is imposed by legislation or by judicial decision.

11. The Full Bench of the Punjab and Haryana High Court rejected the appellants' applications for bail after summarising, what according to it Is the true legal position, thus:

(1) The power Under Section 438, Criminal Procedure Code, is of an extra- ordinary character and must be exercised sparingly in exceptional cases only;

(2) Neither Section 438 nor any other provision of the Code authorises the grant of blanket anticipatory bail for offences not yet committed or with regard to accusations not so far leveled.

(3) The said power is not unguided or uncanalised but all the limitations imposed in the preceding Section 437, are implicit therein and must be read into Section 438.

(4) In addition to the limitations mentioned in Section 437, the petitioner must make out a special case for the exercise of the power to grant anticipatory bail.

(5) Where a legitimate case for the remand of the offender to the police custody Under Section 167(2) can be made out by the investigating agency or a reasonable claim to secure incriminating material from information likely to be received from the offender Under Section 27 of the Evidence Act can be made out, the power Under Section 438 should not be exercised.

(6) The discretion Under Section 438 cannot be exercised with regard to offences punishable with death or imprisonment for life unless the court at that very stage is satisfied that such a charge appears to be false or groundless.

(7) The larger interest of the public and State demand that in serious cases like economic offences involving blatant corruption at the higher rungs of the executive and political power, the discretion Under Section 438 of the Code should not be exercised; and

(8) Mere general allegation of mala fides in the petition are inadequate. The court must be satisfied on materials before it that the allegations of mala fides are substantial and the accusation appears to be false and groundless.

It was urged before the Full Bench that the appellants were men of substance and position who were hardly likely to abscond and would be prepared willingly to face trial. This argument was rejected with the observation that to accord differential treatment to the appellants on account of their status will amount to negation of the concept of equality before the law and that it could hardly be contended that every man of status, who was intended to be charged with serious crimes, including the one Under Section 409 which was punishable with life imprisonment, "was entitled to knock at the door of the court for anticipatory bail". The possession of high status, according to the Full Bench, is not only an irrelevant consideration for granting anticipatory bail but is, if anything, an aggravating circumstance.

12. We find ourselves unable to accept, in their totality, the submissions of the learned Additional Solicitor General or the constraints which the Full Bench of the High Court has engrafted on the power conferred by Section 438. Clause (1) of Section 438 is couched in terms, broad and unqualified. By any known canon of construction, words of width and amplitude ought not generally to be cut down so as to read into the language of the statute restraints and conditions which the legislature itself did not think it proper or necessary to impose.

This is especially true when the statutory provisions which falls for consideration is designed to secure a valuable right like the right to personal freedom and involves the application of a presumption as salutary and deep- grained in our Criminal Jurisprudence as the presumption of innocence. Though the right to apply for anticipatory bail was conferred for the first time by Section 438, while enacting that provision the legislature was not writing on a clean slate in the sense of taking an unprecedented step, in so far as the right to apply for bail is concerned. It had before it two cognate provisions of the Code : Section 437 which deals with the power of courts other than the Court of Session and the High Court to grant bail in non- bailable cases and Section 439 which deals with the "special powers" of the High Court and the Court of Session regarding bail. The whole of Section 437 is riddled and hedged in by restrictions on the power of certain courts to grant bail. That section reads thus :

437. When bail may be taken in case of non- bailable offence. (1) When any person accused of or suspected of the commission of any non- bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life :

Provided that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail:

Provided further that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial as the case may be, that there are not reasonable grounds for believing that the accused has committed a non- bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under Sub- Section (1), the Court may impose any condition which the Court considers necessary-

(a) in order to ensure that such person shall attend in accordance with the conditions of the bond executed under this Chapter, or

(b) in order to ensure that such person shall not commit an offence similar to the offence of which he is accused or of the commission of which he is suspected, or

(c) otherwise in the interests of justice.

(4) Art officer or a Court releasing any person on bail under Sub- section (1) or Sub- section (2), shall record in writing his or its reasons for so doing.

(5) Any Court which has released a person on bail under Sub- section (1) or Sub- section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

(6) If, in any case triable by a Magistrate, the trial of a person accused of any non- bailable offence is not concluded within a period of sixty days from the first date feed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

(7) If, at any time after the conclusion of the trial of a person accused of an non- bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

13. Section 439(1)(a) incorporates the conditions mentioned in Section 437(3) if the offence in respect of which the bail is sought is of the nature specified in that Sub- section. Section 439 reads thus :

439. Special powers of High Court or Court of Session regarding bail. (1) A High Court or Court of Session direct-

(a) That any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in Sub- section (3) of Section 437. may impose any condition which it considers necessary for the purposes mentioned in that Sub- section;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give notice.

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.

14. The provisions of Section 437 and 439 furnished a convenient model for the legislature to copy while enacting Section 438. If it has not done so and has departed from a pattern which could easily be adopted with the necessary modifications, it would be wrong to refuse to give to the departure its full effect by assuming that it was not intended to serve any particular or specific purpose. The departure, in our opinion, was made advisedly and purposefully : Advisedly, at least in part, because of the 41st Report of the Law Commission which, while pointing out the necessity of introducing a provision in the Code enabling the High Court and the Court of Session to grant anticipatory bail, said in paragraph 29.9 that it had "considered" carefully the question of laying down in the statute certain conditions under which alone anticipatory bail could be granted" but had come to the conclusion that the question of granting such bail should be left "to the discretion of the court" and ought not to be fettered by the statutory provision itself, since the discretion was being conferred upon superior courts which were expected to exercise it judicially. The legislature conferred a wide discretion of the High Court and the Court of Session to grant anticipatory bail because it evidently felt, firstly, that it would be difficult to enumerate the conditions under which anticipatory bail should or should not be granted and secondly, because the intention was to allow the higher courts in the echelon a somewhat free hand in the grant of relief in the nature of anticipatory, bail. That is why, departing from the terms of Sections 437 and 439, Section 438(1) uses the language that the High Court or the Court of Session "may, if it thinks fit" direct that the applicant be released on bail. Sub- section (2) of Section 438 is a further and clearer manifestation of the same legislative intent to confer a wide discretionary power to grant anticipatory bail. It provided that the High Court or the Court of Session, while issuing a direction for the grant of anticipatory bail, "may include such conditions in such directions in the light of the facts of the particular case, as it may think fit", including the conditions which are set out in Clauses (i) to (iv) of Sub- section (2). The proof of legislative intent can best be found in the language which the legislature uses. Ambiguities can undoubtedly be resolved by resort to extraneous aids but words, as wide and explicit as have been used in Section 438, must be given their full effect, especially when to refuse to do so will result in undue impairment of the freedom of the individual and the presumption of innocence. It has to be borne in mind that anticipatory bail is sought when there is a mere apprehension of arrest on the accusation that the applicant has committed a non- bailable offence. A person who has yet to lose his freedom by being arrested

asks for freedom in the event of arrest. That is the stage at which it is imperative to protect his freedom, in so far as one may, and to give full play to the presumption that he is innocent. In fact, the stage at which anticipatory bail is generally sought brings about its striking dissimilarity with the situation in which a person who is arrested for the commission of a non- bailable offence asks for bail. In the latter situation, adequate data is available to the Court, or can be called for by it, in the light of which it can grant or refuse relief and while granting it, modify it by the imposition of all or any of the conditions mentioned in Section 437.

15. This is not to say that anticipatory bail, if granted, must be granted without the imposition of any conditions. That will be plainly contrary to the very terms of Section 438. Though Sub- section (1) of that section says that the Court "may, if it thinks fit" issue the necessary direction for bail, sub- section (2) confers on the Court the power to include such conditions in the direction as, it may think fit in the light of the facts of the particular case, including the conditions mentioned in Clauses (i) to (iv) of that sub- section. The controversy therefore is not whether the Court has the power to impose conditions while granting anticipatory bail. It clearly and expressly has that power. The true question is whether by a process of construction, the amplitude of judicial discretion which is given to the High Court and the Court of Session, to impose such conditions as they may think fit while granting anticipatory bail, should be cut down by reading into the statute conditions which are not to be found therein, like those evolved by the High Court or canvassed by the learned Additional Solicitor General. Our answer, clearly and emphatically, is in the negative. The High Court and the Court of Session to whom the application for anticipatory bail is made ought to be left free in the exercise of their judicial discretion to grant bail if they consider it fit so to do on the particular facts and circumstances of the case and on such conditions as the case may warrant. Similarly, they must be left free to refuse bail if the circumstances of the case so warrant, on considerations similar to those mentioned in Section 437 or which are generally considered to be relevant Under Section 439 of the Code.

16. Generalisations on matters which rest on discretion and the attempt to discover formulae of universal application when facts are bound to differ from case to case frustrate the very purpose of conferring discretion. No two cases are alike on facts and therefore, Courts have to be allowed a little free play in the joints if the conferment of discretionary power is to be meaningful. There is no risk involved in entrusting a wide discretion to the Court of Session and the High Court in granting anticipatory bail because, firstly, these are higher courts manned by experienced persons, secondly, their orders are not final but are open to appellate or revisional scrutiny and above all because, discretion has always to be exercised by courts judicially and not according to whim, caprice or fancy. On the other hand, there is a risk in foreclosing categories of cases in which anticipatory bail may be allowed because life throws up unforeseen possibilities and offers new challenges. Judicial discretion has to be free enough to be able to take these possibilities in its stride and to meet these challenges. While dealing with the necessity for preserving judicial discretion unhampered by rules of general application, Earl Loreburn L.C. said in Hyman and Anr. v. Rose [1912] A. C 623 :

I desire in the first instance to point out that the discretion given by the section is very wide.... Now it seems to me that when the Act is so express to provide a wide discretion... it is not advisable to lay down any rigid rules for guiding that discretion. I do not doubt that the rules enunciated by the Master of the Rolls in the present case are useful maxims in general, and that in general they reflect the point of view from which judges would, regard an application for relief. But I think it ought to be distinctly understood that there may be cases in which any or all of them may be disregarded. If it were otherwise, the free discretion given by the statute would be fettered by limitations which have nowhere been enacted. It is one thing to decide what is the true meaning of the language contained in an Act of Parliament. It is quite a different thing to place conditions upon a free discretion entrusted by statute to the Court where the conditions are not based upon statutory enactment at all. It is not safe, I think, to say that the Court must and will always insist upon certain things when the Act does not require them, and the facts of some unforeseen case may make the Court wish it had kept a free hand.

17. Judges have to decide cases as they come before them, mindful of the need to keep passions and prejudices out of their decisions. And it will be strange if, by employing judicial artifices and techniques, we cut down the discretion so wisely conferred upon the Courts, by devising a formula which will confine the power to grant anticipatory bail within a strait- jacket. While laying down cast- iron rules in a matter like granting anticipatory bail, as the High Court has done, it is apt to be overlooked that even Judges can have but an imperfect awareness of the needs of new situations. Life is never static and every situation has to be assessed in the context of emerging concerns as and when it arises. Therefore, even if We were to frame a 'Code for the grant of anticipatory bail', which really is the business of the legislature, it can at best furnish broad guide- lines and cannot compel blind adhere'nce. In which case to grant bail and in which to refuse it is, in the very nature of things, a matter of discretion. But apart from the fact that the question is inherently of a kind which calls for the use of discretion from case to case, the legislature has, in terms express, relegated the decision of that question to the discretion of the court, by providing that it may grant bail "if it thinks fit". The concern of the courts generally is to preserve their discretion without meaning to abuse it. It will be strange if we exhibit concern to stultify the discretion conferred upon the Courts by law.

18. A close look at some of the rules in the eight- point code formulated by he High Court will show how difficult it is to apply them in practice. The seventh proposition says :

The larger interest of the public and State demand that in serious cases like economic offences involving blatant corruption at the higher rungs of the executive and political power, the discretion Under Section 438 of the Code should not be exercised.

19. How can the Court, even if it had a third eye, assess the bluntness of corruption at the stage of anticipatory bail ? And will it be correct to say that bluntness of the accusation will suffice for rejecting bail, even if the applicant's conduct is painted in colours tod lurid to be true ? The eighth proposition rule framed by. the High Court says :

Mere general allegations of mala fides in the petition are inadequate. The court must be satisfied on materials before it that the allegations of mala fide are substantial and the accusation appears to be false and groundless,

20. Does this rule mean, and that is the argument of the learned Additional Solicitor- General, that the anticipatory bail cannot be granted unless it is alleged (and naturally, also shown, because mere allegation is never enough) that the proposed accusations are mala fide ? It is understandable that if mala fides are shown anticipatory ;bail should be granted in the generality of cases. But it is not easy to appreciate why an application for anticipatory bail must be rejected unless the accusation is shown to be mala fide. This, truly, is the risk involved in framing rules by judicial construction. Discretion, therefore, ought to be permitted to remain in the domain of discretion, to be exercised objectively and open to correction by the higher courts. The safety of discretionary power lies in this twin protection which provides, a safeguard against its abuse.

21. According to the sixth proposition framed by the High Court, the discretion Under Section 438 cannot be exercised in regard to offences punishable with death or imprisonment for life unless, the court: at the stage of granting anticipatory bail, is satisfied that such a charge appears to be false or groundless. Now, Section 438 confers on the High Court and the Court of Session the power to grant anticipatory bail if the applicant has reason to believe that he may be arrested on an accusation of having committed "a non- bailable offence". We see no warrant for reading into this provision the conditions subject to which bail can be granted Under Section 437(1) of the Code. That section, while conferring the power to grant bail in cases, of non- bailable offences, provides by way of an exception that a person accused or suspected of the commission of a non-bailable offence "shall not be so released" if there appear to be reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life. If it was intended that the exception contained in Section 437(1) should govern the grant of relief Under Section 438(1), nothing would have been easier for the legislature than to introduce into the latter section a similar provision. We have already pointed out the basic distinction between these two sections. Section 437 applies only after a person, who is alleged to have committed a non- bailable offence, is arrested or detained without warrant or appears or is brought before a court. Section 438 applies before the arrest is made and, in fact, one of the pre- conditions of its application is that the person, who applies for relief under it, must be able to show that he has reason to believe that "he may be arrested", which plainly means that he is not yet arrested. The nexus which this 'distinction bears with the grant or refusal of bail is that in cases falling Under Section 437, there is some concrete data on the basis of which it is possible to show that there appear to be reasonable grounds for believing that the applicant has been guilty of an offence punishable with death or imprisonment for life. In cases falling Under Section 438 that stage is still to arrive and, in the generality of cases thereunder, it would be premature and indeed difficult to predicate that there are or are not reasonable grounds for so believing. The foundation of the belief spoken of in Section 437(1), by reason of which the court cannot release the applicant on bail is, normally, the credibility of the allegations contained in the First Information Report. In the majority- of cases falling Under Section 438, that data will be lacking for forming the requisite belief. If at all the conditions mentioned in Section 437 are to be read into the provisions of Section 438, the transplantation shall have to be done without amputation. That is to say, on the reasoning of the High Court, Section 438(1) shall have to be read as containing the clause that the applicant "shall not" be released on bail "if there appear reasonable grounds for believing that he has been guilty

of an offence punishable with death or imprisonment for life". In this process one shall have overlooked that whereas, the power Under Section 438(1) can be exercised if the High Court or the Court of Session "thinks fits to do so, Section 437(1) does not confer the power to grant bail in the same wide terms. The expression "if it thinks fit", which occurs in Section, 438(1) in relation to the power of the High Court or the Court of Session, is conspicuously absent in Section 437(1). We see no valid reason for re- writing Section 438 with a view, not to expanding the scope and ambit of the discretion conferred on the High Court and the Court of Session but, for the purpose of limiting it. Accordingly, we are unable to endorse the view of the High Court that anticipatory bail cannot be granted in respect of offences like criminal breach of trust for the mere reason that the punishment provided therefore is imprisonment for life. Circumstances may broadly justify the grant of bail in such cases too, though of course, the Court is free to refuse anticipatory bail in any case if there is material before it justifying such refusal.

22. A great deal has been said by the High Court on the fifth proposition, framed by it, according to which, inter alia, the power Under Section 438 should not be exercised if the investigating agency can make a reasonable claim that it can secure incriminating material from information likely to be received from the offender Under Section 27 of the Evidence Act. According to the High Court, it is the right and the duty of the police to investigate into offences brought to their notice and therefore, courts should be careful not to exercise their powers in a manner which is calculated to cause interference therewith. It is true that the functions of the Judiciary and the police are in a sense complementary and not overlapping, And, as, observed by the Privy Council in King Emperor v. Khwaja Nasir Ahmed 71 Ind App 203.

Just as it is essential that every one accused of a crime should have free access to a court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes on them the duty of inquiry. The functions of the Judiciary and the Police are complementary, not overlapping, and the combination of the individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function....

23. But, these remarks, may it be remembered, were made by the Privy Council while rejecting the view of the Lahore High Court that it had inherent jurisdiction under the old Section 561A, Criminal Procedure Code, to quash all proceedings taken by the police in pursuance of two First Information Reports made to them. An order quashing such proceedings puts an end to the proceedings with the inevitable result that all investigation into the accusation comes to a halt. Therefore, it was held that the Court cannot, in the exercise of its inherent powers, virtually direct that the police shall not investigate into the charges contained in the F.I.R. We are concerned here with a situation of an altogether different kind. An order of anticipatory bail does not in any way, directly or indirectly, take away from the police their right to investigate into charges made or to be made against the person released on bail. In fact, two of the usual conditions incorporated in a direction issued Under Section 438(1) are those recommended in Sub- section (2) (i) and (ii) which require the applicant to co- operate with the police and to assure that he shall not tamper with the witnesses during and after the investigation. While granting relief Under Section 438(1), appropriate conditions can be imposed Under Section 438(2) so as to ensure an uninterrupted

investigation. One of such conditions can even be that in the event of the police making out a case of a likely discovery Under Section 27 of the Evidence Act, the person released on bail shall be liable to be taken in police custody for facilitating the discovery. Besides, if and when the occasion arises, it may be possible for the prosecution to claim the benefit of Section 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by a person released on bail by invoking the principle stated by this Court in State of U.P. v. Deoman Upadhyaya MANU/SC/0060/1960 : 1960CriLJ1504 to the effect that when a person not in custody approaches a police officer investigating an offence and offers to give information leading to the discovery of a fact, having a bearing on the charge which may be made against him, he may appropriately be deemed to have surrendered himself to the police. The broad foundation of this rule is stated to be that Section 46 of the CrPC does not contemplate any formality before a person can be said to be taken in custody : submission to the custody by word or action by a person is sufficient. For similar reasons, we are unable to agree that anticipatory bail should be refused if a legitimate case for the remand of the offender to the police custody Under Section 167(2) of the Code is made out by the investigating agency.

24. It is unnecessary to consider the third proposition of the High Court in any great details because we have already indicated that there is no justification for reading into Section 438 the limitations mentioned in Section 437. The High Court says that such limitations are implicit in Section 438 but, with respect, no such implications arise or can be read into that section. The plenitude of the section must be given its full play.

25. The High Court says in its fourth proposition that in addition the limitations mentioned in Section 437, the petitioner must make out a "special case" for the exercise of the power to grant anticipatory bail. This, virtually, reduces the salutary power conferred by Section 438 to a dead letter. In its anxiety, otherwise just, to show that the power conferred by Section 438 is not "unguided or uncanalised", the High Court has subjected that power to a restraint which will have the effect of making the power utterly unguided. To say that the applicant must make out a "special case" for the exercise of the power to grant anticipatory bail is really to say nothing. The applicant has undoubtedly to make out a case for the grant of anticipatory bail. But one cannot go further and say that he must make out a "special case". We do not see why the provisions of Section 438 should be suspected as containing something volatile or incendiary, which needs to be handled with the greatest care and caution imaginable. A wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use. Every kind of judicial discretion, whatever may be the nature of the matter in, regard to which it is required to be exercised, has to be used with due care and caution. In fact, an awareness of the context in which the discretion is required to be exercised and of the reasonably foreseeable consequences of its use, is the hall mark of a prudent exercise of judicial discretion. One ought not to make a bugbear of the power to grant anticipatory bail.

26. By proposition No. 1 the High Court says that the power conferred by Section 438 is "of an extraordinary character and must be exercised sparingly in exceptional cases only". It may perhaps be right to describe the power as of an extraordinary character because ordinarily the

bail is applied for Under Section 437 or Section 439. These Sections deal with the power to grant or, refuse bail to a person who is in the custody of the police and that is the ordinary situation in which bail is generally applied for. But this does not justify the conclusion that the power must be exercised in exceptional cases only, because it is of an extra- ordinary character. We will really be saying once too often that all discretion has to be exercised with care and circumspection depending on circumstances justifying its exercise. It is unnecessary to travel beyond it and subject the wide power conferred by the legislature to a rigorous code of self- imposed limitations.

27. It remains only to consider the second proposition formulated by the High Court, Which is the only one with which we are disposed to agree but we will say more about it a little later.

28. It will be appropriate at this stage to refer to a decision of this Court in Balchand Jain v. State of Madhya Pradesh MANU/SC/0172/1976 : [1977]2SCR52 on which. the High Court has leaned heavily in formulating its propositions. One of us, Bhagwati J. who spoke for himself and A.C. Gupta, J. observed ed in that case that :

the power of granting 'anticipatory bail' is somewhat extraordinary in character and it is only in exceptional cases where it appears that a person might be falsely implicated, or a frivolous case might be launched against farm, or "there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail" that such power is to be exercised.

29. Fazal Ali, J. who delivered a separate judgment of concurrence also observed that:

an order for anticipatory bail is an extraordinary remedy available in special cases", and proceeded to say :

As Section 438 immediately follows Section 437 which is the main provision for bail in respect of non- bailable offences, it is manifest that the conditions imposed by Section 437(1) are implicitly contained in Section 438 of the Code. Otherwise the result would be that a person who is accused of murder can get away Under Section 438 by obtaining an order for anticipatory bail without the necessity of proving that there were reasonable grounds for believing that he was not guilty of offence punishable with death or imprisonment for life. Such a course would render the provisions of Section 437 nugatory and will give a free licence to the accused persons charged with non- bailable offences to get easy bail by approaching the Court Under Section 438 and by-passing Section 437 of the Code. This, we feel, could never have been the intention of the Legislature. Section 438 does not contain unguided or uncanalised powers to pass an order for anticipatory bail, but such an order being of an exceptional type can only be passed if, apart from the conditions mentioned in Section 437, there is a special case made out for passing the order. The words "for a direction under this section" and "Court may, if it thinks fit, direct" clearly show

that the Court has to be guided by a large number of considerations including those mentioned in Section 437 of the Code.

While stating his conclusions Fazal Ali, J. reiterated in conclusion no. 3 that "Section 438 of the Code is an extraordinary remedy and should be resorted to only in special cases."

30. We hold the decision in Balchand Jain (supra) in great respect but it is necessary to remember that the question as regards the interpretation of Section 438 did not at all arise in that case. Fazal Ali, J. has stated in paragraph 3 of his judgment that "the only point" which arose for consideration before the Court was whether the provisions of Section 438 relating to anticipatory bail stand overruled and repealed by virtue of Rule 184 of the Defence and Internal Security of India Rules, 1971: or whether both the provisions can, by the rule of harmonious interpretation, exist side by side. Bhagwati, J. has also stated in his judgment, after adverting to Section 438 that Rule 184 is what the Court was concerned with in the appeal. The observations made in Balchand Jain (supra) regarding the nature of the power conferred by Section 438 and regarding the question whether the conditions mentioned in Section 437 should be read into Section 438 cannot therefore be treated as concluding the points which arise directly for our consideration. We agree, with respect, that the power conferred by Section 438 is of an extraordinary character in the sense indicated above, namely, that it is not ordinarily resorted to like the power conferred by Sections 437 and 439. We also agree that the power to grant anticipatory bail should be exercised with due care and circumspection but beyond that, it is not possible- to agree with the observations made in Balchand Jain (supra) in an altogether different context on an altogether different point.

31. We find a great deal of substance in Mr. Tarkunde's submission that since denial of bail amounts to deprivation of personal liberty, the Court should lean against the imposition of unnecessary restrictions on the scope of Section 438, especially when no such restrictions have been imposed by the legislature in the terms of that section. Section 438 is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An over- generous infusion of constraints and conditions which are not to be found in Section 438 can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on, compliance with unreasonable restrictions. The beneficent provision contained in Section 438 must be saved, not jettisoned. No doubt) can linger after the decision in Maneka Gandhi MANU/SC/0133/1978 : [1978]2SCR621 that in order to meet the challenge of Article 21 of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable. Section 438, in the form in which it; is conceived by the legislature, is open to no exception on the ground that it prescribes a procedure which is unjust or unfair. We ought, at all costs, to avoid throwing it open to a Constitutional challenge by reading words in it which are not be found therein.

32. It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra v. King

Emperor MANU/WB/0119/1923 : AIR1924Cal476 that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the 'Meerut Conspiracy cases' observations are to- be found regarding the right to bail which observe a special mention. In K.N. Joglekar v. Emperor MANU/UP/0060/1931 : AIR1931All504 , it was observed, while dealing with Section 438 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge of the High Court wide powers to grant bail which were not handicapped by tire restrictions in the preceding Section 497 which corresponds) to the present Section 437. It was observed by the Court that there was no; hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In Emperor v. H.L. Hutchinson MANU/UP/0014/1931 : AIR1931All356 it was said that it was very unwise to make an attempt to lay down any particular rules which will bind the High Court, having regard to the fact that the legislature itself left the discretion of the Court unfettered. According) to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.

33. Coming nearer home, it was observed by Krishna Iyer, J., in Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh MANU/SC/0089/1977 : 1978CriLJ502 that "the issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process. After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of procedure established by (law. The last four words of Article 21 are the life of that human right."

34. In Gurcharan Singh v. State (Delhi Admn.) MANU/SC/0420/1978 : 1978CriLJ129 it was observed by Goswami, J. who spoke for the Court, that "there cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail."

35. In American Jurisprudence (2d, Volume 8, page 806, para 39) it is stated :

Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to

the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end.

It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.

36. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; told, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in The State v. Captain Jagjit Singh MANU/SC/0139/1961 : [1962]3SCR622 which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

37. A word of caution may perhaps be necessary in the evaluation of the consideration whether the applicant is likely to abscond. There can be no presumption that the wealthy and the mighty will submit themselves to trial and that the humble and the poor will run away from the course of justice, any more than there can be a presumption that the former are not likely to commit a crime and the latter are more likely to commit it. In his charge to the grand jury at Salisbury Assizes, 1899 (to which Krishna Iyer, J. has referred in Gudikanti), Lord Russel of Killowen said :

...it was the duty of magistrates to admit accused persons to bail, wherever practicable, unless there were strong grounds for supposing that such persons would not appear to take their trial. It was not the poorer classes who did not appear, for their circumstances were such as to tie them

to the place where they carried on their work. They had not the golden wings with which to fly from justice.

This, incidentally, will serve to show how no hard and fast rules can A, be laid down in discretionary matters like the grant or refusal of bail, whether anticipatory or otherwise. No such rules can be laid down for the simple reason that a circumstance which, in a given case, turns out to be conclusive, may have no more than ordinary signification in another case.

38. We would, therefore, prefer to leave the High Court and the Court of Session to exercise their jurisdiction Under Section 438 by a wise and careful use of their discretion which, by their long training and experience, they are ideally suited to do. The ends of justice will be better served by trusting these courts to act objectively and in consonance with principles governing the grant of bail which are recognised over the years, than by divesting them of their discretion which the legislature has conferred upon them, by laying down inflexible rules of general application. It is customary, almost chronic, to take a statute as one finds it on the grounds that, after all "the legislature in, its wisdom" has thought it fit to use a particular expression. A convention may usefully grow whereby the High Court and the Court of Session may be trusted to exercise their discretionary powers in their wisdom, especially when the discretion is entrusted to their care by the legislature in its wisdom. If they err, they are liable to be corrected.

39. This should be the end of the matter, but it is necessary to clarify a few points which have given rise to certain misgivings.

40. Section 438(1) of the Code lays down a condition which has to be satisfied before anticipatory bail can be granted. The applicant must; show that he has "reason to believe" that he may be arrested for a non- bailable offence. The use of the expression "reason to believe" shows that the belief that the applicant may be so arrested must be founded on reasonable grounds. Mere 'fear' is not 'belief, for which reason it is not enough for the applicant to show that he has some sort of a vague apprehension that some one is going to make an accusation against him, in pursuance of which he may be arrested. The grounds on which the belief of the applicant is based that he may be arrested for a non- bailable offence, must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be so arrested. Section 438(1), therefore, cannot be invoked on the basis of vague and general allegations, as if to arm oneself in perpetuity against a possible arrest. Otherwise, the number of applications for anticipatory bail H will be as large as, at any rate, the adult populace. Anticipatory bail is a device to secure the individual's liberty; it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations, likely or unlikely.

41. Secondly, if an application for anticipatory bail is made to the High Court or the Court of Session it must apply its own mind to the question and decide whether a case has been made out for granting such relief. It cannot leave the question for the decision of the Magistrate concerned Under Section 437 of the Code, as and when an occasion arises. Such a course will defeat the very object of Section 438.

42. Thirdly, the filing of a First Information Report is not a condition precedent to the exercise of the power Under Section 438. The imminence of a likely arrest founded on a reasonable belief can be shown to exist even if an F.I.R. is not yet filed.

43. Fourthly, anticipatory bail can be granted even after an F.I.R. is filed, so long as the applicant has not been arrested.

44. Fifthly, the provisions of Section 438 cannot be invoked after the arrest of the accused. The grant of "anticipatory bail" to an accused who is under arrest involves a contradiction in terms, in so far as the offence or offences for which he 'is arrested, are concerned. After arrest, the accused must seek his remedy Under Section 437 or Section 439 of the Code, if he wants to be released on bail in respect of the offence or offences for which he is arrested.

45. We have said that there is one proposition formulated by the High Court with which we are inclined to agree. That is preposition No. (2). We agree that a 'blanket order' of anticipatory bail should not generally be passed. This flows from the very language of the section which, as discussed above, requires the applicant to show that he has "reason to believe" that he may be arrested. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine. That is why, normally, a direction should not issue Under Section 438(1) to the effect that the applicant shall be released on bail "whenever arrested for whichever offence whatsoever." That is what is meant by a 'blanket order' of anticipatory bail, an order which serves as a blanket to cover or protect any and every kind of allegedly unlawful activity, in fact any eventuality, likely or unlikely regarding which, no concrete information can possibly be had. The rationale of a direction Under Section 438(1) is the belief of the applicant founded on reasonable grounds that he may be arrested for a non- bailable offence. It is unrealistic to expect the applicant to draw up his application with the meticulousness of a pleading hi a civil case and such is not requirement of the section.; But specific events; and facts must be disclosed by the applicant in order to enable the court to judge of the reasonableness of his belief, the existence of which is the sine qua non of the exercise of power conferred by the section.

46. Apart from the fact that the very language of the statute compels this construction, there is an important principle involved in the insistence that facts, on the basis of which a direction Under Section 438(1) is sought, must be clear and specific, not vague and general. It is only by the observance of that principle that a possible conflict between the right of an individual to his liberty and the right of the police to investigate into crimes reported to them can be avoided.

47. A blanket order of anticipatory bail is bound to cause serious interference with both the right and the duty of the police in the matter of investigation because, regardless of what kind of

offence is alleged to have been committed by the applicant and when, an order of bail which comprehends allegedly unlawful activity of any description whatsoever, will prevent the police from arresting the applicant even if he commits, say, a murder in the presence of the public. Such an order can then become a charter of lawlessness and a weapon to stifle prompt investigation into offences which could not possibly be predicated when the order was passed. Therefore, the court which grants anticipatory bail must take care to specify the offence or offences in respect of which alone the order will be effective. The power should not be exercised in a. vacuum.

48. There was some discussion before us on certain minor modalities regarding the passing of bail orders Under Section 438(1). Can an carder of bail be passed under that section without notice to the public prosecutor? It can be. But notice should issue to the public prosecutor or the Government Advocate forthwith and the question of bail should be re- examined in the light of the respective contentions of the parties. The ad- interim order too must conform to the requirements of the section and suitable conditions should be imposed on the applicant even at that stage. Should the operation of an order passed Under Section 438(1) be limited in point of tune? Not necessarily. The Court may, if there are reasons for doing so, limit the operation of the order to a short period until after the filing of an F.I.R. in respect of the matter covered by the order. The applicant may in such cases be directed to obtain an order of bail Under Section 437 or 439 of the Code within a reasonably short period after the filing of the F.I.R. as aforesaid. But this need not be followed as an invariable rule. The normal rule should be not to limit the operation of the order in relation to a period of time.

49. During the last couple of years this Court, while dealing with appeals against orders passed by various High Courts, has granted anticipatory bail to many a person by imposing conditions set out in; Section 438(2)(i), (ii) and (iii). The Court has, in addition, directed in most of those cases that (a) the applicant should surrender himself to the police for a brief period if a discovery is to be made Under Section 27 of the Evidence Act or that he should be deemed to have surrendered himself if such a discovery is to be made. In certain exceptional cases, the Court has", in view of the material placed before it, directed that the order of anticipatory bail will remain in operation only for a week or so until after the filing of the F.I.R. in respect of matters covered by the order. These orders, on the whole, have worked satisfactorily , causing the least inconvenience to the individuals concerned and least interference with the investigational rights of the police. The Court has attempted through those orders to strike a balance between the individual's right to personal freedom and the investigational rights of the police. The appellants who were refused anticipatory bail by various courts have long since been released by this Court Under Section 438(1) of the Code.

50. The various appeals and Special Leave petitions before us will stand disposed of in terms of this Judgment. The judgment of the Full Bench of the Punjab and Haryana High Court, which was treated as the main case under appeal, is substantially set aside as indicated during the course of this Judgment.

MANU/DE/7847/2023

Neutral Citation: 2023/DHC/8429

Back to Section 482 of Code of Criminal Procedure, 1973

IN THE HIGH COURT OF DELHI

W.P. (Crl.) 562/2023 and Crl. M.A. 5126/2023

Decided On: 24.11.2023

Rajinder Singh Chadha Vs. Union of India and Ors.

Hon'ble Judges/Coram:

Amit Sharma, J.

JUDGMENT

Amit Sharma, J.

1. The present petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') seeks primarily the following prayer:

"i. Pass a writ/order/direction in the nature of certiorari thereby issuing direction to quash and set aside all proceedings and actions taken pursuant to the Enforcement Case Information Report bearing number ECIR/09/HIU/2019 dated 27.06.2019."

Background

2. Briefly stated, the facts of the case, relevant for adjudication of the present petition are as under:

i. Two FIRs, i.e., FIR No. 16/2018 dated 24.01.2018 and FIR No. 49/2021 dated 12.03.2021 were registered under Sections 420/406/120B of the Indian Penal Code, 1860 ('IPC') at PS Economic Offences Wing ('EOW'). The said FIRs. were registered against the persons accused therein, including the petitioner and arose out of a similar set of facts and circumstances.

ii. In both the FIRs, the respective complainants, inter- alia, alleged that despite payment of monies in 2006- 07, they did not receive possession of flats, as was promised by accused company M/s Uppal Chadha Hi- Tech (hereinafter referred to as the 'company'). It was alleged that in his capacity as a Director of the said firm, the petitioner was responsible for siphoning of the funds collected from the complainants.

iii. During the pendency of the respective trials in FIRs. No. 16/2018 and 49/2021, the accused persons therein settled the dispute with the respective complainants amicably.

iv. In FIR No. 16/2018, the accused persons moved an application for compounding under Section 320 of the CrPC before the learned Trial Court, which was allowed vide order dated 19.11.2019 passed by Sh. Deepak Sherawat, Chief Metropolitan Magistrate, South- East, Saket and the accused persons were accordingly acquitted for offences under Sections 406/420/120B of the IPC.

v. FIR No. 49/2021 was quashed by a coordinate bench of this Court, vide order dated 22.12.2022 passed in CRL.MC. 7083/2022 titled 'Uppal Chadha Hi Tech Developers Pvt. Ltd. & Ors. v. State & Ors.'.

vi. The present ECIR was lodged on 26.07.2019 by the Directorate of Enforcement/respondent no. 2 ('the department') against M/s Uppal Chadha Hi- Tech, Harmandeep Singh, Gurjit Singh Kochar, Kritika Gupta, Rajinder Singh Chadha- the petitioner and other unknown persons.

vii. After the ECIR was lodged, the department carried out a search and seizure on 18.11.2022 under Section 17(1) of the Prevention of Money Laundering Act, 2002 at the office and residential premises of the petitioner. Various phones, documents, digital records and cash was seized. Follow- up searches were conducted on 19.11.2022, 22.11.2022 and 09.12.2022. Pursuant to the search and seizure, the department filed an application under Section 17(4) of the PMLA for retention of records and digital devices seized on 18.11.2022, 19.11.2022, 22.11.2022 and 09.12.2022.

viii. A show- cause notice under Section 8(1) of the PMLA, alongwith recording of reasons dated 21.12.2022 was issued by the Adjudicating Authority to the petitioner, for filing of a written response, on or before 09.02.2023, as to why the department's application under Section 17(4) of the PMLA should not be allowed.

Submissions of behalf of the Petitioner/Rajinder Singh Chadha

3. Learned Senior Counsel appearing on behalf of the petitioner submitted that the basis of the present ECIR, i.e., the predicate offences in FIRs. No. 16/2018 and 49/2021 now stand compounded and quashed, respectively. As a consequence of that, the jurisdictional fact which formed the basis of the department's investigation has now come to an end and hence, the ECIR and the subsequent proceedings cannot continue any longer. Attention of this Court was drawn

to the application under Section 17(4) of the PMLA filed on behalf of the department, wherein it has been clearly stated that the ECIR in question was registered on account of FIRs. No. 16/2018 and 49/2021. It was submitted that it is thus clear, that the ECIR was initiated on account of the aforesaid two FIRs, which no longer exist and therefore, the ECIR cannot continue either. In support of the said argument, learned Senior Counsel for the petitioner placed reliance on the following judgments:

i. Vijay Madanlal Choudhary & Ors. v. Union of India & Ors., MANU/SC/0924/2022 : 2022:INSC:757.

ii. Harish Fabiani and Ors. v. Enforcement Directorate & Ors., MANU/DE/3707/2022.

iii. Naresh Goyal v. The Directorate of Enforcement, Judgment dated 20.02.2023 passed by the Hon'ble High Court of Bombay in Criminal Writ Petition No. 4037 of 2022.

iv. Prakash Industries Limited v. Union of India and Ors., MANU/DE/0424/2023 : 2023:DHC:481.

v. Parvathi Kollur and Anr. v. State by Directorate of Enforcement MANU/SC/1517/2022, Order dated 16.08.2022 passed by the Hon'ble Supreme Court in Criminal Appeal No. 1254/2022.

vi. Directorate of Enforcement v. M/s Obulapuram Mining Company, Order dated 02.12.2022 passed by the Hon'ble Supreme Court in Criminal Appeal No. 1269/2017.

vii. EMTA Coal v. Deputy Director, Directorate of Enforcement MANU/DE/0181/2023, 2023/DHC/000277.

viii. M/s Nik Nish Retail and Anr. v. Assistant Director, Enforcement Directorate, Government of India and Ors., MANU/WB/1688/2022.

ix. Manturi Shashi Kumar v. ED, MANU/TL/0641/2023.

x. Arun Kumar and Ors vs. Union of India and Others, MANU/SC/7267/2007 : (2007) 1 SCC 732.

3.1. Reliance was placed on Vijay Madanlal Choudhary and Ors. v. Union of India, (supra), and in particular, the following paragraphs thereof:

"253. Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression "derived or obtained" is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money- laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of definition clause "proceeds of crime", as it obtains as of now.

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281. The next question is : whether the offence under Section 3 is a standalone offence? Indeed, it is dependent on the wrongful and illegal gain of property as a result of criminal activity relating to a scheduled offence. Nevertheless, it is concerning the process or activity connected with such property, which constitutes offence of money- laundering. The property must qualify the definition of "proceeds of crime" under Section 2(1)(u) of the 2002 Act. As observed earlier, all or whole of the crime property linked to scheduled offence need not be regarded as proceeds of crime, but all properties qualifying the definition of "proceeds of crime" under Section 2(1)(u) will necessarily be crime properties. Indeed, in the event of acquittal of the person concerned or being absolved from allegation of criminal activity relating to scheduled offence, and if it is established in the court of law that the crime property in the concerned case has been rightfully owned and possessed by him, such a property by no stretch of imagination can be termed as crime property and ex- consequenti proceeds of crime within the meaning of Section 2(1)(u) as it stands today. On the other hand, in the trial in connection with the scheduled offence, the Court would be obliged to direct return of such property as belonging to him. It would be then paradoxical to still regard such property as proceeds of crime despite such adjudication by a Court of competent jurisdiction. It is well within the jurisdiction of the concerned Court trying the scheduled offence to pronounce on that matter.

467. In light of the above analysis, we now proceed to summarise our conclusion on seminal points in issue in the following terms:-

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(v)

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(d) The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money- laundering. The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money- laundering against him or any one claiming such property being the property linked to stated scheduled offence through him."

3.2. Learned Senior Counsel submitted that in Naresh Goyal (supra), it was held as under:

"11. Although, the learned counsel for the respondent No. 1- ED tried to impress upon this Court that the ECIR is a private internal document and not at par with an FIR, and as such is not required to be quashed, the said submission was not pressed, when the learned senior counsel for the petitioner in both the petitions showed a copy of the order passed by the Apex Court in the case of M/s. Obulapuram Mining Company Pvt. Ltd. (supra). In the said case, the learned Solicitor General appearing for the appellant- ED made a statement that since the proceedings before the Court (Apex Court) arose from an order of attachment and there is acquittal in respect of the predicate offence, the ED proceeding really would not survive.

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13. As noted above, admittedly there is no scheduled offence as against the petitioner in both the petitions, in view of the closure report filed by the police, which was accepted by the Courts as stated aforesaid. There being no predicate offence i.e. scheduled offence, the impugned ECIR registered by the respondent No. 1- ED will not survive and as such the said ECIR will have to be quashed and set aside."

3.3. Reliance was placed on a judgment of the Hon'ble High Court of Calcutta in Nik Nish Retail (supra) and in particular, on the following paragraph thereof:

"34. The quashing of FIR of regular case automatically created a situation that the offences, stated and alleged in the FIR has no existence; thus the "Scheduled Offence" has also no existence after quashing of the FIR. When there is no "Scheduled Offence", the proceeding initiated under the provisions of Prevention of Money Laundering Act, 2002 cannot stand alone."

It was further submitted that the aforesaid judgment in Nik Nish Retail (supra) was carried in appeal before the Hon'ble Supreme Court and was not interfered with. The said Special Leave Petition (Criminal) Diary No. 24321/2023 titled 'Assistant Director Enforcement Directorate v. M/s Nik Nish Retail Ltd. & Ors.' was disposed of by the Hon'ble Supreme Court vide order dated 14.07.2023 in the following terms:

"In paragraph 187 (v)(d) of the decision in the case of Vijay Madanlal Chowdhury & Ors. v. Union of India & Ors. MANU/SC/0924/2022, it is held that even if predicate offence is quashed by the Court of competent 1 jurisdiction, there can be no offence of money laundering against the accused.

Appropriate proceedings can be always filed by the concerned parties for challenging the order by which predicate offence was quashed. If the said order is set aside and the case is revived, it will be always open for the petitioner to revive the proceedings under the Prevention of Money Laundering Act, 2002.

The Special Leave Petition is accordingly disposed of.

Pending application also stands disposed of."

3.4. In support of his contentions, learned Senior Counsel drew the attention of this Court to Arun Kumar (supra), wherein it has been held as under:

"74. A "jurisdictional fact" is a fact which must exist before a court, tribunal or an authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess.

75. In Halsbury's Laws of England, it has been stated:

"Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of, the issue. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive."

76. The existence of jurisdictional fact is thus sine qua non or condition precedent for the exercise of power by a court of limited jurisdiction."

Submissions on behalf of Respondent No. 2/Directorate of Enforcement

4. Per contra, learned Special Counsel for the department submitted that on the basis of the complaints filed by the investors of the company, the EOW registered FIRs. no. 16/2018 under Sections 420/406/120B of the IPC against the company and its Directors, including the petitioner. On the basis of the aforesaid FIR, the department recorded ECIR/09/HIU/2019 on 27.06.2019. It was further pointed out that initially, in the FIR, there were 20 complainants/victims, however, at the time of filing of chargesheet, there were 60 more complainants and as per the petitioner, they had settled the dispute only with 61 out of aforesaid 80 complainants. It was pointed out that so far as regarding compounding of offences is concerned, in the order dated 19.11.2019 passed by the learned Magistrate compounding FIR No. 16/2018, it has been recorded that the petitioner had undertaken to settle the dispute with the remaining complainants as well. It was further pointed out that thereafter, fresh complaints were received and the EOW registered another FIR No. 49/2021 dated 12.03.2021 and the said FIR was also taken on record in the existing ECIR/09/HIU/2019. Thereafter, the petitioner approached this Court seeking quashing of FIR No. 49/2021 and the same was allowed by a coordinate bench of this Court vide order dated 22.12.2022 passed in CRL.MC. 7083/2022.

5. It was submitted on behalf of the department that as per the chargesheet dated 14.02.2022, filed by the EOW in FIR No. 49/2021, there were a total of 77 complainants and the petitioner had only settled the dispute with 55 complainants. It was further pointed out that there are 22 more complainants/victims with whom the petitioner has not settled the dispute. It was further submitted that 79 complaints are still pending before RERA, Uttar Pradesh against the company.

6. It was further pointed out that during the pendency of the present petition, on the basis of the complaint received from one Ms. Shobhna Gupta, FIR No. 55/2023 dated 10.07.2023 was registered against the aforesaid company and its Directors under Sections 409/420/120B of the IPC at PS EOW. The said FIR No. 55/2023 is stated to have been made on the basis of similar allegations as in the previous FIRs. It was further pointed that the aforesaid FIR was taken on

record for further investigation in the already opened ECIR/09/HIU/2019, which is the subject matter of the present petition.

7. Learned Special Counsel for respondent further submitted that the petitioner was one of the Directors in the companies- M/s UCHDPL, Chadha Infrastructure Developers Pvt. Ltd. and M/s Wave Infratech Pvt. Ltd. An amount of Rs. 175.95 crores is stated to have been transferred to Chadha Infrastructure Developers Pvt. Ltd. and Rs. 87.02 crores has been transferred to M/s Wave Infratech Pvt. Ltd. It was submitted that the petitioner was a director in the companies Chadha Infrastructure Developers Pvt. Ltd. as well as M/s Wave Infratech Pvt Ltd at the time of transfer of funds. It was pointed out that the petitioner is ultimate beneficiary and had a significant role in the activities connected with money laundering including possession and diversion of funds.

8. In support of his contentions, learned Special Counsel placed reliance on Vijay Madanlal Choudhary (supra) and in particular, the following paragraphs thereof:

"461. It is true that the ED Manual may be an internal document for departmental use and in the nature of set of administrative orders. It is equally true that the accused or for that matter common public may not be entitled to have access to such administrative instructions being highly confidential and dealing with complex issues concerning mode and manner of investigation, for internal guidance of officers of ED. It is also correct to say that there is no such requirement under the 2002 Act or for that matter, that there is nothing like investigation of a crime of money-laundering as per the scheme of 2002 Act. The investigation, however, is to track the property being proceeds of crime and to attach the same for being dealt with under the 2002 Act. Stricto sensu, it is in the nature of an inquiry in respect of civil action of attachment. Nevertheless, since the inquiry in due course ends in identifying the offender who is involved in the process or activity connected with the proceeds of crime and then to prosecute him, it is possible for the department to outline the situations in which that course could be adopted in reference to specific provisions of 2002 Act or the Rules framed thereunder; and in which event, what are the options available to such person before the Authority or the Special Court, as the case may be. Such document may come handy and disseminate information to all concerned. At least the feasibility of placing such document on the official website of ED may be explored.

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457. Suffice it to observe that being a special legislation providing for special mechanism regarding inquiry/investigation of offence of money- laundering, analogy cannot be drawn from the provisions of 1973 Code, in regard to registration of offence of money- laundering and more so being a complaint procedure prescribed under the 2002 Act. Further, the authorities referred to in Section 48 of the 2002 Act alone are competent to file such complaint. It is a different matter that the materials/evidence collected by the same authorities for the purpose of civil action of

attachment of proceeds of crime and confiscation thereof may be used to prosecute the person involved in the process or activity connected with the proceeds of crime for offence of money-laundering. Considering the mechanism of inquiry/investigation for proceeding against the property (being proceeds of crime) under this Act by way of civil action (attachment and confiscation), there is no need to formally register an ECIR, unlike registration of an FIR by the jurisdictional police in respect of cognizable offence under the ordinary law. There is force in the stand taken by the ED that ECIR is an internal document created by the department before initiating penal action or prosecution against the person involved with process or activity connected with proceeds of crime. Thus, ECIR is not a statutory document, nor there is any provision in 2002 Act requiring Authority referred to in Section 48 to record ECIR or to furnish copy thereof to the accused unlike Section 154 of the 1973 Code. The fact that such ECIR has not been recorded, does not come in the way of the authorities referred to in Section 48 of the 2002 Act to commence inquiry/investigation for initiating civil action of attachment of property being proceeds of crime by following prescribed procedure in that regard.

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467. In light of the above analysis, we now proceed to summarise our conclusion on seminal points in issue in the following terms:-

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(xviii)(a) In view of special mechanism envisaged by the 2002 Act, ECIR cannot be equated with an FIR under the 1973 Code. ECIR is an internal document of the ED and the fact that FIR in respect of scheduled offence has not been recorded does not come in the way of the Authorities referred to in Section 48 to commence inquiry/investigation for initiating "civil action" of "provisional attachment" of property being proceeds of crime...."

9. Learned Special Counsel for the department further submitted that since the inquiries/investigation under PMLA culminate into a complaint and the same being a complaint case, at this stage, raising an argument that ECIR is to be quashed because some of the FIRs. are compromised, is pre- mature since the scheduled offence continues to exist. It was submitted that once the inquiry/investigation is concluded and the respondent files a complaint, the petitioner can avail of his remedies under the CrPC.

10. Learned Special Counsel submitted that as on the present day, even if there exists a single complainant, who is aggrieved by the accused company and its directors, the two conditions laid down by the Hon'ble Supreme Court in Vijay Madanlal Choudhary (supra) for closing the PMLA proceedings, cannot be satisfied. The said two conditions are as under:

"281. The next question is : whether the offence under Section 3 is a standalone offence? Indeed, it is dependent on the wrongful and illegal gain of property as a result of criminal activity relating to a scheduled offence. Nevertheless, it is concerning the process or activity connected with such property, which constitutes offence of money- laundering. The property must qualify the definition of "proceeds of crime" under Section 2(1)(u) of the 2002 Act. As observed earlier, all or whole of the crime property linked to scheduled offence need not be regarded as proceeds of crime, but all properties qualifying the definition of "proceeds of crime" under Section 2(1)(u) will necessarily be crime properties. Indeed, in the event of acquittal of the person concerned or being absolved from allegation of criminal activity relating to scheduled offence, and if it is established in the court of law that the crime property in the concerned case has been rightfully owned and possessed by him, such a property by no stretch of imagination can be termed as crime property and ex- consequenti proceeds of crime within the meaning of Section 2(1)(u) as it stands today. On the other hand, in the trial in connection with the scheduled offence, the Court would be obliged to direct return of such property as belonging to him. It would be then paradoxical to still regard such property as proceeds of crime despite such adjudication by a Court of competent jurisdiction. It is well within the jurisdiction of the concerned Court trying the scheduled offence to pronounce on that matter."

(emphasis supplied)

11. It was further contended on behalf of the department that it is a well settled principle that the offence of money laundering is an independent offence. Reliance in support of the said contention was placed on:

i. Vijay Madanlal Choudhary & Ors. vs. Union of India & Ors MANU/SC/0924/2022 : 2022:INSC:757.

ii. Judgment dated 12.05.2023 passed by the Hon'ble Supreme Court in ED vs Aditya Tripathi MANU/SC/0571/2023, Criminal Appeal No. 1401/2023.

iii. P. Rajendran vs. Directorate of Enforcement MANU/TN/7667/2022- Judgment dated 14.09.2022 passed by the Hon'ble Madras High Court in Criminal Original Petition No. 19880 of 2022.

iv. J. Sekar vs. Union of India & Ors. MANU/DE/0075/2018.

v. Radha Mohan Lakhotia vs. Directorate of Enforcement MANU/MH/1011/2010.

vi. Dr. Manik Bhattacharaya vs. Ramesh Malik & Ors. MANU/SC/1356/2022- SLP (C) 16325/2022.

12. It was submitted that the petitioner, during the course of arguments has heavily placed reliance on the judgement of Nik Nish Retail (supra), but the same is misplaced, as the facts of the said case were that a full and final settlement was entered between the Bank and Group of Companies, and the same was duly complied with. In the present case, the hard- earned money of innocent home- buyers was at stake, and the company i.e., M/s UCHDPL failed to settle the matter with every complainant, rather new FIRs. by aggrieved home- buyers continued to be filed like the FIR 55/2023.

13. Similarly, it was submitted that in the relied upon judgement of Manturi Shashi Kumar (supra), the Hon'ble Court observed- "In the meanwhile, in view of the settlement arrived at between the de facto complainant and appellant No. 1, the criminal court referred the matter to Lok Adalat and when the matter was settled in Lok Adalat, the criminal court discharged appellant No. 1 vide order dated 20.03.2018 leading to closure of the criminal case as well." However, in the present case it is an admitted fact that the petitioner/accused persons have not settled the matter with all the complainants, which is evident from the facts that on 10.07.2023 the EOW on the basis of a complaint received from one Mrs. Shobhna Gupta registered a FIR bearing No. 55/2023 against M/s Uppal Chadha Hi Tech Developers Ltd (M/s UDCHDPL), Manpreet Singh Chadha, Harmandeep Singh Kandhari, Rajiv Gupta, Ginni Chadha, Sanjeev Jain, Rahul Chauhan and others.

14. Learned Special Counsel further submitted that the petitioner has placed reliance on the judgement of Hon'ble High Court of Karnataka in Mantri Developers and Ors. vs. DOE in Writ Petition 20713 of 2022, however the same has no bearing on the present case as the scheduled offence exists till date. In the present case the scheduled offences took place pursuant to which multiple FIRs. were registered, some of which were settled by the accused. However fresh complaints were filed against the same accused, and on basis of that fresh FIR No. 55/2023 was filed registered qua the same project and same company, which is still in existence.

15. It was further contended on behalf of the department that the argument of the petitioner that FIR No. 55/2023 cannot be added to the existing ECIR, and the department should record an additional ECIR is against the scheme of the PMLA. In this regard it was submitted that the entire PMLA does not mention or define the term 'ECIR' and the same is an internal departmental document for administrative purposes.

16. It was submitted that the scheme of the PMLA is that when a scheduled offence exists, and if there exist prima facie proceeds of crime, the department is statutorily empowered to commence an "inquiry". Further, for inquiry under the Act, neither an FIR nor an ECIR is required.

17. Therefore, it was submitted that the judgements relied upon on behalf of the petitioner are not applicable to the present case, for the reason that in all the cited judgements, either pursuant to a settlement there was a complete quashing of the predicate offence and nothing survived, or there was a clean acquittal in the predicate offence, unlike the peculiar facts of the present case.

Rejoinder on behalf of the Petitioner/Rajinder Singh Chadha

18. In rejoinder, learned counsel for the petitioner submitted that the argument raised by the learned Special Counsel for the department that investigation of the department can be quashed only if a person is finally absolved is not tenable in view of the precedents cited hereinabove, i.e., Nik Nish Retail (supra), which has been confirmed by the Hon'ble Supreme Court vide order dated 14.07.2023 and in Manturi Shashi Kumar (supra) where it has been held in Para 28 that 'it is immaterial for the purpose of PMLA whether acquittal is on merit or composition'.

19. The second limb of arguments raised by the learned Special Counsel for respondent to the effect "that possibility of commission of scheduled offence cannot be ruled out" is also not tenable in view of the observation made by the Hon'ble Supreme Court in Vijay Madanlal (supra) at Para 467 (v)(d) that "the authorities under the 2002 act cannot prosecute any person on a notional basis or on the assumption that a scheduled offence has been committed". It was submitted that the stand taken by the department is contrary to the aforesaid proposition since it is seeking to justify continuing an investigation on a notional basis that there exists a possibility of commission of a scheduled offence.

20. It was submitted that the third limb of the department's argument that the investigation in the impugned ECIR must be kept active on the basis of FIR No. 55/2023 dated 10.07.2023 registered at PS EOW is misplaced as a predicate offence is a jurisdictional fact which permits the department to carry out an investigation under the PMLA. Reliance was placed on a judgment dated 14.12.2022 passed by the Hon'ble High Court of Karnataka, Principal Bench at Bengaluru in WP No. 20713/2022 titled 'Mantri Developers Pvt. Ltd. v. Directorate of Enforcement', wherein it was held that because the predicate offence is a jurisdictional fact, if the investigation in the predicate offence is stayed, the investigation in the PMLA offence should also be stayed.

21. Reliance was further placed on Arun Kumar (supra) wherein it has been held that 'a jurisdictional fact is a fact which must exist before a court, tribunal or an authority assumes jurisdiction over a particular matter.'. Similarly, reliance was placed on Badrinath v. Government of Tamil Nadu, MANU/SC/0624/2000 : (2000) 8 SCC 395 and on State of Kerala v. Puthenkavu

N.S.S. Karayogam, MANU/SC/2110/2001 : (2001) 10 SCC 191 wherein the Hon'ble Supreme Court has observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to judicial, quasi-judicial and administrative proceedings equally.

22. Lastly, it was submitted that the final limb of argument of the department that it can commence an investigation is an existing ECIR without the existence of predicate offence is fallacious. Reliance was placed on a judgment of a coordinate bench of this Court in Prakash Industries (supra) wherein it has been held that 'what needs to be emphasized is that while the adoption of peremptory measures by the ED may be justified and are so sanctioned by the Act, it would be incorrect to construe those powers as the ED alone being entitled to adjudge or declare that a predicate offence stands committed'.

23. It was further submitted that the power of the department to investigate/enquire without registration of scheduled offence is an emergency power which can only be exercised at a preliminary stage and that too subject to the respondent ensuring the registration of a scheduled offence.

Analysis and Findings

24. Heard learned counsel for the parties and perused the record.

25. The proposition of law, as advanced by learned Senior Counsel for the petitioner is not in dispute. In absence of a predicate offence, there can be no offence of money laundering and as per the judgment of the Hon'ble Supreme Court in Vijay Madanlal Choudhary & Ors. v. Union of India & Ors., MANU/SC/0924/2022 : 2022:INSC:757, such prosecution will not be maintainable. In absence of a 'scheduled offence', criminal proceedings initiated under the PMLA cannot survive. In the present case, the two FIRs, i.e., FIR No. 16/2018 dated 24.01.2018 and FIR No. 49/2021 dated 12.03.2021 registered at PS EOW, have been compounded and quashed, respectively, on the ground of compromise. It is pertinent to note that the State has not challenged the aforesaid orders on the ground that the matter was not settled with all the complainants. It is also noted that the remaining complainants, if any, have also not challenged the aforesaid orders on the ground that settlement was not arrived at with them.

26. For the purpose of adjudication of the present petition, the following dates are relevant:

i. 24.01.2018- FIR No. 16/2018 under Sections 420/406/120B of the IPC is registered at PS EOW against the accused persons, including the petitioner.

ii. 27.06.2019- Impugned ECIR/09/HIU/2019 is registered by the departments on the basis of the scheduled offences in FIR No. 16/2018.

iii. 19.11.2019- The learned Trial Court allows an application under Section 320 of the CrPC moved on behalf of the accused persons for compounding of FIR No. 16/2018 registered at PS EOW based on an amicable settlement arrived at between the parties and acquitted the accused persons.

iv. 12.03.2021- FIR No. 49/2021 under Sections 420/406/120B of the IPC is registered at PS EOW against the accused persons, including the petitioner. Consequently, the said FIR is taken on record in the existing ECIR/09/HIU/2019.

v. 18.11.2022- The department carries out search and seizure in terms of Section 17(1) of the PMLA.

vi. 19.11.2022, 22.11.2022 and 09.12.2022- The department carries out follow- up searches and seizures.

ix. 15.12.2022- An application under Section 17(4) of the PMLA is moved by the department for retention of records and digital devices seized on 18.11.2022, 19.11.2022, 22.11.2022 and 09.12.2022.

x. 21.12.2022- A show- cause notice under Section 8(1) of the PMLA was issued by the Adjudicating Authority to the petitioner, for filing of a written response to the department's application under Section 17(4) of the PMLA.

vii. 22.12.2022- FIR No. 49/2021 is quashed by a coordinate bench of this Court.

viii. 10.07.2023- FIR No. 55/2023 is registered at PS EOW under Sections 409/420/120B of the IPC and taken on record in impugned ECIR/09/HIU/2019.

27. Thus, in the aforesaid peculiar facts of the case, the issue before this Court is whether the department is justified in continuing with the investigation/proceedings in the impugned ECIR/09/HIU/2019, which was initially registered on the basis of scheduled offences in FIR No. 16/2018 and thereafter continued on the basis of FIR No. 49/2021, by taking on record scheduled

offences in FIR No. 55/2023 registered at PS EOW on 10.07.2023 based on similar allegations as in the earlier FIRs, especially in view of the fact that scheduled offences in the first two FIRs. stood compounded/quashed?

28. It is pertinent to note that the aforesaid FIRs. were registered at the instance of investors who were aggrieved by the non- completion of a project by the company. A perusal of the aforesaid list of dates reflect that although the impugned ECIR was registered initially on the basis of scheduled offences registered vide FIR No. 16/2018 dated 24.01.2018 which stood compounded vide order dated 19.11.2019, the second FIR No. 49/2021 which was registered on 12.03.2021 was taken on record in the impugned ECIR by the department and the proceedings continued under the same. The department chose not to register a separate ECIR, but took on record the scheduled offences registered vide FIR No. 49/2021 in the same ECIR, inter- alia, on the ground that it related to the same transaction and involved the same accused persons. The fact that FIR No. 49/2021 was taken on record by the department in the present ECIR despite an order of compounding and acquittal was not challenged by the petitioner.

29. Hon'ble Supreme Court in Vijay Madanlal Choudhary (supra) has held that there is no corresponding provision to Section 154 of the CrPC in the PMLA requiring registration of an offence of money laundering. While observing the same, the Hon'ble Supreme Court held as under:

"457....there is no need to formally register an ECIR, unlike registration of an FIR by the jurisdictional police in respect of cognizable offence under the ordinary law. There is force in the stand taken by the ED that ECIR is an internal document created by the department before initiating penal action or prosecution against the person involved with process or activity connected with proceeds of crime. Thus, ECIR is not a statutory document, nor there is any provision in 2002 Act requiring Authority referred to in Section 48 to record ECIR or to furnish copy thereof to the accused unlike Section 154 of the 1973 Code "

(emphasis supplied)

30. In the aforesaid context, it is pertinent to refer to a reference decided by a learned division bench of this Court in State v. Khimji Bhai Jadeja, MANU/DE/2157/2019 : 2019:DHC:3239- DB , wherein, inter- alia, the following question of law was considered:

"a. Whether in a case of inducement, allurement and cheating of large number of investors/depositors in pursuance to a criminal conspiracy, each deposit by an investor constitutes a separate and individual transaction or all such transactions can be amalgamated and clubbed into a single FIR by showing one investor as complainant and others as witnesses?"

Answering the aforesaid question, the learned Division Bench of this Court held as under:

"61. The practice followed by the Delhi Police/State of registering a single FIR on the basis of the complaint of one of the complainants/victims, and of treating the other complainants/victims merely as witnesses, even otherwise, raises very serious issues with regard to deprivation of rights of such complainants/victims to pursue their complaints, and to ensure that the culprits are brought to justice. Firstly, the other complainants/victims cannot be merely cited as witnesses in respect of the complaint of one of the victims on the basis of which the FIR is registered. They may not be witnesses in respect of the transaction forming the basis of the registration of the case. In a situation where hundreds of persons claim that they have been cheated by the same accused at different locations and at different points of time by adoption of the same modus operandi, it is unthinkable and unlikely that all the complainants/victims- who are cited as witnesses, would be witnesses to the single transaction in relation to which FIR is registered. They may, at the most, be witnesses only to establish the conspiracy- which is an allied offence, but unless there is a charge framed in respect of the specific act of cheating- to which each of the Complainant/victim is subjected, it may not be permissible to cite such other complainants/victims as witnesses to prove the act of cheating relating to them. Mere citing a large number of complainants/victims only as witnesses would also deny them the right to file their protest petitions in the eventuality of a closure report being field by the police in respect of the complaint on the basis of which FIR was registered, or the Magistrate not accepting the final report/charge- sheet and discharging the accused. (See Bhagwat Singh v. Commissioner of Police, MANU/SC/0063/1985 : (1985) 2 SCC 537 : AIR 1985 SC 1285). Their right to oppose, or to seek cancellation of bail that the accused may seek in relation to their particular transaction would also be denied. If the accused enters into a settlement/compromise with the complainant on whose complaint the FIR stands registered, and he chooses not to diligently participate in the trial, the complaints of other victims may go unaddressed. Thus, the practice adopted by the State/Delhi Police, and which is sought to be defended by them, is clearly erroneous and not sustainable in law.

*** *** ***

63. Thus, our answer to Question (a) is that in a case of inducement, allurement and cheating of large number of investors/depositors in pursuance to a criminal conspiracy, each deposit by an investor constitutes a separate and individual transaction. All such transactions cannot be amalgamated and clubbed into a single FIR by showing one investor as the complainant, and others as witnesses. In respect of each such transaction, it is imperative for the State to register a separate FIR if the complainant discloses commission of a cognizable offence.?"

The aforesaid judgment was challenged before the Hon'ble Supreme Court in SLP (Crl.) No. 9198/2019 titled 'The State (NCT) of Delhi v. Khimji Bhai Jadeja MANU/SCOR/51993/2019' and was stayed vide order dated 25.11.2019.

31. The significance of the aforesaid judgment is with respect to the scheme of the CrPC, and in particular, Section 154 of the said Code. As pointed out hereinabove, Hon'ble Supreme Court, in

Vijay Madanlal Choudhary (supra) has clearly carved out a distinction between an ECIR under the PMLA and an FIR under the provisions of the CrPC. The Hon'ble Supreme Court accepted the statement of the department that the ECIR is an 'internal document' created by them. The ECIR in the present case was registered on a prima facie satisfaction for commission of offence under Section 3 of the PMLA. The department, by way of the present ECIR, was not investigating the case of home- buyers/investors in respect of the allegations in the first two FIRs. but with respect to alleged 'proceeds of crime' generated from commission of the alleged scheduled offences in the FIR registered at the instance of the home- buyers/investors. There is no dispute with regard to the fact that the third FIR, i.e., FIR No. 55/2023 also relates to the same project which was the subject matter of the two previous FIRs. In the present factual context, even if separate FIRs. are registered at the instance of separate home- buyers/investors, each of the said FIRs. cannot be considered as a separate cause of action for registration of different ECIRs.

32. The stand taken by the department in the written submissions filed by learned Special Counsel is that 'The argument of the petitioner that FIR 55/2023 cannot be added to the existing ECIR, and ED should record an additional ECIR is against the scheme of the PMLA Act. In this regard it is submitted that the entire PMLA Act does not even mention the term 'ECIR', that ECIR is an internal departmental document for administrative purposes'. In view thereof, as stated hereinbefore, the third FIR in the present case relates to the commission of a 'scheduled offence' in respect of the complainant therein, but for the purposes of an investigation under the PMLA, it would be the part of the same ECIR which related to investigation pertaining to 'proceeds of crime' under the PMLA in the previous FIRs. Needless to state, the Hon'ble Supreme Court, in Vijay Madanlal Choudhary (supra), has categorically held that the offence under PMLA is an independent offence. Since the ECIR has not been equated with an FIR and has been held to be an internal document, there cannot possibly be a restriction to bringing on record on any subsequent 'scheduled offence' registered by way of an FIR alleged to have been committed in respect of the same transaction which was the subject matter of such ECIR.

33. The proposition of law laid down in judicial precedents relied upon by learned Senior Counsel for the petitioner is not in dispute. In the said cases, the 'scheduled offence' was quashed or compounded in all respects. In the present case, 'scheduled offences' by way of the third FIR still exist. It is pertinent to note that even in an FIR being investigated by the local police involving multiple complainants, compounding with some of them will not be a ground for quashing of the said FIR. However, partial compounding/quashing is permissible.

34. In so far as the submission of learned Senior Counsel with respect to the issue of the 'jurisdictional fact' is concerned, it is noted that during the pendency of the impugned ECIR, the registration of a third FIR with respect to 'scheduled offences' gives jurisdiction to the department to investigate by taking the said third FIR on record. The authorities cited by learned Senior Counsel for the petitioner are distinguishable with respect to the facts of the present cases. For the sake of repetition, it is noted that after the third FIR was taken on record, the impugned ECIR cannot be stated to be without a predicate offence. The issue before the Court, as explained hereinabove, is whether the investigation in the impugned ECIR can continue on the basis of

registration of the third FIR. It is clarified that since this Court is of the opinion that the ECIR, as explained in Vijay Madanlal Choudhary (supra) cannot be equated with an FIR and as per the stand of the department, the same is only for administrative purposes, there is no impediment in taking the third FIR on record which related to the same project forming the basis for registration of the first two FIRs, resulting in initiation of the impugned ECIR. This, however, cannot ipso facto have any bearing on the legitimacy of the investigation or proceeding in the ECIR with respect to the 'scheduled offences' in the first two FIRs. Reliance is placed on Vijay Madanlal Choudhary (supra), wherein it has been held as under:

"467. In light of the above analysis, we now proceed to summarise our conclusion on seminal points in issue in the following terms:-

*** *** ***

(v)

*** *** ***

(d) The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money- laundering. The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money- laundering against him or any one claiming such property being the property linked to stated scheduled offence through him."

In light of the aforesaid judgment of the Hon'ble Supreme Court and in view of the judgments relied upon by learned Senior Counsel for the petitioner, the principle that can be culled out is that a 'scheduled offence', after an FIR has been quashed, cannot exist and therefore, if there is no 'scheduled offence', there can be no offence of money laundering with respect to the same. Thus, in the considered opinion of this Court, in the present case, there can be no prosecution under the PMLA with respect to the 'scheduled offences' in the first two FIRs, i.e., FIR No. 16/2018 and FIR No. 49/2021 registered at PS EOW.

35. More recently, a coordinate bench of this Court, in Nayati Healthcare and Research NCR Pvt. Ltd. and Ors. through its Authorised Representative Sh. Satish Kumar Narula & Ors. v. Union of India Ministry of Home Affairs through its Standing Counsel & Anr., MANU/DEOR/123327/2023 : 2023:DHC:7542, while relying upon Vijay Madanlal Choudhary (supra) and Nik Nish Retail (supra)observed and held as under:

"13. The Telangana High Court in Manturi Shashi Kumar (supra) has also quashed a complaint under Section 3 of the PMLA on the grounds of the accused being discharged/acquitted of the scheduled offence. The relevant observations of the said judgment are set out below:-

"28. Thus, according to Supreme Court, the offence under Section 3 of PMLA is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. If the person is finally discharged or acquitted of the scheduled offence or the criminal case against him is quashed by the court, there can be no offence of money laundering against him or anyone claiming such property being the property linked to the scheduled offence. It is immaterial for the purpose of PMLA whether acquittal is on merit or on composition."

14. In view of the aforesaid legal position, the present complaint filed by the ED and the proceedings arising therefrom cannot survive. Considering that the FIR has been quashed by this court and that it has not been challenged till date, there can be no offence of money laundering under section 3 of the PMLA against the petitioners.

15. Accordingly, the present petition is allowed and the ECIR bearing No. ECIR/51/DLZO-II/2021 and proceedings arising therefrom are quashed. Consequently, the Look Out Circular issued against the petitioners in respect of the aforesaid ECIR also stands quashed.

36. In view of the aforesaid discussion and in the peculiar facts and circumstances of the case, ECIR/09/HIU/2019 dated 27.06.2019 cannot be quashed in view of registration of FIR No. 55/2023 dated 10.07.2023 under Sections 409/420/120B of the IPC at PS EOW as this would constitute 'scheduled offences' legitimizing the existence of the said ECIR. However, since 'scheduled offences' in FIR No. 16/2018 dated 24.01.2018 under Sections 420/406/120B of the IPC and FIR No. 49/2021 dated 12.03.2021 under Sections 420/406/120B of the IPC, registered at PS EOW have been compounded and quashed, respectively, the department cannot initiate or continue any proceeding including investigation in connection with the said two FIRs. Accordingly, the proceedings undertaken with respect to the said two FIRs. qua the present petitioner in the present ECIR stand quashed.

37. The petition is accordingly partly allowed and disposed of.

38. Pending applications, if any, also stand disposed of.

39. Judgment be uploaded on the website of this Court, forthwith.

MANU/SC/0196/2004

Back to Section 482 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 357 of 1997

Decided On: 09.03.2004

Jagdish Ram Vs. State of Rajasthan and Ors.

Hon'ble Judges/Coram:

Y.K. Sabharwal and Dr. Arijit Pasayat, JJ.

JUDGMENT

Y.K. Sabharwal, J.

1. This matter pertains to an incident that took place in the year 1985. The criminal proceedings before the Magistrate have not crossed the stage of taking cognizance. One of the contentions urged in this appeal for quashing the criminal proceedings is long delay of 19 years.

2. The appellant is a District Ayurvedic Officer. The complainant is a Class IV employee in Ayurvedic Aushdhalaya, Fatehgarh. According to the complainant on 7th November, 1985 when the appellant visited the said place several patients were present. The appellant asked the complainant to bring water. When the complainant brought water, he was insulted by the appellant who said to him "I do not want to spoil my religion by drinking water from your hands. How have you dared to give water" and started abusing him. The complainant has filed a complaint in the court of Chief Judicial Magistrate alleging commission of offence punishable under Section 7 of the Protection of Civil Rights Act, 1955 (hereinafter referred to as 'the Act').

3. The practice of untouch ability in any form has been forbidden by Article 17 of the Constitution of India which inter alia provides that "untouch ability" is abolished, the enforcement of any disability arising out of "untouch ability" shall be an offence punishable in accordance with law. To comply the mandate of the Constitution, the Act has been enacted inter alia with a view to prescribe punishment for the preaching and practice of "untouch ability", for the enforcement of disability arising therefrom and for matters connected therewith.

4. The aforesaid complaint was sent to the police under Section 156(3) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') for investigation. A case was registered and investigation conducted. The investigating officer examined the complainant and other witnesses and also obtained copies of certain documents. After completing the investigation the police

submitted a final reported under Section 173 of the Code stating that the complaint was false and in fact on 7th November the complainant was found absent from duty and, therefore, he was asked to take casual leave for half day and it is on that account a false complaint was lodged by him.

5. After the submission of the above noticed final report by the police the complainant submitted another complaint. The statements of the witnesses who were said to be present at the time of the occurrence were examined by the Additional Chief Judicial Magistrate who by order dated 26th June, 1986 found a prima facie case, took cognizance and issued process against the appellant. The order issuing the process was challenged by the appellant in a revision petition filed before the Sessions Judge which was dismissed. On a petition filed under Section 482 of the Code, the orders of the Additional Chief Judicial Magistrate taking cognizance as also of the Sessions Judge were set aside by the High Court by judgment dated 26th May, 1988 and the case was remanded to the trial court to proceed according to law keeping in view the observations made in the judgment. The High Court inter alia observed that the trial court should consider the entire material available on record before deciding whether the process should be issued against the accused or not

6. After remand, on consideration of the material on record, the Magistrate again reached the same conclusion and took cognizance by order dated 22nd January, 1990. This led to filing of another petition under Section 482 of the Code by the appellant. Again the High Court by judgment dated 27th May, 1994 set aside the order dated 22nd January, 1990 inter alia noticing that the Additional Chief Judicial Magistrate while disagreeing with the final report should have given some reasons for not accepting it and this time also the case was remanded to the Magistrate directing him to consider the material available on record and thereafter pass appropriate order deciding whether the process should be issued or not on the basis of the available material.

7. In this appeal, we are not going into the correctness of the judgments of the High Court dated 26th May, 1988 or 27th May, 1994. These judgments have attained finality. Suffice it to say that as directed by the High Court, the Magistrate again considered the matter for the third time. Again, by order dated 16th December, 1994 the Magistrate reached the same conclusion as had been reached on two earlier occasions and took cognizance of offence under Section 7 of the Act against the appellant and directed that the appellant be summoned.

8. There was a third petition under Section 482 of the Code before the High Court challenging the order taking cognizance. This time the appellant was not lucky. The High Court by the impugned judgment dated 4th May, 1996 rejected the contention that the Additional Chief Judicial Magistrate passed the order without considering the entire material on record. The High Court held that no case for exercising inherent powers under Section 482 of the Code was made out.

9. Challenging the judgment of the High Court, the appellant is before this Court on grant of leave. This Court had stayed the proceedings before the Magistrate pending decision of the appeal.

10. The contention urged is that though the trial court was directed to consider the entire material on record including the final report before deciding whether the process should be issued against the appellant or not, yet entire material was not considered. From perusal of order passed by the Magistrate it cannot be said that the entire material was not taken into consideration. The order passed by the Magistrate taking cognizance is a well written order. The order not only refers to the statements recorded by the police during investigation which led to the filing of final report by the police and the statements of witnesses recorded by the Magistrate under Sections 200 and 202 of the Code but also sets out with clarity the principles required to be kept in mind at the stage of taking cognizance and reaching a prima facie view. At this stage, the Magistrate had only to decide whether sufficient ground exists or not for further proceeding in the matter. It is well settled that notwithstanding the opinion of the police, a magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The investigation is the exclusive domain of the police. The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.

(Dy. Chief Controller of Imports & Exports v. Roshanlal Agarwal and Ors. MANU/SC/0182/2003 :

2003CriLJ1698).

11. The High Court has rightly concluded that the order passed by the Magistrate does not call for any interference in exercise of inherent powers under Section 482 of the Code.

12. Mr. Jain urged an additional ground for quashing the order. Learned counsel contends that the appellant is facing the criminal proceedings for the last 19 years and, therefore, the proceedings deserve to be quashed on the ground of delay. Support is sought from S.G. Nain v. Union of India MANU/SC/0114/1992 : 1992CriLJ560 , Bihar State Electricity Board and Anr. v. Nand Kishore Tamakhuwala MANU/SC/0286/1986 : 1986CriLJ1246 and Ramanand Chaudhary v. State of Bihar and Ors. [2002] 1 SCC 153. In these cases, the criminal proceedings were quashed having regard to peculiar facts involved therein including this Court also entertaining some doubts about the case being made against the accused. In none of these decisions any binding principle has been laid down that the criminal proceedings deserve to be quashed merely on account of delay without anything more and without going into the reasons for delay.

13. It is to be borne in mind that the appellant has been successively approaching the High Court every time when an order taking cognizance was passed by the Magistrate, It is because of the appellant that the criminal proceedings before the Magistrate did not cross the stage of taking cognizance. As earlier noticed, since earlier judgments of the High Court have attained finality, we are not going into correctness of these judgments. When third time the appellant was not successful before the High Court, he has approached this Court and at his instance the proceedings before the trial court were stayed. In fact, from 1986 till date the criminal case has not proceeded further because of the appellant. It would be an abuse of the process of the court if the appellant is now allowed to urge delay as a ground for quashing the criminal proceedings. In considering the question whether criminal proceedings deserve to be quashed on the ground of delay, the first question to be looked into is the reason for delay as also the seriousness of the offence. Regarding the reasons for delay, the appellant has to thank himself. He is responsible for delay. Regarding the seriousness of the offence, we may notice that the ill of untouch ability was abolished under the Constitution and the Act under which the complaint in question has been filed was enacted nearly half a century ago. The plea that the complaint was filed as a result of vindictiveness of the complainant is not relevant at this stage. The appellant would have adequate opportunity to raise all pleas available to him in law before the trial court at an appropriate stage. No case has been made out to quash the criminal proceedings on the ground of delay.

14. Having regard to the enormous delay, we direct the trial court to expedite the trial and dispose of the case within a period of six months. For the reasons aforestated, the appeal is dismissed.

MANU/SC/0448/2020

Neutral Citation: 2020/INSC/400

Back to Section 482 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Writ Petition (Criminal) No. 130 of 2020 and Writ Petition (Criminal) Dairy No. 11189 of 2020
(Under Article 32 of the Constitution of India)

Decided On: 19.05.2020

Arnab Ranjan Goswami Vs. Union of India (UOI) and Ors.

Hon'ble Judges/Coram:

Dr. D.Y. Chandrachud and M.R. Shah, JJ.

JUDGMENT

Dr. D.Y. Chandrachud, J.

Writ Petition (Crl.) No. 130 of 2020

1. The Petitioner is the Editor- in- Chief of an English television news channel, Republic TV. He is also the Managing Director of ARG Outlier Media Asianet News Private Limited which owns and operates a Hindi television news channel by the name of R Bharat. The Petitioner anchors news shows on both channels.

2. On 16 April 2020, a broadcast took place on Republic TV. This was followed by a broadcast on R Bharat on 21 April 2020. These broadcasts led to the lodging of multiple First Information Reports1 and criminal complaints against the Petitioner. They have been lodged in the States of Maharashtra, Chhattisgarh, Rajasthan, Madhya Pradesh, Telangana and Jharkhand as well as in the Union Territories of Jammu and Kashmir. In the State of Maharashtra, an FIR was lodged at Police Station Sadar, District Nagpur City. The details of this FIR are:

Maharashtra

FIR No. 238 of 2020, dated 22 April 2020, registered at Police Station Sadar, District Nagpur City, Maharashtra, Under Sections 153, 153- A, 153- B, 295- A, 298, 500, 504(2), 506, 120- B and 117 of the Indian Penal Code 1860.

Apart from the above FIR, as many as fourteen other FIRs and complaints have been lodged against the Petitioner, of which the details are extracted below:

• FIR No. 245 of 2020, dated 22 April 2020, registered at Police Station Supela, District Durg, Chhattisgarh, Under Sections 153- A, 295- A and 505(2) of the Indian Penal Code 1860.

• FIR No. 180 of 2020, dated 23 April 2020, registered at Police Station Bhilal Nagar, District Durg, Chhattisgarh, Under Sections 153- A, 188, 290 and 505(1) of the Indian Penal Code 1860.

• FIR No. 176 of 2020, dated 22 April 2020, registered at Police Station Civil Lines, District Raipur, Chhattisgarh, Under Sections 153- A, 295- A and 505(2) of the Indian Penal Code 1860.

• Complaint dated 21 April 2020 by District Congress Committee- Antagrah, Kanker, Chhattisgarh.

• Complaint dated 22 April 2020 by Pritam Deshmukh (adv.), Durg District Congress Committee- to SHO city PS Durg, Chhattisgarh.

• Complaint dated 22 April 2020 by Suraj Singh Thakur, State Vice President, Indian Youth Congress- to Sr. Police Officer, Chirag Nagar, Ghatkopar East, Mumbai.

• Complaint dated 22 April 2020- Pankaj Prajapti (party worker of INC and ex- spokesperson NSUI) through counsel Anshuman Shrivastavas- Superintendent of Police, Crime Branch, Indore, Madhya Pradesh.

• Complaint dated 22 April 2020- Balram Jakhad (adv.)- to PS Shyam Nagar- Under Section 153, 188, 505, 120B in Jaipur.

• Complaint by Jaswant Gujar- to SHO Bajaj Nagar PS, Jaipur.

• Complaint dated 22 April 2020 by Fundurdihari, Ambikapur, District Sarguja, Chhattisgarh- Rajesh Dubey, Chhattisgarh State Congress Committee- to SHO Gandhi Nagar, Ambikapur- Under Section 153, 153A, 153B, 504, 505.

• Complaint dated 22 April 2020 in Telangana by Anil Kumar Yadav, State President of Telangana Youth Congress- to SHO Hussaini Alam- Under Section 117, 120B, 153, 153A, 295A, 298, 500, 504, 505 and 506. Also 66A of the IT Act.

• Complaint dated 23 April 2020 by Anuj Mishra before Kotwali, Urai, Tulsi Nagar.

• Complaint dated 22 April 2020 by Kumar Raja, VP, Youth Congress, Jharkhand Congress Committee before Kotwali Police Station, Upper Bazar, Ranchi.

• Complaint dated 22 April 2020 by Madhya Pradesh Youth Congress.

3. The genesis of the FIRs and complaints originates in the broadcasts on Republic TV on 16 April 2020 and R Bharat on 21 April 2020 in relation to an incident which took place in Gadchinchle village of Palghar district in Maharashtra. During the course of the incident which took place on 16 April 2020, three persons including two sadhus were brutally killed by a mob, allegedly in the presence of the police and forest guard personnel. The incident was widely reported in the print and electronic media. The petition states that a video recording of the incident is available in the public domain. In his news show titled "Poochta hai Bharat" on 21 April 2020 on R Bharat, the Petitioner claims to have raised issues in relation to the allegedly tardy investigation of the incident. The segment of the news broadcast is available for public viewing online at:

https://www.youtube.com/watch?v=C2i4MMpKu9I

4. The viewpoint which the Petitioner claims to have put across during the course of the broadcast, is described in the following extract from the Writ Petition which has been instituted by the Petitioner before this Court Under Article 32 of the Indian Constitution:

A review of the above debate would show that its thrust was to question the tardy investigation, inconsistent versions of the authorities and the administration and the State Government's silence on the Palghar incident given that the unfortunate incident happened in Maharashtra which is presently Under Rule of an alliance government jointly formed by Shiv Sena, the Congress and the Nationalist Congress Party. The debate highlighted the manner in which the incident was being portrayed by the authorities, including the glaring fact that the incident occurred in the presence of numerous police officials which fact was initially suppressed.

5. The Petitioner claims that following the broadcast, "a well- coordinated, widespread, vindictive and malicious campaign" was launched against him by the Indian National Congress2 and its activists. The campaign, he alleges, was carried out online through news reports and tweets

indicating that members of the INC had filed multiple complaints simultaneously against the Petitioner before various police stations seeking the registration of FIRs and an investigation into offences alleged to have been committed by him Under Sections 153, 153A, 153B, 295A, 298, 500, 504, 506 and 120B of the Indian Penal Code 18603. A campaign for the arrest of the Petitioner was allegedly launched on social media, using the hashtag:

#ArrestAntiIndiaArnab

6. The Petitioner submitted, in the course of his pleadings, that all the complaints and FIRs have incidentally been lodged in States where the governments which were formed owe allegiance to the INC and that he believes that the law enforcement machinery was being set in motion with an ulterior motive. To substantiate this, the Petitioner refers to an incident which allegedly took place on 23 April 2020, while he was returning by car from his studio at Worli, Mumbai accompanied by his spouse between 12:30 and 1:00 am. His car was confronted by two individuals on a motor- cycle. Confronted by the security personnel of the Petitioner, the two individuals on the motor- cycle are alleged to have disclosed their identity as members of the INC. An FIR was registered at the behest of the Petitioner at NM Joshi Marg Police Station in Mumbai in which the details of the alleged attack on him have been set out.

7. The Petitioner denies that he has propagated views of a communal nature in the course of the news broadcasts which gave rise to the institution of numerous complaints. Asserting his fundamental right to the freedom of speech and expression Under Article 19(1)(a) of the Constitution, the Petitioner has moved this Court Under Article 32 for the protection of those rights. The reliefs which have been sought are:

(i) Quashing all the complaints and FIRs lodged against the Petitioner in multiple States and Union Territories;

(ii) A writ direction that no cognisance should be taken of any complaint or FIR on the basis of the cause of action which forms the basis of the complaints and FIRs which have led to the present writ proceedings; and

(iii) A direction to the Union Government to provide adequate safety and security to the Petitioner and his family as well as to his colleagues at Republic TV and R Bharat.

8. While entertaining the Writ Petition on 24 April 2020, this Court heard submissions by Senior Counsel: on behalf of the Petitioner by Mr. Mukul Rohatgi and Mr. Siddhartha Bhatnagar; on behalf of the State of Maharashtra by Mr. Kapil Sibal; on behalf of the State of Chhattisgarh by Mr. Vivek Tankha; and on behalf of the State of Rajasthan by Dr Abhishek Manu Singhvi. Having

heard the rival submissions, this Court noted in its interim order that the order which it intended to pass should strike a balance between the following governing principles:

(i) The need to ensure that the criminal process does not assume the character of a vexatious exercise by the institution of multifarious complaints founded on the same cause in multiple States;

(ii) The need for the law to protect journalistic freedom within the ambit of Article 19(1)(a) of the Constitution;

(iii) The requirement that recourse be taken to the remedies available to every citizen in accordance with the Code of Criminal Procedure 1973;

(iv) Ensuring that in order to enable the citizen to pursue legal remedies, a protection of personal liberty against coercive steps be granted for a limited duration in the meantime;

(v) The investigation of an FIR should be allowed to take place in accordance with law without this Court deploying its jurisdiction Under Article 32 to obstruct the due process of law; and

(vi) Assuaging the apprehension of the Petitioner of a threat to his safety and the safety of his business establishment.

9. Learned Senior Counsel appearing on behalf of the Petitioner apprised this Court, on instructions, that the Petitioner had no objection to the transfer of FIR 238 of 2020 which was lodged at Police Station Sadar, District Nagpur City to NM Joshi Marg Police Station in Mumbai for the purpose of investigation. Mr. Kapil Sibal, learned Senior Counsel appearing on behalf of the State of Maharashtra similarly had no objection to this course of action. This is recorded specifically in the order passed by this Court on 24 April 2020 in the following terms:

9. The Court was apprised by Mr. Mukul Rohatgi, learned senior Counsel, on seeking instructions, that the Petitioner would have no objection if the FIR which has been lodged at Nagpur is transferred for the purpose of investigation to the N.M. Joshi Marg Police Station, Mumbai, where the Petitioner has lodged an FIR on 23 April 2020. The FIR by the Petitioner is in relation to an incident which took place at midnight, during the course of which, he and his spouse were obstructed by two persons and an alleged to have been subjected to an assault, while returning home from the studio.

10. Mr. Sibal has indicated that there should be no objection to the transfer of the FIR which has been lodged at Nagpur to Mumbai.

Consequently, this Court, by its interim order:

(i) Transferred FIR 238 of 2020 lodged at Police Station Sadar, District Nagpur City to the NM Joshi Marg Police Station in Mumbai with a clarification that the Petitioner shall cooperate in the investigation;

(ii) Stayed further proceedings arising out of the complaints and FIRs other than the one which had been instituted at Police Station Sadar, District Nagpur City and stood transferred;

(iii) Allowed the investigation to proceed in FIR 238 of 2020 which was transferred from Police Station Sadar, District Nagpur City to the NM Joshi Marg Police Station in Mumbai;

(iv) Protected the Petitioner against coercive steps arising out of and in relation to the above FIR, in relation to the telecast dated 21 April 2020;

(v) Granted liberty to the Petitioner to move an application for anticipatory bail before the Bombay High Court Under Section 438 of the Code of Criminal Procedure 19734 and to pursue such other remedies as are available in law. It was clarified that any such application shall be considered on its own merits by the competent court;

(vi) Stayed further proceedings in respect of any other FIR, or as the case may be, criminal complaints which have been filed or which may thereafter be filed with respect to the same incident; and

(vii) Directed the Commissioner of Police5, Mumbai to consider the request of the Petitioner for being provided with security at his residence and at the business establishment.

10. Following the interim order of this Court, several interim applications were filed in the course of the proceedings. The details of each of the IAs are necessary to facilitate our eventual analysis of the case:

IA No. 48585 of 2020: filed by the Petitioner

11. The Petitioner submits that:

(i) The Mumbai police is not conducting a fair and impartial investigation in relation to FIR 238 of 20206 which has been transferred from Police Station Sadar, District Nagpur City to NM Joshi Marg Police Station in Mumbai for investigation;

(ii) The manner in which the investigation has been conducted by the Mumbai police leads to the "inescapable conclusion" that the authorities "harbor grave malice and mala fide intention" against the Petitioner;

(iii) The investigation is politically motivated and has been conducted with "a pre- determined and pre- meditated objective" to arm- twist, harass and humiliate the Petitioner and his family and to diminish his right to free speech and expression Under Article 19(1)(a) of the Constitution;

(iv) Since the Petitioner's news channel is questioning the complicity of the Maharashtra police in the Palghar incident and the police fall under the administration and control of the State government (ruled by an alliance government of the INC), there is a clear conflict of interest in the investigation by the Mumbai police; and

(v) It is necessary that the investigation is stayed to prevent any miscarriage of justice. These apprehensions are sought to be established on the basis of the following averments:

(a) On 25 April 2020, the Petitioner was served with a notice Under Section 41(a) of the Code of Criminal Procedure 19737 summoning him to the police station on 26 April 2020;

(b) On 26 April 2020, the Petitioner expressed his willingness to appear before the Investigating Officer8 through Video Conferencing9;

(c) Rejecting the above request, the IO called upon the Petitioner by a summons dated 26 April 2020 to be physically present at NM Joshi Marg Police Station in Mumbai on 27 April 2020;

(d) On 27 April 2020, the Petitioner was questioned without a break for nearly twelve hours during which he was not allowed to keep possession of his mobile phone or to wear his personal fitness band;

(e) During the course of the investigation, the Petitioner was informed by the Mumbai police that the complainant Dr Nitin Kashinath Raut, who is a Cabinet Minister in the Maharashtra government and a working President of the INC, had filed a supplementary statement indicating when he had been provided with a clip of the broadcast;

(f) A substantial bulk of the questions during the investigation was in relation to a small segment comprising fifteen seconds out of a total broadcast of fifty- two minutes;

(g) During the course of the investigation, the Petitioner was asked by the IO whether he had defamed or maligned the President of the INC in the course of the broadcast on 21 April 2020;

(h) FIR 164 of 2020 is not based on a complaint by the President of the INC and hence, it is inconceivable as to how the IO could have questioned the Petitioner on an alleged act of defamation which he, in any event, denies;

(i) Tweets made on the social media by members of the INC during and around the time of the investigation indicate that the Mumbai police was relying on real time information during the course of the interrogation by "their political masters";

(j) Questions posed to the Petitioner during the course of the investigation have no nexus to FIR 164 of 2020. The questions which were posed included the following:

(i) Corporate structure of the Petitioner's company, ARG Outlier Media Asianet Private Limited ("ARG") including its board of directors. ARG owns and operates Republic TV and R. Bharat.

(ii) Process of obtaining broadcasting licenses by the news channels of the Petitioner.

(iii) Location of archives of Petitioner's news channels; whether the Hindi channel of the Petitioner, R. Bharat is based outside or inside Maharashtra.

(iv) Does the Petitioner's news channel send recordings of news reports to the Central Government (this question was asked multiple times.)

(v) Process of selecting panelists for debates aired on Petitioner's news channels. Are the panelists paid remuneration by the Petitioner's news channel for this purpose.

(vi) Does the Petitioner own the house in which he is currently staying or pays rent.

(k) The complainant, Dr Nitin Kashinath Raut was interviewed on 29 April 2020 by a reporter of Republic TV in regard to the contradictions between the statement in the FIR and his subsequent supplementary statement as to the place where he had watched the video clip. In response to the query posed to him in the interview, the complainant stated:

There is no need to be confused over this point, whatever I have mentioned in my statement, it is true. After watching at home, I also got a clip, which was sent to me from my party office. When I say that I watched it earlier, it's the truth, and later I watched a clip, which is mentioned in the complaint that I filed in the police station. If you have read Article 19(1) of the Constitution, where freedom of expression and thought is mentioned but nowhere does it allow crossing the limits or making extreme comments. There are restrictions mentioned and Mr. Arnab has violated them. I have a lot of respect of Mr. Arnab, he's a senior journalist, and he has handled the media well till now but what happened lately. I don't know. During his speech, he forgot that he's a citizen of this country and a citizen has to abide by the Constitution. I have always supported freedom of expression for journalists but the question is, these comments involve a clear attempt to incite a riot. Arnab was questioned for along during because he's facing a charge of criminal conspiracy, involving Indian Penal Code 153, Indian Penal Code 153(a) and others. You raise the point of him being questioned for 12 to 12.5 hours, I want to ask you that this country's former home minister and former finance minister P. Chidambaram was made to sit for so many hours, why did that happen? You people never raise questions on the reason behind that interrogation. I have heard that clip and Arnab tried to stoke communal sentiments in that speech. No one gave him that right, not even the Constitution.

(l) On 30 April 2020, the IO issued two notices to the Chief Financial Officer10 of Republic TV Under Sections 91 and 160 of the Code of Criminal Procedure requesting for documents. Pursuant to the notice, the CFO appeared before the Mumbai police with publicly available documents and copies of broadcast licenses. He was interrogated for about 6.5 hours inter alia in regard to the following aspects:

(i) Role of the Petitioner's wife, Mrs. Samyabrata Ray Goswami in the news channels and the corporate structure of company.

(ii) Details of the investors in the Petitioner's company, ARG Outlier Media News Private Limited and whether the Petitioner ran the news channel as a proxy owner for an on behalf of someone else.

(iii) Surprisingly, Mr. Sundaram was also asked whether there was "someone" instructing the Petitioner to pose questions concerning Mrs. Sonia Gandhi and concerning her alleged defamation.

(iv) As with the Petitioner, Mr. Sundaram was also asked if the Petitioner's news channel has any arrangement of sending video recording of news reports to the Central Government.

(v) Details on how the Petitioner's channel selects panelists for news shows and whether any remuneration is paid to them.

(m) It has been allegedly learned that an asymptomatic officer attached to the NM Joshi Marg Police Station in Mumbai where the CFO was being interrogated had tested positive for Covid-19 a day earlier with the result that all officers at the police station were now being tested. The CFO had been subjected to grave and unnecessary danger; and

(n) While on the one hand, the police had been investigating FIR 164 of 2020, the FIR lodged by the Petitioner following the attack on him11 is not being investigated satisfactorily. Two persons alleged to have been involved in the attack on the Petitioner were enlarged on bail on 27 April 2020 by the Magistrate's Court at Bhoiwada, Mumbai.

12. On the basis of the above averments, the Petitioner seeks the following reliefs by his IA:

(i) A stay of the investigation and all incidental steps by the Mumbai police in connection with FIR 238 of 2020 transferred to the NM Joshi Marg Police Station in Mumbai (renumbered as FIR 164 of 2020) in pursuance of the order of this Court dated 24 April 2020;

(ii) In the alternative, for a transfer of the investigation to the Central Bureau of Investigation12 with a direction to the CBI to submit reports to this Court from time to time;

(iii) A transfer of the investigation of FIR 148 of 2020 lodged by the Petitioner to the CBI or to an independent investigating agency;

(iv) Permission to the Petitioner to join in the investigation by video conferencing; and

(v) Providing security to the Petitioner and his family at his residence and for the business establishment.

IA 48588 of 202013: filed by the Government of Maharashtra

13. The IA is supported by an affidavit of Abhinash Kumar, Deputy Commissioner of Police, Zone- 3, Mumbai, who is supervising the investigation into Cr. No. 164 of 2020 at the NM Joshi Marg Police Station in Mumbai. The Mumbai police has sought to highlight the conduct of the Petitioner in obstructing the due course of investigation. The reliefs which have been sought in the IA are as follows:

a. Issue appropriate directions as this Hon'ble Court may deem fit so as to insulate the investigation agency from any pressure, threat or coercion from the Petitioner and to enable the Investigating Agency to carry out its lawful obligations in a fair and transparent manner;

b. Restrain the Petitioner from abusing the interim protection granted to the Petitioner vide the order dated 24th April 2020;

14. The basis of the IA appears from the following averments:

(i) On 27 April 2020, the Petitioner attended the NM Joshi Marg Police Station in Mumbai at 9 am accompanied by an entourage of his reporters and camerapersons and gave several speeches which were allegedly telecast live;

(ii) After the Petitioner had been interrogated for 4 hours, a tweet was posted on Republic Bharat stating in Hindi that upon coming out of the police station, the Petitioner had claimed that 'truth will prevail';

(iii) Two other tweets posted on Republic Bharat in regard to the conduct of the investigation have sought to create an impression that:

(a) The police is biased;

(b) The FIR lodged by the Petitioner is not being investigated; and

(c) The Petitioner has been unnecessarily questioned over several hours;

(iv) On 28 April 2020, the Petitioner hosted a debate on Republic Bharat in the course of a programme titled "Puchta hai Bharat" where he made allegations against the Commissioner of Police14, Mumbai of his complicity in a scam involving India Bulls. The Petitioner threatened to reveal these details;

(v) The statements against the CP are intended to hinder the course of the investigation and the allegations have surfaced only after the investigation against the Petitioner commenced on 26 April 2020;

(vi) The allegation of the Petitioner that the police were not investigating his FIR is belied by the circumstance that an FIR was registered Under Sections 341 and 504 read with Section 34 of the Indian Penal Code;

(vii) The two Accused in the FIR filed by the Petitioner were arrested and eventually released on bail on 27 April 2020 by the Metropolitan Magistrate at the 13th Court at Dadar Mumbai; and

(viii) The Deputy Commissioner of Police15, Mumbai has submitted that Palghar lies beyond the territorial jurisdiction of the Mumbai police and hence the accusations made by the Petitioner are false. It has been submitted that the Petitioner has misused his freedom Under Article 19(1)(a) of the Constitution by casting unfounded allegations on the CP and hence, directions of this Court are necessary to insulate the investigating agency so as to the enable it carry on its function in a smooth and transparent manner.

IA 48532 of 2020: filed by the Petitioner

15. The IA is by the Petitioner to produce on the record an affidavit of Shri S. Sundaram, the CFO of Republic Media Network. The affidavit of the CFO attempts to support the case of the Petitioner that:

(i) A prolonged interrogation is being carried out for a seemingly vindictive and malicious purpose;

(ii) The CFO has been interrogated on the structure of the holding company, shareholding pattern and investors: matters which are extraneous to the investigation of the FIR;

(iii) Questions have been posed during the course of the interrogation about the equity cash transactions, the names of the remaining stakeholders, investment by the key investor and the role of the Petitioner's spouse; and

(iv) The CFO was interrogated on the editorial process of the channel, the editorial teams involved and the process whereby a programme is put together. The IO also inquired about how participants are chosen.

IA 48586 of 2020: filed by the Petitioner

16. The Petitioner moved this IA seeking an amendment to the petition filed Under Article 32. The Petitioner seeks the addition of the following reliefs:

(i) A declaration that Section 499 of the Indian Penal Code is violative of Article 19(1)(a) of the Constitution and is hence unconstitutional;

(ii) A declaration that FIR 164 of 202016 and the consequent investigation initiated by the State of Maharashtra are illegal and violative of the fundamental rights guaranteed to the Petitioner Under Articles 19 and 21 of the Constitution;

(iii) A writ of prohibition restraining the State of Maharashtra from registering any FIR against the Petitioner in relation to the broadcast on R Bharat on 21 April 2020 in relation to the Palghar incident; and

(iv) A writ of prohibition restraining the State of Maharashtra from continuing any investigation initiative pursuant to FIR 164 of 2020.

Among the documents which have been annexed to the IA for amendment are copies of:

(a) FIR 238 of 2020 registered on 22 April 2020 at Police Station Sadar, District Nagpur city which now stands transferred;

(b) Copies of the complaints lodged in relation to the broadcast on 21 April 2020 by R Bharat at diverse police stations across the country;

(c) The tweets posted from the tweeter accounts of members of the INC party;

(d) The transcript of the interview with the complaint of FIR 164 of 2020; and

(e) The notices issued to the CFO on 30 April 2020 by the Senior Police Inspector, NM Joshi Marg Police Station in Mumbai.

IA 48515 of 2020 and IA 48519 of 2020:

17. These IAs have been filed by the Petitioner and cover the same reliefs which have been sought in IAs 48585 of 2020 and 48586 of 2020.

Writ Petition (Crl.) Diary No. 11189 of 2020

18. The Writ Petition has been instituted Under Article 32 of the Constitution following the interim order dated 24 April 2020 passed by this Court in the earlier petition. The subsequent petition has been occasioned by the registration of an FIR17 against the Petitioner on 2 May 2020 at the Pydhonie Police Station, Mumbai. The FIR which has been lodged by the third Respondent, claiming to be the Secretary of an organization called Raza Educational Welfare Society. The FIR states that on 29 April 2020, the Petitioner made certain statements in the course of a programme which was broadcast on R Bharat insinuating (with reference to a place of worship) that the "people belonging to the Muslim religion are responsible for the spread of Covid- 19". According to the FIR:

The statements made by Arnab Goswami on 29/04/2020 on republic Bharat TV Channel in connection with the incident of the public gathered in the area of Bandra railway station on 14/04/2020 clearly show that despite Jama Masjid, Bandra being a holy place of worship and despite having no connection with the incident of the gathering of migrant workers at Bandra railway station, Arnab Goswami gave it a communal colour and blamed the Muslim community of being responsible for the spread of Corona. By making statements such as the aforesaid repeatedly on the show, he has severely hurt the sentiments of the Muslim community. He has tried to create communal tensions, incite riots and deliberately hurt the sentiments of the Muslim community by insulting their place of worship. By directly connecting the gathering of migrant workers at the Bandra railway station on 14/04/2020 with Jama Masjid, Arnab Goswami disrupted communal harmony. His statements further implied that the Muslim community is violent and does not respect the law. Arnab Goswami as the owner and anchor of the said TV

show has made these statements with an intention of create a strain/communal disharmony between the Hindu and Muslim communities.

19. Having adverted to the telecast which took place on 29 April 2020, the FIR makes a reference to 14 April 2020 as the date on which the Petitioner as the "anchor and owner" of R Bharat has attempted to connect a place of religious worship with the gathering of migrant workers at Bandra railway station. The FIR has been registered Under Sections 153, 153A, 295A, 500, 505(2), 511, 505(1)(c) and 120B of the Indian Penal Code. Challenging the FIR, the Petitioner seeks to invoke the jurisdiction of this Court for an order quashing the FIR and for a writ directing that no cognisance should be taken on any complaint or FIR on the same cause of action hereafter.

20. Leading the arguments on behalf of the Petitioner, Mr. Harish Salve, learned Senior Counsel submitted that the petition which has been instituted before this Court Under Article 32 raises "wider issues" implicating the freedom of speech and expression of a journalist to air views which fall within the protective ambit of Article 19(1)(a). Mr. Salve submitted that the Petitioner is justified in invoking this jurisdiction since it is necessary for this Court to lay down safeguards which protect the democratic interest in fearless and independent journalism. The submissions which Mr. Salve urges can be formulated for analysis thus:

(i) Both the FIRs which have been lodged against the Petitioner are intended to stifle the free expression of views by an independent journalist which is protected within the ambit of Article 19(1)(a) of the Constitution;

(ii) The investigation by the Mumbai police is mala fide;

(iii) The fact that the lodging of the FIR and the commencement of investigation is mala fide is evident from the following circumstances:

a. All the FIRs, or as the case may be, the complaints are replicas with little variation of language or content and with respect to the same cause of action;

b. The complainants have all chosen states where the government has been formed of or with the support of the INC;

c. The enquiries which were made by the police during the course of interrogating the Petitioner and the CFO bear no nexus with the contents of the FIR and it is evident that the Petitioner is being targeted for expressing views critical of the President of the INC;

d. The involvement of the INC in targeting the Petitioner is evident from the fact that during the course of the investigation, tweets by activists and members of the party appeared on social media bearing on the course of the interrogation;

e. The complainant of the FIR, who is a Cabinet Minister in the State Government of Maharashtra, has gone on record in the course of an interview to target the Petitioner for airing his views;

f. The investigation by the Mumbai police is directed against an alleged act of defamation committed against the President of the INC. The police are trying to implicate the Petitioner in the offence of defamation despite the settled position of law that absent a complaint by the person who is allegedly defamed, no FIR can be lodged; and

g. The Petitioner has, in the course of his programmes on R Bharat and Republic TV, implicated the Maharashtra police and the State Government for their failure to investigate the Palghar incident. He has leveled serious allegations against the CP, Mumbai. Hence, there is an evident conflict of interest in the investigation being conducted by the Mumbai police and the Petitioner apprehends that a fair and impartial process will be denied to him were the investigation to continue; and

(iv) In the circumstances which have been set out above, it is appropriate to protect the constitutional rights of the Petitioner by directing that the investigation be stayed or that, in the alternative, it be handed over to the CBI.

21. Mr. Tushar Mehta, learned Solicitor General has urged that this is a peculiar situation where the Mumbai police, as the investigating agency, has sought the protection of this Court in order to conduct a fair and impartial investigation, complaining that the Petitioner is impeding the process. The Solicitor General submitted that in this backdrop, it would be appropriate if the Court were to decide that an impartial agency conduct the investigation. Mr. Mehta urged that should this Court be inclined to hand over the investigation to the CBI, the agency will conduct the investigation. The Solicitor General urged that:

(i) The conduct of the state police in the present case is 'disturbing';

(ii) The police, as an investigating agency, has sought insulation from the Accused; and

(iii) Investigation by an agency which allays any apprehension of victimisation would be the appropriate course of action.

22. Mr. Kapil Sibal, learned Senior Counsel appearing on behalf of the State of Maharashtra has, while opposing the petitions, urged that:

(i) Both the petitions are an attempt to seek directions from this Court to monitor the course of the investigation which is impermissible in view of the settled legal position;

(ii) The pleadings in the petitions as well as the submissions urged during the hearing indicate that the Petitioner is objecting to the questions which were posed to him during the course of the investigation;

(iii) The Petitioner, as the person against whom the first FIR has been lodged, has absolutely no locus to question the line of investigation or nature of the interrogation;

(iv) The rights of the Petitioner Under Article 19(1)(a) are subject to the limitation stipulated in Article 19(2). The FIRs and the video clips from the programmes posted by the Petitioner (clips of which were played by Mr. Kapil Sibal, learned Senior Counsel over video conferencing during the course of the hearing) indicate that the offences in question are made out;

(v) Contrary to the allegations which have been leveled by the Petitioner against the Maharashtra police, it is the Petitioner who has made a conscious effort to stifle the investigation by an unrestrained use of social media, which is evident from the tweets emanating from the channel during and after the interrogation;

(vi) The Petitioner can have absolutely no grievance with the course of the investigation when he was summoned for interrogation only on one day between the date of the registration of the FIR and the present time;

(vii) Mumbai police has no territorial jurisdiction or connection with the investigation which has been conducted into the Palghar incident;

(viii) The conduct of the Petitioner would indicate that he has made baseless allegations against the CP, Mumbai for the first time after his interrogation took place on 27 April 2020. The attempt

by the Petitioner is clearly to use his position as a media journalist to create an environment of ill-feeling towards the investigating agency;

(ix) As regards the second FIR, no investigation has commenced and hence recourse to the jurisdiction of this Court Under Article 32 is premature;

(x) Despite the liberty which was granted to the Petitioner by this Court in its order dated 24 April 2020, the Petitioner has neither moved the Bombay High Court for quashing the FIRs Under Section 482 of the Code of Criminal Procedure or for the grant of anticipatory bail; and

(xi) In the above circumstances, the petitions filed by the Petitioner Under Article 32 of the Constitution ought not to be entertained.

23. Dr Abhishek Manu Singhvi, learned Senior Counsel appearing on behalf of the investigating agency of the Maharashtra police adduced seven precepts as the foundation of his submission that the petitions ought not to be entertained. Dr Singhvi urged:

(i) The facts of the present case clearly demonstrate that in the garb of an arc of protection, the Accused is attempting to browbeat the police;

(ii) The petitions Under Article 32 constitute an attempt of 'leapfrogging' the normal procedure available under the Code of Criminal Procedure;

(iii) Any interference in the course of an investigation is impermissible;

(iv) What the Petitioner seeks to attempt by the process which has been adopted is to convert the jurisdiction Under Article 32 into one Under Section 482 of the Code of Criminal Procedure;

(v) Though the Petitioner is entitled to the fundamental rights Under Article 19(1)(a), their exercise is subject to the limitations stipulated in Article 19(2). The content of the FIRs and the video clips would demonstrate that the restrictions Under Article 19(2) are attracted;

(vi) Applying the sub judice doctrine, the Petitioner is not entitled to seek the intervention of this Court in the course of an investigation; and

(vii) The transfer of an ongoing investigation to the CBI has been held to be an extraordinary power which must be sparingly exercised in exceptional circumstances. The Accused, it is well-settled, can have no locus in regard to the choice of the investigating agency.

24. Elaborating these submissions, Dr Singhvi submitted that:

(i) Despite the protection that was granted by this Court for three weeks, the Petitioner has not moved the competent court for anticipatory bail or for quashing the FIRs;

(ii) No complainant was impleaded when the first petition was filed;

(iii) In respect of the FIR at the Pydhonie Police Station, no investigation has even commenced;

(iv) The transfer of the investigation of the first FIR from Police Station Sadar, District Nagpur City to NM Joshi Marg Police Station in Mumbai was at the request of and with the consent of the Petitioner; and

(v) The conduct of the Petitioner indicates that it is he who is stifling the investigation.

25. Dr Singhvi submitted that an interrogation does not infringe personal liberty. On the basis of the above submissions, it has been urged that no case has been made out for the transfer of the investigation to the CBI. He urged that the second Writ Petition must, in any event, be dismissed.

26. At this stage, it is necessary to note that the attention of Mr. Kapil Sibal and Dr Singhvi, learned Senior Counsel was specifically drawn to the fact that the FIRs which were filed in various states by persons professing allegiance to the INC appear, prima facie, to be reproductions of the same language and content. Responding to this, Mr. Sibal fairly stated that in the exercise of the jurisdiction Under Article 32, this Court may well quash all the other FIRs and allow the investigation into the FIR which has been transferred to the NM Joshi Marg Police Station in Mumbai to proceed in accordance with law. Mr. Sibal has also urged that there cannot be any dispute in regard to the legal position that a complaint in regard to the offence of defamation can only be at the behest of the person who is aggrieved. Consequently, the FIR which has been presently under investigation at the NM Joshi Marg Police Station in Mumbai would not cover any offence Under Section 499 of the Indian Penal Code.

27. Mr. K.V. Vishwanathan, learned Senior Counsel appearing on behalf of the complainant in the second FIR submitted that:

(i) The FIR which was lodged on 2 May 2020 pertains to a broadcast which took place on 29 April 2020;

(ii) The maintainability of the Writ Petitions Under Article 32 is questioned; and

(iii) The statements made by the Petitioner in the course of the programmes which were broadcast clearly implicate offences Under Sections 153A, 295A and cognate provisions of the Indian Penal Code.

Analysis

28. The fundamental basis on which the jurisdiction of this Court has been invoked Under Article 32 is the filing of multiple FIRs and complaints in various States arising from the same cause of action. The cause of action was founded on a programme which was telecast on R Bharat on 21 April 2020. FIRs and criminal complaints were lodged against the Petitioner in the States of Maharashtra, Rajasthan, Madhya Pradesh, Telangana and Jharkhand besides the Union Territories of Jammu and Kashmir. The law concerning multiple criminal proceedings on the same cause of action has been analyzed in a judgment of this Court in TT Antony v. State of Kerala MANU/SC/0365/2001 : (2001) 6 SCC 181 ("TT Antony"). Speaking for a two judge Bench, Justice Syed Shah Mohammed Quadri interpreted the provisions of Section 154 and cognate provisions of the Code of Criminal Procedure including Section 173 and observed:

20. ...under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 Code of Criminal Procedure, only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 Code of Criminal Procedure. Thus, there can be no second FIR and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in charge of a police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 Code of Criminal Procedure.

The Court held that "there can be no second FIR" where the information concerns the same cognisable offence alleged in the first FIR or the same occurrence or incident which gives rise to

one or more cognisable offences. This is due to the fact that the investigation covers within its ambit not just the alleged cognisable offence, but also any other connected offences that may be found to have been committed. This Court held that once an FIR postulated by the provisions of Section 154 has been recorded, any information received after the commencement of investigation cannot form the basis of a second FIR as doing so would fail to comport with the scheme of the Code of Criminal Procedure. The court observed:

18. ...All other information made orally or in writing after the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in the first information report and entered in the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling Under Section 162 Code of Criminal Procedure. No such information/statement can properly be treated as an FIR and entered in the station house diary again, as it would in effect be a second FIR and the same cannot be in conformity with the scheme of Code of Criminal Procedure.

This Court adverted to the need to strike a just balance between the fundamental rights of citizens Under Articles 19 and 21 and the expansive power of the police to investigate a cognisable offence. Adverting to precedent, this Court held:

27. ...the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report Under Section 173(2) Code of Criminal Procedure. It would clearly be beyond the purview of Sections 154 and 156 Code of Criminal Procedure, nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of fresh investigation based on the second or successive FIRs, not being a counter- case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under way or final report Under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power Under Section 482 Code of Criminal Procedure or Under Articles 226/227 of the Constitution.

(Emphasis supplied)

The Court held that barring situations in which a counter- case is filed, a fresh investigation or a second FIR on the basis of the same or connected cognisable offence would constitute an "abuse of the statutory power of investigation" and may be a fit case for the exercise of power either Under Section 482 of the Code of Criminal Procedure or Articles 226/227 of the Constitution.

29. The decision in TT Antony came up for consideration before a three judge Bench in Upkar Singh v. Ved Prakash MANU/SC/0733/2004 : (2004) 13 SCC 292 ("Upkar Singh"). Justice N

Santosh Hegde, speaking for this Court adverted to the earlier decisions of this Court in Ram Lal Narang v. State (Delhi Administration) MANU/SC/0216/1979 : (1979) 2 SCC 322 ("Ram Lal Narang"), Kari Choudhary v. Mst. Sita Devi MANU/SC/0781/2001 : (2002) 1 SCC 714 ("Kari Choudhary") and State of Bihar v. JAC Saldanha MANU/SC/0253/1979 : (1980) 1 SCC 554 ("Saldanha"). The Court noted that in Kari Choudhary, this Court held that:

11. ...Of course the legal position is that there cannot be two FIRs against the same Accused in respect of the same case. But when there are rival versions in respect of the same episode, they would normally take the shape of two different FIRs and investigation can be carried on under both of them by the same investigating agency.

30. In Saldanha, this Court had held that the power conferred upon the Magistrate Under Section 156(3) does not affect the power of the investigating officer to further investigate the case even after submission of the report Under Section 173(8). In Upkar Singh, this Court noted that the decision in Ram Lal Narang is "in the same line" as the judgments in Kari Choudhary and Saldanha and held that the decision in TT Antony does not preclude the filing of a second complaint in regard to the same incident as a counter complaint nor is this course of action prohibited by the Code of Criminal Procedure. In that context, this Court held:

23. Be that as it may, if the law laid down by this Court in T.T. Antony case [MANU/SC/0365/2001 : (2001) 6 SCC 181 : 2001 SCC (Cri.) 1048] is to be accepted as holding that a second complaint in regard to the same incident filed as a counter- complaint is prohibited under the Code then, in our opinion, such conclusion would lead to serious consequences. This will be clear from the hypothetical example given hereinbelow i.e. if in regard to a crime committed by the real Accused he takes the first opportunity to lodge a false complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question, consequently he will be deprived of his legitimate right to bring the real Accused to book. This cannot be the purport of the Code.

These principles were reiterated by a two judge Bench of this Court in Babubhai v. State of Gujarat MANU/SC/0643/2010 : (2010) 12 SCC 254. Dr. Justice B.S. Chauhan observed:

21. In such a case the court has to examine the facts and circumstances giving rise to both the FIRs and the test of sameness is to be applied to find out whether both the FIRs relate to the same incident in respect of the same occurrence or are in regard to the incidents which are two or more parts of the same transaction. If the answer is in the affirmative, the second FIR is liable to be quashed. However, in case the contrary is proved, where the version in the second FIR is different and they are in respect of the two different incidents/crimes, the second FIR is permissible. In case in respect of the same incident the Accused in the first FIR comes forward with a different version or counterclaim, investigation on both the FIRs has to be conducted.

This Court held that the relevant enquiry is whether two or more FIRs relate to the same incident or relate to incidents which form part of the same transactions. If the Court were to conclude in the affirmative, the subsequent FIRs are liable to be quashed. However, where the subsequent FIR relates to different incidents or crimes or is in the form of a counter- claim, investigation may proceed.

[See also in this context Chirra Shivraj v. State of Andhra Pradesh MANU/SC/0992/2010 : (2010) 14 SCC 444 and Chirag M Pathak v. Dollyben Kantilal Patel MANU/SC/1439/2017 : (2018) 1 SCC 330].

31. In the present case, all the FIRs or complaints which have been lodged in diverse jurisdictions arise out of one and the same incident- the broadcast by the Petitioner on 21 April 2020 on R Bharat. The broadcast is the foundation of the allegation that offences have been committed under the provisions of Sections 153, 153A, 153B, 295A, 298, 500, 504 and 506 of the Indian Penal Code. During the course of the hearing, this Court has had the occasion, with the assistance of the learned Senior Counsel, to peruse the several complaints that were filed in relation to the incident dated 21 April 2020. They are worded in identical terms and leave no manner of doubt that an identity of cause of action underlies the allegations leveled against the Petitioner on the basis of the programme which was broadcast on 21 April 2020. Moreover, the language, content and sequencing of paragraphs and their numbering is identical. It was in this backdrop that Mr. Kapil Sibal, learned Senior Counsel fairly submitted (in our view correctly) that this Court may proceed to quash all the other FIRs and complaints lodged in diverse jurisdictions in the States, leaving open, however, the investigation in respect of the FIR 238 of 2020 dated 22 April 2020 transferred from the Police Station Sadar, District Nagpur City to NM Joshi Marg Police Station in Mumbai.

32. Article 32 of the Constitution constitutes a recognition of the constitutional duty entrusted to this Court to protect the fundamental rights of citizens. The exercise of journalistic freedom lies at the core of speech and expression protected by Article 19(1)(a). The Petitioner is a media journalist. The airing of views on television shows which he hosts is in the exercise of his fundamental right to speech and expression Under Article 19(1)(a). India's freedoms will rest safe as long as journalists can speak truth to power without being chilled by a threat of reprisal. The exercise of that fundamental right is not absolute and is answerable to the legal regime enacted with reference to the provisions of Article 19(2). But to allow a journalist to be subjected to multiple complaints and to the pursuit of remedies traversing multiple states and jurisdictions when faced with successive FIRs and complaints bearing the same foundation has a stifling effect on the exercise of that freedom. This will effectively destroy the freedom of the citizen to know of the affairs of governance in the nation and the right of the journalist to ensure an informed society. Our decisions hold that the right of a journalist Under Article 19(1)(a) is no higher than the right of the citizen to speak and express. But we must as a society never forget that one cannot exist without the other. Free citizens cannot exist when the news media is chained to adhere to one position.

Yuval Noah Harari has put it succinctly in his recent book titled "21 Lessons for the 21st Century": "Questions you cannot answer are usually far better for you than answers you cannot question."

33. A litany of our decisions- to refer to them individually would be a parade of the familiar- has firmly established that any reasonable restriction on fundamental rights must comport with the proportionality standard, of which one component is that the measure adopted must be the least restrictive measure to effectively achieve the legitimate state aim. Subjecting an individual to numerous proceedings arising in different jurisdictions on the basis of the same cause of action cannot be accepted as the least restrictive and effective method of achieving the legitimate state aim in prosecuting crime. The manner in which the Petitioner has been subjected to numerous FIRs in several States, besides the Union Territories of Jammu and Kashmir on the basis of identical allegations arising out of the same television show would leave no manner of doubt that the intervention of this Court is necessary to protect the rights of the Petitioner as a citizen and as a journalist to fair treatment (guaranteed by Article 14) and the liberty to conduct an independent portrayal of views. In such a situation to require the Petitioner to approach the respective High Courts having jurisdiction for quashing would result into a multiplicity of proceedings and unnecessary harassment to the Petitioner, who is a journalist.

34. The issue concerning the registration of numerous FIRs and complaints covering different states is however, as we will explain, distinct from the investigation which arises from FIR 164 of 2020 at NM Joshi Marg Police Station in Mumbai. The Petitioner, in the exercise of his right Under Article 19(1)(a), is not immune from an investigation into the FIR which has been transferred from Police Station Sadar, District Nagpur City to NM Joshi Marg Police Station in Mumbai. This balance has to be drawn between the exercise of a fundamental right Under Article 19(1)(a) and the investigation for an offence under the Code of Criminal Procedure. All other FIRs in respect of the same incident constitute a clear abuse of process and must be quashed.

35. The Petitioner has sought, for reasons outlined earlier, the transfer of the investigation to CBI. Before we elucidate the law on the subject, we must emphasize at the outset that the transfer of FIR 238 of 2020 from the Police Station Sadar, District Nagpur City to NM Joshi Marg Police Station in Mumbai was with the consent of the Petitioner and on his request. The reason why the investigation of the FIR was transferred to the NM Joshi Police Station in Mumbai was because that was the police station at which an earlier FIR had been lodged by the Petitioner in respect of the incident when he and his spouse were allegedly obstructed by two political activists on their way home at midnight on 23 April 2020. Having accepted the transfer of the investigation from Police Station Sadar, District Nagpur City to NM Joshi Marg Police Station in Mumbai, the Petitioner now seeks to question that very investigation by the Mumbai police.

36. The transfer of an investigation to the CBI is not a matter of routine. The precedents of this Court emphasise that this is an "extraordinary power" to be used "sparingly" and "in exceptional circumstances". Speaking for a Constitution Bench in State of West Bengal v. Committee for

Protection of Democratic Rights, West Bengal MANU/SC/0121/2010 : (2010) 3 SCC 571 ("CPDR, West Bengal"), Justice DK Jain observed:

70. ...despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self- imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.

(Emphasis supplied)

This principle has been reiterated in K.V. Rajendran v. Superintendent of Police, CBCID South Zone, Chennai MANU/SC/0842/2013 : (2013) 12 SCC 480. Dr. Justice B.S. Chauhan, speaking for a three judge Bench of this Court held:

13. ...This Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency like CBI. It has been held that the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instill confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having "a fair, honest and complete investigation", and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies.

Elaborating on this principle, this Court observed:

17. ...the Court could exercise its constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases. Such as where high officials of State authorities are involved, or the accusation itself is against the top officials of the investigating agency thereby allowing them to

influence the investigation, and further that it is so necessary to do justice and to instill confidence in the investigation or where the investigation is prima facie found to be tainted/biased.

The Court reiterated that an investigation may be transferred to the CBI only in "rare and exceptional cases". One factor that courts may consider is that such transfer is "imperative" to retain "public confidence in the impartial working of the State agencies." This observation must be read with the observations by the Constitution Bench in CPDR, West Bengal that mere allegations against the police do not constitute a sufficient basis to transfer the investigation.

37. In Romila Thapar v. Union of India MANU/SC/1098/2018 : (2018) 10 SCC 753, Justice AM Khanwilkar speaking for a three judge Bench of this Court (one of us, Dr Justice DY Chandrachud, dissenting) noted the dictum in a line of precedents laying down the principle that the Accused "does not have a say in the matter of appointment of investigating agency". In reiterating this principle, this Court relied upon its earlier decisions in Narmada Bai v. State of Gujarat MANU/SC/0371/2011 : (2011) 5 SCC 79, Sanjiv Rajendra Bhatt v. Union of India MANU/SC/1156/2015 : (2016) 1 SCC 1, E Sivakumar v. Union of India MANU/SC/0591/2018 : (2018) 7 SCC 365 and Divine Retreat Centre v. State of Kerala MANU/SC/1150/2008 : (2008) 3 SCC 542. This Court observed:

30. ...the consistent view of this Court is that the Accused cannot ask for changing the investigating agency or to do investigation in a particular manner including for court- monitored investigation.

38. The principle of law that emerges from the precedents of this Court is that the power to transfer an investigation must be used "sparingly" and only "in exceptional circumstances". In assessing the plea urged by the Petitioner that the investigation must be transferred to the CBI, we are guided by the parameters laid down by this Court for the exercise of that extraordinary power. It is necessary to address the grounds on which the Petitioner seeks a transfer of the investigation. The grounds urged for transfer are:

(i) The length of the interrogation which took place on 27 April 2020;

(ii) The nature of the inquiries which were addressed to the Petitioner and the CFO and the questions addressed during interrogation;

(iii) The allegations leveled by the Petitioner against the failure of the State government to adequately probe the incident at Palghar involving an alleged lynching of two persons in the presence of police and forest department personnel;

(iv) Allegations which have been made by the Petitioner on 28 April 2020 in regard to CP, Mumbai; and

(v) Tweets on the social media by activists of the INC and the interview by the complainant to a representative of R Bharat.

39. As we have observed earlier, the Petitioner requested for and consented to the transfer of the investigation of the FIR from the Police Station Sadar, District Nagpur City to the NM Joshi Marg Police Station in Mumbai. He did so because an earlier FIR lodged by him at that police station was under investigation. The Petitioner now seeks to preempt an investigation by the Mumbai police. The basis on which the Petitioner seeks to achieve this is untenable. An Accused person does not have a choice in regard to the mode or manner in which the investigation should be carried out or in regard to the investigating agency. The line of interrogation either of the Petitioner or of the CFO cannot be controlled or dictated by the persons under investigation/interrogation. In P Chidambaram v. Directorate of Enforcement MANU/SC/1209/2019 : (2019) 9 SCC 24, Justice R Banumathi speaking for a two judge Bench of this Court held that:

66. ...there is a well- defined and demarcated function in the field of investigation and its subsequent adjudication. It is not the function of the court to monitor the investigation process so long as the investigation does not violate any provision of law. It must be left to the discretion of the investigating agency to decide the course of investigation. If the court is to interfere in each and every stage of the investigation and the interrogation of the Accused, it would affect the normal course of investigation. It must be left to the investigating agency to proceed in its own manner in interrogation of the Accused, nature of questions put to him and the manner of interrogation of the Accused.

(Emphasis supplied)

This Court held that so long as the investigation does not violate any provision of law, the investigation agency is vested with the discretion in directing the course of investigation, which includes determining the nature of the questions and the manner of interrogation. In adopting this view, this Court relied upon its earlier decisions in State of Bihar v. P.P. Sharma MANU/SC/0542/1992 : 1992 Supp. (1) SCC 222 and Dukhishyam Benupani, Asst. Director, Enforcement Directorate (FERA) v. Arun Kumar Bajoria MANU/SC/0872/1998 : (1998) 1 SCC 52 in which it was held that the investigating agency is entitled to decide "the venue, the timings and the questions and the manner of putting such questions" during the course of the investigation.

40. In Director, Central Bureau of Investigation v. Niyamavedi represented by its Member K Nandini, Advocate MANU/SC/2247/1995 : (1995) 3 SCC 601, Justice Sujata V. Manohar, speaking for a three judge Bench of this Court held that the High Court should have:

4. ...refrained from making any comments on the manner in which investigation was being conducted by the CBI, looking to the fact that the investigation was far from complete.

This Court observed that:

4. ...Any observations which may amount to interference in the investigation, should not be made. Ordinarily the Court should refrain from interfering at a premature stage of the investigation as that may derail the investigation and demoralise the investigation. Of late, the tendency to interfere in the investigation is on the increase and courts should be wary of its possible consequences.

This Court adopted the position that courts must refrain from passing comments on an ongoing investigation to extend to the investigating agencies the requisite liberty and protection in conducting a fair, transparent and just investigation.

41. The contention of the Petitioner that the length of the investigation or the nature of the questions addressed to him and the CFO during the interrogation must weigh in transferring the investigation cannot be accepted. The investigating agency is entitled to determine the nature of the questions and the period of questioning. The Petitioner was summoned for investigation on one day. Furthermore, the allegation of the Petitioner that there is a conflict of interest arising out of the criticism by him of the alleged failure of the State government to adequately probe the incident at Palghar is not valid. The investigation of the Palghar incident is beyond the territorial jurisdiction of the Mumbai police.

42. The Petitioner has then sought to rely upon the allegations which he has leveled against the CP, Mumbai. The Petitioner was interrogated on 27 April 2020. The allegations which he leveled against the CP, Mumbai were in the course of a television programme on 28 April 2020 ("Poochta hai Bharat") relayed on R Bharat at 1900 hrs. As we have noted earlier, this Court has, in CPDR, West Bengal held that no transfer of investigation can be ordered "merely because a party has levelled some allegations against the local police." Accordingly, we do not find that leveling such allegations would by and itself constitute a sufficient ground for the transfer of the investigation.

43. The interview given by the complainant to a representative of R Bharat does not furnish a valid basis in law for an inference that the investigation is tainted or as warranting a transfer of investigation to the CBI. The Government of Maharashtra has moved an application before this

Court (affirmed by the DCP, Zone- 3) seeking appropriate directions to insulate the investigating agency "from any pressure, threat or coercion from the Petitioner" and to enable it to discharge its lawful duties in a fair and transparent manner. Based on the views tweeted by R Bharat on social media, it is the Maharashtra police which is now claiming a restraining order against the Petitioner. We are unable to accede to the submission of the Solicitor General that the contents of the IA filed by the State would make it necessary to transfer the investigation to the CBI. The investigating agency has placed on the record what it believes is an attempt by the Petitioner to discredit the investigation by taking recourse to the social media and by utilizing the news channels which he operates. Social media has become an overarching presence in society. To accept the tweets by the Petitioner and the interview by the complainant as a justification to displace a lawfully constituted investigation agency of its jurisdiction and duty to investigate would have far- reaching consequences for the federal structure. We are disinclined to do so.

44. In assessing the contention for the transfer of the investigation to the CBI, we have factored into the decision- making calculus the averments on the record and submissions urged on behalf of the Petitioner. We are unable to find any reason that warrants a transfer of the investigation to the CBI. In holding thus, we have applied the tests spelt out in the consistent line of precedent of this Court. They have not been fulfilled. An individual under investigation has a legitimate expectation of a fair process which accords with law. The displeasure of an Accused person about the manner in which the investigation proceeds or an unsubstantiated allegation (as in the present case) of a conflict of interest against the police conducting the investigation must not derail the legitimate course of law and warrant the invocation of the extraordinary power of this Court to transfer an investigation to the CBI. Courts assume the extraordinary jurisdiction to transfer an investigation in exceptional situations to ensure that the sanctity of the administration of criminal justice is preserved. While no inflexible guidelines are laid down, the notion that such a transfer is an "extraordinary power" to be used "sparingly" and "in exceptional circumstances" comports with the idea that routine transfers would belie not just public confidence in the normal course of law but also render meaningless the extraordinary situations that warrant the exercise of the power to transfer the investigation. Having balanced and considered the material on record as well as the averments of and submissions urged by the Petitioner, we find that no case of the nature which falls within the ambit of the tests enunciated in the precedents of this Court has been established for the transfer of the investigation.

45. A final aspect requires elaboration. Section 199 of the Code of Criminal Procedure stipulates prosecution for defamation. Sub- section (1) of Section 199 stipulates that no court shall take cognisance of an offence punishable under Chapter XXI of the Penal Code, 1860 except upon a complaint made by some person aggrieved by the offence. However, where such a person is under the age of eighteen years, or suffers from a mental illness or from sickness or infirmity rendering the person unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the court, make a complaint on his or her behalf. Sub- section (2) states that when any offence is alleged against a person who is the President of India, Vice- President of India, Governor of a State, Administrator of a Union Territory or a Minister of the Union or of a State or of a Union Territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of their conduct in the discharge of public functions, a Court of

Session may take cognisance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor. Sub- section (3) states that every complaint referred to in Sub- section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the Accused of the offence alleged to have been committed. Sub- section (4) mandates that no complaint Under Sub- section (2) shall be made by the Public Prosecutor except with the previous sanction of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government or any other public servant employed in connection with the affairs of the State and of the Central Government, in any other case. Sub- section (5) bars the Court of Sessions from taking cognisance of an offence Under Sub- section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed. Sub- section (6) states that nothing in this Section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognisance of the offence upon such complaint.18

46. Interpreting this provision, a two judge Bench of this Court in Subramanian Swamy v. Union of India, Ministry of Law MANU/SC/0621/2016 : (2016) 7 SCC 221 ("Subramanian Swamy") held that neither can an FIR be filed nor can a direction be issued Under Section 156(3) of the Code of Criminal Procedure and it is only a complaint which can be instituted by a person aggrieved. This Court held:

207. Another aspect required to be addressed pertains to issue of summons. Section 199 Code of Criminal Procedure envisages filing of a complaint in court. In case of criminal defamation neither can any FIR be filed nor can any direction be issued Under Section 156(3) Code of Criminal Procedure. The offence has its own gravity and hence, the responsibility of the Magistrate is more. In a way, it is immense at the time of issue of process. Issue of process, as has been held in Rajindra Nath Mahato v. T. Ganguly [Rajindra Nath Mahato v. T. Ganguly, MANU/SC/0167/1971 : (1972) 1 SCC 450 : 1972 SCC (Cri.) 206], is a matter of judicial determination and before issuing a process, the Magistrate has to examine the complainant. In Punjab National Bank v. Surendra Prasad Sinha [Punjab National Bank v. Surendra Prasad Sinha, MANU/SC/0345/1992 : 1993 Supp (1) SCC 499 : 1993 SCC (Cri.) 149] it has been held that judicial process should not be an instrument of oppression or needless harassment. The Court, though in a different context, has observed that there lies responsibility and duty on the Magistracy to find whether the Accused concerned should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded, then only process would be issued. At that stage the court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance. In Pepsi Foods Ltd. v. Special Judicial Magistrate [Pepsi Foods Ltd. v. Special Judicial Magistrate, MANU/SC/1090/1998 : (1998) 5 SCC 749 : 1998 SCC (Cri.) 1400], a two- Judge Bench has held that summoning of an Accused in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course.

47. In view of the clear legal position, Mr. Kapil Sibal, learned Senior Counsel appearing on behalf of the State of Maharashtra has fairly stated that the FIR which is under investigation at the NM Joshi Marg Police Station in Mumbai does not and cannot cover any alleged act of criminal defamation. We will clarify this in our final directions.

48. Before we conclude, it is necessary to advert to the interim order of this Court dated 24 April 2020. By the interim order, the Petitioner has been granted liberty to move the competent court in order to espouse the remedies available under the Code of Criminal Procedure. Hence, we clarify that this Court has not in the present judgment expressed any opinion on the FIR which is under investigation at the NM Joshi Marg Police Station in Mumbai.

49. We hold that it would be inappropriate for the court to exercise its jurisdiction Under Article 32 of the Constitution for the purpose of quashing FIR 164 of 2020 under investigation at the NM Joshi Marg Police Station in Mumbai. In adopting this view, we are guided by the fact that the checks and balances to ensure the protection of the Petitioner's liberty are governed by the Code of Criminal Procedure. Despite the liberty being granted to the Petitioner on 24 April 2020, it is an admitted position that the Petitioner did not pursue available remedies in the law, but sought instead to invoke the jurisdiction of this Court. Whether the allegations contained in the FIR do or do not make out any offence as alleged will not be decided in pursuance of the jurisdiction of this Court Under Article 32, to quash the FIR. The Petitioner must be relegated to the pursuit of the remedies available under the Code of Criminal Procedure, which we hereby do. The Petitioner has an equally efficacious remedy available before the High Court. We should not be construed as holding that a petition Under Article 32 is not maintainable. But when the High Court has the power Under Section 482, there is no reason to by- pass the procedure under the Code of Criminal Procedure, we see no exceptional grounds or reasons to entertain this petition Under Article 32. There is a clear distinction between the maintainability of a petition and whether it should be entertained. In a situation like this, and for the reasons stated hereinabove, this Court would not like to entertain the petition Under Article 32 for the relief of quashing the FIR being investigated at the NM Joshi Police Station in Mumbai which can be considered by the High Court. Therefore, we are of the opinion that the Petitioner must be relegated to avail of the remedies which are available under the Code of Criminal Procedure before the competent court including the High Court.

50. By the order of this Court dated 24 April 2020, the Petitioner was protected against coercive steps for a period of three weeks. The period which was due to expire on 14 May 2020 was extended, when judgment was reserved on 11 May 2020, pending the decision of this Court. We are inclined to extend that protection for a further period of three weeks, particularly having regard to the outbreak of Covid- 19, so as to leave adequate time to the Petitioner to pursue his remedies before the competent forum.

51. As we have noted earlier, multiple FIRs and complaints have been filed against the Petitioner in several states and in the Union Territories of Jammu and Kashmir. By the interim order of this Court dated 24 April 2020, further steps in regard to all the complaints and FIRs, save and except for the investigation of the FIR lodged at Police Station Sadar, District Nagpur City were stayed. The FIR at Police Station Sadar, District Nagpur City has been transferred to NM Joshi Marg Police Station in Mumbai. We find merit in the submission of Mr. Kapil Sibal, learned Senior Counsel that fairness in the administration of criminal justice would warrant the exercise of the jurisdiction Under Article 32 to quash all other FIRs (save and except for the one under investigation in Mumbai). However, we do so only having regard to the principles which have been laid down by this Court in TT Antony. The filing of multiple FIRs arising out of the same telecast of the show hosted by the Petitioner is an abuse of the process and impermissible. We clarify that the quashing of those FIRs would not amount to the expression of any opinion by this Court on the merits of the FIR which is being investigated by the NM Joshi Marg Police Station in Mumbai.

52. We find no reason to entertain the subsequent Writ Petition19 which has been filed by the Petitioner in respect of the FIR lodged at Pydhonie Police Station (FIR 137 of 2020 dated 2 May 2020). The basis on which the jurisdiction of this Court was invoked in the first Writ Petition- the filing of multiple FIRs in various states- is absent in the subsequent Writ Petition (Crl.) Diary No. 11189 of 2020. The Petitioner would be at liberty to pursue his remedies under the law in respect of the FIR. Any recourse to such a remedy shall be considered on its own merits by the competent court.

Directions

1. Writ Petition (Crl.) No. 130 of 2020

53. Amendments as proposed are allowed. The amendments shall be carried out within one week.

(i) The prayer for transfer of the investigation to the CBI is rejected;

(ii) The interim order of this Court dated 24 April 2020 by which FIR 238 of 2020 dated 22 April 2020 was transferred from the Police Station Sadar, District Nagpur City to NM Joshi Marg Police Station in Mumbai is confirmed. The FIR which has now been numbered as 164 of 2020 shall be investigated by the NM Joshi Marg Police Station in Mumbai;

(iii) We decline to entertain the prayer for quashing FIR 164 of 2020 (earlier FIR 238 of 2020) Under Article 32 of the Constitution. The Petitioner would be at liberty to pursue such remedies as are

available in law under the Code of Criminal Procedure before the competent forum. Any such application shall be considered on its own merits by the competent court;

(iv) In view of the law laid down by this Court in Subramanian Swamy, we clarify that the above FIR does not cover the offence of criminal defamation Under Section 499 of the Indian Penal Code which offence will not form the subject matter of the investigation. Hence, it is not necessary to address the prayer for dealing with the constitutional challenge to the validity of the said provision in these proceedings;

(v) The following FIRs/complaints are quashed, following the decision of this Court in TT Antony (explained subsequently) that successive FIRs/complaints founded on the same cause of action are not maintainable:

• FIR No. 245 of 2020, dated 22 April 2020, registered at Police Station Supela, District Durg, Chhattisgarh, Under Sections 153- A, 295- A and 505(2) of the Indian Penal Code 1860.

• FIR No. 180 of 2020, dated 23 April 2020, registered at Police Station Bhilal Nagar, District Durg, Chhattisgarh, Under Sections 153- A, 188, 290 and 505(1) of the Indian Penal Code 1860.

• FIR No. 176 of 2020, dated 22 April 2020, registered at Police Station Civil Lines, District Raipur, Chhattisgarh, Under Sections 153- A, 295- A and 505(2) of the Indian Penal Code 1860.

• Complaint dated 21 April 2020 by District Congress Committee- Antagrah, Kanker, Chhattisgarh.

• Complaint dated 22 April 2020 by Pritam Deshmukh (adv.), Durg District Congress Committee- to SHO city PS Durg, Chhattisgarh.

• Complaint dated 22 April 2020 by Suraj Singh Thakur, State Vice President, Indian Youth Congress- to Sr. Police Officer, Chirag Nagar, Ghatkopar East, Mumbai.

• Complaint dated 22 April 2020- Pankaj Prajapti (party worker of INC and ex- spokesperson NSUI) through counsel Anshuman Shrivastavas- Superintendent of Police, Crime Branch, Indore, Madhya Pradesh.

• Complaint dated 22 April 2020- Balram Jakhad (adv.)- to PS Shyam Nagar- Under Section 153, 188, 505, 120B in Jaipur.

• Complaint by Jaswant Gujar- to SHO Bajaj Nagar PS, Jaipur.

• Complaint dated 22 April 2020 by Fundurdihari, Ambikapur, District Sarguja, Chhattisgarh- Rajesh Dubey, Chhattisgarh State Congress Committee- to SHO Gandhi Nagar, Ambikapur- Under Section 153, 153A, 153B, 504, 505.

• Complaint dated 22 April 2020 in Telangana by Anil Kumar Yadav, State President of Telangana Youth Congress- to SHO Hussaini Alam- Under Section 117, 120B, 153, 153A, 295A, 298, 500, 504, 505 and 506. Also 66A of the IT Act.

• Complaint dated 23 April 2020 by Anuj Mishra before Kotwali, Urai, Tulsi Nagar.

• Complaint dated 22 April 2020 by Kumar Raja, VP, Youth Congress, Jharkhand Congress Committee before Kotwali Police Station, Upper Bazar, Ranchi.

• Complaint dated 22 April 2020 by Madhya Pradesh Youth Congress.

(vi) The quashing of the FIRs and complaints listed out in (v) above shall not amount to any expression of opinion by this Court on the merits of the FIR which is under investigation by the NM Joshi Marg Police Station in Mumbai;

(vii) No other FIR or, as the case may be, complaint shall be initiated or pursued in any other forum in respect of the same cause of action emanating from the broadcast on 21 April 2020 by the Petitioner on R Bharat. Any other FIRs or complaints in respect of the same cause of action emanating from the broadcast on 21 April 2020, other than the FIRs or complaints referred to in (v) above are also held to be not maintainable; and

(viii) Liberty to the complainants to move this Court for directions if it becomes necessary to do so.

2. Writ Petition (Crl.) Diary No. 11189 of 2020

54. The Writ Petition is dismissed with liberty to the Petitioner to pursue such remedies as are available in accordance with law.

3. (i) The protection granted to the Petitioner on 24 April 2020 in Writ Petition (Crl.) Diary No. 11006 of 202020 against coercive steps is extended for a period of three weeks from the date of this judgment to enable the Petitioner to pursue the remedies available in law;

(ii) The CP, Mumbai shall consider the request of the Petitioner for the provision of security at the residence of the Petitioner and at the business establishment in Mumbai, in accordance with law. Based on the threat perception, police protection may be provided if it is considered appropriate and for the period during which the threat perception continues; and

(iii) Nothing contained in the present judgment shall be construed as an expression of opinion on the merits of the allegations contained in the FIRs.

55. Writ Petition (Crl.) No. 130 of 2020 shall stand disposed of. Writ Petition (Crl.) Diary No. 11189 of 2020 shall stand dismissed with the liberty which has been granted in the above segment. IA 48588 of 2020 filed by the state government is dismissed, leaving it open to the investigating agency to urge its submissions before the competent court. All other interim applications are disposed of in view of the above directions.

56. Pending application(s), if any, shall stand disposed of.

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