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# Prosecution Replenish

An Endeavour for Learning and Excellence

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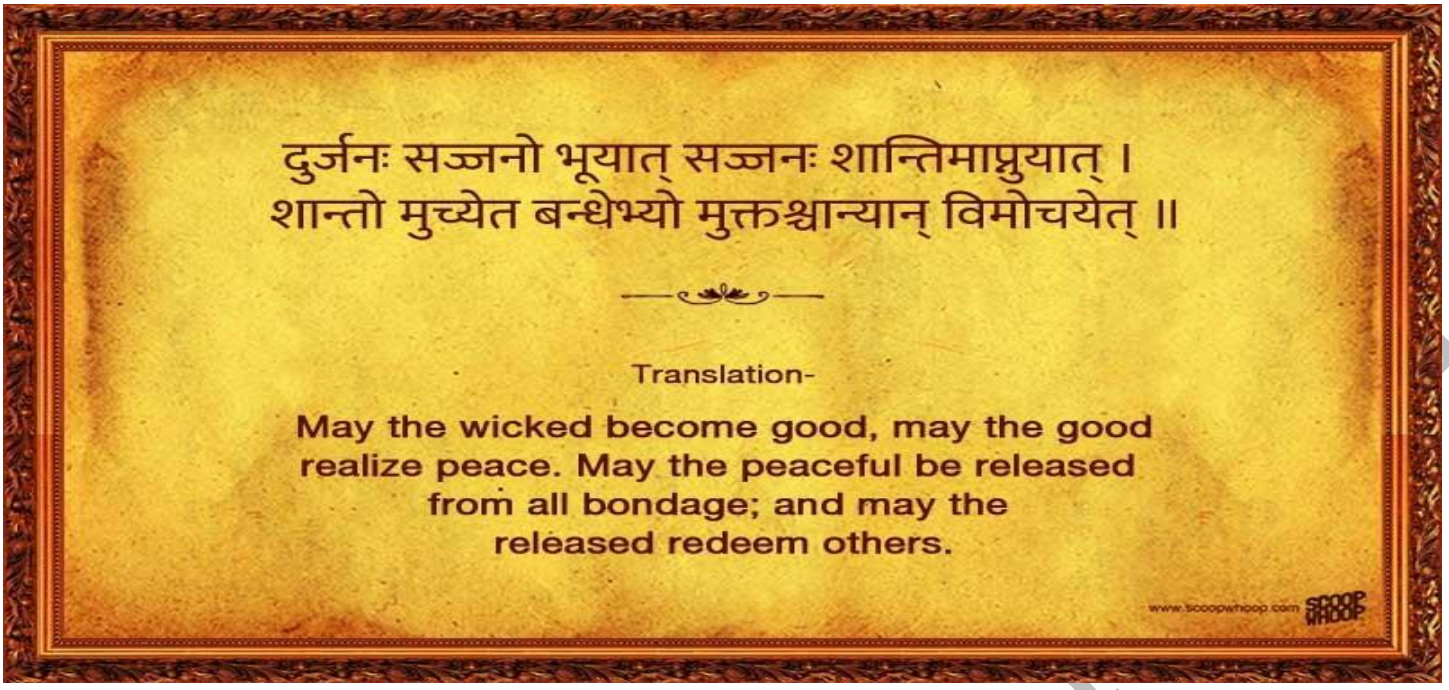
Aano Bhadra Krtavo Yantu Vishwatah.(RIG VEDAM)
"Let Noble Thoughts Come To Me From All Directions"




## WITHDRAWAL FROM PROSECUTION

**DVR Tejo Karthik**
Judicial Magistrate of First Class,
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In our Criminal jurisprudence, an offence committed by a person is treated as an offence against the whole society. Thus, the prosecution is conducted by the State and the State is a party to the proceedings. The prosecution of criminal cases is conducted by the Public Prosecutor on behalf of the State. Withdrawal from prosecution is dealt Under Section 321 Code of Criminal Procedure, 1973.

Under Section 321 Cr.P.C the Public Prosecutor or the Assistant Public Prosecutor in-charge of a case is endowed with power to withdraw from the prosecution subject to the consent of the court at any time before the judgment is pronounced. The exercise of the power by the Public Prosecutor or the Assistant Public Prosecutor must be in the interest of administration of justice and the prosecutor is expected to take a fair and independent decision to withdraw from the case by assigning reasons for such withdrawal. It is the duty of the prosecutor to satisfy the court about the reasons or circumstances which justify the withdrawal of the case from prosecution. The prosecutor exercises the statutory power while dealing with the withdrawal of a case from prosecution.

The term "withdrawal from prosecution" connotes that when a prosecution is instituted for one or more offences against one or more accused, the Public Prosecutor may at any time before the judgment is pronounced, file an application for withdrawal of one or more offences against one or all the accused.

The Hon'ble Supreme Court of India in Kumari Shrilekha Vidyarthi Etc., V. State Of U.P. and Ors., AIR 1991 SC 537 comprising of Hon'ble Justice J.S.Verma (his Lordship then was) and Hon'ble Justice R.M.Sahai observed that Section 321 permits withdrawal from prosecution by the Public Prosecutor or Assistant Public Prosecutor in charge of a case, with the consent of the Court, at any time before the judgment is pronounced. This power of the Public Prosecutor in charge of the case is derived from statute and the guiding consideration for it, must be the interest of administration of justice. There can be no doubt that this function of the Public Prosecutor relates to a public purpose entrusting him with the responsibility of so acting only in the interest of administration of justice. In the case of Public Prosecutors, this additional public element flowing from statutory provisions in the Code of Criminal Procedure, undoubtedly. invest the Public Prosecutors with the attribute of holder of a public office which cannot be whittled down by the assertion that their engagement is purely professional between a client and his lawyer with no public element attaching to it.

It was observed by the Supreme Court in Subhash Chander V. State (Chandigarh Admn.) & Ors, AIR 1980 SC 423 that the functionary clothed by the Code with the power to withdraw from the prosecution is the Public Prosecutor. The Public Prosecutor is not the executive, nor a flunkey of political power. Invested by the statute with a discretion to withdraw or not to withdraw, it is for him to apply an independent mind and exercise his discretion. In doing so, he acts as a limb of the judicative process, not as an extension of the executive.

Only Public Prosecutor or Assistant Public Prosecutor is authorized to withdraw from the prosecution with the consent of the court. The consent of the court as a condition for withdrawal is imposed as a check on exercise of

Prosecution Report

the Public Prosecutor's power. Consent will be given only if public justice in the larger sense is promoted rather than subverted by such withdrawal. That is the essence of the nolle prosequi jurisprudence.
The power of Public Prosecutor was observed succinctly by the Supreme Court in N. Natarajan V. B.K.Subba Rao, (2003) 2 SCC 76 as in the conduct of the case a public prosecutor must have full freedom and he can even give up certain cases and request the court to discharge or acquit any accused. If that kind of autonomy is to be enjoyed by the public prosecutor, he cannot be fettered in conducting the proceedings.
In S.K. Shukla & Ors V. State Of U.P. & Ors, AIR 2006 SC 413 it was observed that the Public Prosecutor cannot act like a post box or act on the dictate of the State Governments. He has to act objectively as he is also an officer of the Court. At the same time court is also not bound by that. The courts are also free to assess whether the prima facie case is made or not.
In Balwant Singh & Ors V. State Of Bihar, AIR 1977 SC 2265 the independent role of the Public Prosecutor in making an application for withdrawal from a prosecution was emphasized. It was pointed out that statutory responsibility for deciding upon withdrawal vested in the Public Prosecutor and the sole consideration which should guide the Public Prosecutor was the larger factor of the administration of justice and neither political favour nor party pressure or the like. Nor should he allow himself to be dictated to by his administrative superiors to withdraw from the prosecution. The Court also indicated some instance where withdrawal from prosecution might be resorted to independently of the merits of the case:
"Of course, the interests of public justice being the paramount consideration they may transcend and overflow the legal justice of the particular litigation. For instance, communal feuds which may have been amicably settled should not re-erupt on account of one or two prosecutions pending. Labour disputes which, might have given rise to criminal cases, when settled, might probably be another instance where the interests of public justice in the broader connotation may perhaps warrant withdrawal from the prosecution. Other instance also may be given".
The Court in State of Bihar V. Ram Naresh Pandey and Anr., AIR 1957 SC 389 had made following observations while dealing with an application under Section 494 of the old Cr. P.C., which enabled the prosecution to withdraw from the prosecution. Section 321 of the new Cr.P.C is similarly worded with slight modifications. This Court observed as follows:- "The section is an enabling one and vests in the Public Prosecutor the discretion to apply to the Court for its consent to withdraw from the prosecution of any person. The consent, if granted, has to be followed up by his discharge or acquittal, as the case may be. The section gives no indication as to the grounds on which the Public Prosecutor may make the application, or the considerations on which the Court is to grant its consent. The function of the Court, therefore, in granting its consent may well be taken to be a judicial function. It follows that in granting the consent the Court must exercise a judicial discretion. But it does not follow that the discretion is to be exercised only with reference to material gathered by the judicial method. Otherwise the apparently wide language of Section 494, Cr.P.C. would become considerably narrowed down in its application.
In understanding and applying the section, two main features thereof have to be kept in mind. The initiative is that of the Public Prosecutor and what the Court has to do is only to give its consent and not to determine any matter judicially. The judicial function, therefore, implicit in the exercise of the judicial discretion for granting the consent would normally mean that the Court has to satisfy itself that the executive function of the Public Prosecutor has not been improperly exercised, or that it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes."
In State of Orissa V. Chandrika Mahopatra and Others, (1976) 4 SCC 250,it was held that it is not sufficient for the Public Prosecutor merely to say that it is not expedient to proceed with the prosecution. He has to make out some ground which would show that the prosecution is sought to be withdrawn because inter alia the prosecution may not be able to produce sufficient evidence to sustain the charge or that the prosecution does appear to be well founded or that there are other circumstances which clearly show that the object of administration of justice would not be advanced or furthered by going on with the prosecution.
Hon'ble P.N. Bhagwati, J. as he then was speaking for the three Judge bench regarding withdrawal from the prosecution, said: "the paramount consideration in all those cases must be the interest of administration of justice. No hard and fast rule can be laid down nor can any categories of cases be defined in which consent should be granted or refused. It must ultimately depend on the facts and the circumstances of each case in the light of what is necessary in order to promote the ends of justice, because the objective of every judicial process must be the attainment of justice."
The law as it stands today in relation to applications under Section 321 is laid down by the majority judgment delivered by Hon'ble Khalid, J. in the Constitution Bench decision of the Supreme Court in Sheonandan Paswan V. State of Bihar and Others., (1987) 1 SCC 288, it is held that when an application under Section 321

Prosecution Replenish

is made, it is not necessary for the court to assess the evidence to discover whether the case would end in conviction or acquittal.

What the court has to see is whether the application is made in good faith, in the interest of public policy and justice and not to thwart or stifle the process of law. The court, after considering the facts of the case, has to see whether the application suffers from such improprieties or illegalities as would cause manifest injustice if consent was given. When the Public Prosecutor makes an application for withdrawal after taking into consideration all the material before him, the court must exercise its judicial discretion by considering such material and, on such consideration, must either give consent or decline consent. The section should not be construed to mean that the court has to give a detailed reasoned order when it gives consent. If, on a reading of the order giving consent, a higher court is satisfied that such consent was given on an over all consideration of the material available, the order giving consent has necessarily to be upheld. Section 321 contemplates consent by the court in a supervisory and not an adjudicatory manner. What the court must ensure is that the application for withdrawal has been properly made, after independent consideration by the Public Prosecutor and in furtherance of public interest. Section 321 enables the Public Prosecutor to withdraw from the prosecution of any accused. The discretion exercisable under Section 321 is fettered only by a consent from the court on a consideration of the material before it. What is necessary to satisfy the section is to see that the Public Prosecutor has acted in good faith and the exercise of discretion by him is proper.

Another important aspect which was determined by the Court in Sheonandan Paswan's case was whether a third party can oppose withdrawal. The court observed that now if any citizen can lodge a first information report or file a complaint and set the machinery of the criminal law in motion and his locus standi to do so cannot be questioned, we do not see why a citizen who finds that a prosecution for an offence against the society is being wrongly withdrawn, cannot oppose such withdrawal. If he can be a complainant or initiation of criminal prosecution, he should equally be entitled to oppose withdrawal of the criminal prosecution which has already been initiated at his instance. If the offence for which a prosecution is being launched is an offence against the society and not merely an individual wrong, any member of the society must have locus to initiate a prosecution as also to resist withdrawal of such prosecution, if initiated.

In Abdul Karim Etc. Etc V. State Of Karnataka & Others Etc., (2000) 8 SCC 710 the Supreme Court discussed about the averments to be made in the petition by the Public Prosecutor and also the recording of the satisfaction of the Public Prosecutor for withdrawal. It was observed as follows:- "The law, therefore, is that though the Government may have ordered, directed or asked a Public Prosecutor to withdraw from a prosecution, it is for the Public Prosecutor to apply his mind to all the relevant material and, in good faith, to be satisfied thereon that the public interest will be served by his withdrawal from the prosecution. In turn, the court has to be satisfied, after considering all that material, that the Public Prosecutor has applied his mind independently thereto, that the Public Prosecutor, acting in good faith, is of the opinion that his withdrawal from the prosecution is in the public interest, and that such withdrawal will not stifle or thwart the process of law or cause manifest injustice. It must follow that the application under Section 321 must aver that the Public Prosecutor is, in good faith, satisfied, on consideration of all relevant material, that his withdrawal from the prosecution is in the public interest and it will not stifle or thwart the process of law or cause injustice. The material that the Public Prosecutor has considered must be set out, briefly but concisely, in the application or in an affidavit annexed to the application or, in a given case, placed before the court, with its permission, in a sealed envelope. The court has to give an informed consent. It must be satisfied that this material can reasonably lead to the conclusion that the withdrawal of the Public Prosecutor from the prosecution will serve the public interest; but it is not for the court to weigh the material. The court must be satisfied that the Public Prosecutor has considered the material and, in good faith, reached the conclusion that his withdrawal from the prosecution will serve the public interest. The court must also consider whether the grant of consent may thwart or stifle the course of law or result in manifest injustice. If, upon such consideration, the court accords consent, it must make such order on the application as will indicate to a higher court that it has done all that the law requires it to do before granting consent."

The Supreme Court had discussed about the function of the Public Prosecutor in terms of Sec.321 of the Code in Rajendra Kumar Jain Etc V. State Through Special Police Establishment and Others, Etc., Etc., AIR 1980 SC 1510 and the following propositions which emerged are :

1. Under the scheme of the Code prosecution of an offender for a serious offence is primarily the responsibility of the Executive.
2. The withdrawal from the prosecution is an executive function of the Public Prosecutor.
3. The discretion to withdraw from the prosecution is that of the Public Prosecutor and none else, and so, he cannot surrender that discretion to someone else.

Prosecution Replenish

4. The Government may suggest to the Public Prosecutor that he may withdraw from the prosecution but none can compel him to do so.
5. The Public Prosecutor may withdraw from the prosecution not merely on the ground of paucity of evidence but on other relevant grounds as well in order to further the broad ends of public justice, public order and peace. The broad ends of public justice will certainly include appropriate social, economic and, we add, political purposes Sans Tammany Hall enterprise.
6. The Public Prosecutor is an officer of the Court and responsible to the Court.
7. The Court performs a supervisory function in granting its consent to the withdrawal.
8. The Court's duty is not to re-appreciate the grounds which led the Public Prosecutor to request withdrawal from the prosecution but to consider whether the Public Prosecutor applied his mind as a free agent, uninfluenced by irrelevant and extraneous considerations. The Court has a special duty in this regard as it is the ultimate repository of legislative confidence in granting or withholding its consent to withdrawal from the prosecution.

It was also observed that it shall be the duty of the Public Prosecutor to inform the Court and it shall be the duty of the Court to appraise itself of the reasons which prompt the Public Prosecutor to withdraw from the prosecution. The Court has a responsibility and a stake in the administration of criminal justice and so has the Public Prosecutor, its 'Minister of Justice'. Both have a duty to protect the administration of criminal justice against possible abuse or misuse by the Executive by resort to the provisions of Sec.361 Criminal Procedure Code. The independence of the judiciary requires that once the case has travelled to the Court, the Court and its officers alone must have control over the case and decide what is to be done in each case.

It was further observed in Rajendra Kumar Jain’s case cited supra that an application for withdrawal from prosecution may be made at any time before the judgment is pronounced. So the Public Prosecutor may file an application for withdrawal from prosecution at any time between the Court taking Cognizance of the case till pronouncement of the judgment. It was held that notwithstanding the fact that offence is exclusively triable by the Court of Session, the Court of Committing Magistrate is competent to give consent to the Public Prosecutor to withdraw from the prosecution. If a person has been convicted by the trail Court and case is pending before Appellate Court, then at that stage the Public Prosecutor cannot move an application before the Appellate Court for withdrawal from prosecution because under Section 321 Cr.P.C. “Court” means Trial Court and not Appellate Court. So,the Public Prosecutor cannot move an application for withdrawal from the prosecution before an Appellate Court.

The role of the Government in withdrawal from prosecution has been dealt by the Supreme Court in S.K. Shukla & Ors V. State Of U.P. & Ors, AIR 2006 SC 413 and it was observed that before an application is made under Section 321, the Public Prosecutor has to apply his mind to the facts of the case independently without being subject to any outside influence. The Government may suggest to the Public Prosecutor that a particular case may not be proceeded with, but nobody can compel him to do so. However, Section 321 of the Code does not lay any bar on the Public Prosecutor to receive any instruction from the Government before he files an application under that section. If the Public Prosecutor received such instructions, he cannot be said to act extraneous influence. On the contrary, the Public Prosecutor cannot file an application for withdrawal of a case on his own without instruction from the Government, since a Public Prosecutor cannot conduct a case absolutely on his own, or contrary to the instruction of his client, namely, the Government. Unlike the Judge, the Public Prosecutor is not an absolutely independent officer. He is appointed by the government for conducting in court any prosecution or other proceedings on behalf of the Government concerned. So there is the relationship of counsel and client between the Public Prosecutor and the Government. If the Government gives instructions to a Public Prosecutor to withdraw from the prosecution of a case, the latter after applying his mind to the facts of the case may either agree with instructions and file a petition stating grounds of withdrawal or disagree therewith having found a good case for prosecution and refuse to file the withdrawal petition. In the latter event the Public Prosecutor will have to return the brief and perhaps to resign, for, it is the Government, not the Public Prosecutor, who is in the know of larger interest of the State".

In the case of Bairam Muralidhar V. State of Andhra Pradesh, (2014) 10 SCC 380 the Court held that it is the obligation of the Public Prosecutor to state what material he has considered. It has to be set out in brief. He is required to act in good faith, peruse the materials on record and form an independent opinion that the withdrawal of the case would really subserve the public interest at large. Their Lordships have held as under :-

"18. The central question is whether the Public Prosecutor has really applied his mind to all the relevant materials on record and satisfied himself that the withdrawal from the prosecution would subserve the cause of

Prosecution Replenish

public interest or not. Be it stated, it is the obligation of the Public Prosecutor to state what material he has considered. It has to be set out in brief. The court as has been held in Abdul Karim case, is required to give an informed consent. It is obligatory on the part of the court to satisfy itself that from the material it can reasonably be held that the withdrawal of the prosecution would serve the public interest. It is not within the domain of the court to weigh the material. However, it is necessary on the part of the court to see whether the grant of consent would thwart or stifle the course of law or cause manifest injustice. A court while giving consent under Section 321 of the Code is required to exercise its judicial discretion, and judicial discretion, as settled in law, is not to be exercised in a mechanical manner. The court cannot give such consent on a mere asking. It is expected of the court to consider the material on record to see that the application had been filed in good faith and it is in the interest of public interest and justice. Another aspect the court is obliged to see is whether such withdrawal would advance the cause of justice. It requires exercise of careful and concerned discretion because certain crimes are against the State and the society as a collective demands justice to be done. That maintains the law and order situation in the society. The Public Prosecutor cannot act like the post office on behalf of the State Government. He is required to act in good faith, peruse the materials on record and form an independent opinion that the withdrawal of the case would really subserve the public interest at large. An order of the Government on the Public Prosecutor in this regard is not binding. He cannot remain oblivious to his lawful obligations under the Code. He is required to constantly remember his duty to the court as well as his duty to the collective."

A Full Bench of Hon'ble Kerala High Court in Dy. Accountant General (Admn.) Office of the Accountant General, Kerala, Trivandarum V. State of Kerala and others, AIR 1970 Kerala 158 held that power to withdraw the prosecution must be exercised in the light of his own judgment by the Public Prosecutor and not at dictation of some other authority, however, so high. The question whether accused has right to contest if public prosecutor wants to not press application for withdrawal of prosecution came up for consideration in M/S V.L.S. Finance Ltd V. S.P. Gupta and Anr., AIR 2016 SC 721, the Court held that accused person cannot be allowed to contest such an application. The observations of the Court are pertinent. It was observed that there can be no cavil over the proposition that when an application of withdrawal from the prosecution under Section 321 Cr.P.C. is filed by the Public Prosecutor, he has the sole responsibility and the law casts an obligation that he should be satisfied on the basis of materials on record keeping in view certain legal parameters. The filing of the application for seeking withdrawal from prosecution and application not to press the application earlier filed are both within the domain of Public Prosecutor. He has to be satisfied. The court has a role when the Public Prosecutor moves the application seeking the consent for withdrawing from the prosecution. At that stage, the court is required to see whether there has been independent application of mind by the Public Prosecutor and whether other ingredients are satisfied to grant the consent. Prior to the application being taken up being moved by the Public Prosecutor, the court has no role. If the Public Prosecutor intends to withdraw or not press the application, he is entitled to do so.

The court cannot say that the Public Prosecutor has no legal authority to file the application for not pressing the earlier application. It needs no special emphasis to state that the accused persons cannot be allowed to contest such an application.

Analysis and Conclusion:- Though the Government may suggest to the Public Prosecutor that a particular case may not be proceeded with, but such suggestion of the Government is not binding on the prosecutor and the Government power is not ipsi dixit and the Public Prosecutor who is the in-charge of the case derives his power from the statue and guiding consideration for withdrawal of the case must be the interest of administration of justice and the public prosecutor who is the holder of a public office must exercise his power only after satisfying himself to all the relevant material and in good faith that the public interest will be served by his withdrawal from the prosecution. At the same time the court performs a supervisory function in granting its consent to the withdrawal. The court's duty is not re-appreciate the grounds which led the prosecutor to request withdrawal from the prosecution but to consider whether the prosecutor has applied his mind as a free agent, uninfluenced by irrelevant and extraneous considerations.

**NOTE: The said statutory power of withdrawal under Sec 321 CrPC is governed by the GOMS no. 54 of 2000, in the states of A.P. and Telangana State, and it cannot be unilaterally filed by the Prosecutor, without following the procedure mentioned in the said GOMs 54 of 2000.**

**The litigants, the Police, the executive or the Judiciary or anybody, who wants a case to be withdrawn has to follow the procedure mentioned in GOMs 54 of 2000.**

(Prosecution Replenish conveys its heartfelt thanks to **Sri D.V.R. Tejo Karthik,** Judicial Magistrate of First Class, Special Mobile Court, Mahabubnagar, for contributing this article for our leaflet**)**

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# CITATIONS

**2020 0 Supreme(SC) 687; Chaman Lal Vs.The State of Himachal Pradesh; (THREE JUDGE BENCH); Criminal Appeal No. 1229 Of 2017; Decided On : 03-12-2020**

On evidence, it has been established and proved that the victim was mentally retarded and her IQ was 62 and she was not in a position to understand the good and bad aspect of sexual assault. The accused has taken disadvantage of the mental sickness and low IQ of the victim.

From the medical evidence, it emerges that IQ 62 falls in the category of 'mild mental retardation'. It has also emerged that the mental status and IQ are determined on the basis of the injuries and activities. IQ of a person can be known on the basis of the questions, activities and the history of a patient. Therefore, even if there might be some contradictions with respect to language known by the victim, in that case also, it cannot be said to be the major contradictions to disbelieve the entire medical evidence on the mental status of the victim.

It is required to be noted that it is a case of sexual assault on a victim whose IQ was 62 and was mentally retarded and that accused has taken undue advantage of the mental sickness/illness of the victim. A person suffering from mental disorder or mental sickness deserves special care, love and affection. They are not to be exploited. In the present case, the accused has exploited the victim by taking disadvantage of her mental sickness/illness. Therefore, no interference of this Court against the impugned judgment and order passed by the High Court convicting the accused is called for.

**2020 0 Supreme(SC) 688; Jayant Vs The State of Madhya Pradesh : Criminal Appeal Nos. 824-825 OF 2020 (Arising from SLP (Criminal) Nos. 2640-2641/2020)**

**State of Madhya Pradesh Vs. Jayant; WITH CRIMINAL APPEAL NO.826 OF 2020 (Arising from SLP (Criminal) No. 4549/2020) ; Decided On : 03-12-2020**

the violators cannot be permitted to go scot free on payment of penalty only. There must be some stringent provisions which may have deterrent effect so that the violators may think twice before committing such offences and before causing damage to the earth and the nature.

After giving our thoughtful consideration in the matter, in the light of the relevant provisions of the MMDR Act and the Rules made thereunder vis-a-vis the Code of Criminal Procedure and the Penal Code, and the law laid down by this Court in the cases referred to hereinabove and for the reasons stated hereinabove, our conclusions are as under:

i) that the learned Magistrate can in exercise of powers under Section 156(3) of the Code order/direct the concerned In-charge/ SHO of the police station to lodge/register crime case/FIR even for the offences under the MMDR Act and the Rules made thereunder and at this stage the bar under Section 22 of the MMDR Act shall not be attracted;

(ii) the bar under Section 22 of the MMDR Act shall be attracted only when the learned Magistrate takes cognizance of the offences under the MMDR Act and Rules made thereunder and orders issuance of process/summons for the offences under the MMDR Act and Rules made thereunder;

(iii) for commission of the offence under the IPC, on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the MMDR Act and Rules made thereunder; and

(iv) that in respect of violation of various provisions of the MMDR Act and the Rules made thereunder, when a Magistrate passes an order under Section 156(3) of the Code and directs the concerned In-charge/ SHO of the police station to register/lodge the crime case/FIR in respect of the violation of various provisions of the Act and Rules made thereunder and thereafter after investigation the concerned In-charge of the police station/investigating officer submits a report, the same can be sent to the concerned Magistrate as well as to the concerned authorised officer as mentioned in Section 22 of the MMDR Act and thereafter the concerned authorised officer may file the complaint before the learned Magistrate along with the report submitted by the concerned investigating officer and thereafter it will be open for the learned Magistrate to take cognizance after following due procedure, issue process/summons in respect of the violations of the various provisions of the MMDR Act and Rules made thereunder and at that stage it can be said that cognizance has been taken by the learned Magistrate.

(v) in a case where the violator is permitted to compound the offences on payment of penalty as per sub-section 1 of Section 23A, considering sub-section 2 of Section 23A of the MMDR Act,

there shall not be any proceedings or further proceedings against the offender in respect of the offences punishable under the MMDR Act or any rule made thereunder so compounded. However, the bar under sub-section 2 of Section 23A shall not affect any proceedings for the offences under the IPC, such as, Sections 379 and 414 IPC and the same shall be proceeded with further.

**2020 0 Supreme(SC) 692; PARAMVIR SINGH SAINI Vs. BALJIT SINGH & OTHERS: SPECIAL LEAVE PETITION (CRIMINAL) NO.3543 of 2020; 02-12-2020 (THREE JUDGE BENCH)**

The majority of the Compliance Affidavits and Action Taken Reports fail to disclose the exact position of CCTV cameras qua each Police Station. The affidavits are bereft of details with respect to the total number of Police Stations functioning in the respective State and Union Territory; total number of CCTV cameras installed in each and every Police Station; the positioning of the CCTV cameras already installed; working condition of the CCTV cameras; whether the CCTV cameras have a recording facility, if yes, then for how many days/hours, have not been disclosed. Further, the position qua constitution of Oversight Committees in accordance with the Order dated 03.04.2018, and/or details with respect to the Oversight Committees already constituted in the respective States and Union Territory have also not been disclosed.

Compliance affidavits by all the States and Union Territories are to be filed, as has been stated earlier, by either the Principal Secretary of the State or the Secretary, Home Department of the States/Union Territories. This is to be done by all the States and Union Territories, including those who have filed so-called compliance affidavits till date, stating the details mentioned in paragraph 8 of this Order. These affidavits are to be filed within a period of six weeks from today.

So far as constitution of Oversight Committees in accordance with our Order dated 03.04.2018 is concerned, this should be done at the State and District levels. The State Level Oversight Committee (hereinafter referred to as the "SLOC") must consist of:

(i) The Secretary/Additional Secretary, Home Department;
(ii) Secretary/Additional Secretary, Finance Department;
(iii) The Director General/Inspector General of Police; and
(iv) The Chairperson/member of the State Women's Commission.

So far as the District Level Oversight Committee (hereinafter referred to as "DLOC") is concerned, this should comprise of:

(i) The Divisional Commissioner/Commissioner of Divisions/Regional Commissioner/Revenue Commissioner Division of the District (by whatever name called);
(ii) The District Magistrate of the District;
(iii) A Superintendent of Police of that District; and
(iv) A mayor of a municipality within the District/a Head of the Zilla Panchayat in rural areas.

It shall be the duty of the SLOC to see that the directions passed by this Court are carried out. Amongst others, the duties shall consist of:

(a) Purchase, distribution and installation of CCTVs and its equipment;
(b) Obtaining the budgetary allocation for the same;
(c) Continuous monitoring of maintenance and upkeep of CCTVs and its equipment;
(d) Carrying out inspections and addressing the grievances received from the DLOC; and
(e) To call for monthly reports from the DLOC and immediately address any concerns like faulty equipment.

Likewise, the DLOC shall have the following obligations:

(a) Supervision, maintenance and upkeep of CCTVs and its equipment;
(b) Continuous monitoring of maintenance and upkeep of CCTVs and its equipment;
(c) To interact with the Station House Officer (hereinafter referred to as the "SHO") as to the functioning and maintenance of CCTVs and its equipment; and
(d) To send monthly reports to the SLOC about the functioning of CCTVs and allied equipment.
(e) To review footage stored from CCTVs in the various Police Stations to check for any human rights violation that may have occurred but are not reported.

It is obvious that none of this can be done without allocation of adequate funds for the same, which must be done by the States'/Union Territories' Finance Departments at the very earliest.

The duty and responsibility for the working, maintenance and recording of CCTVs shall be that of the SHO of the police station concerned. It shall be the duty and obligation of the SHO to immediately

report to the DLOC any fault with the equipment or malfunctioning of CCTVs. If the CCTVs are not functioning in a particular police station, the concerned SHO shall inform the DLOC of the arrest /interrogations carried out in that police station during the said period and forward the said record to the DLOC. If the concerned SHO has reported malfunctioning or non-functioning of CCTVs of a particular Police Station, the DLOC shall immediately request the SLOC for repair and purchase of the equipment, which shall be done immediately.

The Director General/Inspector General of Police of each State and Union Territory should issue directions to the person in charge of a Police Station to entrust the SHO of the concerned Police Station with the responsibility of assessing the working condition of the CCTV cameras installed in the police station and also to take corrective action to restore the functioning of all non-functional CCTV cameras. The SHO should also be made responsible for CCTV data maintenance, backup of data, fault rectification etc.

The State and Union Territory Governments should ensure that CCTV cameras are installed in each and every Police Station functioning in the respective State and/or Union Territory. Further, in order to ensure that no part of a Police Station is left uncovered, it is imperative to ensure that CCTV cameras are installed at all entry and exit points; main gate of the police station; all lock-ups; all corridors; lobby/the reception area; all verandas/outhouses, Inspector's room; Sub-Inspector's room; areas outside the lock-up room; station hall; in front of the police station compound; outside (not inside) washrooms/toilets; Duty Officer's room; back part of the police station etc.

CCTV systems that have to be installed must be equipped with night vision and must necessarily consist of audio as well as video footage. In areas in which there is either no electricity and/or internet, it shall be the duty of the States/Union Territories to provide the same as expeditiously as possible using any mode of providing electricity, including solar/wind power. The internet systems that are provided must also be systems which provide clear image resolutions and audio. Most important of all is the storage of CCTV camera footage which can be done in digital video recorders and/or network video recorders. CCTV cameras must then be installed with such recording systems so that the data that is stored thereon shall be preserved for a period of 18 months. If the recording equipment, available in the market today, does not have the capacity to keep the recording for 18 months but for a lesser period of time, it shall be mandatory for all States, Union Territories and the Central Government to purchase one which allows storage for the maximum period possible, and, in any case, not below 1 year. It is also made clear that this will be reviewed by all the States so as to purchase equipment which is able to store the data for 18 months as soon as it is commercially available in the market. The affidavit of compliance to be filed by all States and Union Territories and Central Government shall clearly indicate that the best equipment available as of date has been purchased.

Whenever there is information of force being used at police stations resulting in serious injury and/or custodial deaths, it is necessary that persons be free to complain for a redressal of the same. Such complaints may not only be made to the State Human Rights Commission, which is then to utilise its powers, more particularly under Sections 17 and 18 of the Protection of Human Rights Act, 1993, for redressal of such complaints, but also to Human Rights Courts, which must then be set up in each District of every State/Union Territory under Section 30 of the aforesaid Act. The Commission/Court can then immediately summon CCTV camera footage in relation to the incident for its safe keeping, which may then be made available to an investigation agency in order to further process the complaint made to it.

The Union of India is also to file an affidavit in which it will update this Court on the constitution and workings of the Central Oversight Body, giving full particulars thereof. In addition, the Union of India is also directed to install CCTV cameras and recording equipment in the offices of:

(i) Central Bureau of Investigation (CBI)
(ii) National Investigation Agency (NIA)
(iii) Enforcement Directorate (ED)
(iv) Narcotics Control Bureau (NCB)
(v) Department of Revenue Intelligence (DRI)
(vi) Serious Fraud Investigation Office (SFIO)
(vii) Any other agency which carries out interrogations and has the power of arrest.

As most of these agencies carry out interrogation in their office(s), CCTVs shall be compulsorily installed in all offices where such interrogation and holding of accused takes place in the same manner as it would in a police station.

The COB shall perform the same function as the SLOC for the offices of investigative/enforcement agencies mentioned above both in Delhi and outside Delhi wherever they be located.

The SLOC and the COB (where applicable) shall give directions to all Police Stations, investigative/enforcement agencies to prominently display at the entrance and inside the police stations/offices of investigative/enforcement agencies about the coverage of the concerned premises by CCTV. This shall be done by large posters in English, Hindi and vernacular language. In addition to the above, it shall be clearly mentioned therein that a person has a right to complain about human rights violations to the National/State Human Rights Commission, Human Rights Court or the Superintendent of Police or any other authority empowered to take cognizance of an offence. It shall further mention that CCTV footage is preserved for a certain minimum time period, which shall not be less than six months, and the victim has a right to have the same secured in the event of violation of his human rights.

Since these directions are in furtherance of the fundamental rights of each citizen of India guaranteed under Article 21 of the Constitution of India, and since nothing substantial has been done in this regard for a period of over 2½ years since our first Order dated 03.04.2018, the Executive/ Administrative/police authorities are to implement this Order both in letter and in spirit as soon as possible. Affidavits will be filed by the Principal Secretary/Cabinet Secretary/Home Secretary of each State/Union Territory giving this Court a firm action plan with exact timelines for compliance with today's Order. This is to be done within a period of six weeks from today.

**2020 0 Supreme(SC) 697; AMISH DEVGAN Vs UNION OF INDIA AND OTHERS; WRIT PETITION (CRIMINAL) NO. 160 OF 2020; Decided on : 07-12-2020**

In Arnab Ranjan Goswami's case, the proceedings in the subsequent FIRs were quashed as the counsel for the complainants in the said case had joined the petitioner in making the said prayer. However, in the present case, we would like to follow the ratio in T.T. Antony which is to the effect that the subsequent FIRs would be treated as statements under Section 162 of the Criminal Code. This is clear from the following dictum in T.T. Antony:

"18. An information given under sub-section (1) of Section 154 CrPC is commonly known as first information report (FIR) though this term is not used in the Code. It is a very important document. And as its nickname suggests it is the earliest and the first information of a cognizable offence recorded by an officer in charge of a police station. It sets the criminal law in motion and marks the commencement of the investigation which ends up with the formation of opinion under Section 169 or 170 CrPC, as the case may be, and forwarding of a police report under Section 173 CrPC. It is quite possible and it happens not infrequently that more information than one are given to a police officer in charge of a police station in respect of the same incident involving one or more than one cognizable offences. In such a case he need not enter every one of them in the station house diary and this is implied in Section 154 CrPC. Apart from a vague information by a phone call or a cryptic telegram, the information first entered in the station house diary, kept for this purpose, by a police officer in charge of a police station is the first information report - FIR postulated by Section 154 CrPC. 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 CrPC. 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 CrPC. Take a case where an FIR mentions cognizable offence under Section 307 or 326 IPC and the investigating agency learns during the investigation or receives fresh information that the victim died, no fresh FIR under Section 302 IPC need be registered which will be irregular; in such a case alteration of the provision of law in the first FIR is the proper course to adopt. Let us consider a different situation in which H having killed W, his wife, informs the police that she is killed by an unknown person or knowing that W is killed by his mother or sister, H owns up the responsibility and during

investigation the truth is detected; it does not require filing of fresh FIR against/-/- the real offender - who can be arraigned in the report under Section 173(2) or 173(8) CrPC, as the case may be. It is of course permissible for the investigating officer to send up a report to the Magistrate concerned even earlier that investigation is being directed against the person suspected to be the accused."

This would be fair and just to the other complainants at whose behest the other FIRs were caused to be registered, for they would be in a position to file a protest petition in case a closure/final report is filed by the police. Upon filing of such protest petition, the magistrate would be obliged to consider their contention(s), and may even reject the closure/final report and take cognizance of the offence and issue summons to the accused. Otherwise, such complainants would face difficulty in contesting the closure report before the Magistrate, despite and even if there is enough material to make out a case of commission of an offence.

Lastly, we would also like to clarify that Section 179 of the Criminal Code permits prosecution of cases in the court within whose local jurisdiction the offence has been committed or consequences have ensued. Section 186 of the Criminal Code relates to cases where two separate charge-sheets have been filed on the basis of separate FIRs and postulates that the prosecution would proceed where the first charge-sheet has been filed on the basis of the FIR that is first in point of time. Principle underlying section 186 can be applied at the pre-charge-sheet stage, that is, post registration of FIR but before charge-sheet is submitted to the Magistrate. In such cases ordinarily the first FIR, that is, the FIR registered first in point of time, should be treated as the main FIR and others as statements under Section 162 of the Criminal Code. However, in exceptional cases and for good reasons, it will be open to the High Court or this Court, as the case may be, to treat the subsequently registered FIR as the principal FIR. However, this should not cause any prejudice, inconvenience or harassment to either the victims, witnesses or the person who is accused. We have clarified the aforesaid position to avoid any doubt or debate on the said aspect.

**2020 0 Supreme(SC) 710; Rohtas & Anr.Vs. State of Haryana; Criminal Appeal No. 38 of 2011 With Bijender Vs State of Haryana; Criminal Appeal No. 775 of 2011; Decided on : 10-12-2020**

Sections 211 to 224 of CrPC which deal with framing of charges in criminal trials, give significant flexibility to Courts to alter and rectify the charges. The only controlling objective while deciding on alteration is whether the new charge would cause prejudice to the accused, say if he were to be taken by surprise or if the belated change would affect his defence strategy Nallapareddy Sridhar Reddy vs. State of AP, 2020 SCC OnLine SC 60, 16-21]. The emphasis of Chapter XVII of the CrPC is thus to give a full and proper opportunity to the defence but at the same time to ensure that justice is not defeated by mere technicalities. Similarly, Section 386 of CrPC bestows even upon the appellate Court such wide powers to make amendments to the charges which may have been erroneously framed earlier. Furthermore, improper, or non-framing of charge by itself is not a ground for acquittal under Section 464 of the CrPC.

**2020 0 Supreme(SC) 713; IN RE: THE PROPER TREATMENT OF COVID 19 PATIENTS AND DIGNIFIED HANDLING OF DEAD BODIES IN THE HOSPITALS ETC.; SUO MOTU WRIT PETITION (CIVIL) NO.7 OF 2020; Decided on : 18-12-2020**

We have already issued various directions with regard to measures to be taken to contain the Covid-19. We once again reiterate the State to issue necessary directions with regard to following measures so as to effectively monitor and supervise the implementation of various SOPs and guidelines.

(i) More and more police personnel shall be deployed at the places where there is likelihood of gathering by the people, such as, Food Courts, Eateries, Vegetable Markets (Wholesale or Retail), sabzi Mandies, bus stations, railway stations, street vendors, etc.

(ii) As far as possible, unless must, no permission shall be granted by the local administration or the Collector/DSP for celebration/gathering even during the day hours and wherever the permissions are granted, the local administration/DSP/Collector/Police In-charge of the local police station shall ensure the strict compliance of the Guidelines/SOPs. There should be a mechanism to check the number of people attending such function/gathering, such as, the particulars with respect to how many persons are going to attend the celebration/gathering, timings during which the celebration/gathering is to take place etc.

(iii) There shall be more and more testing and to declare the correct facts and figures. One must be transparent in number of testing and declaring the facts and figures of the persons who are Corona Positive. Otherwise, the people will be misled and they will be under impression that everything is all right and they will become negligent.
(iv) Whenever directions are issued under the Disaster Management Act directing the corporate hospitals/private hospitals to keep 50% or any other percentage free municipal beds, it must be strictly complied with and there shall be constant vigilance and supervision.
((v) There shall be free helpline numbers to redress the grievances of common man, when there is noncompliance of the directions by the private hospitals/corporate hospitals.
(vi) Curfew on weekends/night be considered by States where it is not in place.
(vii) In a micro containment zone or in an area where number of cases are on higher side, to cut the chain, they should be sealed and there should be complete lockdown so far as such areas are concerned. Such containment areas need to be sealed for few days except essential services. The same is required to break the chain of virus spread.
(viii) Any decision to impose curfew and/or lockdown must be announced long in advance so that the people may know and make provisions for their livelihood, like ration etc.
(ix) Another issue is a fatigue of front row health care officers, such as, Doctors, Nurses as well as workers. They are already exhausted physically and mentally due to tireless work for eight months. Some mechanism may be required to give them intermittent rest.

**Nalladammu Narayana Reddy vs State Of Telangana on 28 December, 2020; CRIMINAL REVISION CASE No. 600 of 2020; https://indiankanoon.org/doc/179999400/; http://tshcstatus.nic.in/hcorders/2020/crlrc/crlrc_600_2020.pdf;**
Interim custody of vehicle involved in NDPS offence is granted.

**Mr. Shaik Syed vs The State Of Telangana on 28 December, 2020; I.A.No.4 of 2020 AND CRIMINAL REVISION CASE No.396 of 2020; https://indiankanoon.org/doc/111113176/; http://tshcstatus.nic.in/hcorders/2020/crlrc/crlrc_396_2020.pdf**
offences punishable under Sections 376(2)(n), 417 and 420 IPC and Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 in Crime No.249 of 2020 of Alwal Police Station.are allowed to be withdrawn on affidavit of the victim.

**Naga Venkata Sai Pradeep Kumar ... vs The State Of Telangana on 24 December, 2020; https://indiankanoon.org/doc/188173874/;**
**http://tshcstatus.nic.in/hcorders/2020/crlp/crlp_6409_2020.pdf;**
**Dr Mattaparthy Neelakanteswara vs The State Of Telangana on 24 December, 2020; https://indiankanoon.org/doc/184681828/;http://tshcstatus.nic.in/hcorders/2020/crlp/crlp_5696_2020.pdf;**
offences punishable under the provisions of the Scheduled Castes & Scheduled Tribes Act, 1989, allowed to be COMPOUNDED

**Mr. G. Gnaneshwar .. Appellant Vs. The State of A.P., ACB, Hyderabad; 11.06.2020; 2020 2 ALD Crl 967(TS); http://tshcstatus.nic.in/hcorders/2007/crla/crla_492_2007.pdf;**
Grant of sanction is not a mere formality. Therefore, the provisions in regard to the sanction must be observed with complete strictness keeping in mind the public interest and the protection available to the accused against whom the sanction is sought. It was further held that it is not an acrimonious exercise but a solemn and sacrosanct act which affords protection to the government servant against frivolous prosecution. Further, it is a weapon to discourage vexatious prosecution and is a safeguard for the innocent, though not a shield for the guilty. The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. In every individual case, the prosecution has to establish and satisfy the court by leading evidence that those facts were placed before the sanctioning authority and the authority had applied its mind on the same. If the sanction order on its face indicates that all relevant material i.e. FIR, disclosure statements, recovery memos, draft charge sheet and other materials on record were placed before the sanctioning authority and if it is further discernible from the recital of the sanction order that the sanctioning authority perused all the material, an inference may be drawn that the sanction had been

granted in accordance with law. This becomes necessary in case the court is to examine the validity of the order of sanction inter alia on the ground that the order suffers from the vice of total non-application of mind. Thus, where there is no reason in the order passed by the Authority/Court, a presumption can be drawn that the said order was passed without application of mind as per the principle held by the Hon'ble Apex Court.
However, the learned Public Prosecutor would contend that there is no need of mentioning all the documents while issuing the prosecution sanction orders by the Sanctioning Authority with regard to prima facie case and the satisfaction he arrived at to prosecute the Accused Officer, and mentioning the same in the Sanction proceedings is sufficient. But, the said contention of the learned Special Public Prosecutor is not acceptable for the reasons stated above and also in view of the principle held by the Apex Court in C.B.I. v. Ashok Kumar Aggarwal{2014 Crl.L.J. 930}. In view of the above discussion and the decisions, presumption can be drawn that the Sanctioning Authority has issued Ex.P15 sanction proceedings without application of mind.

**2020 5 Supreme 395; 2020 0 Supreme(SC) 540; 2020 2 ALD Crl 1009(SC); Jeet Ram Vs.The Narcotics Control Bureau, Chandigarh; CRIMINAL APPEAL NO.688 OF 2013; 15-09-2020**
No defence witness has deposed to the chain of events, as has been stated by the appellant in the statement under Section 313, Cr.PC. It is also fairly well settled that where accused offers false answers in examination under Section 313 Cr.PC, same also can be used against him. Further onus was on the appellant to explain the possession and in absence of the same being discharged, presumption under Section 54 of the NDPS Act also will kick in.
Even with regard to the finding of the trial court that the case of the prosecution was not supported by independent witnesses, it is clear from the evidence on record that the incident had happened at about 10:30 p.m. in a dhaba which is away from the village site and all other persons who are found in the dhaba were the servants of the accused. It is also clear from the evidence on record that Suresh Kumar and Attar Singh examined on behalf of the appellant are closely related to the accused, as such, they could not be said to be independent witnesses. Pappu was the only other person who is none other than the servant of the dhaba and we cannot expect such a person to be a witness against his own master. Evidence of the Police witnesses

**2020 5 Supreme 142; 2020 0 Supreme(SC) 535; 2020 2 ALD Crl 1019 (SC) THREE JUDGE BENCH; Rizwan Khan Vs The State of Chhattisgarh; CRIMINAL APPEAL NO. 580 OF 2020 (Arising out of S.L.P.(Criminal) No.4422/2019); Decided On : 10-09-2020**
It is true that all the aforesaid witnesses are police officials and two independent witnesses who were panchnama witnesses had turned hostile. However, all the aforesaid police witnesses are found to be reliable and trustworthy. All of them have been thoroughly cross-examined by the defence. There is no allegation of any enmity between the police witnesses and the accused. No such defence has been taken in the statement under Section 313, Cr.P.C. There is no law that the evidence of police officials, unless supported by independent evidence, is to be discarded and/or unworthy of acceptance.
It is settled law that the testimony of the official witnesses cannot be rejected on the ground of non-corroboration by independent witness. As observed and held by this Court in catena of decisions, examination of independent witnesses is not an indispensable requirement and such non-examination is not necessarily fatal to the prosecution case

**Yerramseti Venugopal Rao Vs. The State of Andhra Pradesh; 2020 2 ALD Crl 1048(AP); https://www.casemine.com/judgement/in/5f4398cd4653d009c1ff7660;**
A single charge sheet for Sec 302 & 307 IPC is sufficient to open a Rowdy sheet.
two grounds are shown for continuation of rowdy sheet. Firstly, that there is every chance that he may gain over the witnesses and secondly, due to fear of the petitioners no one has turned up to the police station to lodge any fresh complaints. It must be said that first ground is not envisaged in Order 602. Even otherwise if the petitioners made any attempt to win over the witnesses in Cr.No.304/2019, the concerned police can report to the Court where the case is pending for cancellation of the bail of the petitioners or for taking other suitable action. The second ground is concerned, except alleging that no victim has turned up to the police station to lodge any fresh complaints for fear of petitioners, no plausible material is placed before the Court in that regard. It is incomprehensible as to how the

respondent police came to know that the petitioners committed some other offences when none of the victims came forward to the police station to lodge fresh complaints. Thus, both the grounds shown are not sustainable in the eye of law.

**2020 3 SCC Cri 618; 2019 0 AIR(SC) 1834; 2019 2 ALT(Cri)(SC) 225; 2019 1 Crimes(SC) 255; 2019 0 CrLJ 2386; 2019 3 Supreme 482; 2019 0 Supreme(SC) 222;State of Gujarat Vs Anwar Osman Sumbhaniya and others; Criminal Appeal Nos. 1359-1361 of 2007; Decided: 27-02-2019**

The sanctioning authority has palpably failed to evaluate the materials gathered during the investigations before recording its satisfaction on the factum

The necessity of obtaining prior sanction under Section 20-A(2) need not be underscored considering the draconian provisions of TADA.

the prosecution has essentially relied upon the confessional statement of the accused recorded under the provisions of TADA. That will be of no avail and certainly not admissible against the accused in the trial for offences under other enactments, especially when the Designated Court could not have taken cognizance of the offence under TADA for lack of a valid sanction.

**2020 3 SCC Cri 639; 2019 18 SCC 561; 2019 3 Crimes(SC) 29; 2019 1 Scale 408; 2019 4 SCJ 385; 2019 1 Supreme 508; 2019 0 Supreme(SC) 45; Mahadevappa Vs. State of Karnataka Rep. By Public Prosecutor ; Criminal Appeal No. 1261 of 2008; Decided On : 07-01-2019**

In our opinion, there is no reason to discard the evidence of the father and mother of the deceased who are the most natural and material witnesses to speak on such issues. Indeed, in such circumstances, the daughter a newly married girl would always like to first disclose her domestic problems to her mother and father and then to her close relatives because they have access to her and are always helpful in solving her problems.

We have not been able to notice any kind of contradiction on any of the material issues in the evidence of these four witnesses despite they being subjected to lengthy cross-examination by the defense. That apart, why should a mother and a father speak lie unless there are justifiable reasons behind it. We do not find any such reason in this case.

The evidence of four prosecution witnesses which we have detailed above fully proves the case of the prosecution. In this view of the matter, even if, some witnesses might have turned hostile, yet it would be of no significance and nor it would adversely affect the case of the prosecution. It is more so when the witnesses which we have referred above did not turn hostile and were, therefore, rightly believed by the High Court.

it is not in dispute that the incident in question occurred in the house when only the deceased and the appellant were present. In other words, the appellant was the only person present at the time of incident in the house with the deceased.

In the absence of any plausible explanation given by the appellant and the one which was suggested but not having been proved and further keeping in view the circumstances, the manner in which the incident occurred and material seized from the room i.e. kerosene oil bottle, it is proved beyond reasonable doubt that the appellant was responsible for causing death of Rukmini Bai. In other words, Rukmini Bai's death was homicidal and not accidental.

**2020 5 KHC 322; 2020 0 Supreme(SC) 561; MAHESHWAR TIGGA Vs THE STATE OF JHARKHAND; CRIMINAL APPEAL NO. 635 OF 2020 (Arising out of SLP (Crl.) No.393 of 2020); Decided on : 28-09-2020**

A false promise is not a fact within the meaning of the Code. We are inclined to agree with this view, but we must add that there is no straitjacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the courts provide at best guidance to the judicial mind while considering a question of consent, but the court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them.

**https://indiankanoon.org/doc/90165818/;**
**http://tshcstatus.nic.in/hcorders/2020/crlp/crlp_6596_2020.pdf; Sri Korvi Ramesh vs The State of Telangana on 11 December, 2020;**
Sec 306 IPC- Deceased stated that in his DD that the accused demanded the money due to him and also assaulted him a week ago, as such he poured kerosene and lit himself up- Bail denied as there are specific allegations against the petitioner.

**Anumula Revanth Reddy vs The State Of Telangana And Another on 10 December, 2020;**
**https://indiankanoon.org/doc/101937474/;**
**http://tshcstatus.nic.in/hcorders/2020/crlp/crlp_5771_2020.pdf;**
**https://indiankanoon.org/doc/95126554/;**
**http://tshcstatus.nic.in/hcorders/2020/crlp/crlp_5773_2020.pdf;**
Section 195(1)(a)(i) of Cr.P.C. mandates filing of a complaint in writing by a public servant and the police cannot register an FIR and investigate the case and thereafter file report, in case where the alleged offence is under Section 188 of IPC. A complaint in writing by a public servant is essential for a Magistrate to take cognizance of the offence under Section 188 of IPC.

**Naveen Vaishnav vs The State Of Telangana on 10 December, 2020;**
https://indiankanoon.org/doc/96370645/; http://tshcstatus.nic.in/hcorders/2020/wp/wp_21981_2020.pdf;
In W.P.No.38397 of 2018 and batch in Govind Raju Sami v. State of Telangana and Others 2019 (3) ALT 139, this Court considered all the aspects concerning non-registration of crimes, not investigating into the crimes registered, delay in investigation, not following due procedure in filing the final report and the scope of provisions of the Code of Criminal Procedure, more particularly, Sections 156, 190 and 200 of Cr.P.C., and this Court held as under:
"34. Having regard to law propounded by Supreme Court, it is no more open for any one to contend that unless a report is filed aggrieved person is without remedy. It is also no more open to contend that once crime is registered accused must be arrested and charge sheet/final report must be filed as a matter of course. Further, delay in completing the investigation can be for various reasons. Police may be waiting for forensic report/Medical report/the accused is absconding/having regard to complex nature of crime reported more time is consumed to collect required data/information to assess the nature of crime, number of documents and/or witnesses are more. While determining delay, it is necessary to consider each case on its facts having regard to attending circumstances including nature of offence, number of accused and witnesses etc [Mahender Lal Das v. State of Bihar Appeal (Civil) No. 1038 of 2001 dated 12.10.2001]. The jurisdictional Magistrate shall have all material facts in issue at his command to assess the issue and shall be competent to go into all aspects when matters are brought before him and to take appropriate decision. It is also within the competence of superior officers to assess the conduct of Station House Officer and to take remedial action whenever there is deliberate and unexplained delay in investigation and filing of final report."

**Suman Vadavath vs The State Of Telangana And 3 Others on 10 December, 2020**
https://indiankanoon.org/doc/157696320/; http://tshcstatus.nic.in/hcorders/2020/wp/wp_22250_2020.pdf;
The confiscation proceedings and granting interim custody are two independent aspects. Merely because, the interim custody of the vehicle is granted, the competent authority is not precluded from proceeding to finalize the confiscation proceedings.

**Guguloth Santosh Naik Vs. The State of Telangana, rep.by its Principal Secretary, Home Department and others; http://tshcstatus.nic.in/hcorders/2020/wp/wp_23081_2020.pdf; WRIT PETITION No.23081 OF 2020; 23.12.2020;**
As held by the Hon'ble Supreme Court in Lalitha Kumari on mere registration of crime, it is not necessary that person should be arrested.
having regard to the law laid down by the Hon'ble Supreme Court and having regard to the fact that the writ petition was instituted within four days of reporting crime, it cannot be said that police have not acted diligently in investigating into the crime and in not arresting the 17 fifth respondent. Thus, it is premature for this Court, at this stage, to hold the action of respondent-police in not arresting fifth respondent as amounting to abuse or misuse of power or dereliction of their solemn duty. Having regard to the law laid down by the Hon'ble Supreme Court, the provisions of Cr.P.C. and the scope

Execution Perfect

and objects of the Act, 1989, it cannot be said that merely because crime is reported under the Act, straightaway accused has to be arrested

**WRIT PETITION NO.21128 OF 2020 ; Ganji Venkatesham Vs State of Telangana and others ; 22.12.2020; http://tshcstatus.nic.in/hcorders/2020/wp/wp_21128_2020.pdf;**
It is not for the individual citizen to assess how the law enforcing agency should act but it is for that agency to come to subjective satisfaction of the need to resort to preventive detention. That satisfaction is also conditioned by the requirement of disturbance to 'public order', not 'law and order'.

**Gudur Sandeep Reddy & others Vs. State of Telangana; CRLP Nos.5819, 5939, 5961, 6095 & 6097 OF 2020; 02-12-2020; http://tshcstatus.nic.in/hcorders/2020/crlp/crlp_5819_2020.pdf;**
it is relevant to point out that the role played by the police in the entire episode is not satisfactory. The parents of the deceased have met the Commissioner of Police, Cyberabad Commissionerate, who in turn advised them to approach the Police Station, Chandanagar. Accordingly, they went to the Chandanagar Police Station and lodged a complaint on 17.06.2020 with Chandanagar Police Station complaining that they have life threat from the parents and relatives of the de facto complainant.
the parents of the deceased and the de facto complainant went to the Commissioner of Police Office in an auto-rickshaw who in turn advised them to go to the Gachibowli Police Station. Therefore, they went to the Gachibowli Police Station between 5.30 p.m. to 6.00 p.m. and lodged a complaint complaining about the kidnapping the deceased. Thus, the police came to know about the inter-caste marriage of the de facto complainant with deceased on 10.06.2020 and also on 17.06.2020. The said facts were mentioned in the statements of both LWs.2 and 3 recorded by the police under Section - 161 of Cr.P.C. Despite lodging complaint by the parents of the deceased complaining that they have life threat from the parents and relatives of the de facto complainant, the police have not taken any preventive measures to prevent the incident. It appears that the police have not taken any steps in accordance with law on the complaint lodged by the parents of the deceased. Thus, the police have utterly failed in preventing the incident. The said action of the police is contrary to the guidelines issued by the Apex Court in the judgments cited supra. Hope the police will take appropriate measures in preventing such incidents in future.

NOSTALGIA

**Non-examination of Independent Witness:**
It is true that the duty of the prosecution is to seek not just conviction but to ensure that justice is done [Kumari Shrilekha Vidyarthi vs. State of UP, (1991) 1 SCC 212]. The prosecution must, therefore, put forth the best evidence collected in the course of investigation. Although it is always ideal that independent witnesses come forward to substantiate the prosecution case but it would be unfair to expect the presence of third-parties in every case at the time of incident, for most violent crimes are seldom anticipated. Any adverse inference against the non-examination of independent witnesses thus needs to be assessed upon the facts and circumstances of each case. In fact, it must first be determined whether the best evidence though available, has been actually withheld by the prosecution for oblique or unexplained reasons.

**Cancellation of Bail**
A two judge Bench of this Court, in Kanwar Singh Meena vs. State of Rajasthan, (2012) 12 SCC 180, noted that:

> "10. Thus, Section 439 of the Code confers very wide powers on the High Court and the Court of Session regarding bail. But, while granting bail, the High Court and the Sessions Court are guided by the same considerations as other courts. That is to say, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds are required to be taken into consideration. **Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the court. The court has to only opine as to whether there is prima facie**

**case against the accused. The court must not undertake meticulous examination of the evidence collected by the police and comment on the same. Such assessment of evidence and premature comments are likely to deprive the accused of a fair trial.** While cancelling the bail under Section 439(2) of the Code, the primary considerations which weigh with the court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But, that is not all. The High Court or the Sessions Court can cancel the bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. **If the court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail.** Such orders are against the well-recognised principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing the accused involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society. Needless to say that though the powers of this Court are much wider, this Court is equally guided by the above principles in the matter of grant or cancellation of bail."

**Does Criminal Court finding bind Civil Court?**

In 2005 (4) SCC 370 (Iqbal Singh Marwah and another vs. Meenakshi Marwah and another), the Apex Court has held that The findings given in one proceeding is not binding on the other. Civil cases are decided on the basis of preponderance of evidence, while in a Criminal case, the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given.

Hon'ble Apex Court in Kishan Singh (D) Thru Lrs vs Gurpal Singh & Ors reported in 2011 (1) ALT (Crl.) 148 = AIR 2010 SC 3624, after referring several judgments of Supreme Court, Privy Council and other High Courts, observed "Thus, in view of the above, the law on the issue stands crystallized to the effect that the findings of fact recorded by the Civil Court do not have any bearing so far as the criminal case is concerned and viceversa. Standard of proof is different in civil and criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject matter and both the cases have to be decided on the basis of the evidence adduced therein."

**(This judgment is contributed by Sri S.Srikanth, JCJ, Adoni, A.P)**

# NEWS

- **GOVERNMENT OF ANDHRA PRADESH-** Public Services – A.P. Prosecutions Department - Additional Charge arrangements for the post of Director of Prosecutions, Andhra Pradesh – Orders – Issued- **G.O.Rt.No:1228, HOME (COURTS.A) DEPARTMENT, DATED:11.12.2020.**
- **GOVERNMENT OF ANDHRA PRADESH-**Public Services – Prosecutions Department – Inter-State transfers - Smt.K.Vijayasudha, Assistant Public Prosecutor, JMFC Juvenile Court, Kurnool (Zone-IV) and Sri M.Subbaiah, Assistant Public Prosecutor, JMFC Court, Alampur, Mahaboobnagar District, from Andhra Pradesh to Telangana and vice versa on mutual basis – Orders – Issued- **G.O.Ms.No:147 HOME (COURTS.A) DEPARTMENT DATED: 18.12.2020.**
- Sri. S.Sambasiva Reddy, Adl. PP Gr-I, IV AMSJ court, appointed Public Relation Officer to the Office of the Directorate of Prosecutions, Telangana.

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# ON A LIGHTER VEIN

There was a man who was driving down a road and his car breaks down near a monastery. He goes to the monastery, knocks on the door, and says, "My car broke down. Do you think I could stay the night?"

The monks graciously accept him, feed him dinner, even fix his car. As the man tries to fall asleep, he hears a strange sound. A sound unlike anything he's ever heard before. The Sirens that nearly seduced Odysseus into crashing his ship comes to his mind.

He doesn't sleep that night. He tosses and turns trying to figure out what could possibly be making such a seductive sound.

The next morning, he asks the monks what the sound was, but they say, "We can't tell you. You're not a monk."

Distraught, the man is forced to leave. Years later, after never being able to forget that sound, the man goes back to the monastery and pleads for the answer again. The monks reply, "We can't tell you. You're not a monk."

The man says, "If the only way I can find out what is making that beautiful sound is to become a monk, then please, make me a monk." The monks reply, "You must travel the earth and tell us how many blades of grass there are and the exact number of grains of sand. When you find these answers, you will have become a monk."

The man sets about his task. After years of searching, he returns as a gray-haired old man and knocks on the door of the monastery. A monk answers. He is taken before a gathering of all the monks.

"In my quest to find what makes that beautiful sound, I traveled the earth and have found what you asked for: By design, the world is in a state of perpetual change. Only God knows what you ask. All a man can know is himself, and only then if he is honest and reflective and willing to strip away self deception."

The monks reply, "Congratulations. You have become a monk. We shall now show you the way to the mystery of the sacred sound." The monks lead the man to a wooden door, where the head monk says, "The sound is beyond that door." The monks give him the key, and he opens the door. Behind the wooden door is another door made of stone. The man is given the key to the stone door and he opens it, only to find a door made of ruby. And so it went that he needed keys to doors of emerald, pearl and diamond. Finally, they come to a door made of solid gold. The sound has become very clear and definite. The monks say, "This is the last key to the last door." The man is apprehensive to no end. His life's wish is behind that door!

With trembling hands, he unlocks the door, turns the knob, and slowly pushes the door open. Falling to his knees, he is utterly amazed to discover the source of that haunting and seductive sound... But, of course, I can't tell you what it is because you're not a monk.

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Vol- X
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# Prosecution Replenish

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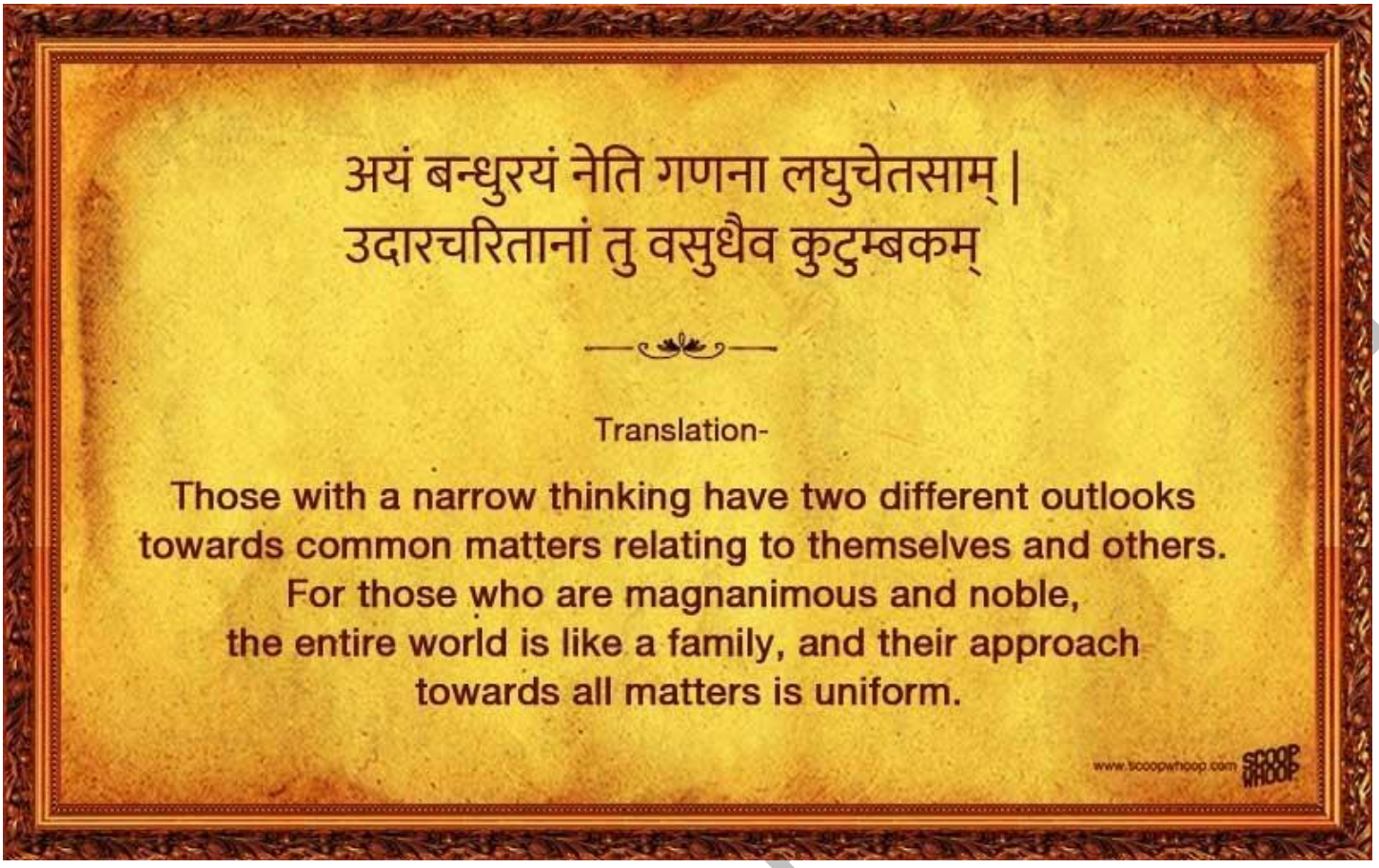
## February, 2021

Aano Bhadra Krtavo Yantu Vishwatah.(RIG VEDAM)
"Let Noble Thoughts Come To Me From All Directions"




**POWER OF MAGISTRATE TO OBTAIN SPECIMEN SIGNATURE OR HAND WRITING**

The Law with regard to the power of Magistrate to obtain specimen signature or hand writing is dealt under Section 311 A of the Code of Criminal Procedure. Section 311 A has been introduced in the Code by the Act 25 of 2005 which came into effect from 23-6-2006. Prior to the year 2006 there was no such power conferred on the Magistrate.

Section 311A found its place by virtue of the observation/suggestion made by Hon'ble Supreme Court of India in **State of Uttar Pradesh V. Rambabu Mishra, AIR 1980 SC 791.** The Hon'ble Supreme Court in the said Judgment suggested that a suitable legislation be brought along the lines of Section 5 of Identification of Prisoners Act, 1920 to provide for the investiture of Magistrates with the power to issue directions to any person, including an accused person to give specimen signatures and writings. The provisions under the Identification of Prisoners Act, 1920, did not contemplate any prescription for taking the signature or handwriting of any person including an accused person.

The provision is basically intended to enable the investigating agency to collect specimen signatures and writings of any person including an accused person for the purpose of collection of evidence in the course of investigation.

From the perusal of the provision of Section 311A Cr.P.C. it is absolutely clear that the Magistrate is invested with the power to invoke the provision for the purpose of any investigation or proceedings under the Code directing any person including an accused to give specimen signatures or handwriting and he may make an order to that effect that the person to whom the order relates, shall be produced or shall attend at the time or place specified and shall give his specimen signatures or handwriting. The proviso appended to the Section would make it abundantly clear that no order shall be passed by the Magistrate under the Section unless the person has at some time been arrested in connection with such investigation or proceeding, meaning thereby the arrest of the person in connection with investigation or proceeding is *sine qua non* for exercising the power under the Section by the Magistrate. Thus, where the person or the accused is not arrested then the Magistrate cannot invoke his power under section 311 A Cr.P.C. It is pertinent to note that the power under this Section can only be exercised by Magistrate, but not Sessions Judge as the provision itself is self explanatory.

The Hon'ble High Court of Judicature at Hyderabad for the State of Telangana & the State of Andhra Pradesh in **Alapati Srinivas Kumar, Hyd & 4 Others V., State Of AP., rep by PP and Anr.,** Criminal Petition No.7755 of 2017, Dated 17.08.2018., observed as follows:

*"This Section upholds the power of a Magistrate to direct any person including an accused person to give specimen signatures and handwriting for the purpose of any investigation or proceedings under the Code. The proviso to Section says that no order shall be made under this section unless the person at some time been arrested in connection with such investigation or proceeding. Section 311-A has been inserted in the Cr.P.C as per Cr.P.C (Amendment) Act, 2005 w.e.f. 23.06.2006, on the analogy of Section 5 of the Identification of Prisoners Act, 1989. While the main Section says the Court has power to direct any person including the accused, the proviso illustrates that the order shall not be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding. Needless to emphasize that the word 'person' used in the proviso is with reference to accused in the main section but not others. Therefore, in a given case, the Court may have to obtain the specimen signatures and handwriting of not only accused in that case but also the complainant. Since the question of arrest of the complainant at some time in connection with such investigation or proceeding does not arise, such arrest in the proviso, in my view, shall be referred to the accused in the main case".*

Whether directing any person/accused to give specimen signature or hand writing violates the constitutional guarantee of right against self incrimination/testimonial compulsion under Article 20 (3) of the Constitution of India? The Hon'ble Supreme Court of India in **State of Bombay V. Kathi Kalu Oghad and Others, AIR 1961 SC 1808 (CB)** held that giving thumb impression or impression of foot or palm or fingers or specimen writings would not amount to compelling a person to be a witness against himself and therefore it is not violative of Article 20 (3) of the Constitution of India. The larger Bench of the Hon'ble Supreme Court explained what is meant by testimonial compulsion. The spirit and purport of the said decision is that any direction to the accused to do anything or to make any statement indicating his complicity in an offence in any manner, will amount to testimonial compulsion. The Hon'ble Supreme Court had unconditionally held that a direction to the accused to provide his specimen thumb impression, or impression of foot or palm or fingers, or specimen writing will not in any manner amount to testimonial compulsion under Article 20 (3) of the Constitution of India.

The Hon'ble High Court of Delhi in **Rakesh Bisht V. Central Bureau of Investigation, 2007 CrLJ 1530,** observed taking into consideration the decision in Kathi Kalu (supra), on the subject of an accused being a witness against himself, that the taking of an handwriting sample in the course of a trial to establish the identity of a person would not be hit by Article 20(3) of the Constitution of India. However, it may be mentioned that if an accused is asked to give a handwriting sample and the matter which he writes contains inculpatory statements, then the same would be hit by Article 20(3) of the Constitution, as then he would be a witness against himself. For example, if an accused in a car theft case is compelled to write "I stole the car", although it would constitute a handwriting sample, it would be hit by Article 20(3) of the Constitution because the accused was compelled to be a witness against himself. On the other hand, if the accused were asked to give a handwriting sample by copying some known classical work in his handwriting, that would not be hit by Article 20(3) of the Constitution as then he would not be a witness against himself and his handwriting specimen would only be for the purposes of identification.

The Court also observed that the legislature has consciously referred to taking of specimens of signatures or handwriting for the purposes of any investigation or proceeding under this Code and it is for the first time that the Code has empowered the Magistrates to carve out an exception of passing an order directing a person to give specimen signatures of handwriting even in the course of investigation and it is amply clear that de hors this provision, the court did not have any power to direct any accused in the course of an investigation to give specimens of his signatures or handwriting.

Further, The Division Bench of Hon'ble High Court of Delhi in **Jaipal V. State, 2011 CrLJ 4444** held that the law is well settled that obtaining the handwriting of an accused during investigation is not hit by Article 20 (3) of the Constitution of India as an accused cannot be said to be a witness against himself, if he is asked to give his handwriting for the purpose of verification of any document purported to be in his handwriting. Certain acts like compulsorily obtaining specimen signatures and handwriting samples are testimonial in nature, they are not incriminatory by themselves if they are used for the purpose of identification or corroboration of the facts that are already in prosecuting agency's knowledge. It was held that obtaining handwriting of an accused for corroboration of the facts already known is thus not barred under Article 20 (3). Section 311-A allows the Court to order an accused to give his handwriting during enquiry or investigation. These powers were not available with the Court before Section 311-A was brought to the statute book in the year 2006. An addition of Section 311-A merely empowered the Court to order an accused to give his

handwriting/signatures for the purpose of investigation of his questioned handwriting/signatures which power was not available to the Court as according to Section 73, the Court can order for comparison of signatures/handwriting etc. of any person whose signatures / handwriting is in dispute before the Court.

In **State of Uttar Pradesh V. Rambabu Mishra, AIR 1980 SC 791** it was ventilated before the Court by the appellant therein that Section 73 of the Evidence Act conferred ample power on the Magistrate to direct the accused to give his specimen writing even during the course of investigation. It was also urged that it would be generally in the interests of the administration of justice for the Magistrate to direct the accused to give his specimen writing when the case was still under investigation, since that would enable the investigating agency not to place the accused before the Magistrate for trial or enquiry, if the disputed writing, as a result of comparison with the specimen writing, was found not to have been made by the accused. The court agreed with the contention that a direction by the Magistrate to the accused to give his specimen writing when the case is still under investigation would surely be in the interests of the administration of justice, but did not agree with the contention that Section 73 of the Evidence Act enables the Magistrate to give such a direction even when the case is still under investigation. The observations made by the Court are pertinent. The observations are as follows:-

*"Section 73 of the Evidence Act is as follows: "73. 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, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose. The Court may 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.*

*This section applies also, with any necessary modifications to finger-impressions".*

*The second paragraph of Section 73 enables the Court to direct any person present in Court to give specimen writings "for the purpose of enabling the Court to compare" such writings with writings alleged to have been written by such person. The clear implication of the words "for the purpose of enabling the Court to compare" is that there is some proceeding before the Court in which or as a consequence of which it might be necessary for the Court to compare such writings. The direction is to be given for the purpose of 'enabling the Court to compare' and not for the purpose of enabling the investigating or other agency 'to compare'. If the case is still under investigation there is no present proceeding before the Court in which or as a consequence of which it might be necessary to compare the writings. The language of Section 73 does not permit a Court to give a direction to the accused to give specimen writings for anticipated necessity for comparison in a proceeding which may later be instituted in the Court. Further Section 73 of the Evidence Act makes no distinction between a Civil Court and a Criminal Court. Would it be open to a person to seek the assistance of the Civil Court for a direction to some other person to give sample writing under Section 73 of the Evidence Act on the plea that it would help him to decide whether to institute a civil suit in which the question would be whether certain alleged writings are those of the other person or not ? Obviously not. If not, why should it make any difference if the investigating agency seeks the assistance of the Court under Section 73 of the Evidence Act on the plea that a case might be instituted before the Court where it would be necessary to compare the writings ?*

*We may also refer here to Section 73 of the Identification of Prisoners Act, 1920, which provides:*

*"5. If a Magistrate is satisfied that, for the purposes of any investigation or proceeding under the Code of Criminal Procedure, 1898, it is expedient to direct any person to allow his measurements or photograph to be taken, 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 the order and shall allow his measurements or photograph to be taken, as the case may be, by a police officer:*

*Provided that no order shall be made directing any person to be photographed except by a Magistrate of the first class:*

*Provided further, 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".*

*Section 2(a) of the Act defines "measurements" as including "finger impressions and foot print impressions".*

*There are two things to be noticed here. First, signature and writing are excluded from the range of Section 5 of the Identification of Prisoners Act and, second, 'finger impression' are included in both Section 73 of the Evidence Act and Section 5 of the Identification of Prisoners Act. A possible view is that it was thought that Section 73 of the Evidence Act would not take in the stage of investigation and so Section 5 of the Identification of Prisoners Act made special provision for that stage and even while making such provision, signature and*

Prosecution Report

*writings were deliberately excluded. As we said, this is a possible view but not one on which we desire to rest our conclusion. Our conclusion rests on the language of Section 73 of the Evidence Act.*
*Section 73 of the Evidence Act was considered by us in* ***State (Delhi Administration) V. Pali Ram, AIR 1974 SC 14*** *where we held that a Court holding an enquiry under the Criminal Procedure Code was entitled under Section 73 of the Evidence Act to direct an accused person appearing before it to give his specimen handwriting to enable the Court by which he may be tried to compare it with disputed writings. The present question whether such a direction, under Section 73 of the Evidence Act, can be given when the matter is still under investigation and there is no proceeding before the Court was expressly left open. The question was also not considered in* ***State of Bombay V. Kathi Kalu Oghad, AIR 1961 SC 1808,*** *where the question which was actually decided was that no testimonial compulsion under Article 20(3) of the Constitution was involved in a direction to give specimen signature and hand-writing for the purpose of comparison."*

The Hon'ble High Court of Kerala in **A.S.Subin V. State of Kerala & Anr, 2012 CrLJ 2327** observed that the words "proceeding under this Code" should receive wider meaning. If such a wider meaning is given it can be reasonably held that it includes inquiry and trial as well. Though the word 'trial' is not specifically mentioned in Section 311A, the reasonable interpretation should be that the expression 'proceeding under this Code' includes inquiry and trial. In other words, inquiry and trial are proceedings under the code.

The Hon'ble High Court of Rajasthan (Jaipur Bench) in **Hanuman & Ors V. State of Rajasthan through PP, 2017 (4) Raj LW 3084** held that as per wording of the Section 311A Cr.P.C, a Magistrate has to be satisfied before giving direction that for the purpose of an investigation or proceedings under the Code, it is expedient to direct any person or accused to give specimen signature or handwriting. Therefore, before giving such a direction, a Magistrate has to record his satisfaction.

The Hon'ble High Court of Himachal Pradesh in **Jitender Kumar V. State of Himachal Pradesh, 2009 (1) Latest HLJ 278,** held that it will not be correct to say that only because the accused person is released on bail, he ceases to be in the custody, therefore, the Magistrate would not be competent to exercise his powers under Section 311-A Cr.P.C. If the bail is granted, the reality is not changed and from the fact above, it cannot be said that he is not a "person arrested for an offence". A person released on bail is still considered to be detained in the custody of the court through his surety. He is under obligation to appear before the court whenever required or directed so to do. Therefore, to that extent, his liberty is subject to restraint. He is notionally in the custody of the court, hence continues to be a "person arrested". Therefore, the jurisdiction of the Magistrate to pass the appropriate orders under Section 311-A of the Code of Criminal Procedure, because the person enlarged on bail is not effected at all.

Whether Section 311A of the Code is prospective or retrospective came up for consideration before the Hon'ble Supreme Court of India in **Sukh Ram V. State of Himachal Pradesh, AIR 2016 SC 3548,** the Court held that the amendment by which Section 311 A was inserted in the Code is prospective in nature and not retrospective.

**Conclusion**

The jurisprudence with regard to power of Magistrate to obtain specimen signature or hand writing has made its way in the statute book on the recommendation made by the Hon'ble Supreme Court in Rambabu Mishra's, (AIR 1980 SC 791) case for appropriate legislation akin to Section 5 of the Identification of Prisoners Act, 1920 to provide for the consecration of Magistrates with the power to issue directions to any person, including an accused person, to give specimen signatures and writings which the magistrates did not have prior to the legislation. Investigation in to a criminal offence is intended basically to explore in detail the allegations made and to collect and examine the evidence in depth for deciding whether the crime has been really committed and for identity of the perpetrator, apprehension of the perpetrator and to submit evidence in the court to bring home the guilt of the offender for the imputed crime. Therefore collection of evidence in the course of investigation plays a vital role and in order to enable the investigating agencies to unravel the truth, Section 311A was inserted in the Code facilitating the investigating agencies to collect specimen signatures and writings of any person including an accused person.

**DVR Tejo Karthik**
JMFC,Spl.Mobile Court,
Mahabubnagar.

*(Prosecution Replenish conveys its heartfelt thanks to* ***Sri D.V.R. Tejo Karthik,*** *Judicial Magistrate of First Class, Special Mobile Court, Mahabubnagar, for contributing this article for our leaflet)*

# CITATIONS

**Crlp_5994_2020.pdf; 05-01-2021; The State of Telangana Vs. Akaram Ranjith S/o Mallesh**
Bail obtained by misrepresenting that other accused were enlarged on bail, was cancelled.

**WP_9591_2020.pdf; Kommuri Sriniwas, and another And The State of Telangana and 6 others: 05.01.2021**
The adoptions made under HAMA Act are outside the purview of the Juvenile Justice Act and CARA Regulations.

**WP_1354_2021.pdf; Mahankall Ramu vs The State of Telangana and 2 Others; 22.01.2021**
In view of the Covid situation, vehicle involved in Prohibition and Excise offences, directed to be released in interim custody, subject to the orders of the DC.

**Crlp_6995_2020.pdf ;Deepak Kothari and 2 Others vs Sub Inspector of Police and Another; 22.01.2021**
The Police are incompetent to take cognizance of the offences punishable under Sections 45 and 59(1) of the Food Safety and Standards (FSS) Act, 2006, investigating into the offences along with other offences under the provisions of the Indian Penal Code, 1860, and filing charge sheet is grave illegality, as the Food Officer alone is competent to investigate and to file charge sheet following the Rules laid down under Sections 41 and 42 of FSS Act, whereas, in the present case, the Police have registered the crime for the offences under Sections 420, 336, 273 read with Section 34 of IPC and Section 20(2) of the COTPA Act. Proceedings are Quashed.

**Crlp_7008_2020.pdf; 22.01.2021; Paneti Narsimulu vs The State of Telangana;**
Revision petition against dismissal of recall of victim of POCSO act, on the ground of police accompanying the witness to court, is rejected. Also on the ground that the victim was cross examined in length.

**http://tshcstatus.nic.in/hcorders/2021/crlp/crlp_91_2021.pdf; Mohammed Yousuf vs The State of Telangana; 21.02.2021;**
petition for grant of bail in FIR No 325/2020 on the file of Amberpet Police Station , in Hon'ble High court dismissed as infructuous as Sessions court already enlarged the accused on bail.
(The Parallel maintenance of bail applications in Session court and High Court is not found fault)

**CRLP/21/2021; MALAVATU AUDINARAYANA Versus CHINTALA KALPANA;**
Sec 41 A CrPC guidelines are directed to be followed in a case under Sections 354, 354B, 354D, 506, 509 r/w 34 IPC and under Sections 3(1)(i), 3(1)(r) and 3(1)V(a) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

**CRLP/231/2021: Bojja Rama Lakshmi Versus The State of Andhra Pradesh; 20.01.2021**
Sec 41 A CrPC guidelines are directed to be followed in a case for the offences punishable under Section 420 IPC and under Section 3(1)(r)(s) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989

**CRLP/6069/2020; Konapur Mathada Nagaraj Versus State of Andhra Pradesh; 21.01.2021**
**CRLP/6071/2020; Konapur Mathada Nagaraj Vs. THE STATE OF ANDHRA PRADESH; 21.01.2021.**
**CRLP/6074/2020; Konapur Mathada Nagaraj Vs. THE STATE OF ANDHRA PRADESH; 21.01.2021.**
the order passed by the court below as far as directing the petitioner to deposit the passport, as a condition for bail, is not sustainable.
(The Circular issued by Hon'ble High court directing the deposit of passport as condition of bail, is not brought to the notice of the Hon'ble High Court)

Prosecution

**CRLP/2/2021; BHUKYA RAJU Versus THE STATE OF ANDHRA PRADESH**

When once the police have issued the notice under Section 41-A of Cr.P.C to the petitioners, they have to follow the procedure as per law and without seeking permission of the concerned Magistrate, the police cannot apprehend the petitioners.

**Sankurathri Venkateswara Rao @ Bullaabbu Vs. STATE OF A.P. ; 19.01.2021; CRLA/211/2009,**

In view of the fact that PW.1 is a member of a Scheduled caste, and in the light of the nature of the offence, I am of the opinion that delay in filing complaint is not an inordinate one so as to render the prosecution case improbable. More so, explanation for delay has been offered by PW.1 himself. He deposed immediately after the incident he had gone to Penugonda Police Station and submitted a complaint, which however was not registered as FIR. Subsequently he lodged complaint with SDPO, Narsapur. It is argued no documentary evidence to corroborate the oral version of PW.1 is placed on record. PW.1 claimed that he handed over the complaint to Police who did not act thereupon. Hence, it is improbable that he would have an endorsed copy of the complaint with himself. When the Police authorities failed or neglected to act on the complaint of PW.1, it would be absurd to expect they would preserve a copy of such complaint in their records. Hence, delay in lodging case has been properly explained.

Gist of such accusation is clearly stated in the complaint lodged by him with the then SDPO, Narsapur. Thus, such accusation cannot be said to be an after thought. Furthermore, it appears the said Police officer did not conduct investigation in a fair and proper manner. Hence, so called omission or contradiction in the deposition of PW.1 and other witnesses in Court vis-àvis statements recorded by the said Police Officer in the course of perfunctory investigation cannot be a ground to throw out their deposition, more so, when the initial complaint lodged with the Police contains the accusation of abuse by taking caste name against the appellant. When judged from this perspective, plea of embellishment or improvement of the prosecution case pales into insignificance.

**2021 0 Supreme(SC) 15; ASHARAM TIWARI Vs. STATE OF MADHYA PRADESH ; Criminal Appeal of 2021(Arising out of SLP (Crl.) No. 239 of 2020) ; 12-01-2021**

PW-1 and PW-4 are both injured witnesses. They have both been found to be reliable and truthful. We see no reason why they would falsely implicate another, when the deceased was their own minor son. Similarly, PW-2 is the son of the second deceased, an eye witness to the killing of his father at home. The failure to examine any available independent witness is inconsequential. It is the quality of the evidence and not the number of witnesses that is relevant. It is nobody's case of the accused that PW-1 and PW-4 were not injured in the same occurrence or that PW-2 was not an eye witness.

**2021 0 Supreme(SC) 17; Anversinh @ Kiransinh Fatesinh Zala Vs.State of Gujarat ; CRIMINAL APPEAL NO. 1919 of 2010; 12-01-2021 (THREE JUDGE BENCH)**

the appellant was at the precipice of majority himself. He was no older than about eighteen or nineteen years at the time of the offence and admittedly it was a case of a love affair. His actions at such a young and impressionable age, therefore, ought to be treated with hope for reform, and not punitively.

Far from there being an imbalance of power; if not for the age of the prosecutrix, the two could have been happily married and cohabiting today. Indeed, the present instance is an offence: mala prohibita, and not mala in se. Accordingly, a more equitable sentence ought to be awarded.

**2021 0 Supreme(SC) 5; Hari Om @ Hero Vs. State of U.P.; Criminal Appeal Nos. 1256 of 2017, 3, 4 of 2021, Special Leave Petition (Crl.) Nos. 9087, 9088 of 2017: THREE JUDGE BENCH: 05-01-2021**

According to the record, Exhibit Ka.7 was the Panchnama testifying the lifting of the fingerprints from the house of the deceased by Constable Dharmender Singh. If the fingerprints were picked from the glasses there is nothing to indicate what method was applied to lift the fingerprints from the glasses allegedly used by the accused when they were offered water. What the record indicates is that some photographs were sent to the office of the Director, Fingerprint Bureau, Lucknow and nothing more. It does not show the procedure adopted for taking such photographs and whether such method is a trusted and tested one. The concerned person was not examined, who could have thrown light on these issues. The record also does not show whether those glasses by themselves were made

available for appropriate analysis. There is, thus, no clarity in the process adopted by the investigating machinery.

**2021 0 Supreme(SC) 20; MURALI Vs. STATE REP. BY THE INSPECTOR OF POLICE; CRIMINAL APPEAL NO.24/2021 [Arising out of SLP (Crl.) 10813 of 2019] With RAJAVELU Vs. STATE REP. BY THE INSPECTOR OF POLICE; CRIMINAL APPEAL NO.25/2021 [Arising out of SLP (Crl.) 10814 of 2019]; 05-01-2021; THREE JUDGE BENCH**

it would not be appropriate to order compounding of an offence not compoundable under the Code ignoring and keeping aside statutory provisions.

**2021 0 Supreme(SC) 24; THE NATIONAL HIGHWAYS AUTHORITY OF INDIA Vs. PAN DARI NATHAN GOVINDARAJULU AND ANOTHER; Civil Appeal Nos. 4035-4037 of 2020; 19-01-2021(THREE JUDGE BENCH)**

A statutory rule or Notification is to be treated as a part of the statute[ State of Tamil Nadu v. Hind Stone, (1982) 2 SCC 205]. Rules made under a statute must be treated for all purposes of construction or obligation exactly as if they were in the Act, are to be of the same effect as if they are contained in the Act, and are to be judicially noticed for all purposes of construction or obligation [The State of Uttar Pradesh and Ors v. Babu Ram Upadhya 1961 SCR (2) 679]. The principles of interpretation of subordinate legislation are applicable to the interpretation of statutory Notifications [Bansal Wire Industries Ltd. v. State of U.R, (2011) 6 SCC 545]. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the law-giver [(1843-60) All ER Rep 55, Sussex Peerage case].

It has been repeatedly held by this Court that where there is no ambiguity in the words, literal meaning has to be applied, which is the golden rule of interpretation. The words of a statute must prima facie be given their ordinary meaning [Dental Council of India v. Hari Prakash, (2001) 8 SCC 61 and Harbhajan Singh v. Press Council of India, (2002) 3 SCC 722]

**2020 6 KLT 561; 2020 0 Supreme(SC) 653; 2021 1 SCC Cri 1; 2020 10 SCC 710; Hitesh VermaVs The State of Uttarakhand And Another; Criminal Appeal No. 707 of 2020 (Arising out of SLP (Criminal) No. 3585 of 2020); 05-11-2020**

The property disputes between a vulnerable section of the society and a person of upper caste will not disclose any offence under the Act unless, the allegations are on account of the victim being a Scheduled Caste. Still further, the finding that the appellant was aware of the caste of the informant is wholly inconsequential as the knowledge does not bar, any person to protect his rights by way of a procedure established by law.

offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste.

As per the FIR, the allegations of abusing the informant were within the four walls of her building. It is not the case of the informant that there was any member of the public (not merely relatives or friends) at the time of the incident in the house. Therefore, the basic ingredient that the words were uttered "in any place within public view" is not made out.

**2020 0 Supreme(SC) 628; 2021 1 SCC Cri 14; 2020 10 SCC 740; Rajesh Dhiman Vs. State of Himachal Pradesh; Criminal Appeal No. 1032 of 2013; With Gulshan Rana Vs.State of Himachal Pradesh; Criminal Appeal No. 1126 of 2019; 26-10-2020; THREE JUDGE BENCH**

The earlier position of law which allowed the solitary ground of the complainant also being the investigating officer, to become a spring board for an accused to be catapulted to acquittal, has been reversed. Instead, it is now necessary to demonstrate that there has either been actual bias or there is real likelihood of bias, with no sweeping presumption being permissible.

the expression “reasonable doubt” is a well-defined connotation. It refers to the degree of certainty required of a court before it can make a legally valid determination of the guilt of an accused. These words are inbuilt measures to ensure that innocence is to be presumed unless the court finds no reasonable doubt of the guilt of the person charged. Reasonable doubt does not mean that proof be

so clear that no possibility of error exists. In other words, the evidence must only be so conclusive that all reasonable doubts are removed from the mind of an ordinary person.
As correctly appreciated by the High Court in detail, non-examination of independent witnesses would not ipso facto entitle one to seek acquittal. Though a heighted standard of care is imposed on the court in such instances but there is nothing to suggest that the High Court was not cognizant of this duty. Rather, the consequence of upholding the trial Court's reasoning would amount to compulsory examination of each and every witness attached to the formation of a document. Not only is the imposition of such a standard of proof unsupported by statute but it is also unreasonably onerous in our opinion. The High Court has rightly relied upon the testimonies of the government officials having found them to be impeccable after detailed re-appreciation of the entire evidence. We see no reason to disagree with such finding(s).

**2021 1 ALD Crl 6(SC); 2020 5 KLT(SN) 28; 2020 0 Supreme(SC) 563;2021 1 SCC Cri 36; 2020 10 SCC 92;Kaushik Chatterjee Vs .STATE OF HARYANA & ORS.: Transfer Petition (Crl.) No.456 of 2019 with Transfer Petition (Crl.) No.666 and 681 of 2019 : 30-09-2020 (THREE JUDGE BENCH)**
While jurisdiction of a civil court is determined by (i) territorial and (ii) pecuniary limits, the jurisdiction of a criminal court is determined by (i) the offence and/or (ii) the offender. But the main difference between the question of jurisdiction raised in civil cases and the question of jurisdiction arising in criminal cases, is two-fold.

(i) The first is that the stage at which an objection as to jurisdiction, territorial or pecuniary, can be raised, is regulated in civil proceedings by Section 21 of the Code of Civil Procedure, 1908. There is no provision in the Criminal Procedure Code akin to Section 21 of the Code of Civil Procedure.

(ii) The second is that in civil proceedings, a plaint can be returned, under Order VII, Rule 10, CPC, to be presented to the proper court, at any stage of the proceedings. But in criminal proceedings, a limited power is available to a Magistrate under section 201 of the Code, to return a complaint. The power is limited in the sense (a) that it is available before taking cognizance, as section 201 uses the words "Magistrate who is not competent to take cognizance" and (b) that the power is limited only to complaints, as the word "complaint", as defined by section 2(d), does not include a "police report".

In other words, the jurisdiction of a criminal Court is normally relatable to the offence and in some cases, to the offender, such as cases where the offender is a juvenile (section 27) or where the victim is a women [the proviso to clause (a) of section 26]. But Section 461(l) focuses on the offender and not on the offence.
A cursory reading of Section 461(l) and Section 462 gives an impression that there is some incongruity. Under Clause (l) of Section 461 if a Magistrate not being empowered by law to try an offender, wrongly tries him, his proceedings shall be void. A proceeding which is void under Section 461 cannot be saved by Section 462. The focus of clause (l) of Section 461is on the "offender" and not on the "offence". If clause (l) had used the words "tries an offence" rather than the words "tries an offender", the consequence might have been different.
It is significant to note that Section 460, which lists out nine irregularities that would not vitiate the proceedings, uses the word "offence" in three places namely clauses (b), (d) and (e). Section 460 does not use the word "offender" even once.
On the contrary Section 461 uses the word 'offence' only once, namely in clause (a), but uses the word "offender" twice namely in clauses (l) and (m). Therefore, it is clear that if an offender is tried by a Magistrate not empowered by law in that behalf, his proceedings shall be void under Section 461. Section 462 does not make the principle contained therein to have force notwithstanding anything contained in Section 461.

**2021 1 SCC Cri 50; 2020 10 SCC 108; 2020 5 KHC 322; 2020 0 Supreme(SC) 561; MAHESHWAR TIGGA Vs. THE STATE OF JHARKHAND; CRIMINAL APPEAL NO. 635 OF 2020: (Arising out of SLP (Crl.) No.393 of 2020); 28-09-2020; THREE JUDGE BENCH.**
Under Section 90 IPC, a consent given under a misconception of fact is no consent in the eyes of law. But the misconception of fact has to be in proximity of time to the occurrence and cannot be spread over a period of four years. It hardly needs any elaboration that the consent by the appellant was a conscious and informed choice made by her after due deliberation, it being spread over a long period of time coupled with a conscious positive action not to protest.

**2021 1 SCC Cri 76; 2020 10 SCC 573; 2020 0 Supreme(SC) 595; Ganesan Vs STATE REPRESENTED BY ITS INSPECTOR OF POLICE: CRIMINAL APPEAL No. 680 of 2020 (Arising from S.L.P.(Criminal) No.4976 of 2020): 14-10-2020**

To hold accused guilty for commission of offence of rape, solitary evidence of prosecutrix is sufficient, provided same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.

**2021 1 SCC Cri 85; 2020 10 SCC 616; 2020 0 Supreme(SC) 586; Bikramjit Singh Vs.The State of Punjab; Criminal Appeal No. 667 of 2020 (@ Special Leave Petition (Crl.) No. 2933 of 2020); 12-10-2020 (THREE JUDGE BENCH)**

A conspectus of the aforesaid decisions would show that so long as an application for grant of default bail is made on expiry of the period of 90 days (which application need not even be in writing) before a charge sheet is filed, the right to default bail becomes complete. It is of no moment that the Criminal Court in question either does not dispose of such application before the charge sheet is filed or disposes of such application wrongly before such charge sheet is filed.

"The Court", when read with the extended definition contained in Section 2(1)(d) of the UAPA, now speaks of the Special Court constituted under Section 22 of the NIA Act. What becomes clear, therefore, from a reading of these provisions is that for all offences under the UAPA, the Special Court alone has exclusive jurisdiction to try such offences. This becomes even clearer on a reading of Section 16 of the NIA Act which makes it clear that the Special Court may take cognizance of an offence without the accused being committed to it for trial upon receipt of a complaint of facts or upon a police report of such facts. What is equally clear from a reading of Section 16(2) of the NIA Act is that even though offences may be punishable with imprisonment for a term not exceeding 3 years, the Special Court alone is to try such offence -albeit in a summary way if it thinks it fit to do so.

**2021 1 SCC Cri 117, 2020 10 SCC 654; 2020 0 Supreme(SC) 600; The State of Madhya Pradesh & Ors. Vs. Bherulal: Special Leave Petition (C) Diary No. 9217 of 2020: 15-10-2020**

constrained to send a signal and we propose to do in all matters today, where there are such inordinate delays that the Government or State authorities coming before us must pay for wastage of judicial time which has its own value. Such costs can be recovered from the officers responsible.

**2021 1 SCC Cri 131; 2021 a ALD Crl 1; 2020 10 SCC 517; 2020 0 Supreme(SC) 562; SUBED ALI AND OTHERS Vs. THE STATE OF ASSAM: Criminal Appeal No. 1401 of 2012: 30-09-2020(THREE JUDGE BENCH)**

Common intention consists of several persons acting in unison to achieve a common purpose, though their roles may be different. The role may be active or passive is irrelevant, once common intention is established. There can hardly be any direct evidence of common intention. It is more a matter of inference to be drawn from the facts and circumstances of a case based on the cumulative assessment of the nature of evidence available against the participants. The foundation for conviction on the basis of common intention is based on the principle of vicarious responsibility by which a person is held to be answerable for the acts of others with whom he shared the common intention. The presence of the mental element or the intention to commit the act if cogently established is sufficient for conviction, without actual participation in the assault. It is therefore not necessary that before a person is convicted on the ground of common intention, he must be actively involved in the physical activity of assault. If the nature of evidence displays a pre-arranged plan and acting in concert pursuant to the plan, common intention can be inferred. A common intention to bring about a particular result may also develop on the spot as between a number of persons deducible from the facts and circumstances of a particular case. The coming together of the accused to the place of occurrence, some or all of whom may be armed, the manner of assault, the active or passive role played by the accused, are but only some of the materials for drawing inferences.

**2021 1 SCC Cri 137; 2020 10 SCC 533; ILANGOVAN Vs. STATE OF TAMIL NADU: 02.09.2020;**

the mere submission of the counsel for the appellant, that the testimonies of the witnesses in the case should be disregarded because they were related, without bringing to the attention of the Court any reason to disbelieve the same, cannot be countenanced.

**2021 1 SCC Cri 141; 2020 9 SCC 101; 2020 0 Supreme(SC) 599; Saravanan – Vs. State represented by the Inspector of Police: Criminal Appeal Nos. 681-682 of 2020 (Arising from S.L.P. (Criminal) Nos.4386-4387 of 2020): 15-10-2020:**

Therefore, the only requirement for getting the default bail/statutory bail under Section 167(2), Cr.P.C. is that the accused is in jail for more than 60 or 90 days, as the case may be, and within 60 or 90 days, as the case may be, the investigation is not completed and no chargesheet is filed by 60th or 90th day and the accused applies for default bail and is prepared to furnish bail. No other condition of deposit of the alleged amount involved can be imposed. Imposing such condition while releasing the accused on default bail/statutory bail would frustrate the very object and purpose of default bail under Section 167(2), Cr.P.C.

**2021 1 SCC Cri 201; 2020 9 SCC 627; 2020 5 Supreme 142; 2020 0 Supreme(SC) 535; Rizwan Khan Vs. The State of Chhattisgarh: CRIMINAL APPEAL NO. 580 OF 2020 (Arising out of S.L.P.(Criminal) No.4422/2019): 10-09-2020 THREE JUDGE BENCH**

To prove the case under the NDPS Act, the ownership of the vehicle is not required to be established and proved. It is enough to establish and prove that the contraband articles were found from the accused from the vehicle purchased by the accused. Ownership of the vehicle is immaterial.

It is true that all the aforesaid witnesses are police officials and two independent witnesses who were panchnama witnesses had turned hostile. However, all the aforesaid police witnesses are found to be reliable and trustworthy. All of them have been thoroughly cross-examined by the defence. There is no allegation of any enmity between the police witnesses and the accused. No such defence has been taken in the statement under Section 313, Cr.P.C. There is no law that the evidence of police officials, unless supported by independent evidence, is to be discarded and/or unworthy of acceptance.

**2021 1 SCC Cri 209, 2020 9 SCC 636; ASHOO SURENDRANATH TEWARI Vs. THE DEPUTY SUPERINTENDENT OF POLICE, EOW, CBI & ANR.**

The continuation of the criminal prosecution, despite the exoneration of the accused in departmental proceedings on merits, will amount to abuse of process of law.

**2021 1 ALD Crl 19(SC): 2020 5 KHC 441; 2020 6 KLT 545; 2020 0 Supreme(SC) 578;Miss 'A' Vs. STATE OF UTTAR PRADESH AND ANR.**

Under no circumstances copies of statements recorded under Section 164 of Cr.P.C. can be furnished till appropriate orders are passed by Court after taking cognizance in the matter.

It is only after taking of cognizance and issuance of process that accused is entitled, in terms of Sections 207 and 208 of Code, to copies of documents.

**2021 1 ALD (Crl) 38(SC); CRIMINAL APPEAL NO.2183 OF 2011; SUBHASH SAHEBRAO DESHMUKH Vs. SATISH ATMARAM TALEKAR AND OTHERS**

where the complaint has been dismissed by the Magistrate under Section 203 of the Code, upon challenge to the legality of the said order being laid by the complainant in a revision petition before the High Court or the Sessions Judge, the persons who are arraigned as accused in the complaint have a right to be heard in such revision petition. This is a plain requirement of Section 401(2) of the Code

**2021 1 ALD (Crl) 45(AP); A.PULLAMMA, Vs. STATE OF AP.& 4 OTHERS.,**

when the dispute touching the same subject property was either pending or already disposed of by a Civil Court, the proceedings under Section 145 of Cr.P.C are not maintainable

Needless to emphasise if the parties despite pendency of the civil suit bent upon causing breach of public peace and tranquillity, the Executive Magistrate is authorized to initiate proceedings under Section 107 of Cr.P.C.

**2021 1 ALD CRL 52(AP); Atukuri Ramalingeswararao Vs. STATE OF AP; CrLP 6230 OF 2019; 06.03.2020.**

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The change of advocate or lawyer is not a ground to recall of the witness. The petitioner did not specify the reason on which he intends to cross-examine the P.W.1 except making a vague statement that P.W.1 is to be cross-examined on some important aspects to prove his case. This is not a valid ground to order for recalling of P.W.1.

**2021 1 ALD Crl 72(TS); 03.02.2020; State Vs. CHINDURALA RAMESH, WARANGAL DISTRICT**
A perusal of the entire evidence would show that P.W.1- victim is a consenting party, as such she kept quiet from 2001-2004 and even she did not inform the same to her mother (P.W.2) and she did not disclose the name of the accused before P.W.8-Doctor, who got aborted her twice in the year 2001 and in the year 2004. Since P.W.5, who is one of the panchayatdars, did not support the case of prosecution; P.W.11 has stated that the matter was not decided finally and the original agreement was not produced by the prosecution. There is no evidence whether the accused has illicit intimacy with P.W.1 by making false promise to marry her.

**2021 1 ALD Crl 80(TS); Kurama Anand Prakash Vs State of Telangana: CRIMINAL PETITION No. 985 of 2019;22.01.2020**
Earlier 498A IPC case compromised between the defacto complainant and A-1 to A-5. There is no legal embargo to the 2nd respondent/de facto complainant to file second complaint in Crime No.144 of 2017 with new facts incorporating the deliberate fraud and cheating perpetrated by the petitioners/A1 to A5 apart from subjecting her to dowry harassment, psychological trauma and domestic violence;
Case filed against A-1 husband and her family members A2 to A-5. Trial court framed charges against A-1 to A-5 under Sec 498A IPC and Sec 3 & 4 DP Act.
As seen from the allegations in the complaint as well as the charge sheet, it reveals that there are no specific allegations against the petitioners/A-2 to A-5, except the bald and general allegation that the petitioners harassed the 2nd respondent/de facto complainant physically and mentally for want of additional dowry. Case against A-1 to A-5 quashed.

**2021 1 ALD Crl 85(TS); P.Mallesh Vs State of Telangana; CRLP NO. 2227 of 2019: 07.02.2020;**
Whether the petitioners/A-1 to A-4 created fake agreement of sale, dated 15.05.1984 by forging the signature of G.P.A. Holder or not can be decided by the civil Court as the suit for declaration is pending before the civil Court. continuation of criminal proceedings against the petitioners/A-1 to A-4 would amount to abuse of the process of Court.

**2021 1 ALD Crl 97(TS); Palakurthy Srinivas Vs State of Telangana; CRLP NO. 7602 of 2019: 21.01.2020;**
the contents of the charge sheet itself discloses that the petitioners/A2 and A3 filed a suit for grant of perpetual injunction against the 2nd respondent/de facto complainant and others and also obtained an ad-interim injunction order. That apart, the petitioners/accused placed on record the receipt and agreement of sale executed by the father of the 2nd respondent/de facto complainant. Prima facie the matter appears to be civil in nature. Whether the father of the 2nd respondent/de facto complainant had executed the agreement of sale or not can be decided by the civil Court as the suit is pending before the civil Court. 7 Having regard to the principles laid down by the Apex Court in the cases referred to above and in view of the pendency of the Civil Suit between the parties with regard to the same property, I am of the considered view that continuation of criminal proceedings against the petitioners/A1 to A3 would amount to abuse of the process of Court.

NOSTALGIA

Grounds for cancellation of bail:-
In Raghubir Singh v. State of Bihar {(1986) 4 SCC 481}, the Apex Court considered the following factors for cancellation of bail:

i) the accused misuses his liberty by indulging in similar criminal activity;
ii) interferes with the course of investigation;
iii) attempts to tamper with evidence or witnesses;
iv) threatens witnesses or investigation;
v) there is likelihood of his fleeing to another country;

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vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency; and

vii) attempts to place himself beyond the reach of his surety etc

**Sterling witness**

in the case of Rai Sandeep alias Deepu v. State (NCT of Delhi), (2012) 8 SCC 21. In paragraph 22, it is observed and held as under:

> "22. In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all 12 other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

**Mere acquittal of one accused would not automatically lead to acquittal of another accused:**

In the case of Yanob Sheikh v. State of West Bengal, (2013) 6 SCC 428, wherein it was held-

"24. … Where the prosecution is able to establish the guilt of the accused by cogent, reliable and trustworthy evidence, mere acquittal of one accused would not automatically lead to acquittal of another accused. It is only where the entire case of the prosecution suffers from infirmities, discrepancies and where the prosecution is not able to establish its case, the acquittal of the co-accused would be of some relevancy for deciding the case of the other."

**Departmental Proceedings and Criminal Proceedings:**

In Radheshyam Kejriwal vs. State of West Bengal and Another, (2011) 3 SCC 581, the Court in paragraph 38 held as follows:-

"38. The ratio which can be culled out from these decisions can broadly be stated as follows:

(i) Adjudication proceedings and criminal prosecution can be launched simultaneously;

**(ii)** Decision in adjudication proceedings is not necessary before initiating criminal prosecution;

**(iii)** Adjudication proceedings and criminal proceedings are independent in nature to each other;

**(iv)** The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;

**(v)** Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;

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**(vi)** The finding in the adjudication proceedings in favour of 8 the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and

**(vii)** In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases."

It finally concluded:

"39. In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court."

# NEWS

- MHA advisory on Transgender Persons(Protection of Rights) act, 2019 and Rules 2020 issued on 21.1.2021.
- MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT- [Department of Empowerment of Persons with Disabilities (Divyangjan)]- NOTIFICATION-4th January, 2021- identifying the various posts to be filled in pursuance of the provisions of the Rights of Persons with Disabilities Act, 2016-4.1.2021.
- MHA advisory on Flag Code dated 12.1.2021.
- TS HC- proceedings dated 29.1.2021 -extending the stay orders in view of the pandemic to 26.2.2021.
- GOVERNMENT OF ANDHRA PRADESH- G.O.RT.No. 83 HOME (COURTS.A) DEPARTMENT Dated: 27-01-2021.- Smt. Mamatha Sundari, Joint Secretary to Government placed in Full Additional Charge (FAC) to the post of the Director of Prosecutions, Andhra Pradesh.
- GOVERNMENT OF ANDHRA PRADESH- GAD – Protocol - Warrant of Precedence – Placement to the Public Prosecutor, High Court of Andhra Pradesh in the State Warrant of Precedence – Amendment – Orders – Issued- G.O.MS.No. 8- GENERAL ADMINISTRATION (PROTOCOL-A) DEPARTMENT Dated: 11-01-2021.
- TSHC- advisory on webinars to the judges –ROC No. 1310-2020-B.Spl., dt. 28.01.2021

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# ON A LIGHTER VEIN


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Ministry of Health & Family Welfare Government of India

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# Continue Following COVID Appropriate Behaviour During & After Vaccination

1. Wear a mask/face cover
2. Practise frequent hand washing or use hand sanitization
3. Maintain 6 feet physical distance (Do Gaj Doori)
4. If any symptoms develop, promptly self-isolate
5. If any symptoms develop, promptly seek medical assistance


These are important for your safety and the safety of your friends and loved ones

Ministry of Health & Family Welfare Government of India

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# COVID-19 Vaccination is for All, Wait for Your Turn Patiently

1. Government has adhered to phased vaccination process
2. Due to limited vaccine availability in the initial phase, it might take some time before it can be made available widely
3. Some people may have to wait for their turn to get the vaccine
4. These vaccines will first be provided to people who are at higher risk of contracting COVID-19 or spreading the infection
5. Only registered beneficiaries (who registered online) will be vaccinated. There will be no on-spot registrations at the vaccination site

Ministry of Health & Family Welfare Government of India

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# Answers to All Your COVID-19 Vaccination Questions


1. Vaccination saves lives, provides immunity and protects us, and our communities from contracting diseases

2. It is critical for us to get the vaccine to protect ourselves, our families, friends and communities from the infection

3. The vaccines have been developed and will be introduced to the public after undergoing various trials and safety protocols

4. Though it is true that the vaccines have been developed in a short time frame, but they have undergone all necessary protocols

Ministry of Health & Family Welfare Government of India

myGov मेरी सरकार

Answers to All Your COVID-19 Vaccination Questions


5. Adequate safety & efficacy tests have been done on these vaccines & regulatory approval has been given only after confirming all required checks

6. While administering the vaccine, all safety protocols will be followed at the vaccination centers and vaccination sites

7. All vaccinators have been adequately trained in vaccine safety protocols

8. Even after vaccination, everyone needs to follow COVID Appropriate Behaviour

COVID-19 VACCINE
Mythbusters
MYTH
There are side-effects of COVID-19 vaccine?
FACT
As is true for other vaccines, the common side effects in some individuals could be mild fever, pain, etc. at the site of injection
COVID-19 VACCINE
Mythbusters
MYTH
A person can get vaccinated without showing the photo ID
FACT
Photo ID is a must for both registration & verification at session site to ensure that the intended person is vaccinated
COVID-19 VACCINE
Mythbusters
MYTH
A person can get vaccinated without registration?
FACT
Registration is mandatory. Only after registration, the information on the session site & time will be shared

Vol- X
Part-3

# Prosecution Replenish

An Endeavour for Learning and Excellence

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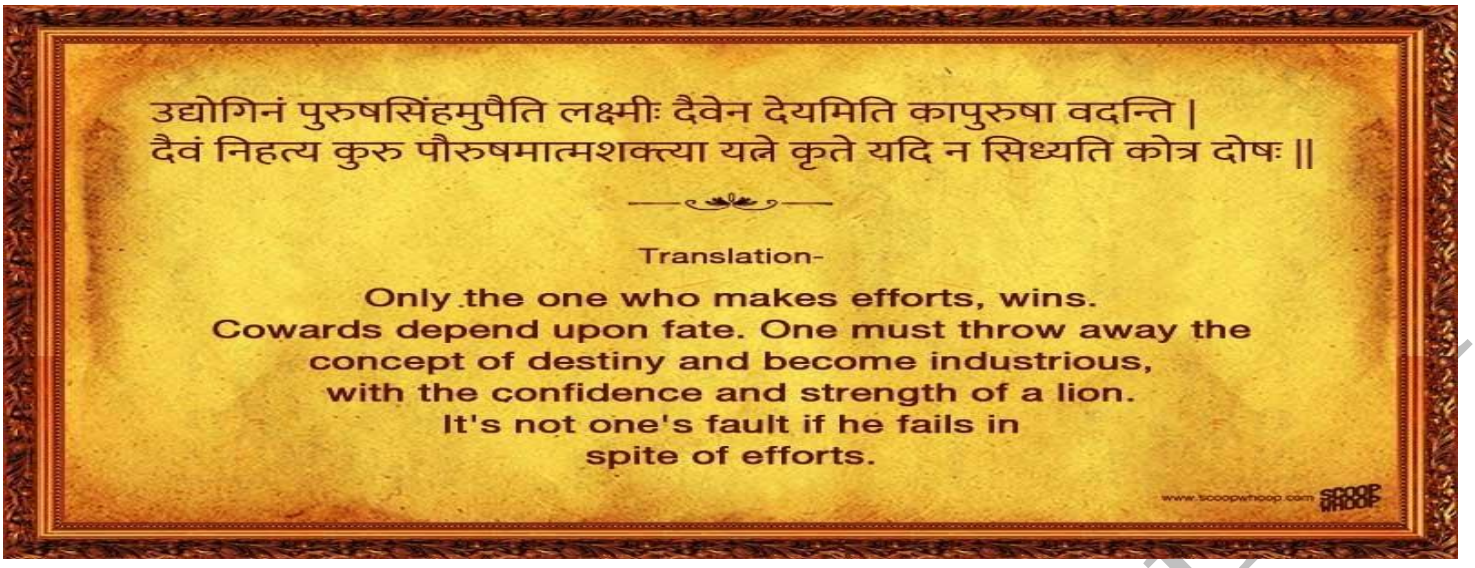
Aano Bhadra Krtavo Yantu Vishwatah.(RIG VEDAM)
"Let Noble Thoughts Come To Me From All Directions"




**Role of Public Prosecutors, Appearance by Public Prosecutors and Permission to Conduct Prosecution**

The criminal justice system in India is legacy of British system and we follow Anglo-Saxon criminal justice system in which prosecution is one of the essential pillars of criminal justice system. Public Prosecutor is the prosecuting officer of a criminal case. The role of the prosecutor begins after the police have conducted investigation and filed charge sheet in the Court for prosecuting the offender. The function of Public Prosecutor is of immense importance. The Public Prosecutor represents the interest of the State in creating and maintaining a lawful and orderly society. The Public Prosecutor helps the Court in administration of the justice. Public Prosecutor is expected to be unbiased and honest in his duties. A Public Prosecutor holds an unrivaled position and has a public element attached to his office; he represents not the Police but the State. A Public Prosecutor discharges his duties not as a representative of the complainant but as a representative of the State; and the State has its interests and obligations to the entire society, every component of it, including the accused. The duty of a Public Prosecutor is not merely to secure the conviction of the accused at all costs but to place before the court whatever evidence is in the possession of the prosecution, whether it be in favour of or against the accused and to leave the court to decide upon all such evidence, whether the accused had or had not committed the offence with which he stood charged. It is as much the duty of the Prosecutor as of the court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice. A Public Prosecutor is an important officer of the State Government and is appointed by the State under the Code of Criminal Procedure, 1973. She/he is not a part of the investigating agency. She/he is an independent statutory authority. She/he is neither the post office of the investigating agency, nor its "forwarding agency" but is charged with a statutory duty. The purpose of a criminal trial is not to support at all cost a theory, but to investigate the offence and to determine the guilt or innocence of the accused and the duty of the Public Prosecutor is to represent not the police, but the State and her/his duty should be discharged by her/him fairly and fearlessly and with a full sense of responsibility that attaches to her/his position. There can be no manner of doubt that Parliament intended that Public Prosecutors should be free from the control of the police department.

The role of the Public Prosecutor had been concisely discussed by the Hon'ble Supreme Court of India between **Rekha Murarka V. The State of West Bengal** reported in **2019 CriLJ 3986**. The court at para no.8 observed as follows:

"8. In our criminal justice system, the Public Prosecutor occupies a position of great importance. Given that crimes are treated as a wrong against the society as a whole, his role in the administration of justice is crucial, as he is not just a representative of the aggrieved person, but that of the State at large. Though he is appointed by the Government, he is not a servant of the Government or the investigating agency. He is an officer of the Court and his primary duty is to assist the Court in arriving at the truth by putting forth all the relevant material on behalf of the prosecution. While discharging these duties, he must act in a manner that is fair to the Court, to the investigating agencies, as well to the accused. This means that in instances where he finds material indicating that the accused legitimately deserves a benefit during the trial, he must not conceal it. The space carved out for the Public Prosecutor is clearly that of an independent officer who secures the cause of justice and fair play in a criminal trial".

On the role of the Prosecutor it was held by the Hon'ble High Court of Karnataka in **K.V.Shiva Reddy V. State of Karnataka., 2005 CrLJ 3000** that Prosecutor is an officer of the Court expected to assist the Court in arriving at the truth in a given case. The Prosecutor no doubt, has to vigorously and conscientiously prosecute the case so as to serve the high public interest of finding out the truth and in ensuring adequate punishment to

Prosecution Replies

the offender. At the same time, it is no part of his duty to secure by fair means or foul conviction in any case. He has to safeguard public interest in prosecuting the case; public interest also demands that the trial should be conducted in a fair manner, heedful of the rights granted to the accused under the laws of the country including the Code. The Prosecutor, while being fully aware of his duty to prosecute the case vigorously and conscientiously, must also be prepared to respect and protect the rights of the accused. A Public Prosecutor has no client or constituency apart from the State and State is not a party like any other party. He is not paid by an individual who may be aggrieved or by the accused who is on trial. He, therefore, does not have the disability of a dual personality, which is certainly true of an ordinary Advocate, who is torn, in the thick of his practice in Court, between the wider loyalty to public interest, to the Court system, claim of straight and rigid adherence to truth and discipline on the one hand, and his narrow, as also monetary, association with the individual litigant or the institution, whom he represents on the other. An Advocate-client relationship introduces a personal element from which the Public Prosecutor must be considered immune. He is above the personal loyalty. He does not have a dual capacity. Public Prosecutors were expected to act in a "scrupulously fair manner" and present the case "with detachment and without anxiety to secure a conviction" and that the Courts trying the case "must not permit the Public Prosecutor to surrender his functions completely in favour of a private Counsel". Public Prosecutor for the State was not such a mouth piece for his client the State, to say what it wants or its tool to do what the State directs. "He owes allegiance to higher cause". He must not consciously "misstate the facts", nor "knowingly conceal the truth". Despite his undoubted duty to his client, the State, "he must sometimes disregard his client's most specific instructions if they conflicted with the duty in the Court to be fair, independent and unbiased in his views.

In **Prabhu Dayal Gupta V. State, 1986 Cri. L.J.383 (Del.)** the Delhi High Court has observed that, the Prosecutor has to be fair in the presentation of the Prosecution case. He must not suppress or keep back from the Court evidence relevant to the determination of the guilt or innocence of the accused. He must present a complete picture and not one sided picture. He must not be partial to the prosecution or to the accused. He has to be fair to both sides in the presentation of the case.

The Delhi High Court in the case of **Ajay Kumar v. State and Anr., 1986 Cri. L.J. 932 (Del.)** dealing with the role of a Public Prosecutor held that, the Public Prosecutor is a functionary of the State appointed to assist the Court in the conduct of a trial, the object of which is basically to find the truth and to punish the accused if he is found guilty according to the known norms of law and procedure. It is no part of his obligation to secure conviction of an accused, in any event, or at all costs. Nor is he intended to play a partial role or become party to the prosecution of the accused or lend support, directly or indirectly, to a denial of justice or of fair trial to the accused. His plain task is to represent the State's point of view on the basis of the material which could be legitimately brought before the Court at the trial. If all State actions must be just, fair and reasonable, he would be under no less duty as a functionary of the State to discharge his functions as a Public Prosecutor in an equally just, fair and reasonable manner irrespective of the outcome of the trial. In that sense, he is part of the judicature system, and an upright Public Prosecutor has no friends and foes in Court. He has no prejudices, preconceived notions, bias, hostility or his own axe to grind. He represents public interest but is not a partisan in the narrow sense of the term.

The Supreme Court in **Hitendra Vishnu Thakur and Others V. State of Maharashtra and Others., (1994) 4 SCC 602** held that a public prosecutor is an important officer of the State Govt. and is appointed by the State under the CrPC. He is not a part of the investigating agency. He is an independent statutory authority. The public prosecutor is expected to independently apply his mind to the request of the investigating agency before submitting a report to the court for extension of time with a view to enable the investigating agency to complete the investigation. He is not merely a post office or a forwarding agency. A public prosecutor may or may not agree with the reasons given by the investigating officer for seeking extension of time and may find that the investigation had not progressed in the proper manner or that there has been unnecessary, deliberate or avoidable delay in completing the investigation.

The Supreme Court in the case of ***S. B. Shahane and Ors. V. State of Maharashtra and Anr.*,AIR 1995 SC 1628.,** had stressed on the desirability of separation of prosecution agency from investigation agency. It was observed that Assistant Public Prosecutors could not be allowed to continue as personnel of the Police Department and to continue to function under the control of the head of the Police Department. State Governments were directed to constitute a separate cadre of Assistant Public Prosecutors by creating a separate prosecution Department making its head directly responsible to the State Government.

A Full Bench of Allahabad High Court in a case **Queen-Empress V. Durga., ILR (1894) 16 All 84** pinpointed the role of Public Prosecutor as under :

Prosecution Reforms

"15. It is the duty of a Public Prosecutor to conduct the case for the Crown fairly. His object should be, not to obtain an unrighteous conviction, but, as representing the Crown, to see that justice is vindicated: and, in exercising his discretion as to the witnesses whom he should or should not call, he should bear that in mind. In our opinion, a Public Prosecutor should not refuse to call or put into the witness-box for cross-examination a truthful witness returned in the calendar as a witness for the Crown, merely because the evidence of such witness might in some respects be favourable to the defence. If a Public Prosecutor is of opinion that a witness is a false witness or is likely to give false testimony if put into the witness-box, he is not bound, in our opinion, to call that witness or to tender him for cross-examination."

In ***Zahira Habibulla H. Sheikh and Another* V. *State of Gujarat and Others., (2004) 4 SCC 158*** *while emphasizing for fair trial as pulse beat of Arts. 14 and 21 of the Constitution of India, Hon'ble Supreme Court noted with serious concern the failure of prosecuting agency to assist the court to find out the truth and cautioned the prosecuting agency to be fair and to act in requisite manner.*

*Unfortunately in Indian Criminal Justice system there is a confusion about the duties and responsibilities of Public Prosecutor. In United States, the duty of a Public Prosecutor or other government lawyer is to seek justice, not merely to convict and to see that justice is done. Rule 3.8 of the Model Rules of Professional Conduct formulated by the American Bar Association lays down that the Prosecutor in a criminal case shall refrain from prosecuting a charge that the Prosecutor knows is not supported by probable cause and make timely disclosure to the defense of all evidence or information known to the Prosecutor that tends to negate the guilt of the accused or mitigates the offense and in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the Prosecutor, except when the Prosecutor is relieved of this responsibility by a protective order of the tribunal.*

*The Supreme Court of United States in* ***Harry Berger V. United States of America,(1935) 295 US 78*** *speaking through Mr. Justice Sutherland, delivering the opinion of the Court said that:*

"The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. [She/] he may prosecute with earnestness and vigor indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much [her/] his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one"

The Supreme Court of Canada has also elaborated upon role of Prosecutor in **R. v. Boucher. ,(1954) 110 CTC 263** by saying that:

"It cannot be over emphasized that the purpose of a criminal prosecution is not to obtain a conviction; it is to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime. Counsel has a duty to see that all available legal proof of the facts is presented; it should be done firmly and pressed to its legitimate strength, but it must also be done fairly. The role of Prosecutor excludes any notion of winning or losing; her/his function is a matter of public duty than which in civil life there can be none charged with greater responsibility. It is to be efficiently performed with an ingrained sense of dignity, the seriousness and the justness of judicial proceedings."

According to New Zealand Law Society's Rules of Professional Conduct although the Prosecutor is an advocate, he or she must prosecute "dispassionately and with scrupulous fairness" [Rule 9.01, Rules for Professional Conduct for Barristers and Solicitors, Adopted by the New Zealand Law Society on 28th July, 1989]. The New Zealand courts have explained that the Crown's duty is to present its case fairly and completely, and to be as firm as the circumstances warrant, but the Crown must never "struggle for a conviction". They have further said that it is "quite impermissible" for a Prosecutor to attempt to persuade the jury by factors of prejudice or emotion and that the Prosecutor is neither the lawyer for the victim, nor a lawyer for the police. He or she acts on behalf of the community, and has a responsibility to ensure that justice is done in a fair and balanced way.

The Canadian jurisprudence has also interpreted the role of a Prosecutor by laying down that a Prosecutor's responsibilities are public in nature. As a Prosecutor and public representative, Crown counsel's demeanor and actions should be fair, dispassionate and moderate, show no signs of partisanship and avoid "tunnel vision" [tunnel vision means the single-minded and overly narrow focus on a particular investigative or prosecutorial theory, so as to unreasonably color the evaluation of information received and one's conduct in response to that information]

Prosecution Replenish

Section 24 of the Code of Criminal Procedure lays down that a Public Prosecutor shall be appointed for conducting prosecution, appeal or other proceeding on behalf of the government, as the case may be.

Sec.301 of Cr.P.C deals with appearance by Public Prosecutors. Sub-Section(1) says that the Public Prosecutor or the 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. Sub Section(2) says that 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 Asst., Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case.

Sec.302 of the Code of Criminal Procedure deals with permission to conduct prosecution. Sub-Section (1) says that 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. Sub-Section(2) says that any person conducting the prosecution may do so personally or by a pleader.

Sec.301 Cr.P.C is a general provision for the appearance of Public Prosecutor regarding inquiries and trails. A plain reading of the section would show that in so far as Court of Session is concerned it is only the Public Prosecutor who shall conduct the prosecution. Nevertheless, if a private person instructs the pleader, such a pleader so instructed shall act only under the directions of Public Prosecutor and with the permission of the court may submit written arguments after the evidence is closed. Therefore, the role of a pleader is very much limited U/Sec.301 Cr.P.C in as much as he can only act under the directions of the Public Prosecutor and can only submit written arguments after the evidence is closed. It is significant to note that Sec.301 Cr.P.C has been introduced on the premise that an offence is one against the State and therefore it is responsibility of the State to punish the accused having committed the offence against the society.

The Hon'ble Supreme Court of India in **Thakur Ram V. The State Of Bihar, AIR 1966 SC 911** observed that in a case which has proceeded on a police report a private party has really no locus standi. The criminal law is not to be used as an instrument of wreaking private vengeance by an aggrieved party against the person who, according to that party, had caused injury to it. Barring a few exceptions, in criminal matters the party who is treated as the aggrieved party is the State which is the custodian of the social interests of the community at large and so it is for the State to take all the steps necessary for bringing the person who has acted against the social interests of the community to book.

Section 24 is a specific provision under Chapter II of the Code of Criminal Procedure. Section 24 of the Code of Criminal Procedure speaks about the appointment and functions of Prosecutors. Proviso to Section 24(8) has been inserted in the Code by way of Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009) with effect from 31.12.2009. Section 24(8) reads as follows:-

"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."

Section 2(q) of the Code of Criminal Procedure defines "pleader" as thus:

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

The Hon'ble Supreme Court of India in **Delhi Domestic Working Women's Forum V. Union Of India And Others (1995) 1 SCC 14,** while dealing with the legal assistance to be provided to a victim of rape held that the victim of a sexual assault case will have to be informed by the police about her right to be represented by a lawyer. It is further observed in the said judgment that the complainant is entitled to be provided with the legal assistance of a lawyer who is well acquainted with the criminal justice system. Such a lawyer appointed for the complainant would have to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her both in the police station and in the Court. He also has to provide assistance so as to enable her to get help such as mind counselling or medical assistance. It was also observed that a duty is cast also on the Court upon an application by the police to appoint a lawyer.

The Hon'ble Supreme Court in the said Judgment gave broad parameters in assisting the victims of rape. The parameters are as follows:-

Prosecution Replenish

(1) The complainants of sexual assault cases should be provided with legal representation. It is important to have someone who is well- acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counseling or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represent her till the end of the case.

(2) Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her.

(3) The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report should state that the victim was so informed.

(4) A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable.

(5) The advocate shall be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay, advocates would be authorized to act at the police station before leave of the court was sought or obtained.

(6) In all rape trials anonymity of the victim must be maintained, as far as necessary.

(7) It is necessary, having regard to the Directive Principles contained under Article 38 (1) of the Constitution of India to set up Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatized to continue in employment.

(8) Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurred as a result of the rape.

Therefore a reading of the above said judgment in juxtaposition to Sec.24(8) of the Code would show that an advocate engaged by a victim will have to be permitted to take adequate part in a criminal proceedings thereby performing his role as an advocate representing the victim.

The Black Dictionary defines the "Assistance of counsel" as under:

"Representation by a lawyer, esp. in a criminal case."

The word "Assist" is defined in Black Dictionary as follows: "Assist. To help; aid; succor; lend countenance or encouragement to; participate in as an auxiliary. To contribute effort in the complete accomplishment of an ultimate purpose intended to be effected by those engaged."

The word "engage" has been defined in Black Dictionary as follows:

"to employ or involve oneself; to take part in; to embark on" From the above definitions it is seen that the definition of word "engage" would mean to make oneself involve into a particular activity and to take part". Therefore the word "engage" has got a wider import than the word instruct.

Proviso of Section 24(8) Cr.P.C. speaks about the assistance to prosecution. Therefore it implies that the role of the Prosecutor is also to be shared by the victim's counsel by way of assisting the prosecution even if it is to a limited extent. Therefore an advocate so engaged has to perform three different roles. He has to render assistance to the victim who engaged him, secondly to assist the prosecution by assisting the Public Prosecutor who conducts the prosecution and to assist the Court being the officer of the Court. Hence an advocate so engaged by the victim has to perform the above said three roles which are complimentary to each other.

The Provision under Section 24(8) and Section 301 of the Code of Criminal Procedure are rather complimentary to each other rather than conflicting. Proviso to Section 24(8) of the Criminal Procedure Code is in other words an expansion of Section 301 of the Code of Criminal Procedure. Both proviso under Section 24(8) and Section 301 Cr.P.C. will have to read together. Engaging of an advocate should only mean "to have an effective assistance". That is a reason why the word 'advocate' has been incorporated under Section 24. The definition of a 'pleader' is wider which has to be read in the context of Section 301 Cr.P.C. and the definition word "advocate" would mean an active participation in the prosecution through a counsel. On a reading of Section 301 together with proviso under Section 24(8) Cr.P.C.,they provide more access to an aggrieved party to assist the prosecution.

The Hon'ble High Court of Kerala between **Umanath V. State Of Kerala and Anr.,2000 CriLJ 1067** observed that it is patent that the pleader instructed to conduct the prosecution under Section 301 of the Cr.P.C.

Prosecution Replenish

has to act under the directions of the P.P. or A.P.P. as the case may be and that is only an affair between the Public Prosecutor and the lawyer engaged to assist him. It is clear from the provisions of subsection (1) of Section 301 of the Cr.P.C. that the engagement of a pleader by a private party and the conduct of the trial of the case by such pleader under the directions of the P.P. or A.P.P. is a matter exclusively between the Public Prosecutor and the Pleader so appointed and the Court is unconcerned with such appointment of the Pleader by a private party to act under the directions of the P.P. or A.P.P. in the prosecution of the case, no permission of the Court is necessary under Section 301(1) of the Cr.P.C. except for the purpose of submitting a written argument after completion of the trial by the pleader so appointed by the party.

In **Shiv Kumar V. Hukam Chand and Anr., (1999) 7 SCC 467** the question that was posed before Three Judge Bench of Hon'ble Supreme Court was whether an aggrieved has a right to engage its own counsel to conduct the prosecution despite the presence of the Public Prosecutor. The Court after noting the role of the Public Prosecutor observed unlike Section 302 of the Code, the application of which is confined to magistrate courts, Section 301 of the Code is applicable to all the courts of criminal jurisdiction. This distinction can be discerned from employment of the words any court in Section 301. In view of the provision made in the succeeding section as for magistrate courts the insistence contained in Section 301(2) must be understood as applicable to all other courts without any exception. The first sub-section empowers the Public Prosecutor to plead in the court without any written authority, provided he is in charge of the case. The second sub-section, imposes the curb on a counsel engaged by any private party. It limits his role to act in the court during such prosecution under the directions of the Public Prosecutor. The only other liberty which he can possibly exercise is to submit written arguments after the closure of evidence in the trial, but that too can be done only if the court permits him to do so. From the scheme of the Code the legislative intention is manifestly clear that prosecution in a sessions court cannot be conducted by any one other than the Public Prosecutor. The legislature reminds the State that the policy must strictly conform to fairness in the trial of an accused in a sessions court. A Public Prosecutor is not expected to show a thirst to reach the case in the conviction of the accused somehow or the other irrespective of the true facts involved in the case. The expected attitude of the Public Prosecutor while conducting prosecution must be couched in fairness not only to the court and to the investigating agencies but to the accused as well. If an accused is entitled to any legitimate benefit during trial the Public Prosecutor should not scuttle/conceal it. On the contrary, it is the duty of the Public Prosecutor to winch it to the fore and make it available to the accused. Even if the defence counsel overlooked it, Public Prosecutor has the added responsibility to bring it to the notice of the court if it comes to his knowledge. A private counsel, if allowed free hand to conduct prosecution would focus on bringing the case to conviction even if it is not a fit case to be so convicted. That is the reason why Parliament applied a bridle on him and subjected his role strictly to the instructions given by the Public Prosecutor. It is not merely an overall supervision which the Public Prosecutor is expected to perform in such cases when a privately engaged counsel is permitted to act on his behalf. The role which a private counsel in such a situation can play is, perhaps, comparable with that of a junior advocate conducting the case of his senior in a court. The private counsel is to act on behalf of the Public Prosecutor albeit the fact he is engaged in the case by a private party. If the role of the Public Prosecutor is allowed to shrink to a mere supervisory role the trial would become a combat between the private party and the accused which would render the legislative mandate in Section 225 of the Code a dead letter.

A Division Bench of the High Court of Andhra Pradesh in **In re Bhupalli Malliah & ors., AIR 1959 A.P. 477** had in fact deprecated the practice of Public Prosecutors sitting back and permitting private counsel to conduct prosecution, in the following terms: We would like to make it very clear that it is extremely undesirable and quite improper that a Public Prosecutor should be allowed to sit back, handing over the conduct of the case to a counsel, however eminent he may be, briefed by the complainant in the case.

Another Division Bench of the High Court of Andhra Pradesh in **Medichetty Ramakistiah and Ors. V. The State of Andhra Pradesh., AIR 1959 AP 659 = 1959 CriLJ 1404** observed unless, therefore, the control of the Public Prosecutor is there, the prosecution by a pleader for a private party may degenerate into a legalized means for wreaking private vengeance. The prosecution instead of being a fair and dispassionate presentation of the facts of the case for the determination of the Court, would be transformed into a battle between two parties in which one was trying to get better of the other, by whatever means available. The Court had further ruled that prosecution should not mean persecution and the Prosecutor should be scrupulously fair to the accused and should not strive for conviction in all these cases.

The Supreme Court of India in **M/S JK International V. State, Govt of NCT of Delhi and Others., (2001) 3 SCC 462** observed that he scheme envisaged in the Code of Criminal procedure indicates that a person who is aggrieved by the offence committed, is not altogether wiped out from the scenario of the trial merely because the investigation was taken over by the police and the charge sheet was laid by them. Even the fact that

Prosecution Replenish

the court had taken cognizance of the offence is not sufficient to debar him from reaching the court for ventilating his grievance. Even in the sessions court, where the Public Prosecutor is the only authority empowered to conduct the prosecution as per Section 225 of the Code, a private person who is aggrieved by the offence involved in the case is not altogether debarred from participating in the trial. This can be discerned from Section 301(2) of the Code. The said provision falls within the Chapter titled General Provisions as to Inquiries and Trials. When such a role is permitted to be played by a private person, though it is a limited role, even in the sessions courts, that is enough to show that the private person, if he is aggrieved, is not wiped off from the proceedings in the criminal Court merely because the case was charge sheeted by the police. It has to be stated further, that the Court is given power to permit even such private person to submit his written arguments in the Court including the sessions court. If he submits any such written arguments the Court has a duty to consider such arguments before taking a decision. The High Court of Kerala in **Babu V. State Of Kerala, 1984 CriLJ 499** also made similar observation. The High Court observed that the Public Prosecutors are really ministers of justice whose job is none other than assisting the State in the administration of justice. They are not representatives of any party. Their job is to assist the court by placing before the court all relevant aspects of the case. They are not there to see the innocents go to the gallows. They are also not there to see the culprits escape a conviction. But the Pleader engaged by a private person who is a de facto complainant cannot be expected to be so impartial. Not only that, it will be his endeavour to get a conviction even if a conviction may not be possible. So, the real assistance that a Public Prosecutor is expected to render will not be there if a Pleader engaged by a private person is allowed to take the role of a Public Prosecutor by granting permission under Section 302Cr.P.C.

The Madras High Court in **All India Democratic Women's Association V. State and Others.,1998 CriLJ 2629** held that Section 301(2) of Cr.P.C. gives the third party a right to assist the prosecution only. A very limited right seems to have been given to an Advocate instructed by a private person and that too to assist the Public Prosecutor under section 301(2) of Cr.P.C. The only correct interpretation of section 301(2) of Cr.P.C. can be that the lawyer instructed by a private person has no right of audience except to assist the Public Prosecutor and that Advocate can certainly assist the Public Prosecutor during the course of criminal proceedings.

In so far as Section 302 Cr.P.C is concerned the permission of the Court is mandatory to appoint a private counsel to prosecute the case in the place of Public Prosecutor or Assistant Public Prosecutor. If application is field then that application shall contain specific reason(s) for the appointment of such private counsel to prosecute the case. The Section would reveal that any person who obtained permission thereunder could conduct the prosecution of the case concerned. Evidently, this provision is distinctly different from the provision under Section 301 of the Code. Upon grant of permission under Section 302 of the Code the private counsel takes over the role of the Prosecutor whilst even after the permission under Section 301 (2) of the Code, the Public Prosecutor proceeds to conduct the prosecution and the private counsel so granted with permission could only act under the directions of the Public Prosecutor. As far as Section 302 Code of Criminal Procedure is concerned, power is conferred on the Magistrate to grant permission to the Complainant to conduct the prosecution independently. Under Section 302 any person not being a police officer below the rank of inspector, can prosecute a case, with the permission of the court, either himself or through his pleader, however no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence alleged with respect to which the accused is being prosecuted. The High Court of Kerala in **Babu V. State Of Kerala, 1984 CriLJ 499** observed that when permission under Section 302 is given the Public Prosecutor or the Assistant Public Prosecutor as the case may be disappears from the scene and the pleader engaged by the person who will invariably be the de facto complainant will be in full charge of the prosecution. However it was held by the Court that permission could be granted under Section 302 under very very exceptional circumstances otherwise only in case where the circumstances are such that a denial of permission under Section 302 Cr.P.C would stand in the way of meting out justice.

In **Dhariwal Industries Ltd. v. Kishore Wadhwani,(2016) 10 SCC 378,** the Court held regarding S. 302 CrPC, power is conferred on Magistrate to grant permission to complainant to conduct the prosecution independently. Proper mode of seeking permission under S. 302 CrPC, is only by written application. when permission is sought to conduct the prosecution by a private person, it is open to the court to consider his request. The Court has to form an opinion that cause of justice would be best sub-served and it is better to grant such permission. And, it would generally grant such permission.

The right of the victim/affected party to participate in the proceedings is recognized under Sections 301 and 302 of Cr.P.C., and the Hon'ble Supreme Court has expanded the scope of participation of the victim in the Court proceedings.

Prosecution Reprism

The Hon'ble High Court of Madhya Pradesh at Jabalpur in **Uma Uikey V. The State Of Madhya Pradesh., 2018 LawSuit(MP) 1114**, observed that the word "intervenor" is nowhere defined in the Cr.P.C. but whenever participation of the complainant or third party is raised, Sections 301 and 302 of Cr.P.C. come into the mind. Under Section 301 of Cr.P.C. the Advocate engaged by the private person with the permission of the Court may be allowed to assist the prosecution; whereas under Section 302 of the Cr.P.C. the private party is allowed to conduct the prosecution. The Magistrate/Court while allowing the same consider the aspect that whether cause of justice would be served better in granting such permission.

The Supreme Court of India in ***Sundeep Kumar Bafna V. State Of Maharashtra & Anr.*,(2014) 16 SCC 623** after analyzing the role of Public Prosecutor held that no vested right is granted to a complainant or informant or aggrieved party to directly conduct a prosecution. So far as the Magistrate is concerned, comparative latitude is given to him but he must always bear in mind that while the prosecution must remain being robust and comprehensive and effective it should not abandon the need to be free, fair and diligent. So far as the Sessions Court is concerned, it is the Public Prosecutor who must at all times remain in control of the prosecution and a counsel of a private party can only assist the Public Prosecutor in discharging its responsibility. The complainant or informant or aggrieved party may, however, be heard at a crucial and critical juncture of the Trial so that his interests in the prosecution are not prejudiced or jeopardized. That constant or even frequent interference in the prosecution should not be encouraged as it will have a deleterious impact on its impartiality. If the Magistrate or Sessions Judge harbours the opinion that the prosecution is likely to fail, prudence would prompt that the complainant or informant or aggrieved party be given an informal hearing.

In the ultimate analysis it can be said that the purpose of a criminal trial being to determine the guilt or innocence of the accused person, the duty of a Public Prosecutor is not to represent any particular party, but the State. The prosecution of the accused persons has to be conducted with the utmost fairness. In undertaking the prosecution, the State is not actuated by any motives of revenge but seeks only to protect the community. There should not therefore be "a seemly eagerness for, or grasping at a conviction". Under the present scheme of the Code of Criminal Procedure it is possible to permit the intervention of the aggrieved as third party in criminal matters. So far as trial before the Court of Session is concerned the prosecution shall be conducted by Public Prosecutor. The role of the Prosecutor being an officer of the Court is expected to assist the Court in arriving at the truth in a given case. Though third party conducting the prosecution is permitted and it sound theoretically but such prosecution cannot be extended to session cases as the Code does not allow or permit it. Such prosecution is limited to Magistrate courts. Whether the intervention of the third party in session cases is to be permitted or not is a question that requires determination by the Parliament. Ultimately the balancing act is on the Legislative Organ to consider whether there is need for an amendment in the Code to line up the prosecution procedures in Session Courts with those before Magistrate courts.

**DVR Tejo Karthik**
**JMFC, Spl.Mobile Court,**
**Mahabubnagar**

*(Prosecution Replenish conveys its heartfelt thanks to **Sri D.V.R. Tejo Karthik,** Judicial Magistrate of First Class, Special Mobile Court, Mahabubnagar, for contributing this article for our leaflet)*

# CITATIONS

It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of UAPA per-se does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a Statue as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial. **2021 0 Supreme(SC) 46; Union of India Vs. K.A. Najeeb; Criminal Appeal No. 98 of 2021 [Arising out of Special Leave Petition (Crl.) No. 11616 of 2019] Decided On : 01-02-2021; (THREE JUDGE BENCH)**

The High Court would be justified against an acquittal passed by the Learned Trial Court even on re-appreciation of the entire evidence independently and come to its own conclusion that acquittal is

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perverse and manifestly erroneous". However, so far as the appeal against the order of conviction is concerned, there are no such restrictions and the Court of appeal has wide powers of appreciation of evidence and the High Court has to re-appreciate the entire evidence on record being a First Appellate Court. Keeping in mind that once the Learned Trial Court has convicted there shall not be presumption of innocence as would be there in the case of acquittal.**2021 0 Supreme(SC) 47; State of Gujarat Vs. Bhalchandra Laxmishankar Dave; Criminal Appeal No.99 of 2021 [Arising out of SLP (Crl.) No. 9105 of 2015] Decided On : 02-02-2021; (THREE JUDGE BENCH)**

when the ossification test cannot yield trustworthy and reliable results, such test cannot be made a basis to determine the age of the person concerned on the date of incident. Therefore, in the absence of any reliable trustworthy medical evidence to find out age of the appellant, the ossification test conducted in year 2020 when the appellant was 55 years of age cannot be conclusive to declare him as a juvenile on the date of the incident.

A part statement of a witness can be believed even though some part of the statement may not be relied upon by the court. The maxim Falsus in Uno, Falsus in Omnibus is not the rule applied by the courts in India. This Court recently in a judgment reported as llangovan v. State of T.N., (2020)10 SCC 533 held that Indian courts have always been reluctant to apply the principle as it is only a rule of caution.

merely because a prosecution witness was not believed in respect of another accused, the testimony of the said witness cannot be disregarded qua the present appellant. Still further, it is not necessary for the prosecution to examine all the witnesses who might have witnessed the occurrence. It is the quality of evidence which is relevant in criminal trial and not the quantity. Therefore, non-examination of Girendra Singh cannot be said to be of any consequence.**2021 0 Supreme(SC) 108; RAM VIJAY SINGH Vs STATE OF UTTAR PRADESH; CRIMINAL APPEAL NO. 175 OF 2021 (ARISING OUT OF SLP (CRIMINAL) NO. 2898 OF 2020) Decided On : 25-02-2021(THREE JUDGE BENCH)**

The assertion on part of PW1- Sajan Bai that her earlier statement recorded during investigation was read over to her does not mean that she was tutored to follow the line of prosecution. **2021 0 Supreme(SC) 109;**
**DEVILAL AND OTHERS Vs. STATE OF MADHYA PRADESH; CRIMINAL APPEAL NO. 989 OF 2007; Decided On : 25-02-2021(THREE JUDGE BENCH)**

Implementation of plan of action with respect to use of Videography in crime scene during investigation – State and Union Territory Governments should ensure that CCTV cameras are installed in each and every Police Station functioning in respective State and/or Union Territory-CCTV systems that have to be installed must be equipped with night vision and must necessarily consist of audio as well as video footage. **2020 6 KHC 624; 2021 1 SCC 184; 2021 1 SCC(Cri) 470; 2020 0 Supreme(SC) 692; Paramvir Singh Saini Vs Baljit Singh and Others SPECIAL LEAVE PETITION (CRIMINAL) NO.3543 of 2020; DECIDED ON : 02-12-2020**

Firstly, the respondent police were directed not to arrest the petitioner in Cr.No.1/2020, which is not the grievance of the petitioner. The second direction is that the respondent shall not take any coercive steps under the guise of investigation to infringe fundamental right guaranteed under Article 21.

Even if the aforesaid vibrant facets of life and personal liberty enveloped in Article 21 are taken into consideration, it by no means can be harped that the search and seizure operations conducted at the present instance on the judicial order of a Magistrate, in any way violated the order of this Court and consequently Article 21. It must be noted that Article 21, for that matter any fundamental right, is not an unbridled right but circumscribed by certain limitations meaning thereby, the life and personal liberty are subject to procedure established by law. Hence, this Court's order in I.ANo.1/2020 cannot be construed to shun the respondent police from proceeding with investigation. What all protected is the life and personal liberty of the petitioner against the manoeuvres in the cloak of investigation.- **2021 1 ALD CRL 224(AP); Gujjula Sreenu, Vs. The CID, & 4 others.: 21.09.2020**

no proceedings under Section 6- A of the E.C.Act were initiated prima facie. However, the Magistrate is competent to pass an order of confiscation of the vehicle to the State under Section 7 of the E.C.Act recording reasons at the end of trial.

If the vehicles are released and not produced before the Magistrate during trial, the State will be the looser and it causes loss to the State exchequer. Therefore, to protect the interest of the petitioners and respondents by following the principles laid down in the judgments referred supra, I deem it appropriate to direct the respondents to get the vehicles valued by Motor Vehicle Inspector in the presence of the petitioners; after fixation of value of the vehicle, on furnishing immovable property as security equivalent to the value of the vehicle strictly adhering to the Stamps and Registration laws, release the vehicles after obtaining an undertaking from the petitioners to produce the vehicles as and when directed, and that they will not alienate the same and maintain in good condition.
**2021 1 ALD Crl 242(AP); CRIMINAL PETITION Nos.5139 and 5200 of 2020; Geetha Decorticaters Vs. The State of Andhra Pradesh.; ON 20.11.2020**

The proviso to Section 188, which has been extracted hereinbefore, is a fetter on the powers of the investigating authority to inquire into or try any offence mentioned in the earlier part of the Section, except with the previous sanction of the Central Government. The fetters, however, are imposed only when the stage of trial is reached, which clearly indicates that no sanction in terms of Section 188 is required till commencement of the trial. It is only after the decision to try the offender in India was felt necessary that the previous sanction of the Central Government would be required before the trial could commence.
**2021 1 ALD Crl 279(TS); Bhanu Prasad Variganji Vs. State of Telangana;**

Under Sec 102, the investigating officer is to report the information of seizing bank accounts forthwith to the court.
From the basketful of decisions on what is meant by 'forthwith' it can be culled out that it means 'as soon as may be', 'with reasonable speed and expedition', with a sense of urgency' and 'without any unavoidable delay'. In other words, it does not mean instantaneous, the moment when a decision is made/ simultaneous.
Further statute vests power in the Investigating Officer to seize property suspected to have been involved in crime. Intimation to the concerned Magistrate follows the seizure. Power to seize is plenary where as intimation to the Magistrate is incidental to exercise of such power. Thus, defect in intimation is curable and mere delay in intimation does not vitiate the seizure of property per se.
**2021 1 ALD Crl 286(TS) ; W.P. Nos.13363 AND 10565 OF 2020: 3.12.2020; M/s AP Product Vs. State of Telangana;**

registration of crime against the petitioner for the offence punishable under Section 188 of I.P.C. is in violation of Section 195 (1) (a) (i) of Cr.P.C. Similarly, registration of crime for the offence punishable under Section 54 of the Disaster Management Act is in violation of Section 60 of the Disaster Management Act
As I have highlighted the prime duties of the police, either Criminal Investigation Department or Law and Order, the prime duty of the police is to protect the public from law breakers. But, here the police themselves by abuse of law registered crime against this petitioner for various offences, though the allegations made in the complaint do not attract any of the offences punishable under Section 505(2) and Section 506 I.P.C. The other two offences cannot be investigated by the third respondent except on the complaint lodged by the competent person, as discussed above. It is evident from the action of the third respondent in registering and investigating into it, in seizing the electronic equipment from the office of first respondent is nothing but exhibiting over enthusiasm by the third respondent officials to please the political party in power. The third respondent officials are the permanent officials working under the control of State Government irrespective of the political party in power. **The parties may come into power and lose power after sometime, but the officer shall continue to work irrespective of the party in power.** But, registration of power by abusing process of law is a matter of serious concern, as it causes incalculable damage not only to the life and liberty of this petitioner but also to his business directly violating the fundamental right guaranteed under Articles 19 and 21 of the Constitution of India. I, therefore hold that the action of the third respondent is nothing but abuse of process of law in registering crime against the petitioner believing the allegations made in the complaint on their face value as true, the Court can exercise power to quash the proceedings by exercising power under Article 226 of the Constitution of India, which is identical to the power under Section 482 of Cr.P.C.

**2021 1 ALD Crl 306(A.P); WRIT PETITION No.8890 OF 2020 Between: Kantamaneni Ravishankar. Vs. State of Andhra Pradesh; 26.08.2020**

The specious reason of change in circumstances cannot be invoked for successive anticipatory bail applications, once it is rejected by a speaking order and that too by the same Judge.
**G.R. ANANDA BABU Appellant(s) VERSUS THE STATE OF TAMIL NADU & ANR.;28.01.2021**

Mere Absence Of Doctor's Certification Would Not Ipso Facto Render Dying Declaration Unacceptable; **SURENDRA BANGALI @ SURENDRA SINGH ROUTELE vs. STATE OF JHARKHAND [CRIMINAL APPEAL NO.1078 OF 2010]; 04.02.2021**

# NOSTALGIA

**JURISDICTION TO ENTERTAIN CANCELLATION OF BAIL**

In Puran v. Rambilas, (2001) 6 SCC 338, it was reiterated that at the time of deciding an application for bail, it would be necessary to record reasons, albeit without evaluating the evidence on merits. In turn, Puran (supra) cited Gurcharan Singh v. State (Delhi Admn.) (1978) 1 SCC 118; wherein this Court observed that bail once granted by the trial Court, could be cancelled by the same Court only in case of new circumstances/evidence, failing which, it would be necessary to approach the Higher Court exercising appellate jurisdiction.

# NEWS

- GOVERNMENT OF ANDHRA PRADESH- Public Services – A.P. Prosecutions Department - Additional Charge arrangements for the post of Director of Prosecutions, Andhra Pradesh - Sri Gudi Vijaya Kumar, IPS., Special Secretary to Government, Home Department – Orders – Issued. G.O.RT.No. 157; HOME (COURTS.A) DEPARTMENT; Dated: 17-02-2021
- TIRUMALA TIRUPATI DEVASTHANAMS - AMENDMENT TO THE TIRUMALA TIRUPATI DEVASTHANAMS EMPLOYEES SERVICE RULES, 1989 - IN RESPECT OF QUALIFICATIONS FOR THE POST OF DEPUTY DEVASTHANAMS LAW OFFICER –providing a post for Prosecutor- [G.O.Ms.No.46, Revenue (Endts.III), 25th February, 2021.]
- GOVERNMENT OF TELANGANA Forest – Rules - The Telangana State Forest Offences (Compounding and Prosecution) Rules, 1969 Amendment to Rule 13 empowering the Police Officer not below the rank of Sub-inspector of Police to file charge sheet before the Magistrate – Notification – Orders – Issued- G.O.Ms.No. 10 ENVIRONMENT, FORESTS, SCIENCE & TECHNOLOGY (FOR.I) DEPARTMENT Dated: 27-02-2021.
- GOVERNMENT OF TELANGANA- Public Services – Prosecuting Officers – Promotion and postings to certain Additional Public Prosecutors Grade-I as Public Prosecutors /Joint Directors of Prosecutions on temporary basis - Orders – Issued- G.O.Rt.No.219 HOME (COURTS.A) DEPARTMENT, Dated:05.02.2021

| **Name of Prosecutor Promoted** | **Public Prosecutor-Cum Joint Director of Prosecutions** |
|---|---|
| Sri A.Shankar | Principal Sessions Court, Khammam |
| Smt K.V.Rajini | Principal Sessions Court, Nalgonda |
| Sri J.Srinivas Reddy | Principal Sessions Court,, Sanga Reddy |
| Smt P.Shailaja | Metropolitan Sessions Judge Court, Nampally |
| Sri K.Ajay | Principal Sessions Court, Warangal |

- GOVERNMENT OF TELANGANA- Public Services – Prosecuting Officers – Promotion and postings to certain Additional Public Prosecutors Grade-II as Additional Public Prosecutors Grade-I/Deputy

Prosecution Reporter

Directors of Prosecutions on temporary basis - Orders – Issued- G.O.Rt.No.236 HOME (COURTS.A) DEPARTMENT, Dated:06.02.2021

| **Name of Prosecutor Promoted** | **Addl Public Prosecutor Gr-I – Cum - Deputy Director of Prosecutions** |
|---|---|
| Smt T.Rajyalakshmi | Retained in ACB as Legal Advisor cum-Spl. P.P in the O/o DG, ACB, TS |
| Smt P.Manjula Devi | I Addl. Sessions Court, Sangareddy |
| Sri Rambaksh | Special Public Prosecutor, Special Court for trial of offences under SC&ST (POA) Act, 1989, Mahabubnagar |
| Sri K.Durgaji | I Addl. MSJ Court, Hyderabad |
| Smt G.Kasturi Bai | II Addl. Sessions Court, RR District |
| Sri R.Upender | Special Public Prosecutor, VI Addl. MSJ Court-cum-Special Court for trial of offences under SC&ST (POA) Act, 1989, Secunderabad |
| Smt Ayesha Rafath | V Addl. MSJ (Mahila) Court, Hyderabad |
| Sri B.Krishna Mohan Rao | Special Public Prosecutor, Special Court for trial of offences under SC&ST (POA) Act, 1989, Khammam |

- **Prosecution replenish congratulates all prosecutors, who have been promoted.**

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## ON A LIGHTER VEIN

Every morning, the CEO of a major bank in Manhattan went to the corner where a shoeshine man was always there. He used to sit on the chair, read the Wall Street Journal, and the shoeshine man gave his shoes a shiny, great look.

One morning, the shoeshine man asks the CEO:

What do you think of the stock market situation?

The CEO arrogantly asks him:

Why are you so interested in this subject?

The shoeshine man replies:

I have twenty million dollars deposited in your bank and I am thinking about investing part of the money in the stock market

The CEO of the bank asks:

What is your name?

He replies: John Smith H.

The CEO arrives at the bank and asks the Manager of the Major Accounts Department:

Do we have a customer named John Smith H.?

The Customer Service Manager for Major Accounts replies:

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We certainly do, Sir! He is an extremely esteemed customer! He has twenty million dollars in his account.
The CEO leaves the bank, approaches the shoeshine boy, and says:
Mr. Smith, I would like to invite you to be our guest of honor at our board meeting next Monday and tell us your life story. I'm sure we will have a lot to learn from you.
At the board meeting, the CEO introduces him to the board members:
We all know Mr. Smith, who makes our shoes shine like no one else. But Mr. Smith is also our valued customer, with twenty million dollars in his account. I invited him to tell us the story of his life. I'm sure we can learn a lot from him. Please, Mr. Smith, tell us your life story.
Then, Mr. Smith began to narrate his story:
I came to this country thirty years ago as a young immigrant from Eastern Europe and with an unpronounceable name. I left the ship penniless in my pocket. The first thing I did was to change my name to Smith. I was hungry and exhausted. I started to wander in search for a job, but without success. Suddenly, I found a coin on the sidewalk. I bought some apples. I had two options: eat the apples and quench my hunger or start a business. I sold the apples for 50 cents and bought more apples with the money. When I started accumulating dollars, I managed to buy a set of used brushes and shoe polishes and started cleaning shoes. I didn't spend a dime on fun or clothes. I only bought bread and cheese to survive. I saved penny by penny and after a while I bought a new set of brushes and shoe polishes in different shades and colors and increased my clientele. I lived like a monk and saved a penny after penny. After a while, I managed to buy a chair so that my customers could sit comfortably while I cleaned their shoes, which brought me more customers. I didn't spend a dime on the pleasures of life. I kept saving every penny. A few years ago, when the corner shoeshine colleague decided to retire, I had already saved enough money to buy his point, which was a better place than mine.

Finally, three months ago, my brother, who was a drug dealer in Chicago, passed away and left me twenty million dollars….
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.Clearly, this is just a campaign to promote reading! Reading stimulates the mind and imagination, makes us travel to other places and even helps communication.

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While due care is taken while preparing this information. The patrons are requested to verify and bring it to the notice of the concerned regarding any misprint or errors immediately, so as to bring it to the notice of all patrons. Needless to add that no responsibility for any result arising out of the said error shall be attributable to the publisher as the same is inadvertent.

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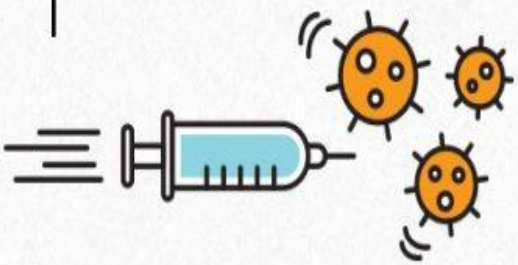
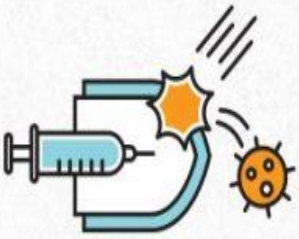
Website : prosecutionreplenish.com

# Current Vaccines Will Work Against the New COVID-19 Variants

No evidence that the current vaccines will fail to protect against COVID-19 variant detected in the UK and South Africa

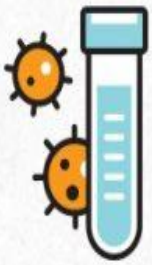


The changes in the variants are not sufficient to make the vaccines ineffective



Vaccines stimulate our immune system to produce a wide range of protective antibodies

Extra precautions like wearing of masks, hand sanitization & physical distancing can prevent spreading of these new variants



Although the new variant increases transmission, there is no evidence so far that suggests it increases severity of the disease

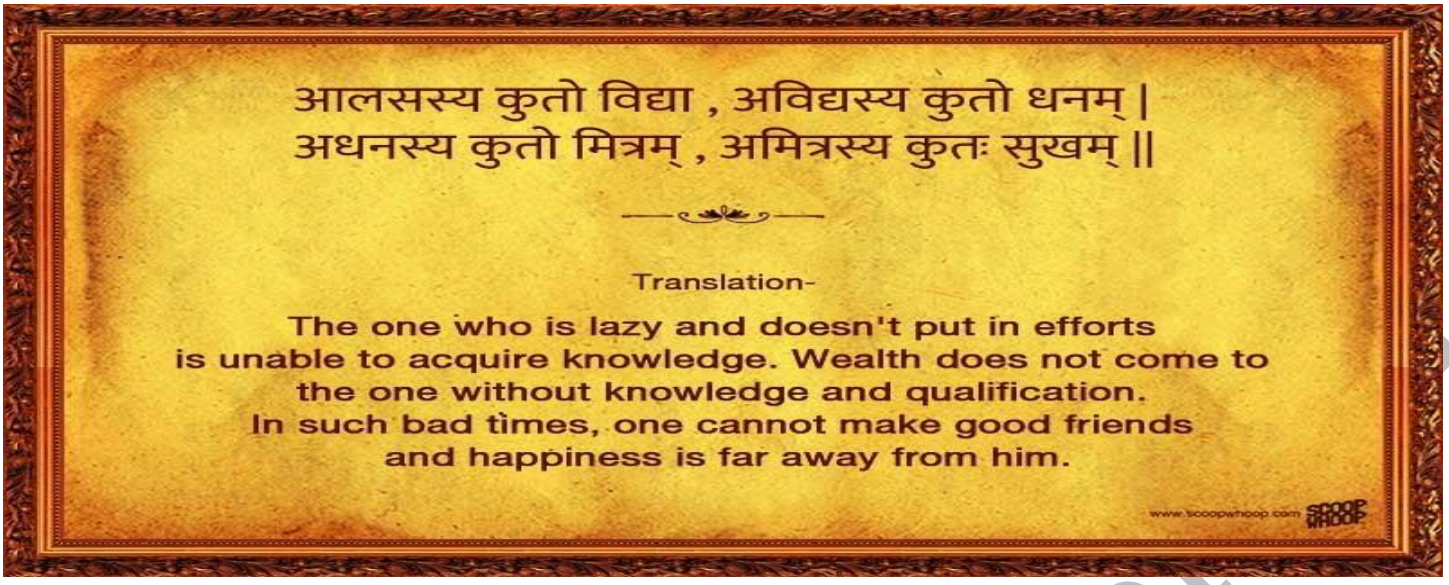
Vol- X
Part-4

# Prosecution Replenish

An Endeavour for Learning and Excellence

## April, 2021

Aano Bhadra Krtavo Yantu Vishwatah.(RIG VEDAM)
"Let Noble Thoughts Come To Me From All Directions"




**APPEARANCE AND EXAMINATION OF WITNESS**

Section 311 of the Code of Criminal Procedure, 1973 empowers the Court to summon any material witness or examine person present if his evidence appears to be essential for the just decision of the case. The pivot of the section is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Section 311 corresponds to Section 540 of the Code of Criminal Procedure, 1898. In the new provision there is a little change in the wordings of the section. The words **"to be"** have been added after the words **"appears to it"** and before the words **"essential to the just decision of the case"**. By adding the words **"to be"** the legislature has emphasized that the evidence of witness sought to be examined under this section must be essential to the just decision of the case. This section enables and in certain circumstances, imposes on the court the duty of summoning witness or witnesses who would not otherwise be brought before the court. The object is obliviously to enable the court to arrive at the truth or otherwise of the fact by summoning and examining the witness or witnesses who can give relevant evidence, irrespective of the fact whether a particular party to the case has summoned the witness or witnesses. The Section is manifestly in two parts; the first part gives purely discretionary authority to the Criminal Court; on the other hand, the second part is mandatory. The discretion given by the first part is very wide and its very width requires a corresponding caution on the part of the Court. But the second part does not allow for any discretion; it binds the Court to examine fresh evidence, and the only condition prescribed is that this evidence must be essential to the just decision of the case.

In **Jamatraj Kewalji Govani V. The State Of Maharashtra.,** AIR 1968 SC 178., a full bench of Hon'ble Supreme Court of India while considering Section 540 of the Old Code observed that the section gives power to the court to summon a material witness or to examine a person present in court or to recall a witness already examined. It confers a wide discretion on the Court to act as the exigencies of justice require. The power of the Court under Section 165 of the Indian Evidence Act, 1872., is complementary to its power under this section. These two provisions between them confer jurisdiction on the Court to act in aid of justice. The Court further observed that the use of the word 'may' in the first part and of the word 'shall' in the second firmly establishes this difference. Under the first part, which is permissive, the court may act in one of three ways :

(a) summon any person as a witness,
(b) examine any person present in court although not summoned, and
(c) recall or re-examine a witness already examined.

The second part is obligatory and compels the Court to act in these three ways or any one of them if the just decision of the case demands it. As the section stands there is no limitation on the power of the Court arising from the stage to which the trial may have reached, provided the Court is bona fide of the opinion that for the just decision of the case, the step must be taken. It is clear that the requirement of just decision of the case does not limit the action to something in the interest of the accused only. The action may equally benefit the prosecution.

The Hon'ble Supreme Court of India between **Natasha Singh V. CBI.,** (2013) 5 SCC 741 observed that Section 311 Cr.P.C. empowers the court to summon a material witness, or to examine a person present at "any stage" of "any inquiry", or "trial", or "any other proceedings" under the Cr.P.C., or to summon any person as a witness, or to recall and re-examine any person who has already been examined if his evidence appears to it, to

Prosecution Report

be essential to the arrival of a just decision of the case. Undoubtedly, the Cr.P.C has conferred a very wide discretionary power upon the court in this respect, but such a discretion is to be exercised judiciously and not arbitrarily. The power of the court in this context is very wide, and in exercise of the same, it may summon any person as a witness at any stage of the trial, or other proceedings. The court is competent to exercise such power even suo motu if no such application has been filed by either of the parties. However, the court must satisfy itself, that it was in fact essential to examine such a witness, or to recall him for further examination in order to arrive at a just decision of the case.

Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 Cr.P.C. must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred under Section 311 Cr.P.C. must therefore, be invoked by the Court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection. The very use of words such as 'any Court', 'at any stage", or 'or any inquiry, trial or other proceedings', 'any person' and 'any such person' clearly spells out that the provision of this section has been expressed in the widest possible terms, and does not limit the discretion of the Court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in-fact, essential to the just decision of the case.

Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person's right to fair trial be jeopardized. Adducing evidence in support of the case canvassed is a valuable right. Denial of such right would amount to the denial of a fair trial. Thus, it is essential that the rules of procedure that have been designed to ensure justice are scrupulously followed, and the court must be zealous in ensuring that there is no breach of the same. (See: **Talab Haji Hussain V. Madhukar Purshottam Mondkarand & Anr.,** AIR 1958 SC 376; **Zahira Habibulla H Sheikh and Anr V. State Of Gujarat And Ors.,** AIR 2004 SC 3114 and AIR 2006 SC 1367; **Mrs. Kalyani Baskar V. Mrs. M. S. Sampoornam,** (2007) 2 SCC 258; **Vijay Kumar V. State Of U.P. & Anr .,** (2011) 8 SCC 136**;** and **Sudevanand V. State through C.B.I.,** (2012) 3 SCC 387 )

In **Zahira Habibulla H Sheikh and Anr V. State Of Gujarat And Ors.**, AIR 2006 SC 1367, the Court observed that it is a cardinal rule in the law of evidence that the best available evidence should be brought before the Court. Sections 60,64 and 91 of the Indian Evidence Act, 1872 are based on this rule. The Court is not empowered under the provisions of the Code to compel either the prosecution or the defence to examine any particular witness or witnesses on their side. This must be left to the parties. But in weighing the evidence, the Court can take note of the fact that the best available evidence has not been given, and can draw an adverse inference. The Court will often have to depend on intercepted allegations made by the parties, or on inconclusive inference from facts elicited in the evidence. In such cases, the Court has to act under the second part of the section. Sometimes the examination of witnesses as directed by the Court may result in what is thought to be "filling of loopholes". That is purely a subsidiary factor and cannot be taken into account. Whether the new evidence is essential or not must of course depend on the facts of each case, and has to be determined by the Presiding Judge. Right from the inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying existence of Courts of justice. The operative principles for a fair trial permeate the common law in both civil and criminal contexts. Application of these principles involves a delicate judicial balancing of competing interests in a criminal trial, the interests of the accused and the public and to a great extent that of the victim have to be weighed not losing sight of the public interest involved in the prosecution of persons who commit offences. The principle of fair trial now informs and energizes many areas of the law. It is reflected in numerous rules and practices. It is a constant, ongoing development process continually adapted to new and changing circumstances, and exigencies of the situation - peculiar at times and related to the nature of crime, persons involved - directly or operating behind, social impart and societal needs and even so many powerful balancing factors which may come in the

Prosecution Replenish

way of administration of criminal justice system. The principle of a fair trial manifests itself in virtually every aspect of our practice and procedure, including the law of evidence.

The Supreme Court further observed that in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crime being public wrong in breach and violation of public rights and duties, which affect the whole community as a community and are harmful to the society in general. The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interests of society is not to be treated completely with disdain and as persona non grata. Courts have always been considered to have an over-riding duty to maintain public confidence in the administration of justice - often referred to as the duty to vindicate and uphold the 'majesty of the law'. Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a Court of law in the future as in the case before it. If a criminal Court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. Courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators. The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the Courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson's eye to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial. A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact or relevant facts which may lead to the discovery of the fact issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial, and not by an isolated scrutiny. Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law. It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence. Since the fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an overhasty stage-managed, tailored and partisan trial. The fair trial for a criminal offence consists not only in technical observance of the frame, and forms of law, but also in recognition and just application of its principles in substance, to find out the truth and prevent miscarriage of justice.

In **Mohanlal Shamji Soni V. Union of India & Anr**., AIR 1991 SC 1346, the Court examined the scope of Section 311 Cr.P.C., and held that it is a cardinal rule of the law of evidence, that the best available evidence must be brought before the court to prove a fact, or a point in issue. However, the court is under an obligation to discharge its statutory functions, whether discretionary or obligatory, according to law and hence ensure that justice is done. The court has a duty to determine the truth, and to render a just decision. The same is also the object of Section 311 Cr.P.C., wherein the court may exercise its discretionary authority at any stage of the inquiry, trial or other proceedings, to summon any person as a witness though not yet summoned as a witness, or to recall or re- examine any person, though not yet summoned as a witness, who are expected to be able to

Prosecution Reforms

throw light upon the matter in dispute, because if the judgments happen to be rendered on an inchoate, inconclusive and speculative presentation of facts, the ends of justice would be defeated.

In **Rajaram Prasad Yadav V. State of Bihar,** (2013) 14 SCC 461, the Supreme Court held that a conspicuous reading of Section 311 Cr.P.C. would show that widest of the powers have been invested with the Courts when it comes to the question of summoning a witness or to recall or re-examine any witness already examined. A reading of the provision shows that the expression "any" has been used as a pre-fix to "court", "inquiry", "trial", "other proceeding", "person as a witness", "person in attendance though not summoned as a witness", and "person already examined". By using the said expression "any" as a pre-fix to the various expressions mentioned above, it is ultimately stated that all that was required to be satisfied by the Court was only in relation to such evidence that appears to the Court to be essential for the just decision of the case.

Section 138 of the Evidence Act, prescribed the order of examination of a witness in the Court. Order of re-examination is also prescribed calling for such a witness so desired for such re-examination. Therefore, a reading of Section 311 Cr.P.C. and Section 138 Evidence Act, insofar as it comes to the question of a criminal trial, the order of reexamination at the desire of any person under Section 138, will have to necessarily be in consonance with the prescription contained in Section 311 Cr.P.C. It is, therefore, imperative that the invocation of Section 311 Cr.P.C. and its application in a particular case can be ordered by the Court, only by bearing in mind the object and purport of the said provision, namely, for achieving a just decision of the case. The power vested under the said provision is made available to any Court at any stage in any inquiry or trial or other proceeding initiated under the Code for the purpose of summoning any person as a witness or for examining any person in attendance, even though not summoned as witness or to recall or re-examine any person already examined. Insofar as recalling and re-examination of any person already examined, the Court must necessarily consider and ensure that such recall and re-examination of any person, appears in the view of the Court to be essential for the just decision of the case. Therefore, the paramount requirement is just decision and for that purpose the essentiality of a person to be recalled and re-examined has to be ascertained. To put it differently, while such a widest power is invested with the Court, it is needless to state that exercise of such power should be made judicially and also with extreme care and caution.

In **Vijay Kumar V. State of U.P. & Anr.,** (2011) 8 SCC 136, the Supreme Court while explaining the object behind vesting wide discretionary power under Section 311 Cr.P.C and also the scope and ambit of the section observed that though Section 311 confers vast discretion upon the court and is expressed in the widest possible terms, the discretionary power under the said Section can be invoked only for the ends of justice.
Discretionary power should be exercised consistently with the provisions of the Code and the principles of criminal law. The discretionary power conferred under Section 311 has to be exercised judicially for reasons stated by the Court and not arbitrarily or capriciously.

In **T. Nagappa V. Y.R. Muralidhar.**, AIR 2008 SC 2010, the Court held, that while considering such an application, the court must not imagine or assume what the deposition of the witness would be, in the event that an application under Section 311 Cr.P.C. is allowed and appreciate in its entirety, the said anticipated evidence. The Court held as follows:

> *"What should be the nature of evidence is not a matter which should be left only to the discretion of the court. It is the accused who knows how to prove his defence. It is true that the court being the master of the proceedings must determine as to whether the application filed by the accused in terms of subsection (2) of Section 243 of the Code is bona fide or not or whether thereby he intends to bring on record a relevant material. But ordinarily an accused should be allowed to approach the court for obtaining its assistance with regard to summoning of witnesses, etc. If permitted to do so, steps therefor, however, must be taken within a limited time. There cannot be any doubt whatsoever that the accused should not be allowed to unnecessarily protract the trial or summon witnesses whose evidence would not be at all relevant."*

**Rajendra Prasad V. Narcotic Cell Through Its Officer in-charge, Delhi.**, (1999) 6 SCC 110 is a decision where the contention that the prosecution should not be permitted to fill in lacuna was examined having regard to the exercise of power under Section 311 Cr.P.C. It was held by the Supreme Court that it is a common experience in criminal courts that defence counsel would raise objections whenever courts exercise powers under Section 311 of the Code or under Section 165 of the Evidence Act, 1872 by saying that the court could not "fill the lacuna in the prosecution case". A lacuna in the prosecution is not to be equated with the fallout of an oversight committed by a Public Prosecutor during trial, either in producing relevant materials or in eliciting relevant answers from witnesses. The adage "to err is human" is the recognition of the possibility of making

Prosecution Replenish

mistakes to which humans are prone. A corollary of any such laches or mistakes during the conducting of a case cannot be understood as a lacuna which a court cannot fill up. Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be foreclosed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better.

In **U.T. of Dadra & Haveli & Anr V. Fatehsinh Mohansinh Chauhan**., (2006) 7 SCC 529, it has been elucidated that the exercise of power under Section 311 Cr.P.C should be resorted to only with the object of discovering the truth or obtaining proper proof of such facts which lead to a just and correct decision of the case, this being the primary duty of a criminal court, calling a witness or re-examining a witness already examined for the purpose of finding out the truth in order to enable the court to arrive at a just decision of the case cannot be dubbed as "filling in a lacuna in the prosecution case" unless the facts and circumstances of the case make it apparent that the exercise of power by the court would result in causing serious prejudice to the accused resulting in miscarriage of justice.

In **Iddar & Ors V. Aabida & Anr.**, AIR 2007 SC 3029, It has been stated that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the court to summon a witness under the section merely because the evidence supports the case for the prosecution and not that of the accused. The section is a general section which applies to all proceedings, inquiries and trials under the Code and empowers Magistrate to issue summons to any witness at any stage of such proceedings, trial or inquiry.

In **Rajaram Prasad Yadav's** case cited supra, the Hon'ble Supreme Court of India while dealing with an application under Section 311 Cr.P.C. read along with Section 138 of the Evidence Act, had laid down the following principles which have to be borne in mind by the Courts:

a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?

b) The exercise of the widest discretionary power under Section 311 Cr.P.C. should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.

c) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.

d) The exercise of power under Section 311 Cr.P.C. should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

e) The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

f) The wide discretionary power should be exercised judiciously and not arbitrarily.

g) The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

h) The object of Section 311 Cr.P.C. simultaneously imposes a duty on the Court to determine the truth and to render a just decision.

i) The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

j) Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

k) The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the

Prosecution Replenish

prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

m) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

n) The power under Section 311 Cr.P.C. must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.

A witness was examined by the defence counsel and he died subsequently during trial. The new counsel sought to recall the witness as the earlier counsel could not cross examine the witness due to his ill-health. The question before the Hon'ble Supreme Court was whether such prayer can be allowed. The Hon'ble Supreme Court in **Hoffman Andreas V. Inspector Of Customs, Amritsar.**,(2000) 10 SCC 430, allowed the prayer by observing thus:

> *"6. Normally, at this late stage, we would be disinclined to open up a closed trial once again. But we are persuaded to consider it in this case on account of the unfortunate development that took place during trial i.e. the passing away of the defence Counsel midway of the trial. The Counsel who was engaged for defending the appellant had cross-examined the witnesses but he could not complete the trial because of his death. When the new Counsel took up the matter he would certainly be under the disadvantage that he could not ascertain from the erstwhile counsel as to the scheme of the defence strategy which the predeceased advocate had in mind or as to why he had not put further questions on certain aspects. In such circumstances, if the new Counsel thought to have the material witnesses further examined, the court could adopt latitude and a liberal view in the interest of justice, particularly when the court has unbridled powers in the matter as enshrined in Section 311 of the Code. After all the trial is basically for the prisoners and courts would afford the opportunity to them in the fairest manner possible.*

7. We think that the plea of the defence that a further opportunity to put more questions to the three prosecution witnesses can be permitted on account of the unfortunate death of the defence Counsel pendente lite, and a new Counsel has to evolve his defence strategy afresh.

8. We make note of the fact that the new defence Counsel filed the said petition for recalling the prosecution witnesses even before the accused was called upon to enter on his defence.

9. For the aforesaid reasons, without entering into merits of the contentions raised before us we deem it necessary, in the interest of justice, to afford an opportunity to the accused to further cross-examine the three prosecution witnesses who were already examined….."

Whether the order passed under Section 311 of the Code is amenable to revision was considered by the Hon'ble Supreme Court of India between **Sethuraman V. Rajamanickam.**, (2009) 5 SCC 153. The Court observed that the order passed under Section 311 Cr.P.C., for recalling the witness is an interlocutory order and as such, the revision against the order is clearly barred under Section 397(2) Cr.P.C. and revision is clearly not maintainable.

**CONCLUSION**

In summation the object of Section 311 of the Code is to enable the Court to determine the truth and to render a just decision after discovering all relevant facts after obtaining proper proof of such facts in order to arrive at a just decision of the case in the interest of justice. Nevertheless, the exercise of the power or the discretion under Section 311 has to be exercised judiciously in order to prevent failure of justice on account of a mistake of either party to the lis to bring on record the valuable evidence which appears to the Court to be essential for the just decision of the case and which is germane to the fact or facts in issue and relevant fact or facts.

**DVR Tejo Karthik**
JMFC, Spl. Mobile Court,
Mahabubnagar.

*(Prosecution Replenish conveys its heartfelt thanks to **Sri D.V.R. Tejo Karthik,** Judicial Magistrate of First Class, Special Mobile Court, Mahabubnagar, for contributing this article for our leaflet)*

Prosecution Replenish

after pouring kerosene on the deceased and thereafter setting her ablaze, thereafter merely because the accused might have tried to extinguish the fire will not take the case out of the clutches of clause fourthly of Section 300 of the IPC. The act of the accused pouring kerosene on the deceased and thereafter setting her ablaze by matchstick is imminently dangerous which, in all probability, will cause death. Therefore, the High Court has rightly convicted the accused for the offence under Section 302 IPC.
**https://main.sci.gov.in/supremecourt/2020/5750/5750_2020_36_1502_26738_Judgement_08-Mar-2021.pdf; NAGABHUSHAN Vs THE STATE OF KARNATAKA**

merely because the parents and other relatives of the deceased were present in the Hospital, when the statement of the deceased was recorded, it cannot be said that the said statement was a tutored one. It is quite natural that when such an incident happens, the parents and other relatives try to reach the hospital immediately. Merely because they were in the hospital, the same is no ground to disbelieve the dying declaration, recorded by the Magistrate.
It is also clear from the material evidence, placed before this Court, that though the family members of the deceased were in the hospital, they were sent out, when the dying declaration was recorded by the Magistrate
**https://main.sci.gov.in/supremecourt/2018/9036/9036_2018_37_1501_26627_Judgement_03-Mar-2021.pdf; Satpal vs. State of Haryana**

Section 311 provides that any Court may, at any stage of any inquiry, trial or other proceedings under the CrPC, 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”. The true test, therefore, is whether it appears to the Court that the evidence of such person who is sought to be recalled is essential to the just decision of the case.
It is submitted that at the time of filing the charge sheet the Investigation Officer has obtained the Approval Order of the Board and not submitted it before this Hon'ble Court.
It is submitted that recalling PW1 and PW11 for marking the documents pertaining to the Sanction cannot be termed as lacuna or to fill up the gap. But only to help this Hon'ble Court for arriving just decision of the case
**https://main.sci.gov.in/supremecourt/2020/9117/9117_2020_36_4_26554_Judgement_01-Mar-2021.pdf; The State represented by the Deputy Superintendent of Police Vs. Tr N Seenivasagan**

We deem it appropriate to issue the following directions: -
1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.
2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.
3. The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.
4. The Government of India shall amend the guidelines for containment zones, to state. “Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements.”

**https://main.sci.gov.in/supremecourt/2020/10787/10787_2020_31_1501_26732_Judgement_08-Mar-2021.pdf; 2021 0 Supreme(SC) 131; Suo Motu Writ Petition (Civil) No.3 of 2020 IN RE: COGNIZANCE FOR EXTENSION OF LIMITATION.**

Once he is the beneficiary of such forged/manipulated court order and having taken advantage of such order thereafter it will not be open for the respondent accused to contend that it might have been done by his brother Pappu Singh who was doing Pairokar on his behalf.
Merely because the chargesheet is filed is no ground to release the accused on bail.
The submission on behalf of the accused that as the record is now in the court's custody there is no chance of tampering is concerned, the allegation against the respondent accused are of tampering/ forging/ manipulating the court record which was in the custody of the court. Seriousness of the offence is one of the relevant considerations while considering the grant of bail.
The bail cancellation appeal filed by a third person and who is not connected with the matter under consideration and is having a personal grievance against the accused may not be entertained
**https://main.sci.gov.in/supremecourt/2020/11832/11832_2020_36_1502_26964_Judgement_15-Mar-2021.pdf; 2021 0 Supreme(SC) 146; NAVEEN SINGH Vs THE STATE OF UTTAR PRADESH**

the High Court was clearly not justified in granting bail and the reasons provided by the High Court, as we have already indicated above, do not reflect application of mind to the seriousness of the offence which is involved. Indicating that the respondent as an educated person with a Bachelor of Technology "may not commit any offence" is an extraneous circumstance which ought not to have weighed with the High Court in the grant of bail for an offence under the NDPS Act.
Merely recording the submissions of the parties does not amount to an indication of a judicial or, for that matter, a judicious application of mind by the Single Judge of the High Court to the basic question as to whether bail should be granted. The provisions of Section 37 of the NDPS Act provide the legal norms which have to be applied in determining whether a case for grant of bail has been made out.
**https://main.sci.gov.in/supremecourt/2020/14161/14161_2020_36_21_26738_Judgement_08-Mar-2021.pdf; Union of India Vs Prateek Shukla**

Sections 195(1)(b)(i) and 340, CrPC will not be applicable in the present case where documents were fabricated during the investigative phase prior to their production during before the Trial Court.
**https://main.sci.gov.in/supremecourt/2020/14906/14906_2020_39_1501_26894_Judgement_12-Mar-2021.pdf; 2021 0 Supreme(SC) 143; Bhima Razu Prasad Vs. State, rep. By Deputy Superintendent of Police, CBI/SPE/ACUII**

The use of firearm by the appellant-accused has also been established and proved. Merely because the weapon is not seized cannot be a ground to acquit the accused when his presence and his active participation and using firearm by him has been established and proved.
**https://main.sci.gov.in/supremecourt/2017/19028/19028_2017_36_1501_26554_Judgement_01-Mar-2021.pdf; 2021 0 Supreme(SC) 112; Dhirendra Singh @ Pappu Vs.State of Jharkhand**

it is hereby directed that henceforth:
(a) Bail conditions should not mandate, require or permit contact between the accused and the victim. Such conditions should seek to protect the complainant from any further harassment by the accused;
(b) Where circumstances exist for the court to believe that there might be a potential threat of harassment of the victim, or upon apprehension expressed, after calling for reports from the police, the nature of protection shall be separately considered and appropriate order made, in addition to a direction to the accused not to make any contact with the victim;
(c) In all cases where bail is granted, the complainant should immediately be informed that the accused has been granted bail and copy of the bail order made over to him/her within two days;
(d) Bail conditions and orders should avoid reflecting stereotypical or patriarchal notions about women and their place in society, and must strictly be in accordance with the requirements of the Cr.

Prosecution Replenish

PC. In other words, discussion about the dress, behavior, or past "conduct" or "morals" of the prosecutrix, should not enter the verdict granting bail;

(e) The courts while adjudicating cases involving gender related crimes, should not suggest or entertain any notions (or encourage any steps) towards compromises between the prosecutrix and the accused to get married, suggest or mandate mediation between the accused and the survivor, or any form of compromise as it is beyond their powers and jurisdiction;

(f) Sensitivity should be displayed at all times by judges, who should ensure that there is no traumatization of the prosecutrix, during the proceedings, or anything said during the arguments, and

(g) Judges especially should not use any words, spoken or written, that would undermine or shake the confidence of the survivor in the fairness or impartiality of the court.

Further, courts should desist from expressing any stereotype opinion, in words spoken during proceedings, or in the course of a judicial order, to the effect that

(i) women are physically weak and need protection;
(ii) women are incapable of or cannot take decisions on their own;
(iii) men are the "head" of the household and should take all the decisions relating to family;
(iv) women should be submissive and obedient according to our culture;
(v) "good" women are sexually chaste;
(vi) motherhood is the duty and role of every woman, and assumptions to the effect that she wants to be a mother;
(vii) women should be the ones in charge of their children, their upbringing and care;
(viii) being alone at night or wearing certain clothes make women responsible for being attacked;
(ix) a woman consuming alcohol, smoking, etc. may justify unwelcome advances by men or "has asked for it";
(x) women are emotional and often overreact or dramatize events, hence it is necessary to corroborate their testimony;
(xi) testimonial evidence provided by women who are sexually active may be suspected when assessing "consent" in sexual offence cases; and
(xii) lack of evidence of physical harm in sexual offence case leads to an inference of consent by the woman.

**https://main.sci.gov.in/supremecourt/2020/20318/20318_2020_35_1501_27140_Judgement_18-Mar-2021.pdf; 2021 0 Supreme(SC) 151; APARNA BHAT & ORS. Vs. STATE OF MADHYA PRADESH & ANR**

any further complaint by the same complainant against the same accused, after the case has already been registered, will be deemed to be an improvement from the original complaint.

Even in a non-cognizable case, the police officer after the order of the Magistrate, is empowered to investigate the offence in the same manner as a cognizable case, except the power to arrest without a warrant. Therefore, the complainant cannot subject the accused to a double whammy of investigation by the police and inquiry before the Magistrate.

**https://main.sci.gov.in/supremecourt/2020/26114/26114_2020_40_1501_26742_Judgement_08-Mar-2021.pdf; 2021 0 Supreme(SC) 133; KRISHNA LAL CHAWLA & ORS. Vs. STATE OF U.P. & ANR**

Now so far as the submission on behalf of the appellants that FIR could not be registered during the pendency of the application under Section 156(3) Cr.P.C. on the same set of allegations, it is submitted that Section 210 Cr.P.C. leaves no doubt that FIR under Section 154 Cr.P.C. can be registered during the pendency of the complaint case on the very same set of facts/allegations. It is submitted that quashing of FIR will lead to demolition of complaint under Section 156(3) Cr.P.C. pending consideration before the learned Magistrate.

**2021 0 Supreme(SC) 114; KAPIL AGARWAL AND OTHERS Vs. SANJAY SHARMA AND OTHERS; CRIMINAL APPEAL NO.142 OF 2021; Decided on : 01-03-2021**

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The overt acts attributed to principal accused may or may not be attributed to a person accompanying such principal accused,
**https://main.sci.gov.in/supremecourt/2019/26322/26322_2019_33_1501_27099_Judgement_22-Mar-2021.pdf; Ramesh Alias Dapinder Singh vs. State of Himachal Pradesh.;**

The Court was not required to appreciate the deposition of the injured eye witness and what was required to be considered at this stage was whether there is any prima facie case and not whether on the basis of such material the proposed accused is likely to be convicted or not and/or whatever is stated by the injured eye witness in his examination-in-chief is exaggeration or not. The aforesaid aspects are required to be considered during the trial and while appreciating the entire evidence on record. Therefore, the High Court has materially erred in quashing and setting aside the order passed by the learned Trial Court summoning the accused to face the trial in exercise of powers under Section 319 CrPC, on the reasoning mentioned hereinabove.
**https://main.sci.gov.in/supremecourt/2020/27124/27124_2020_36_1503_26964_Judgement_15-Mar-2021.pdf; 2021 0 Supreme(SC) 147; Sartaj Singh Vs. State of Haryana & Anr. Etc.**

an enquiry at pre-FIR stage is held to be permissible and not only permissible but desirable, more particularly in cases where the allegations are of misconduct of corrupt practice acquiring the assets/properties disproportionate to his known sources of income. After the enquiry/enquiry at pre-registration of FIR stage/preliminary enquiry, if, on the basis of the material collected during such enquiry, it is found that the complaint is vexatious and/or there is no substance at all in the complaint, the FIR shall not be lodged. However, if the material discloses prima facie a commission of the offence alleged, the FIR will be lodged and the criminal proceedings will be put in motion and the further investigation will be carried out in terms of the Code of Criminal Procedure. Therefore, such a preliminary enquiry would be permissible only to ascertain whether cognizable offence is disclosed or not and only thereafter FIR would be registered. Therefore, such a preliminary enquiry would be in the interest of the alleged accused also against whom the complaint is made.
during the course of the 'open enquiry', the appellant has been called upon to give his statement and he has been called upon to carry along with the information on the points, which are referred to hereinabove for the purpose of recording his statement. The information sought on the aforesaid points is having 23 a direct connection with the allegations made against the appellant, namely, accumulating assets disproportionate to his known sources of income. However, such a notice, while conducting the 'open enquiry', shall be restricted to facilitate the appellant to clarify regarding his assets and known sources of income. The same cannot be said to be a fishing or roving enquiry. Such a statement cannot be said to be a statement under Section 160 and/or the statement to be recorded during the course of investigation as per the Code of Criminal Procedure. Such a statement even cannot be used against the appellant during the course of trial. Statement of the appellant and the information so received during the course of discrete enquiry shall be only for the purpose to satisfy and find out whether an offence under Section 13(1)(e) of the PC Act, 1988 is disclosed. Such a statement cannot be said to be confessional in character, and as and when and/or if such a statement is considered to be confessional, in that case only, it can be said to be a statement which is self-incriminatory, which can be said to be impermissible in law.
**https://main.sci.gov.in/supremecourt/2020/28134/28134_2020_35_1501_27143_Judgement_24-Mar-2021.pdf ; 2021 0 Supreme(SC) 156; Charansingh Vs. State of Maharashtra and others**

Object underlying Section 311, Cr.P.C. is that there may not be failure of justice on account of mistake of either party in bringing valuable evidence on record or leaving ambiguity in statements of witnesses examined from either side. Determinative factor is whether it is essential to just decision of case.
**2021 0 Supreme(SC) 126; V.N. Patil Vs. K. Niranjan Kumar and Others; Criminal Appeal No. 267 of 2021, SLP (Crl.) No. 8965 of 2018; Decided On : 04-03-2021**

The fervent plea made by the Appellant for protection of non-tribals living in the State of Meghalaya and for their equality cannot, by any stretch of imagination, be categorized as hate speech. It was a call for justice - for action according to law, which every citizen has a right to expect and articulate. Disapprobation of governmental inaction cannot be branded as an attempt to promote hatred

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between different communities. Free speech of the citizens of this country cannot be stifled by implicating them in criminal cases, unless such speech has the tendency to affect public order. The sequitur of above analysis of the Facebook post made by the Appellant is that no case is made out against the Appellant for an offence under Section 153 A and 505 (1) (c) IPC.
**https://main.sci.gov.in/supremecourt/2020/28921/28921_2020_37_1501_27280_Judgement_25-Mar-2021.pdf; 2021 0 Supreme(SC) 160; PATRICIA MUKHIM Vs. STATE OF MEGHALAYA & ORS**

What constitutes proof of common intention, may differ from situation to situation and much depends on the facts of each case and the role played by each accused.
The first issue which this court considers is whether the appellants are correct, in arguing that the initial intimation received by the police on telephone (at 5.45 P.M.) on the day of the incident, constituted an FIR. According to counsel, the information about the attack was sufficient, and the entry made in the police register was sufficient to be treated as an FIR. It was submitted that the subsequent statement (registered late in the night at 11.45 P.M.) of the complainant, had to be treated as a statement under Section 161 of the Cr.PC. A cryptic phone call without complete information or containing part-information about the commission of a cognizable offence cannot always be treated as an FIR. This proposition has been accepted by this Court in T.T. Antony v. State of Kerala, (2001) 6 SCC 181 and Damodar v. State of Rajasthan, (2004) 12 SCC 336. A mere message or a telephonic message which does not clearly specify the offence, cannot be treated as an FIR.
**2021 0 Supreme(SC) 155; Netaji Achyut Shinde (Patil) And Another Vs. The State of Maharashtra; Criminal Appeal No. 121 of 2019 with Criminal Appeal No (S). 328 of 202; Decided on : 23-03-2021**

There can be no doubt that Section 320 of the Criminal Procedure Code, 1973 ("CrPC") does not encapsulate Section 324 and 307 IPC under its list of compoundable offences. Given the unequivocal language of Section 320(9) CrPC which explicitly prohibits any compounding except as permitted under the said provision, it would not be possible to compound the appellants' offences.
Notwithstanding thereto, it appears to us that the fact of amicable settlement can be a relevant factor for the purpose of reduction in the quantum of sentence.
**2021 1 SCC(Cri) 487; 2021 1 SCC 726; 2021 0 Supreme(SC) 20;Murali Vs State; CRL APPEAL NO.24/2021 [Arising out of SLP (Crl.) 10813 of 2019] With RAJAVELU Vs STATE CRL APPEAL NO.25/2021 [Arising out of SLP (Crl.) 10814 of 2019] Decided on : 05-01-2021**

Sec 438 CrPC is not superseded by Sec7(c) of the Muslim women Act,2019. The Victim Women should be heard at the time of bail hearing.
Sec 18 & 18A of SC ST POA act is not applicable where prima facie case is not made out and anticipatory bail can be granted.
**2021 1 SCC Cri 492; 2021 1 SCC 733; Rahna Jalal Vs State of Kerala**

If the abovementioned provisions of IPC are considered in three compartments, that is to say:
(A) The situation obtaining before 03.02.2013.
(B) The situation in existence during 03.02.2013 to 02.04.2013.
(C) The situation obtaining after 02.04.2013.
Following features emerge:-
(i) The offence under Section 375, as is clear from the definition of relevant provision in compartment (A), could be committed against a woman. The situation was sought to be changed and made gender neutral in compartment (B). However, the earlier position now stands restored as a result of provisions in compartment (C)
(ii) Before 03.02.2013 the sentence for an offence under Section 376(1) could not be less than seven years but the maximum sentence could be life imprisonment; and for an offence under Section 376(2) the minimum sentence could not be less than ten years while the maximum sentence could be imprisonment for life. Section 376A dealt with cases where a man committed non-consensual sexual intercourse with his wife in certain situations.

(iii) As a result of the Ordinance, the sentences for offences under Sections 376(1) and 376(2) were retained in the same fashion. However, a new provision in the form of Section 376A was incorporated under which, if while committing an offence punishable under sub-section (1) or sub-section (2) of Section 376, a person "inflicts an injury which causes the death" of the victim, the accused could be punished with rigorous imprisonment for a term "which shall not be less than 20 years but which may extend to imprisonment for life, which shall mean the remainder of that person's natural life or with death." Thus, for the first time, Death Sentence could be imposed if a fatal injury was caused during the commission of offence under sub-section (1) or (2) of Section 376.

(iv) Though the provisions of the Amendment Act restored the original non gender-neutral position vis-a-vis the victim, it made certain changes in sub-section (2) of Section 376. Now, the punishment for the offence could be rigorous imprisonment for not less than ten years which could extend to imprisonment for life "which shall mean imprisonment for the remainder of that person's natural life." It was, thus, statutorily made clear that the imprisonment for life would mean till the last breath of that person's natural life.

(v) Similarly, by virtue of the Amendment Act, for the offence under Section 376A, the punishment could not be less than 20 years which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.

A reasonable doubt is not an imaginary, trivial or a merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

the absence of association of vaginal, cervical and anal swabs with the Appellant does not in any way diminish the strength of evidence against the Appellant.

Circumstances warranting Death Sentence or life sentence discussed.

**2021 1 SCC 596; 2021 1 SCC Cri 555; 2020 0 Supreme(SC) 647; Shatrughna Baban Mesharam Vs State of Maharashtra; Criminal Appeal Nos. 763-764 of 2016; Decided On : 02-11-2020**

The High Court has also come to the conclusion that the victim was not in a position to understand the good and bad aspect of the sexual assault. Merely because the victim was in a position to do some household works cannot discard the medical evidence that the victim had mild mental retardation and she was not in a position to understand the good and bad aspect of sexual assault. It appears that the accused had taken disadvantage of the mental illness of the victim. It is required to be appreciated coupled with the fact that the accused is found to be the biological father of the baby child delivered by the victim. Despite the above, in his 313 statement the case of the accused was of a total denial. It was never the case of the accused that it was a case of consent. Therefore, considering the evidence on record, more particularly the deposition of PW11 and PW22 and even the deposition of the other prosecution witnesses, the High Court has rightly observed that case would fall under Section 375 IPC and has rightly convicted the accused for the offence under Section 376 IPC.

**2021 1 ALD Crl 393(SC); 2020 4 Crimes(SC) 475; 2020 0 Supreme(SC) 687;Chaman Lal Vs The State of Himachal Pradesh: Criminal Appeal No. 1229 Of 2017; Decided On : 03-12-2020**

It is no doubt true that a large number of witnesses turned hostile and the Trial Court was also not happy with the manner of prosecution conducted this case. But that is not an unusual event in the long drawn out trials in our country and in the absence of any witness protection regime of substance, one has to examine whatever is the evidence which is capable of being considered, and then come to a finding whether it would suffice to convict the accused.

We are confronted with a factual situation where the appellant herein, as a husband is alleged to have caused the death of his wife by strangulation. The fact that the family members were in the home some time before is also quite obvious. No explanation has been given as to how the wife could have received the injuries. This is a strong circumstance indicating that he is responsible for commission of the crime [Trimukh Maroti Kirkan vs. State of Maharashtra]. The appellant herein was under an obligation to give a plausible explanation regarding the cause of the death in the statement recorded under Section 313 of the Cr.P.C. and mere denial could not be the answer in such a situation.

**2021 1 ALD Crl 405(SC); 2020 4 Crimes(SC) 422; 2020 0 Supreme(SC) 665;Jayantilal Verma Vs State of M.P. (Now Chhattisgarh); Criminal Appeal No. 590 of 2015; On : 19-11-2020**

The issue whether the detention order can be passed on the basis of solitary offence is no more res integra. However, even if the detenu is involved in a solitary offence and it is found that the prejudicial activity of the detenu has the propensity and potential to disturb the peace and tranquility in a locality or within the community thereby disturbing the public order, then the order of preventive detention needs to be sustained. No hard and fast rule can be laid down as to nature of the prejudicial activities and the effect such activities will have on public order. Whether the activities of the detenu would affect public order or not has to be tested in the background of such prejudicial activities in each case.
**2021 1 ALD Crl. 466(TS); http://tshcstatus.nic.in/hcorders/2020/wp/wp_6648_2020.pdf; Bhimsen Tyagi. Vs. The State of Telangana,**

Having regard to the law laid down by the Hon'ble Supreme Court, the provisions of Cr.P.C. and the scope and objects of the Act, 1989, it cannot be said that merely because crime is reported under the Act, straightaway accused has to be arrested
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
**http://tshcstatus.nic.in/hcorders/2020/wp/wp_23081_2020.pdf; 2021 1 ALD Crl 479 (TS); Guguloth Santosh Naik Vs.The State of Telangana**

While the Wakf Tribunal constituted under the Act can decide the nature of the Wakf property, it cannot decide inter se dispute between the petitioners and the State Government because no such jurisdiction is conferred on it. So the remedy of filing a suit before the Wakf Tribunal it is not an effective alternative remedy in the circumstances of the case where the State and the Wakf Board both also claim this land. M/s.Sai Pawan Estates **Pvtd. Ltd. and others. …Petitioners. Vs .The Telangana State Wakf Board, rep. by its Chief Executive Officer, Nampally, Hyderabad and others. http://tshcstatus.nic.in/hcorders/2018/wp/wp_20707_2018.pdf**

## NOSTALGIA

**Suspension of a sentence**
In Preet Pal Singh v State of Uttar Pradesh {(2020) 8 SCC 645} where Justice Indira Banerjee, speaking for the Court, observed as follows:

> *"35. There is a difference between grant of bail under Section 439 of the CrPC in case of pre-trial arrest and suspension of sentence under Section 389 of the CrPC and grant of bail, post-conviction. In the earlier case there may be presumption of innocence, which is a fundamental postulate of criminal jurisprudence, and the courts may be liberal, depending on the facts and circumstances of the case, on the principle that bail is the rule and jail is an exception, as held by this Court in Dataram Singh v. State of U.P. and Anr. (supra). However, in case of post- conviction bail, by suspension of operation of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted, once there is conviction upon trial. Rather, the Court considering an application for suspension of sentence and grant of bail, is to consider the prima facie merits of the appeal, coupled with other factors. There should be strong compelling reasons for grant of bail, notwithstanding an order of conviction, by suspension of sentence, and this strong and compelling reason must be recorded in the order granting bail, as mandated in Section 389(1) of the Cr.P.C."*

**Sec 311 CrPC**
In Manju Devi v State of Rajasthan {(2019) 6 SCC 203}, a two-Judge bench of this Court noted that an application under Section 311 could not be rejected on the sole ground that the case had been pending for an inordinate amount of time (ten years there). Rather, it noted that "the length/duration of a case cannot displace the basic requirement of ensuring the just decision after taking all the necessary and material evidence on record. In other words, the age of a case, by itself, cannot be decisive of the matter when a prayer is made for examination of a material witness". Speaking for the Court, Justice Dinesh Maheshwari expounded on the principles underlying Section 311 in the following terms:

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"10. It needs hardly any emphasis that the discretionary powers like those under Section 311 CrPC are essentially intended to ensure that every necessary and appropriate measure is taken by the Court to keep the record straight and to clear any ambiguity insofar as the evidence is concerned as also to ensure that no prejudice is caused to anyone. The principles underlying Section 311 CrPC and amplitude of the powers of the court thereunder have been explained by this Court in several decisions [ Vide Mohanlal Shamji Soni v. Union of India, 1991 Supp (1) SCC 271 : 1991 SCC (Cri) 595; Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158 : 2004 SCC (Cri) 999; Mina Lalita Baruwa v. State of Orissa, (2013) 16 SCC 173 : (2014) 6 SCC (Cri) 218; Rajaram Prasad Yadav v. State of Bihar, (2013) 14 SCC 461 : (2014) 4 SCC (Cri) 256 and Natasha Singh v. CBI, (2013) 5 SCC 741 : (2013) 4 SCC (Cri) 828] . In Natasha Singh v. CBI [Natasha Singh v. CBI, (2013) 5 SCC 741 : (2013) 4 SCC (Cri) 828] , though the application for examination of witnesses was filed by the accused but, on the principles relating to the exercise of powers under Section 311, this Court observed, inter alia, as under: (SCC pp. 746 & 748-49, paras 8 &15) "8. Section 311 CrPC empowers the court to summon a material witness, or to examine a person present at "any stage" of "any enquiry", or "trial", or "any other proceedings" under CrPC, or to summon any person as a witness, or to recall and re-examine any person who has already been examined if his evidence appears to it, to be essential to the arrival of a just decision of the case. Undoubtedly, CrPC has conferred a very wide discretionary power upon the court in this respect, but such a discretion is to be exercised judiciously and not arbitrarily. The power of the court in this context is very wide, and in exercise of the same, it may summon any person as a witness at any stage of the trial, or other proceedings. The court is competent to exercise such power even suo motu if no such application has been filed by either of the parties. However, the court must satisfy itself, that it was in fact essential to examine such a witness, or to recall him for further examination in order to arrive at a just decision of the case. *** 15. The scope and object of the provision is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 CrPC must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred under Section 311 CrPC must therefore, be invoked by the court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection. The very use of words such as "any court", "at any stage", or "or any enquiry, trial or other proceedings", "any person" and "any such person" clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case." (emphasis in original)"

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# NEWS

- Prosecution Replenish congratulates Smt. G.Vyjayanthi Garu, on madam's promotion as Director of Prosecutions, Telangana State.
- Prosecution Replenish congratulates Smt. Vidya Deore Nikam, APP-Group-A, Nasik, on achieving 100% conviction in all the cases dealt by madam.
- **GOVERNMENT OF ANDHRA PRADESH FINANCE ( FMU-Home&Courts ) DEPARTMENT G.O.Rt.No: 561** Budget Estimates 2020-21 - Budget Release Order for Rs. 12,40,000 **/-** (Rupees Twelve lakh forty thousand) as ADDITIONAL FUNDS to Prosecutions Department **-** Orders – Issued- **Dated:21-03-2021**
- **GOVERNMENT OF ANDHRA PRADESH-FINANCE ( FMU-Home&Courts ) DEPARTMENT G.O.Rt.No: 420** Read the following:- Budget Estimates 2020-21 - Budget Release Order for Rs. 7,78,00,000 **/-** (Rupees Seven crore seventy eight lakh) as ADDITIONAL FUNDS to Prosecutions Department **-** Orders – Issued- **Dated:05-03-2021**
- **GOVERNMENT OF ANDHRA PRADESH- HOME DEPARTMENT** - Budget Estimates 2020-21 - Prosecutions – Sanction of **Rs.7,78,00,000/-** as additional funds - Administrative Sanction -Accorded. **HOME (BUDGET) DEPARTMENT G.O.RT.No. 285 Dated: 15-03-2021.**
- **GOVERNMENT OF ANDHRA PRADESH-**HOME DEPARTMENT - Budget Estimates 2020- 1 - Prosecutions - Sanction of Rs.12,40,000/- as additional funds - Administrative Sanction – Accorded. **HOME (BUDGET) DEPARTMENT- G.O.RT.No. 349 Dated: 26-03-2021**

- **GOVERNMENT OF ANDHRA PRADESH-** HOME DEPARTMENT – Budget Estimates 2020-21 – Prosecutions - Sanction of Rs.12,40,000/- as additional funds - Administrative Sanction – Accorded. **HOME (BUDGET) DEPARTMENT G.O.RT.No. 345 Dated: 25-03-2021**
- **GOVERNMENT OF ANDHRA PRADESH-** Public Services - Prosecutions Department – Special Court for trial of offences under sub-section (8) of Section 24 of the code of Criminal Procedure, 1973 (Central Act 2 of 1974) to conduct prosecution of ACB Cases - Public Prosecutors/Addl. Public Prosecutors designated as Special Public Prosecutors to the Special Courts –Notification - Orders – Issued. **HOME (COURTS.A) DEPARTMENT** G.O.RT.No. 305 Dated: 17-03-2021.

**I) Special Public Prosecutors**

| Sl. No. | Name of the Legal Officer S/ Shri / Smt. | Present Place of Working |
|---|---|---|
| 1. | P. Seshaiah, Public Prosecutor | ACB, Rajamahendravaram |
| 2. | P.S.A. Jyothi, AddI.PP, Grade-II | ACB, Vijayawada |
| 3. | P. Venkata Subbaiah, Public Prosecutor | ACB, Nellore |
| 4. | K.V. Srinivasa Rao, AddI.PP, Grade-II | ACB, Nellore |
| 5. | G.S. Rama Bhagavan, Sr.APP | ACB, Kurnool |

**II) Legal Advisor-cum- Special Public Prosecutors :**

| Sl.No | Name of the Legal Officer S/ Sri/Smt. | Place of Posting |
|---|---|---|
| 1. | K. Srinivasa Rao, Addl.PP, Gr-II | ACB, Visakhapatnam |
| 2. | G. Chinna Rao, APP | ACB, Visakhapatnam |
| 3. | 1. Meena Devi, APP | ACB, Vijayawada |
| 4. | Ch. Thriveni, APP | ACB, HO, Vijayawada |

- **GOVERNMENT OF ANDHRA PRADESH -** Home Department – A.P. Prosecution Services – Retirement of certain Prosecuting Officers on attaining the age of Superannuation during the year 2021 – Notification – Orders – Issued. **G.O.Rt.No.232 HOME (COURTS.A) DEPARTMENT Dated.05.03.2021**

| Sl.No. | Name and Designation | Date of Birth | Date of Retirement |
|---|---|---|---|
| (1) | S/Sri. (2) | (3) | (4) |
| 1. | Sri. P.V. Subbaiah, Public Prosecutor | 15.06.1961 | 30.06.2021 |
| 2. | Smt. K. Vittal Kumari, Additional Public Prosecutor Grade-I | 05.07.1961 | 31.07.2021 |
| 3. | Smt. Ch. Subhashini, Additional Public Prosecutor Grade-I. | 22.06.1961 | 30.06.2021 |
| 4. | Smt. S. Bharathi, Additional Public Prosecutor Grade-I. | 01.07.1961 | 30.06.2021 |
| 5. | Smt. S. Tarakeswari, Additional Public Prosecutor Grade-II | 02.03.1961 | 31.03.2021 |
| 6. | Sri.BVA.Narasimhamurthy, Additional Public Prosecutor Grade-II | 12.09.1961 | 30.09.2021 |
| 7. | Sri.I.Rajaratnam, Additional Public Prosecutor Grade-II | 01.04.1961 | 31.03.2021 |
| 8. | Smt.YHS. Mahalakshmi, Additional Public Prosecutor Grade-II | 01.09.1961 | 31.08.2021 |

- **HIGH COURT FOR THE STATE OF TELANGANA – ROC No.423/SO/2021 Date:26.03.2021 CIRCULAR N0.7/2021-** permission to the Women Judges working in the State Judicial Services to avail (5) Five Special Casual Leaves in addition to regular 15 causal leaves on par with Women employees working in the High Court and Subordinate Courts in the State.
- **HIGH COURT FOR THE STATE OF TELANGANA- ROC No.394/SO/2020dt.25.2.2021** The Stay orders passed the District Courts shall continue and operate until 13.03.2021. thereafter, it is left to the parties to approach the concerned courts for passing appropriate orders in their respective cases.
- **HIGH COURT FOR THE STATE OF TELANGANA- ROC No.323/SO/2021 Date: 15.03.2021- CIRCULAR No. 06/2021-** Sub : High Court for the State of Telangana - Stipulation of Dress code to the Judicial Instructions issued officers in the State.
- **HIGH COURT FOR THE STATE OF TELANGANA- ROC.No. 792/2021-B.SPL., DATED:02.03.2021-** 22 (Twenty two) Civil Judges (Junior Division) are promoted as Senior CivilJudges on temporary basis under Rule 14 ( la) of the Telangana StateJudicial Services Rules, 2017.
- High Court of Andhra Pradesh- Reduction of training period of Civil Judges (Junior Division) who have been appointed for the years from 2014 to 2017 already undergone – issued.

Prasad Ramesh

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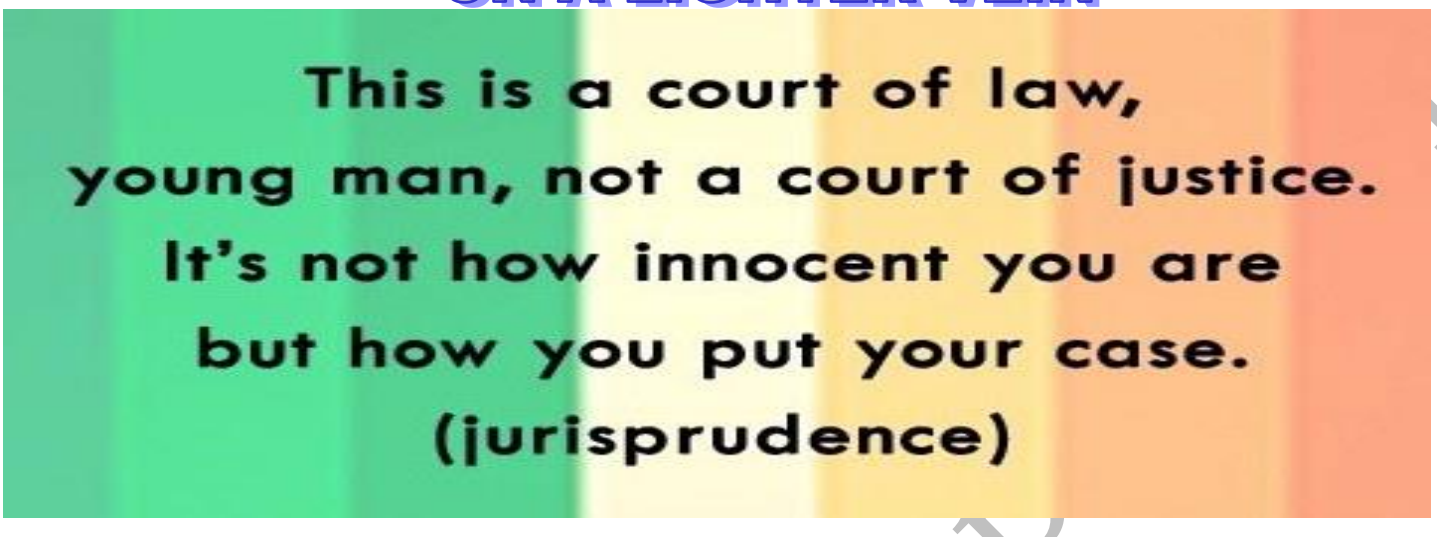


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**Smt G.Vyjayanthi Garu achieved the distinction of being the first Women Director of Prosecutions, from Cadre Prosecutors**

**Smt Vidya Deore Nikam ji, APP, Nashik, Maharashtra was honoured by Sri Deepak Pandey JI, Commissioner of police of Nashik for achieving the 100 % convictions in all cases of which prosecution was conducted by madam.**

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# Prosecution Replenish

An Endeavour for Learning and Excellence

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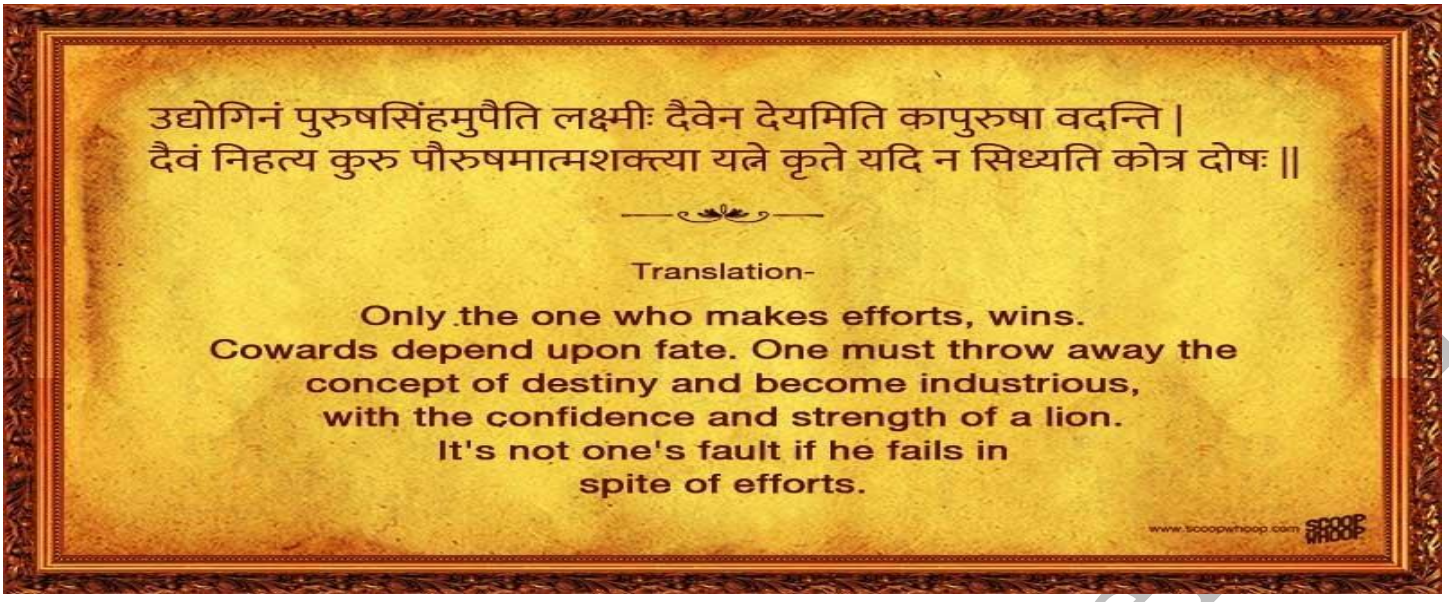
AanoBhadraKrtavoYantuVishwatah.(RIG VEDAM)
"Let Noble Thoughts Come To Me From All Directions"




**POWER TO EXAMINE THE ACCUSED UNDER SECTION 313 OF THE CODE OF CRIMINAL PROCEDURE**

The power to examine the accused is provided in Section 313 Cr.P.C., 1973 (Section 342 of the Code of 1898) which reads as under:-

"**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."

There are two kinds of examination under Section 313 Cr.P.C. The first under Section 313(1) (a) Cr.P.C. relates to any stage of the inquiry or trial; while the second under Section 313(1) (b) Cr.P.C. takes place after the prosecution witnesses are examined and before the accused is called upon to enter upon his defence. The former is particular and optional; but the latter is general and mandatory. (See.,***Nar Singh V. State of Haryana.,*** (2015) 1 SCC 496)

In ***Usha K. Pillai V. Raj K. Srinivas& Ors.***, (1993) 3 SCC 208, the Court held that the Court is empowered by Section 313 (1) clause (a) to question the accused at any stage of the inquiry or trial; while Section 313(1) clause (b) obligates the Court to question the accused before he enters his defence on any circumstance appearing in prosecution evidence against him.

**PURPOSE OF EXAMINATION UNDER SECTION 313**

Section 313 of the Code is intended to afford a person accused of a crime an opportunity to explain the circumstances appearing in evidence against him. Sub-section (1) of the section is in two parts: the first part empowers the court to put such questions to the accused as it considers necessary at any stage of the inquiry or trial whereas the second part imposes a duty and makes it imperative on the court to question him generally on the prosecution having completed the examination of its witnesses and before the accused is called on to enter upon his defence. Section 313 of the Code is a statutory provision and embodies the fundamental principle of fairness based on the maxim audialterampartem. It is trite law that the attention of the accused must be specifically invited to inculpatory pieces of evidence or circumstances laid on record with a view to giving him an opportunity to offer an explanation if he chooses to do so. The section imposes a heavy duty on the court to

Prosecution Replies

take great care to ensure that the incriminating circumstances are put to the accused and his response solicited. The words *'shall question him'* clearly bring out the mandatory character of the clause and cast an imperative duty on the court and confer a corresponding right on the accused to an opportunity to offer his explanation for such incriminating material appearing against him. It is, therefore, true that the purpose of the examination of the accused under Section 313 is to give the accused an opportunity to explain the incriminating material which has surfaced on record. The stage of examination of the accused under Clause (b) of Sub-section (1) of Section 313 reaches only after the witnesses for the prosecution have been examined and before the accused is called on to enter upon his defence. At the stage of closure of the prosecution evidence and before recording of statement under Section 313, the learned judge is not expected to evaluate the evidence for the purpose of deciding whether or not he should question the accused. After the Section 313 stage is over he has to hear the oral submissions, of counsel on the evidence adduced before pronouncing on the evidence. The learned trial judge is not expected before he examines the accused under Section 313 of the Code, to sift the evidence and pronounce on whether or not he would accept the evidence regarding any incriminating material to determine whether or not to examine the accused on that material. To do so would be to prejudge the evidence without hearing the prosecution under Section 314 of the Code. Therefore, no matter how weak or scanty the prosecution evidence is in regard to a certain incriminating material, it is the duty of the court to examine the accused and seek his explanation thereon. It is only after that stage is over that the oral arguments have to be heard before the judgment is rendered. It is only where the court finds that no incriminating material has surfaced that the accused may not be examined under Section 313 of the Code. If there is material against the accused he must be examined (Vide., ***State Of Maharashtra V. Sukhdev Singh @ Sukha& Ors.,*** AIR 1992 SC 2100 = 1992 CriLJ 3454)

The Hon'ble Supreme Court of India in ***Raj Kumar Singh @ Raju @ Batya V. State Of Rajasthan.,*** AIR 2013 SC 3510 held that in a criminal trial, the purpose of examining the accused person under Section 313 Cr.P.C., is to meet the requirement of the principles of natural justice i.e. audialterampartem. This means that the accused may be asked to furnish some explanation as regards the incriminating circumstances associated with him, and the court must take note of such explanation. In a case of circumstantial evidence, the same is essential to decide whether or not the chain of circumstances is complete. No matter how weak the evidence of the prosecution may be, it is the duty of the court to examine the accused, and to seek his explanation as regards the incriminating material that has surfaced against him. The circumstances which are not put to the accused in his examination under Section 313 Cr.P.C., cannot be used against him and have to be excluded from consideration.

In ***Nar Singh V. State of Haryana.,*** (2015) 1 SCC 496, the Hon'ble Supreme Court of India held that the object u/Sec.313 Cr.P.C is to bring the substance of accusation to the accused to enable the accused to explain each and every circumstance appearing in the evidence against him. The provisions of the section are mandatory and cast a duty on the court to afford an opportunity to the accused to explain each and every circumstance and incriminating evidence against him. The examination of the accused u/Sec.313 Cr.P.C is not a mere formality. Sec.313 Cr.P.C prescribes a procedural safeguard for an accused, giving him an opportunity to explain the facts and circumstances appearing against him in the evidence and this opportunity is valuable from the standpoint of the accused. The real importance of Sec.313 Cr.P.C lies in that, it imposes a duty on the court to question the accused properly and fairly so as to bring home to him the exact case he will have to meet and thereby an opportunity is given to him to explain any such point.

An accused can be questioned under Section 313 Cr.P.C. only for the purpose of enabling him personally to explain any circumstance appearing in the evidence against him. No matter how weak or scanty the prosecution evidence is in regard to certain incriminating material, it is the duty of the Court to examine the accused and seek his explanation on incriminating material which has surfaced against him. Section 313 Cr.P.C. is based on the fundamental principle of fairness. The attention of the accused must specifically be brought to inculpatory pieces of evidence to give him an opportunity to offer an explanation if he chooses to do so. Therefore, the court is under a legal obligation to put the incriminating circumstances before the accused and solicit his response. This provision is mandatory in nature and casts an imperative duty on the court and confers a corresponding right on the accused to have an opportunity to offer an explanation for such incriminatory material appearing against him. Circumstances which were not put to the accused in his examination under Section 313 Cr.P.C. cannot be used against him and have to be excluded from consideration. (See., ***Paramjeet Singh alias Pamma V. State of Uttarakhand.,*** (2010) 10 SCC 439, ***SharadBirdhichandSarda V. State of Maharashtra,*** AIR 1984 SC 1622; and ***State of Maharashtra V. Sukhdev Singh & Anr.,*** AIR 1992 SC 2100).

Prosecution Replenish

The Hon'ble Supreme Court of India in ***Asraf Ali V. State of Assam,*** (2008) 16 SCC 328, observed that Section 313 of the Code casts a duty on the court to put in an inquiry or trial questions to the accused for the purpose of enabling him to explain any of the circumstances appearing in the evidence against him. It follows as a necessary corollary therefrom that each material circumstance appearing in the evidence against the accused is required to be put to him specifically, distinctly and separately and failure to do so amounts to a serious irregularity vitiating trial, if it is shown that the accused was prejudiced.

In ***Basavaraj R. Patil and Others V. State Of Karnataka and Others.,*** (2000) 8 SCC 740, the Court considered the scope of Section 313 Cr.P.C. and what is the object of examination of an accused under Section 313 of the Code. The Court held that the section itself declares the object in explicit language that it is "for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him". Thus it is well settled that the provision is mainly intended to benefit the accused and as its corollary to benefit the court in reaching the final conclusion. At the same time it should be borne in mind that the provision is not intended to nail him to any position, but to comply with the most salutary principle of natural justice enshrined in the maxim audialterampartem. The word "may" in clause (a) of sub-section (1) in Section 313 of the Code indicates, without any doubt, that even if the court does not put any question under that clause the accused cannot raise any grievance for it. But if the court fails to put the needed question under clause (b) of the sub-section it would result in a handicap to the accused and he can legitimately claim that no evidence, without affording him the opportunity to explain, can be used against him. It is now well settled that a circumstance about which the accused was not asked to explain cannot be used against him.

**METHODOLOGY FOR RECORDING THE STATEMENT UNDER SECTION 313 AND MODE OF FRAMING QUESTIONS UNDER SECTION 313**

The proper methodology for recording the statement under Section 313 of the Code was succinctly discussed by the Hon'ble Supreme Court of India in ***Dharnidhar V. State Of U.P. & Ors.,*** (2010) 7 SCC 759. The Court observed that the legislative intent behind this section appears to have twin objects. Firstly, to provide an opportunity to the accused to explain the circumstances appearing against him. Secondly, for the Court to have an opportunity to examine the accused and to elicit an explanation from him, which may be free from the fear of being trapped for an embarrassing admission or statement. The proper methodology to be adopted by the Court while recording the statement of the accused under Section 313 of the Cr.P.C. is to invite the attention of the accused to the circumstances and substantial evidence in relation to the offence, for which he has been charged and invite his explanation. In other words, it provides an opportunity to an accused to state before the Court as to what is the truth and what is his defence, in accordance with law. It was for the accused to avail of that opportunity and if he fails to do so then it is for the Court to examine the case of the prosecution on its evidence with reference to the statement made by the accused under Section 313 of the Cr.P.C.

The proper mode of framing the questions under Section 313 was dealt by the Hon'ble Supreme Court of India in ***Tara Singh V. The State.,****AIR 1951 SC 441., Four Judge bench of the Hon'ble Supreme Court speaking through Hon'ble Justice Vivian Bose* held as to how the questions are to be put when the accused is examined for the incriminating circumstances. The Court held that it is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material circumstance which is intended to be used against him. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question. Fairness therefore requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand.

In ***Ajay Singh V. State of Maharashtra.,*** (2008) 1 SCC (Cri) 371 the Court held that the word 'generally' in sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The

Prosecution Replenish

importance of observing faithfully and fairly the provisions of Section 313 of the Code cannot be too strongly stressed.

In ***Naval Kishore Singh V. State of Bihar.,*** (2004) 7 SCC 502, the Court deprecated the practice of putting the entire evidence against the accused together in a single question and giving an opportunity to explain the same, as the accused may not be in a position to give a rational and intelligent explanation. The Court observed that the importance of giving an opportunity to the accused to explain the adverse circumstances in the evidence and the Section 313 examination shall not be carried out as an empty formality. It is only after the entire evidence is unfurled the accused would be in a position to articulate his defence and to give explanation to the circumstances appearing in evidence against him. Such an opportunity being given to the accused is part of a fair trial and if it is done in slip shop manner, it may result in imperfect appreciation of evidence.

In ***State of Punjab V. Sawaran Singh.,*** (2005) 6 SCC 101., it was held by the Court that generally composite questions shall not be asked to accused bundling so many facts together. Questions must be such that any reasonable person in the position of the accused may be in a position to give rational explanation to the questions as had been asked. There shall not be failure of justice on account of an unfair trial.

**OBJECTIONS AS TO DEFECTIVE SECTION 313 STATEMENT AND OMISSION ON THE PART OF THE COURT TO QUESTION THE ACCUSED ON ANY INCRIMINATING CIRCUMSTANCE**

In ***Nar Singh V. State of Haryana.,*** (2015) 1 SCC 496., the Supreme Court observed that undoubtedly, the importance of a statement under Section 313 Cr.P.C., insofar as the accused is concerned, can hardly be minimized. The statutory provision is based on the rules of natural justice for an accused, who must be made aware of the circumstances being put against him so that he can give a proper explanation to meet that case. If an objection as to Section 313 Cr.P.C. statement is taken at the earliest stage, the Court can make good the defect and record additional statement of the accused as that would be in the interest of all. When objections as to defective Section 313 Cr.P.C. statement is raised in the appellate court, then difficulty arises for the prosecution as well as the accused. When the trial court is required to act in accordance with the mandatory provisions of Section 313 Cr.P.C., failure on the part of the trial court to comply with the mandate of the law, cannot automatically enure to the benefit of the accused. Any omission on the part of the Court to question the accused on any incriminating circumstance would not *ipso facto* vitiate the trial, unless some material prejudice is shown to have been caused to the accused. Since justice suffers in the hands of the Court, the same has to be corrected or rectified in the appeal. So far as Section 313 Cr.P.C. is concerned, undoubtedly, the attention of the accused must specifically be brought to inculpable pieces of evidence to give him an opportunity to offer an explanation, if he chooses to do so. The question whether a trial is vitiated or not depends upon the degree of the error and the accused must show that non-compliance of Section 313 Cr.P.C. has materially prejudiced him or is likely to cause prejudice to him. Merely because of defective questioning under Section 313 Cr.P.C., it cannot be inferred that any prejudice had been caused to the accused, even assuming that some incriminating circumstances in the prosecution case had been left out. When prejudice to the accused is alleged, it has to be shown that accused has suffered some disability or detriment in relation to the safeguard given to him under Section 313 Cr.P.C. Such prejudice should also demonstrate that it has occasioned failure of justice to the accused. The burden is upon the accused to prove that prejudice has been caused to him or in the facts and circumstances of the case, such prejudice may be implicit and the Court may draw an inference of such prejudice. Facts of each case have to be examined to determine whether actually any prejudice has been caused to the accused due to omission of some incriminating circumstances being put to the him.

Similarly, observing that omission to put any material circumstance to the accused does not *ipso facto* vitiate the trial and that the accused must show prejudice and that miscarriage of justice had been sustained by him, the Court in ***Santosh Kumar Singh V. State through CBI.,*** (2010) 9 SCC 747 has held that the facts of each case have to be examined but the broad principle is that all incriminating material circumstances must be put to an accused while recording his statement under Section 313 of the Code, but if any material circumstance has been left out that would not *ipso facto* result in the exclusion of that evidence from consideration unless it could further be shown by the accused that prejudice and miscarriage of justice had been sustained by him.

In ***State of Punjab V. Hari Singh & Ors.*** (2009) 4 SCC 200, question regarding conscious possession of narcotics was not put to the accused when he was examined under Section 313 Cr.P.C. Finding that question relating to conscious possession of contraband was not put to the accused, the Court held that the effect of such omission vitally affected the prosecution case and the Court affirmed the acquittal.

In ***Kuldip Singh & Ors. V. State of Delhi.,*** (2003) 12 SCC 528, the Court held that when important incriminating circumstance was not put to the accused during his examination under Section 313 Cr.P.C., prosecution cannot place reliance on the said piece of evidence.

Prosecution Replenish

However, in ***Alister Anthony Pareira V. State of Maharashtra.,*** (2012) 2 SCC 648, in the facts and circumstances, it was held that by not putting to the appellant-accused expressly the chemical analyzer's report and the evidence of the doctor, no prejudice can be said to have been caused to the appellant and he had full opportunity to say what he wanted to say with regard to the prosecution evidence and that the High Court had rightly rejected the contention of the appellant-accused in that regard.

When such objection as to omission to put the question under Section 313 Cr.P.C. is raised by the accused in the appellate court and prejudice is also shown to have been caused to the accused, then what are the courses available to the appellate court?

The answer to this can be found in the decision between ***State (Delhi Administration) V. Dharampal.,***(2001) 10 SCC 372, wherein the Supreme Court has held that in the event of an inculpatory material not having been put to the accused, the appellate Court can always make good that lapse by calling upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against the accused but not put to him.

In ***Shivaji SahebraoBobade& Anr V. State Of Maharashtra.,*** (1973) 2 SCC 793, the Supreme Court considered the fallout of the omission to put a question to the accused on vital circumstance appearing against him and the Court has held that the appellate court can question the counsel for the accused as regards the circumstance omitted to be put to the accused and in para 16 the Court speaking through Hon'ble Justice V. R. Krishna Iyer held as under:-

"…It is trite law, nevertheless fundamental, that the prisoner's attention should be drawn to every inculpatory material so as to enable him to explain it. This is the basic fairness of a criminal trial and failures in this area may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed. However, where such an omission has occurred it does not ipso facto vitiate the proceedings and prejudice occasioned by such defect must be established by the accused. In the event of evidentiary material not being put to the accused, the Court must ordinarily eschew such material from consideration. It is also open to the appellate Court to call upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against him but not put to him and if the accused is unable to offer the appellate Court any plausible or reasonable explanation of such circumstances, the Court may assume that no acceptable answer exists and that even if the accused had been questioned at the proper time in the trial Court he would not have been able to furnish any good ground to get out of the circumstances on which the trial Court had relied for its conviction. In such a case, the Court proceeds on the footing that though a grave irregularity has occurred as regards compliance with Section 342 CrPC., the omission has not been shown to have caused prejudice to the accused...."

**EFFECT OF CIRCUMSTANCES NOT PUT TO AN ACCUSED UNDER SECTION 313**

**The Hon'ble Supreme Court in *MaheshwarTigga V. State of Jharkhand,* (2020) 10 SCC 108 (3 Judge Bench) held that it stands well settled that circumstances not put to an accused under Section 313 Cr.P.C. cannot be used against him, and must be excluded from consideration. In a criminal trial, the importance of the questions put to an accused are basic to the principles of natural justice as it provides him the opportunity not only to furnish his defence, but also to explain the incriminating circumstances against him. A probable defence raised by an accused is sufficient to rebut the accusation without the requirement of proof beyond reasonable doubt.**

**In *Samsul Haque V. State of Assam.*, (2019) 18 SCC 161., the Supreme Court observed that if the circumstances are not put to the accused in his statement under Section 313 of the Cr.P.C. they must be completely excluded from consideration because the accused did not have any chance to explain them.***Ordinarily, in such a situation, such material as not put to the accused must be eschewed.*

**CIRCUMSTANCES NOT APPEARING IN EVIDENCE**

Circumstances not appearing in evidence cannot be put to the accused under Section 313 of the Code. In ***Kalpnath Rai V. State through CBI.,***(1997) 8 SCC 732 = 1998 CriLJ 369., the Hon'ble Supreme Court held that it is trite that an accused cannot be confronted during such questioning with any circumstance which is not in evidence. Section 313 of the Code is not intended to be used as an interrogation. No trial court can pick out any paper or document from outside the evidence and abruptly slap it on the accused and corner him for giving an answer favourable or unfavourable.

**CAN STATEMENT UNDER SECTION 313 BE TREATED AS EVIDENCE WITHIN THE MEANING OF SECTION 3 OF THE EVIDENCE ACT AND CAN STATEMENT RECORDED UNDER SECTION 313 OF THE CODE CONSTITUTE THE SOLE BASIS FOR CONVICTION**

Prosecution Replenish

In ***Dehal Singh V. State of Himachal Pradesh.,*** (2010) 9 SCC 85., it was held that the statement under Section 313 of the Code of Criminal Procedure is taken into consideration to appreciate the truthfulness or otherwise of the case of prosecution and it is not an evidence. Statement of an accused under Section 313 of the Code of Criminal Procedure is recorded without administering oath and, therefore, said statement cannot be treated as evidence within the meaning of Section 3 of the Evidence Act. There is reason not to treat the statement under Section 313 of the Code of Criminal Procedure as evidence as the accused cannot be cross-examined, with reference to those statements. However, when an accused appears as witness in defence to disproof the charge, his version can be tested by his cross-examination.

Whether a statement recorded under Section 313 of the Code can constitute the sole basis for conviction? Since no oath is administered to the accused, the statements made by the accused will not be evidence Strictosensu. That is why Sub-section (3) says that the accused shall not render himself liable to punishment if he gives false answers. Then comes Sub-section (4) which reads:

(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 had committed.

Thus the answers given by the accused in response to his examination under Section. 313 can be taken into consideration in such inquiry or trial. This much is clear on a plain reading of the above sub-section. Therefore, though not strictly evidence, Sub-section (4) permits that it may be taken into consideration in the said inquiry or trial.( See., ***State Of Maharashtra V. Dr. R. B. Chowdhary& 2 Ors.,*** AIR 1968 SC 110 )

In ***SanatanNaskar& Anr V. State Of West Bengal.,*** AIR 2010 SC 3507 it was held that the statement of the accused can be used to test the veracity of the exculpatory of the admission, if any, made by the accused. It can be taken into consideration in any enquiry or trial but still it is not strictly evidence in the case. The provisions of Section 313 (4) of Cr.PC explicitly provides that the answers given by the accused may be taken into consideration in such enquiry or trial and put in evidence for or against the accused in any other enquiry into or trial for, any other offence for which such answers may tend to show he has committed. In other words, the use is permissible as per the provisions of the Code but has its own limitations. The Courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however, such statements made under this Section should not be considered in isolation but in conjunction with evidence adduced by the prosecution.

In ***State of U.P V. Lakhmi.***, 1998 (4) SCC 336, 3 Judge Bench of the Hon'ble Supreme Court of India headed by Hon'ble Chief Justice M.M. Punchhi, observed that the need of law for examining the accused with reference to incriminating circumstances appearing against him in prosecution evidence is not for observance of a ritual in a trial nor is it a mere formality. It has a salutary purpose. It enables the Court to be apprised of what the indicted person has to say about the circumstances pitted against him by the prosecution. Answers to the questions may sometimes be flat denial or outright repudiation of those circumstances. In certain cases accused would offer some explanations to incriminating circumstances. In very rare instances accused may even admit or own incriminating circumstances adduced against him, perhaps for the purpose of adopting legally recognized defences. In all such cases the Court gets the advantage of knowing his version about those aspects and it helps the Court to effectively appreciate and evaluate the evidence in the case. If an accused admits any incriminating circumstance appearing in evidence against him there is no warrant that those admissions should altogether be ignored merely on the ground that such admissions were advanced as a defence strategy. Sub-Section (4) of Section 313 of the Code contains necessary support o the legal position that answers given by the accused during such examination are intended to be considered by the Court. The words *"may be taken into consideration in such inquiry or trial"* in sub-Section (4) would amount to a legislative guideline for the Court to give due weight to such answers, though it does not mean that such answers could be made the sole basis of any finding.

Taking in to consideration the ratio of the Court in ***Lakhmi's case***, cited above, the Hon'ble Supreme Court in ***Paul V. State of Kerala,***(2020) 3 SCC 115., observed as follows:- "We, therefore, have no hesitation in holding that a statement made by the accused under Section 313 Cr.PC even it contains inculpatory admissions cannot be ignored and the Court may where there is evidence available proceed to enter a verdict of guilt"

In***ReenaHazarika V. State of Assam.,*** (2019) 13 SCC 289, it was held that Section 313, cannot be seen simply as a part of audialterampartem. It confers a valuable right upon an accused to establish his innocence and can well be considered beyond a statutory right as a constitutional right to a fair trial under Article 21 of the Constitution, even if it is not to be considered as a piece of substantive evidence, not being on oath under Section 313(2), Cr.P.C. The importance of this right has been considered time and again, but it yet remains to be applied in practice. If the accused takes a defence after the prosecution evidence is closed, under Section

Prosecution Replenish

313(1)(b) CrPC the Court is duty bound under Section 313(4) CrPC to consider the same. The mere use of the word 'may' cannot be held to confer a discretionary power on the court to consider or not to consider such defence, since it constitutes a valuable right of an accused for access to justice, and the likelihood of the prejudice that may be caused thereby. Whether the defence is acceptable or not and whether it is compatible or incompatible with the evidence available is an entirely different matter. If there has been no consideration at all of the defence taken under Section 313 Cr.P.C., the conviction may well stand vitiated. A solemn duty is cast on the court in dispensation of justice to adequately consider the defence of the accused taken under Section 313 Cr.P.C. and to either accept or reject the same for reasons specified in writing.

**CAN ADVERSE INFERENCE BE DRAWN IF THE ACCUSED REMAINS SILENT OR MAKES FALSE STATEMENT WHEN EXAMINED UNDER SECTION 313**

In ***Mannu Sao V. State Of Bihar.,*** (2011) 1 SCC (Cri) 370., it was observed that the option lies with the accused to maintain silence coupled with simplicitor denial or in the alternative to explain his version and reasons, for his alleged involvement in the commission of crime. This is the statement which the accused makes without fear or right of the other party to cross- examine him. However, if the statements made are false, the Court is entitled to draw adverse inferences and pass consequential orders, as may be called for, in accordance with law.

In terms of Section 313 Cr.P.C., the accused has the freedom to maintain silence during the investigation as well as before the Court. The accused may choose to maintain silence or complete denial even when his statement under Section 313 Cr.P.C. is being recorded, of course, the Court would be entitled to draw an inference, including adverse inference, as may be permissible to it in accordance with law. Right to fair trial, presumption of innocence unless proven guilty and proof by the prosecution of its case beyond any reasonable doubt are the fundamentals of our criminal jurisprudence. When we speak of prejudice to anaccused, it has to be shown that the accused has suffered some disability or detriment in relation to any of these protections substantially. Such prejudice should also demonstrate that it has occasioned failure of justice to the accused. One of the other cardinal principles of criminal justice administration is that the courts should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage, as this expression is perhaps too pliable. [See.,***Rafiq Ahmed @ Rafi V. State Of U.P.,*** (2011) 8 SCC 300].

The accused has a duty to furnish an explanation in his statement under Section 313 Cr.P.C. regarding any incriminating material that has been produced against him. If the accused has been given the freedom to remain silent during the investigation as well as before the court, then the accused may choose to maintain silence or even remain in complete denial when his statement under Section 313 Cr.P.C. is being recorded. However, in such an event, the court would be entitled to draw an inference, including such adverse inference against the accused as may be permissible in accordance with law. (Vide: ***Ramnaresh& Ors V. State Of Chhattisgarh.***, AIR 2012 SC 1357 and ***Raj Kumar Singh @ Raju @ Batya V. State Of Rajasthan.,*** AIR 2013 SC 3150).

In ***Prahlad V. State of Rajasthan,*** (2018) SCC Online SC 2548., 3 Judge Bench of the Supreme Court held that silence on the part of the accused as to questions put to him by the court under Section 313 of the Code of Criminal Procedure, in such a matter wherein he is expected to come out with an explanation, leads to an adverse inference against the accused.

In so far as the examination of the accused under Section 313 of the Code is concerned where case of the prosecution rests on circumstantial evidence, the Hon'ble Supreme Court in ***MunishMubar V. State Of Haryana.,*** (2012) 10 SCC 464., held that it is obligatory on the part of the accused, while being examined under Section 313 Cr.P.C. to furnish some explanation with respect to the incriminating circumstances associated with him, and the Court must take note of such explanation, even in a case of circumstantial evidence, so to decide, whether or not, the chain of circumstances is complete.

A division Judge Bench of Hon'ble Supreme Court comprising of Hon'ble **Justice R F Nariman and Hon'ble Justice B R Gavai,** in the case of ***Shivaji ChintappaPatil V. State of Maharashtra.,*** **2021 SCCOnLine SC 158**, observed that false explanation or non-explanation of the accused to the questions posed by the court under Section 313 of the Code of Criminal Procedure, can only be used as an additional circumstance, when the prosecution has proved the chain of circumstances leading to no other conclusion than the guilt of the accused. However, it cannot be used as a link to complete the chain.

In ***ParminderKaur @ P.P. Kaur @ Soni V. State of Punjab.,*** (2020) 8 SCC 811, 3 Judge Bench of the Hon'ble Supreme Court held that once a plausible version has been put forth by the defence at the examination stage of Section 313 of the Cr.PC, then it is for the prosecution to negate such a defence plea.

In a unreported judgment of the Supreme Court in **Rajender @ Rajesh @ Raju V. State (NCT of Delhi).,** Criminal Appeal No. 1889 of 2010., October 24, 2019., it was held that the the reasonableness of the explanation offered by the accused as to how and when he/she parted company with the deceased has a bearing

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on the effect of the last seen in a case. Section 106 of the Indian Evidence Act, 1872 provides that the burden of proof for any fact that is especially within the knowledge of a person lies upon such person. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company with the deceased. In other words, he must furnish an explanation that appears to the Court to be probable and satisfactory, and if he fails to offer such an explanation on the basis of facts within his special knowledge, the burden cast upon him under Section 106 is not discharged. Particularly in cases resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, such failure by itself can provide an additional link in the chain of circumstances proved against him. This, however, does not mean that Section 106 shifts the burden of proof of a criminal trial on the accused. Such burden always rests on the prosecution. Section 106 only lays down the rule that when the accused does not throw any light upon facts which are specially within his/her knowledge and which cannot support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce an explanation as an additional link which completes the chain of incriminating circumstances. Notably, a circumstance of last seen does not, by itself, necessarily lead to an inference that the accused committed the crime. There must be something more that establishes a connection between the accused and the crime. For instance, there may be cases where close proximity between the event of last seen and the factum of death may persuade a rational mind to reach the irresistible conclusion that the last seen of the deceased is material and merits an explanation from the accused.

In ***Sudru V. State of Chhattisgarh.,*** *(2019) 8 SCC 333., the Supreme Court has observed that non-explanation or false explanation by an accused in his statement under Section 313 CrPC cannot be taken as a circumstance to complete the chain of circumstances to establish the guilt of the accused.* However, in that case, the bench comprising Hon'ble **Justice Deepak Gupta and Hon'ble Justice B R Gavai**took into account the false explanation given by the accused but noted that the finding of guilt has been already recorded on the basis of other circumstances.

**CONCLUSION**

Summing up it can be said that pivot of Section 313 is to bring the core of accusation to the accused to enable him to explain personally each and every circumstance appearing against him in the evidence. The provisions of section 313 are therefore, mandatory and cast a duty on the court to afford an opportunity to the accused as a procedural safeguard so as to explain any such incriminatory point. The attention of the accused must specifically be brought to the inculpatory pieces of evidence to offer an explanation if he chooses to do so. Thence, the court is under a legal obligation to put the incriminating circumstances before the accused and solicit his response in reaching the final determination as the examination is not a formality or perfunctory.

**DVRTejoKarthik**
**JMFC, Spl.Mobile Court,**
**Mahabubnagar**

*(Prosecution Replenish conveys its heartfelt thanks to **Sri D.V.R. TejoKarthik,** Judicial Magistrate of First Class, Special Mobile Court, Mahabubnagar, for contributing this article for our leaflet)*

# CITATIONS

**2021 0 Supreme(SC) 222;LOK PRAHARI THROUGH ITS GENERAL SECRETARY S.N. SHUKLAIAS (RETD.) Vs. UOI& ORS; WRIT PETITION (C) NO. 1236 OF 2019; 20-04-2021(THREE JUDGE BENCH)**

Appointment of ad hoc Judges in High Courts is need of the hour.

The principle of continuing mandamus forms part of our Constitutional jurisprudence and the term was used for the first time in Vineet Narain v. Union of India, (1998) 1 SCC 226. The practice of issuing continuing directions to ensure effective discharge of duties was labelled as a "**continuing mandamus"**. We may note that unlike a writ remedy, a continuing mandamus is an innovative procedure not a substantive one which allows the Court an effective basis to ensure that the fruits of a judgment can be enjoyed by the right-bearers, and its realisation is not hindered by administrative and/or political recalcitrance. It is a means devised to ensure that the administration of justice translates into tangible benefits.

**2021 0 Supreme(SC) 203;BOOTA SINGH & OTHERS Vs. STATE OF HARYANA; CRIMINAL APPEAL NO.421 OF 2021; 16-04-2021**

NDPSAct :The explanation to Section 43 shows that a private vehicle would not come within the expression "public place" as explained in Section 43 of the NDPS Act. On the strength of the decision

of this Court in Jagraj Singh alias Hansa, the relevant provision would not be Section 43 of the NDPS Act but the case would come under Section 42 of the NDPS Act.

**2021 0 Supreme(SC) 198;State of Rajasthan Vs. Ashok Kumar Kashyap;Criminal Appeal No. 407 of 2021 (Arising from S.L.P.(Criminal) No.3194 of 2021) Diary No. 8524 of 2020; 13-04-2021**
At the stage of framing of the charge and/or considering the discharge application, the mini trial is not permissible. At this stage, it is to be noted that even as per Section 7 of the PC Act, even an attempt constitutes an offence. Therefore, the High Court has erred and/or exceeded in virtually holding a mini trial at the stage of discharge application.
As rightly observed and held by the learned Special Judge at the stage of framing of the charge, it has to be seen whether or not a prima facie case is made out and the defence of the accused is not to be considered
We are not further entering into the merits of the case and/or merits of the transcript as the same is required to be considered at the time of trial. Defence on merits is not to be considered at the stage of framing of the charge and/or at the stage of discharge application.

**2021 0 Supreme(SC) 199;M/s Neeharika Infrastructure Private Limited Vs. State of Maharashtra And Others; Criminal Appeal No. 330 of 2021; 13-04-2021**
The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C, while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India,

**2021 0 Supreme(SC) 194;SudeshKediaVs. Union of India; Criminal Appeal Nos. 314-315 of 2021 (Arising out of SLP (Crl.) Nos. 6259-6260 of 2020); 09-04-2021**
UAPA -While considering the grant of bail under Section 43 (5) D, it is the bounden duty of the Court to apply its mind to examine the entire material on record for the purpose of satisfying itself, whether a prima facie case is made out against the accused or not.

**2021 0 Supreme(SC) 184;YOGESH vs. STATE OF HARYANA; CRIMINAL APPEAL NO.1306 OF 2017WithANUJVs. STATE OF HARYANA; CRIMINAL APPEAL NO.1307 OF 2017WithPARDEEPVs. STATE OF HARYANA; CRIMINAL APPEAL NO.1308 OF 2017Decided on : 06-04-2021**
There are of course circumstances like recovery of clothing apparel as well as tiffin box etc. belonging to the victim. However, such recoveries by themselves, in the absence of any other material evidence on record pointing towards the guilt of the accused, cannot be termed sufficient to hold that the case was proved beyond reasonable doubt. Not only those circumstances are not conclusive in nature but they also do not form a cogent and consistent chain so as to exclude every other hypothesis except the guilt of the appellants.

**2021 1 SCC Cri 810; 2021 2 SCC 525 ; 2020 4 Crimes(SC) 406; 2020 0 Supreme(SC) 661;M/s FerticoMarketing and Investment Pvt. Ltd. and Others Vs. Central Bureau of Investigation and Another; Criminal Appeal Nos. 760-764, 765-767, 768-769, 770-774, 775-777, 778-785 of 2020, SLP (Crl.) Nos. 8314-8316, 8342-8346, 8420-8421 of 2019, 1792-1796, 1789-1791, 1821-1828 of 2020; 17-11-2020**
the cognizance and the trial cannot be set aside unless the illegality in the investigation can be shown to have brought about miscarriage of justice. It has been held, that the illegality may have a bearing on the question of prejudice or miscarriage of justice but the invalidity of the investigation has no relation to the competence of the court.

**2021 1 SCC Cri 822; 2021 2 SCC 598; 2021 0 Supreme(SC) 28;Ms.X Vs. The State of Jharkhand and Others: Writ Petition (Civil) No. 1352 of 2019: 20-01-2021; THREE JUDGE BENCH**
This Court in Nipun Saxena and Another (supra) has occasion to consider Section 228-A wherein this Court in para 50.1 has issued following directions:

"50.1. No person can print or publish in print, electronic, social media, etc. the name of the victim or even in a remote manner disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large."

**2021 1 SCC Cri 830; 2021 2 SCC 608; 2021 0 Supreme(SC) 15;AsharamTiwari Vs. State of M.P.: Criminal Appeal of 2021(Arising out of SLP (Crl.) No. 239 of 2020); 12-01-2021**

PW-1 and PW-4 are both injured witnesses. They have both been found to be reliable and truthful. We see no reason why they would falsely implicate another, when the deceased was their own minor son. Similarly, PW-2 is the son of the second deceased, an eye witness to the killing of his father at home. The failure to examine any available independent witness is inconsequential. It is the quality of the evidence and not the number of witnesses that is relevant. It is nobody's case of the accused that PW-1 and PW-4 were not injured in the same occurrence or that PW-2 was not an eye witness.

**2021 1 ALD Crl. 657(TS); DannarapuMadhav Rao Vs State of Telangana; CRLP 375/2021: 2.2.2021**

Police are incompetent to take cognizance of Section 45 & 59(1) of Food Safety Standards Act,2006.

**2021 1 ALD Crl. 658(TS); 2020 0 Supreme(Telangana) 787;GudurSandeep Reddy and Others Vs. The State of Telangana; Criminal Petition Nos. 5819, 5939, 5961, 6095, 6097 of 2020; 02-12-2020**

Murder of a member of family due to perpetrators belief that the victim has brought shame or dishonour upon the family or has violated the principles of a community or a religion with an honour culture is called honour killing. The killers justify their actions by claiming that the victim has brought dishonour upon the family name or prestige. The reasons for the honour killings appear to be that marriage out of caste, divorce, marriage by choice, homosexuality, pregnancy before marriage, inappropriate dressing etc. It also appears that the killers are committing the said honour killings to save their prestige of the family or done in order to make it an example for other or done out of rage or anger. But, there is no change in the attitude of young generation. Honour killers failed to appreciate the same.

**2021 1 ALD Crl 702(SC); 2021 0 Supreme(SC) 20;MURALI Vs. STATE; CRIMINAL APPEAL NO.24/2021 [Arising out of SLP (Crl.) 10813 of 2019]WithRAJAVELUVs STATE; CRIMINAL APPEAL NO.25/2021 [Arising out of SLP (Crl.) 10814 of 2019]: 05-01-2021**

There can be no doubt that Section 320 of the Criminal Procedure Code, 1973 ("CrPC") does not encapsulate Section 324 and 307 IPC under its list of compoundable offences. Given the unequivocal language of Section 320(9) CrPC which explicitly prohibits any compounding except as permitted under the said provision, it would not be possible to compound the appellants' offences.

**http://tshcstatus.nic.in/hcorders/2020/crlp/crlp_6087_2020.pdf; Rahul Razdan Vs State of Telangana**

The offences under Sections 143, 147, 148, 452,**353**, 427 and **153(A)** read with 149 of IPC quashed as compromised out of court.

**http://tshcstatus.nic.in/hcorders/2021/crlp/crlp_2992_2021.pdf; Pabbu Ankoos Vs State of Telangana and another**

Court dismissed the Sec 451 CrPC application on the ground that the record produced by the petitioner does not reflect the ownership of the petitioner over the vehicle.

**https://main.sci.gov.in/supremecourt/2020/5024/5024_2020_35_1501_27785_Judgement_27-Apr-2021.pdf; Criminal Appeal No 452 of 2021 (Arising out of SLP(Crl) No 1795 of 2021) Patan Jamal Vali Vs The State of Andhra Pradesh;**

To deny the protection of Section 3 (2) (v) on the premise that the crime was not committed against an SC & ST person solely on the ground of their caste identity is to deny how social inequalities function in a cumulative fashion.

**CRIMINAL APPEAL NO. 448 OF 2021 (@ SPECIAL LEAVE PETITION (CRL.) NO. 3577 0F 2020) SUDHA SINGH Vs THE STATE OF UTTAR PRADESH & ANR; 23.04.2021. (THREE JUDGE BENCH)**

There is no doubt that liberty is important, even that of a person charged with crime but it is important for the courts to recognise the potential threat to the life and liberty of victims/witnesses, if such accused is released on bail.

**https://main.sci.gov.in/supremecourt/2014/29222/29222_2014_37_1504_27802_Judgement_28-Apr-2021.pdf;CRLA NO.216 OF 2015;Kalabhai Hamirbhai Kachhot V. State of Gujarat;28.4.2021**

it is held that only contradictions in material particulars and not minor contradictions can be a ground to discredit the testimony of the witnesses.

**CRIMINAL PETITION No.2655 OF 2021=; 28.04.2021; M.Krishna Naik Vs. The State of Andhra Pradesh**

Ordered to take collateral security/immovable property security for the value of the said vehicle from the petitioner, instead of FDR.

**Miryala Rama Rao vs State of A.P= CRIMINAL PETITION No.2621 OF 2021; 27-04-2021; BATCH**

In view of the provisions of Section 387 of Cr.P.C., it is clear that the presence of an accused is not essential on every date of hearing in Appellate Court, unless, the Appellate Court requires the presence of the accused.

**Kottaki Prashant @Prabha vs State of A.P=; CRIMINAL PETITION NO.2418 OF 2021: 26.04.2021;**

A-1 released on bail in NDPS case, does not entitle bail to A-2, though languishing in prison for 161 days.

**Gosangi Venkata Subbareddy,Vs State of A.P=; CRIMINAL PETITION No.2549 OF 2021: 26-04-2021**

The Investigating Officer to complete the investigation in accordance with law and after giving the benefit of Section 41-A Cr.P.C. to the petitioners in accordance with the guidelines of the Hon'ble Supreme Court in Arnesh Kumar vs. State of Bihar for the offence under Sections 447, 427, 506 r/w 34 IPC and Sections 3(1) (s), 3 (2)(1)(v)(a) of SC ST Prevention of Atrocities Act.

NOSTALGIA

**Effect of Defective /illegal investigation on Trial:**

The Court, in H.N. Rishbud and Inder Singh vs. State of Delhi, (1955) 1 SCR 1150, observed as under:-

> "If, therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial is well settled as appears from the cases in Prabhu vs. Emperor, AIR 1944 PC 73 and LumbhardarZutshi vs. The King, AIR 1950 PC 26. These no doubt relate to the illegality of arrest in the course of investigation while we are concerned in the present cases with the illegality with reference to the machinery for the collection of the evidence. This distinction may have a bearing on the question of prejudice or miscarriage of justice, but both the cases clearly show that invalidity of the investigation has no relation to the competence of the Court. We are, therefore, clearly, also, of the opinion that where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby."

# NEWS

- Prosecution Replenish congratulates Sri M.Surendar, on taking charge as the Addl. Director of Prosecutions, Telangana.
- SUO MOTO WRIT (CRL) NO.(S) 1/2017IN RE: TO ISSUE CERTAIN GUIDELINES REGARDING INADEQUACIESAND DEFICIENCIES IN CRIMINAL TRIALS
- Centre approves new Zones for the sake of recruitment in Telangana.

**THE COPIES OF THESE CIRCULARS, GAZETTES MENTIONED IN NEWS SECTION OF THIS LEAFLET ARE AVAILABLE IN OUR "PROSECUTION REPLENISH" CHANNEL IN TELEGRAM APP. *http://t.me/prosecutionreplenish* AND ALSO ON OUR WEBSITE** http://prosecutionreplenish.com/

# ON A LIGHTER VEIN

A man who was driving a car with his wife was stopped by a police officer. The following exchange took place. The man says, "What's the problem, officer?"

- **Officer:** "You were going at least 125kmp/
- **Man:** "No sir, I was going 100kmp/h."
- **Wife:** "Oh, Harry. You were going 140kmp/h." (The man gave his wife a dirty look.)
- **Officer:** "I'm also going to give you a ticket for your broken taillight. "
- **Man:** "Broken taillight? I didn't know about a broken taillight!"
- **Wife:** "Oh Harry, you've known about that taillight for weeks." (The man gave his wife another dirty look.)
- **Officer:** "I'm also going to give you a citation for not wearing your seat belt."
- **Man:** "Oh, I just took it off when you were walking up to the car."
- **Wife:** "Oh Harry, you never wear your seat belt."

The man turned to his wife and yelled, "SHUT YOUR MOUTH!"
The officer turned to the woman and asked, "Ma'am, does your husband talk to you this way all the time?"

- **The wife said,** "No, only when he's drunk.

While due care is taken while preparing this information. The patrons are requested to verify and bring it to the notice of the concerned regarding any misprint or errors immediately, so as to bring it to the notice of all patrons. Needless to add that no responsibility for any result arising out of the said error shall be attributable to the publisher as the same is inadvertent.

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- ✓ The articles should be sent on email to prosecutionreplenish@gmail.com.
- ✓ The submitted articles will not be returned and will not carry a right of publication.
- ✓ The last date for submitting the articles is 5th of September,2021.


# MANAGING **COVID STRESS**

## GUIDELINES FOR HOME ISOLATION

Of Mild/Asymptomatic COVID-19 Cases

Ministry of Health and Family Welfare, Government of India

### Patients Eligible for Home Isolation

- The person should be clinically assigned as a mild/ asymptomatic case by the treating medical officer
- Such cases should have the requisite facility at their residence for self-isolation & also for quarantining the family contacts
- A caregiver should be available 24x7. A communication link between the caregiver and hospital is a prerequisite
- Patients suffering from immunocompromised status (HIV, Transplant recipients. etc) not recommended for home isolation & shall only be allowed after proper evaluation by the treating medical officer
- Elderly patients aged over 60 yrs & those with co-morbid conditions such as Diabetes, Heart disease, etc. only to be allowed home isolation after proper evaluation
- In addition, the guidelines on home-quarantine for other members available at https://www.mohfw.gov.in/pdf/Guidelinesforhomequarantine.pdf shall be followed

# RECOVERY STORIES

## HOPE AMIDST THE PANDEMIC

105-year-old & his 95-year-old wife wins over COVID-19 after battling for 9 days in ICU

90-year-old woman from Pandharpur beats COVID-19, treks over 3,000 feet two weeks post recovery

A newborn baby suffering from breathing issues due to COVID-19, recovers completely after 27 Days of treatment

RECOVERY STORIES

HOPE AMIDST THE PANDEMIC

Elderly woman from Ujjain with 95% lung infection beats Covid after being on oxygen support for 80 days

82-year-old woman from Gorakhpur beats COVID-19, says her oxygen levels improved with the Proning technique

75-year-old diabetic woman from Mumbai beats COVID-19 even after doctors give her 24 hours to live, she recovered 13 days later

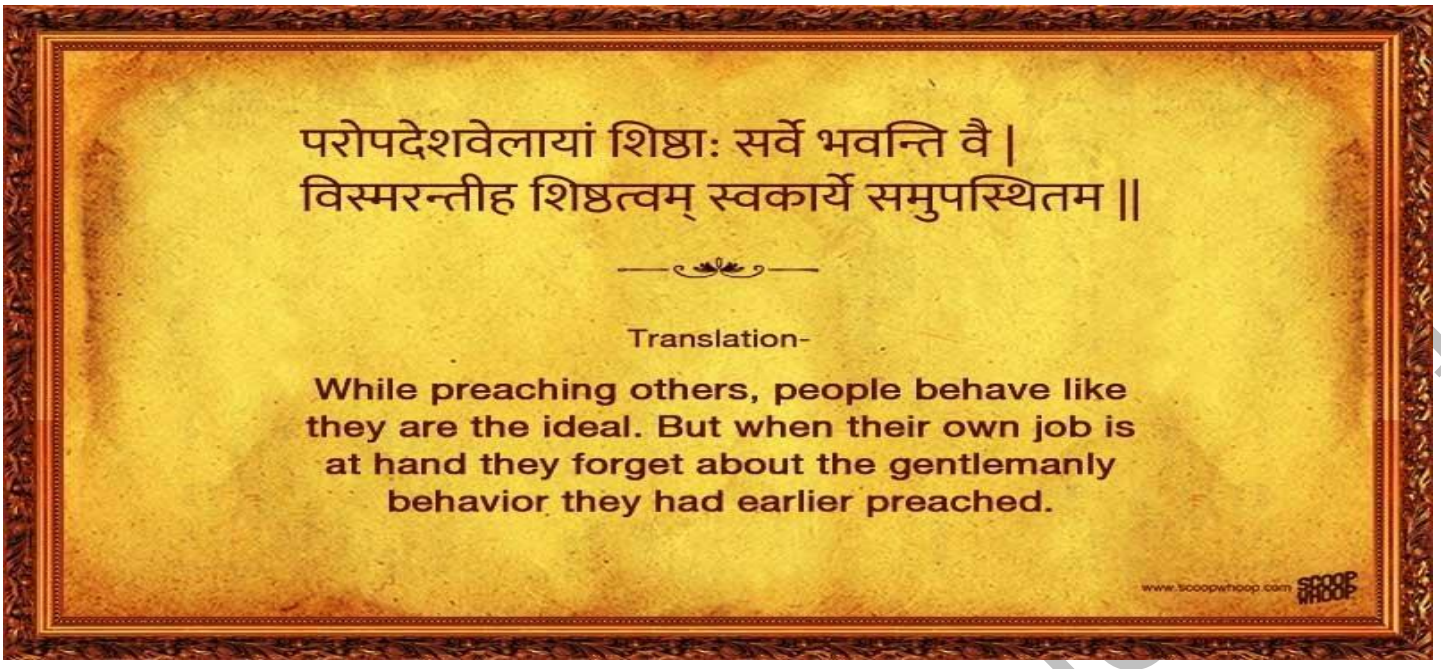
Vol- X
Part-6

# Prosecution Replenish

An Endeavour for Learning and Excellence

## June, 2021

AanoBhadraKrtavoYantuVishwatah.(RIG VEDAM)
"Let Noble Thoughts Come To Me From All Directions"




**FURTHER INVESTIGATION AT POST COGNIZANCE STAGE BASING ON POLICE REPORT**

The criminal investigative machinery is set into motion by lodging of a First Information Report in relation to commission of a cognizable offence.Such report may be made orally or in writing. If made orally then the officer in charge of a police station is required to reduce the same into writing, read the same to the informant and wherever the person reporting is present, the same shall be signed by such person in accordance with the provisions of Section 154 of the Code of Criminal Procedure. A police officer can conduct investigation in any cognizable case without the orders of the Magistrate as empowered under Section 156 of the Code. A "cognizable case" is defined under Section 2(c) of the CrPC as follows:

> "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.

Police cannot investigate non-cognizable offences on their own. Police can only investigate non-cognizable offences under the orders of a Magistrate as per Section 155(2) of the Code. The police shall conduct such investigation in accordance with the provisions of Chapter XII of the Code. Section 2(h) of the Code defines investigation. It defines as under:

"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 authorized by a Magistrate in this behalf;

Where information as contemplated in law is received by an investigating officer and he has reasons to believe that an offence has been committed, which he is empowered to investigate, then he shall forthwith send a report of the same to the Magistrate and proceed to the spot to investigate the facts and circumstances of the case and take appropriate measures for discovery and arrest of the offender. After the investigation has been completed by the Investigating Officer, he has to prepare a report without unnecessary delay in terms of Section 173 of the Code and he shall forward his report to a Magistrate who is empowered to take cognizance on a police report. The report so completed should satisfy the requirements stated under clauses (a) to (h) of sub-section (2) of Section 173 of the Code. Upon receipt of the report, the empowered Magistrate shall proceed further in accordance with law.

On receipt of the Final Report/Challan/Charge Sheet a Magistrate may decide that ***(i)*** there is no sufficient ground for proceeding further and drop action or ***(ii)*** he may take cognizance of the offence under Section 190 of the Code on the basis of the police report and issue process and this he may do without being bound in any manner by the conclusion arrived at by the police in their report or ***(iii)***order for further investigation under sub-section (3) of Section 156 and require the police to make a further report. (See., ***Bhagwant Singh V. Commissioner of Police., (1985) 2 SCC 537 &Minu Kumari V. State of Bihar.,(2006) 4 SCC 359*** )

In ***Abhinandan Jha & Ors V. Dinesh Mishra, AIR 1968 SC 117 = 1968 CrLJ 97*** it was observed by the Court while dealing with the Code of 1898 that If the report is a charge-sheet under Section 170 it is open to the magistrate to agree with it and take cognizance of the offence under Section 190(1)(b); or to take the view that the facts disclosed do not make out an offence and decline to take cognizance. But he cannot call upon the police to submit a report that the accused need not be proceeded against on the ground that there was not sufficient evidence. If the report is of the action taken under Section 169, then the magistrate may agree with the report and close the proceeding. If he disagrees with the report he can give directions to the police under Section 156(3) to make a further investigation. If the police, after further investigation submit a charge-sheet, the magistrate may follow the procedure where the charge-sheet under Section 170 is filed; but if the police are still of the opinion that there was not sufficient evidence against the accused, the magistrate may agree or disagree with it. Where he agrees, the case against the accused is closed.

Prosecution Pro

Where the magistrate disagrees and forms the opinion that the facts set out in the report constitute an offence, he can take cognizance under Section 190(1)(c) CrPC.

Similarly in ***KamlapatiTrivediV.State of West Bengal.,(1980) 2 SCC 91*****,** the Court observed that if the magistrate does not agree with the police report, he may order further investigation.

The Code of Criminal Procedure, 1898 did not contain a provision by which the police were empowered to conduct a further investigation in respect of an offence after a police report under Section 173 has been forwarded to the Magistrate. The Fifth Law Commission under the Chairmanship of Sri Kalyan Vaidyanathan Kuttur Sundaram also referred as K. V. K. Sundaram, who was an Indian civil servant, who holds the record as the first Law Secretary (1948–1958) of independent India and second Chief Election Commissioner of India (1958–1967) in its Forty-First Law Commission Report forwarded to the Ministry of Law on 24th September, 1969 recommended the addition of sub-section (7) to Section 173 as it stood under the Code of Criminal Procedure, 1898 empowering the police to conduct further investigation.

The proposed sub-section (7) to Section 173 of the Code of 1898 **(Corresponding to sub-section (8) to Section 173 of the Code of 1973 )** read as follows:
"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 (5) **[As per the Code of 1973 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)".

The Law Commission in chapter XIV while dealing with "Information to the police and their powers to investigate" observed as follows:

"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."

Article 21 of the Constitution of India enshrines and guarantees the precious right of life and personal liberty to a person which can only be deprived on following the procedure established by law. Fundamentally, justice not only has to be done but also must appear to have been done.

A trial encompasses investigation, inquiry, trial, appeal and retrial *i.e.* the entire range of scrutiny including crime detection and adjudication on the basis thereof. Jurisprudentially, the guarantee under Article 21 embraces both the life and liberty of the accused as well as interest of the victim, his near and dear ones as well as of the community at large and therefore, cannot be alienated from each other with levity. It is judicially acknowledged that fair trial includes fair investigation as envisaged by Articles 20 and 21 of the Constitution of India. Though well-demarcated contours of crime detection and adjudication do exist, if the investigation is neither effective nor purposeful nor objective nor fair, it would be the solemn obligation of the courts, if considered necessary, to order further investigation or re-investigation as the case may be, to discover the truth so as to prevent miscarriage of the justice. No inflexible guidelines or hard-and-fast rules as such can be prescribed by way of uniform and universal invocation and the decision is to be conditioned to the attendant facts and circumstances, motivated dominantly by the predication of advancement of the cause of justice.(See., ***Pooja Pal V. Union of India and Ors., (2016) 3 SCC 135*** )

With the introduction of Section 173 (8) in the Code of 1973, the police have been armed with the power to further investigate an offence even after a police report has been forwarded to the Magistrate. Section 156(3)has remained unchanged even after the advent of the Code of 1973.

In ***State of Bihar and Anr V. J.A.C. Saldanha and Ors., AIR 1980 SC 326.,*** the Supreme Court was called upon to decide whether the State Government was competent to direct further investigation in a criminal case in which a report was submitted by the investigating agency under Section 173(2) of the Code of Criminal Procedure, 1973 to the Magistrate having jurisdiction to try the case and whether the Magistrate having jurisdiction to try the case committed an illegality in postponing consideration of the report submitted to him upon a request made by Asst. Public Prosecutor in charge of the case till report on completion of further investigation directed by the State Government was submitted to him.
The Supreme Court held that Sub-section(8) of Section 173 is not the source of power of the State Government to direct further investigation. Section 173(8) enables an officer in charge of a police station to carry on further investigation even after a report under Section 173(2) is submitted to Court. But if State Government has otherwise power to direct further investigation it is neither curtailed, limited nor denied by Section 173(8), more so, when the State Government directs an officer superior in rank to an officer in charge of police station thereby enjoying all powers of an officer in charge of a police station to further investigate the case. Such a situation would be covered by the combined reading of Section

Prosecution Prepaisi

173(8) with Section 36 of the Code. Such power is claimed as flowing from the power of superintendence over police to direct a police officer to do or not to do a certain thing because at the stage of investigation the power is enjoyed as executive power untrammeled by the judiciary. The Supreme Court further held that the power of the Magistrate under Section 156(3) to direct further investigation is clearly an independent power and does not stand in conflict with the power of the State Government as spelt out herein before. The power conferred upon the Magistrate under Section 156(3) can be exercised by the Magistrate even after submission of a report by the investigating officer which would mean that it would be open to the Magistrate not to accept the conclusion of the investigating officer and direct further investigation. This provision does not in any way affect the power of the investigating officer to further investigate the case even after submission of the report as provided in Section 173(8).

In ***Vinay Tyagi V. Irshad Ali, (2013) 5 SCC 762,*** wherein a two-Judge Bench, after referring to the decision in***Bhagwant Singh V. Commissioner of Police., (1985) 2 SCC 537 (3 Judge Bench)***has held that the Magistrate before whom a report under Section 173(2) of the Code is filed, is empowered in law to direct "further investigation" and require the police to submit a further or a supplementary report.

In ***Dharam Pal V. State of Haryana & Ors., (2016) 4 SCC 160.,*** the Supreme Court held that Section 173 Cr.P.C. empowers the Police Officer conducting investigation to file a report on completion of the investigation with the Magistrate empowered to take cognizance of the offence. Section 173(8) Cr.P.C. empowers the office-in-charge to conduct further investigation even after filing of a report under Section 173(2) Cr.P.C. if he obtains further evidence, oral or documentary. Thus, the power of the Police Officer under Section 173(8) Cr.P.C. is unrestricted. Needless to say, the Magistrate has no power to interfere but it would be appropriate on the part of the investigating officer to inform the Court.

In ***Rama Chaudhary V. State of Bihar., (2009) 6 SCC 346*** it was held that from a plain reading of sub-section (2) and sub-section (8) of Section 173, it is evident that even after submission of police report under sub-section (2) on completion of investigation, the police has a right to "further" investigation under sub-section (8) of Section 173 but not "fresh investigation" or "re investigation". The meaning of "Further" is additional; more; or supplemental. "Further" investigation, therefore, is the continuation of the earlier investigation and not a fresh investigation or re investigation to be started *ab-initio* wiping out the earlier investigation altogether. Sub- section (8) of Section 173 clearly envisages that on completion of further investigation, the investigating agency has to forward to the Magistrate a "further" report and not fresh report regarding the "further" evidence obtained during such investigation.

The Supreme Court in ***Hasanbhai Valibhai Qureshi V. State of Gujarat and Ors., (2004) 5 SCC 347*** dealt withthe necessity for further investigation being balanced with the delaying of a criminal proceeding. The Court observed that the prime consideration for further investigation is to arrive at the truth and do real and substantial justice. The hands of investigating agency for further investigation should not be tied down on the ground of mere delay. In other words, the mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation if that would help the court in arriving at the truth and do real and substantial as well as effective justice.

The Judicial Precedents discussed supra would indicate that the direction of further investigation by the magistrate is evidently before the stage of taking cognizance under section 190 of the Code.

Now it boils down to the question whether the Magistrate has the power to order further investigation after taking cognizance. If the answer is in affirmative, then till what stage such power could be exercised by the Magistrate.

In ***Ram Lal Narang Etc. Etc V. State of Delhi (Admn.)., AIR 1979 SC 1791.,*** the issue before the Supreme Court was whether the Police have powers to further investigate, after the magistrate has taken cognizance of the offence and what is the scope and ambit of Section 173 of the Code. The Court was dealing with the Code of 1898. The Court observed that ordinarily, the right and duty of the police would end with the submission of a report under Section 173 of the Code upon receipt of which it was up to the Magistrate to take or not to take cognizance of the offence.
The Court had also observed that there was no provision in the Code of 1898 prescribing the procedure to be followed by the police, where, after the submission of a report under Section 173 of the Code 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 or after the Magistrate had taken cognizance of the offence.
The Court took into consideration the 41st Law Commission report and Sub-Section (8) of Section 173 of the Code of 1973 and also the dicta of High Court of Madras in ***Divakar Singh V. A. Ramamurthi Naidu., (1918) 35 MLJ 127.,***which observed that number of investigations into a crime is not limited by law and that when one has been completed another may be begun on further information received.
Ultimately the Court in ***Ram Lal Narang's case*** held that neither Section 173 nor Section 190 lead to hold that the power of the police to further investigate was exhausted by the Magistrate taking cognizance of the offence. Practice, convenience and preponderance of authority, permitted repeated investigations on discovery of fresh facts. Notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under Section 173 of the 1898 Code, the right of the police to further investigate was not exhausted and the police could exercise such right as often as necessary when fresh information came to light. Where the police decided to make a further investigation, the police could express their regard and respect for the Court by seeking its formal permission to make further investigation.

Three Judge Bench of Hon'ble Supreme Court of India speaking through his Lordship Hon'ble Justice Rohinton Fali Nariman in ***Vinubhai Haribhai Malaviya V. The State of Gujarat., (2019) 17 SCC 1*** considered the entire gamut of

Prosecution Perfect

Section 156(3) and Section 173(8) of the Code vis-a-vis further investigation after submission of police report under Section 173(2) of the Code.

The Court had expounded the nuances and intricacies of the law relating to further investigation by police after filing of charge sheet and after the cognizance was taken by the magistrate.

It was held by the Court that it is clear that a fair trial must kick off only after an investigation is itself fair and just. The ultimate aim of all investigation and inquiry, whether by the police or by the Magistrate, is to ensure that those who have actually committed a crime are correctly booked, and those who have not are not arraigned to stand trial. That this is the minimal procedural requirement that is the fundamental requirement of Article 21of the Constitution of India cannot be doubted. It is the hovering omnipresence of Article 21 over the CrPC that must needs inform the interpretation of all the provisions of the CrPC, so as to ensure that Article 21 is followed both in letter and in spirit. The Magistrate's power under Section 156(3) of the CrPC is very wide, for it is this judicial authority that must be satisfied that a proper investigation by the police takes place. To ensure that a "proper investigation" takes place in the sense of a fair and just investigation by the police which such Magistrate is to supervise Article 21 of the Constitution of India mandates that all powers necessary, which may also be incidental or implied, are available to the Magistrate to ensure a proper investigation which, without doubt, would include the ordering of further investigation after a report is received by him under Section 173(2); and which power would continue to enure in such Magistrate at all stages of the criminal proceedings until the trial itself commences. Indeed, even textually, the "investigation" referred to in Section 156(1) of the CrPC would, as per the definition of "investigation" under Section 2(h), include all proceedings for collection of evidence conducted by a police officer; which would undoubtedly include proceedings by way of further investigation under Section 173(8) of the CrPC. Section 2(h) of the Code of Criminal Procedure, 1973 defines "investigation" in the same terms as the earlier definition contained in Section 2(l) of the Code of Criminal Procedure, 1898with this difference that "investigation" after the 1973 Code has come into force will now include all the proceedings under the CrPC for collection of evidence conducted by a police officer. "All" would clearly include proceedings under Section 173(8) as well. Thus, when Section 156(3) states that a Magistrate empowered under Section 190 may order "such an investigation", such Magistrate may also order further investigation under Section 173(8), regard being had to the definition of "investigation" contained in Section 2(h). The "investigation" spoken of in Section 156(3) would embrace the entire process, which begins with the collection of evidence and continues until charges are framed by the Court, at which stage the trial can be said to have begun. The power of the police to further investigate the offence continues right till the stage the trial commences. A criminal trial does not begin after cognizance is taken, but only after charges are framed. Article 21 of the Constitution demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases mid-way through the pre-trial proceedings would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h) and Section 173(8) of the CrPC and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised *suo motu* by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculpating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding.

Thence, what could be culled out from the decision is :

**(1)** Power to make order as to further investigation is available to Magistrate under Section 156(3) CrPC even at post cognizance,

**(2)** Such Power can be exercised until trial commences,

**(3)** This power can also be exercised suo motu by the Magistrate himself, depending on the facts of each case,

**(4)** Magistrate's power under Section 156(3) CrPC is very wide and by virtue of Article 21 of the Constitution of India, all powers necessary, which may also be incidental or implied are available to the Magistrate to ensure proper investigation *vis-a-vis.,* fair and just investigation by police,

**(5)** The term "investigation" under Section 2(h) CrPC includes all proceedings under the Code for collection of evidence conducted by a police officer. "All" would clearly include proceedings under Section 173(8) of the Code as well,

**(6)** The crowning object of all investigation and inquiry, whether by the police or by the Magistrate, is to ensure that those who have actually committed a crime are correctly booked, and those who did not commit the crime are not arraigned to stand trial.

In summary the Supreme Court in Vinubhai's case.,(2019) 17 SCC 1, observed that a fair investigation is a pre-requisite of a fair trial and to a great extent relied upon Article 21 of the Constitution of India, reckoning it to be the directional force for interpretation of all the provisions of the Code of Criminal Procedure. The Supreme Court by virtue of this judgment empowered the Magistrates to direct further investigation *even at a post-cognizance stage till framing of charges which would ultimately help the investigating agencies in registering multiple* FIRs arising out of same cause of action in the event of police unearthing new evidence.

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**JMFC, Spl.Mobile Court,**
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*(Prosecution Replenish conveys its heartfelt thanks to **Sri D.V.R. TejoKarthik,** Judicial Magistrate of First Class, Special Mobile Court, Mahabubnagar, for contributing this article for our leaflet)*

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# CITATIONS

**https://main.sci.gov.in/supremecourt/2021/892/892_2021_34_1502_27998_Judgement_07-May-2021.pdf; TRANSFER PETITION (CRIMINAL) NO. 17 OF 2021 RAJKUMAR SABU Vs M/S SABU TRADE PRIVATE LIMITED; 7th May,2021**

Barring claims being made that the respondents being influential person in Salem, no material has been produced to demonstrate that such perceived influence can impair a neutral trial.

solely based on the fact that one of the parties to that case is unable to follow the language of that Court would not warrant exercise of jurisdiction of this Court under Section 406 of the 1973 Code.

convenience of one of the parties cannot be a ground for allowing his application.

**https://main.sci.gov.in/supremecourt/2021/4836/4836_2021_33_1502_28011_Judgement_12-May-2021.pdf; CRIMINAL APPEAL NO.510 OF 2021 [ARISING OUT OF SLP (CRIMINAL) NO. 1796/2021] GAUTAM NAVLAKHA Vs. NATIONAL INVESTIGATION AGENCY: MAY 12, 2021.**

the power under Section 167 could also be exercised by Courts which are superior to the Magistrate.

broken periods of custody can be counted whether custody is suffered by the order of the Magistrate or superior courts, if investigation remains incomplete after the custody, whether continuous or broken periods pieced together reaches the requisite period; default bail becomes the right of the detained person.

the remand order be it a transit remand order is one which is passed under Section 167 of the Cr.P.C. and though it may be for the production of the Appellant, it involved authorising continued detention within the meaning of Section 167.

It is an indispensable requirement to claim the benefit of default bail that the detention of the accused has to be authorised by the Magistrate.

an order under Section 167 is purely an interlocutory order. No revision is maintainable. A petition under Section 482 cannot be ruled out.

it is clear that if the arrest does not satisfy the requirements of Section 41, the Magistrate is duty bound not to authorize further detention. The Magistrate is to be satisfied that the condition precedent for arrest under Section 41 of the CrPC has being satisfied. He must also be satisfied that all the constitutional rights of the person arrested are satisfied. Therefore, it is not as if an arrest becomes a fait accompli, however, illegal it may be, and the Magistrate mechanically and routinely orders remand. On the other hand, the Magistrate is to be alive to the need to preserve the liberty of the accused guaranteed under law even in the matter of arrest and detention before he orders remand. This is no doubt apart from being satisfied about the continued need to detain the accused.

**This is for the reason that there is an arrest which in the first place sets the ball rolling. Therefore, he has either to be released on bail, if not, he would have to be remanded.**

A transit remand, which was a remand, under Section 167, was passed.

It will be open to courts to order house arrest under Section 167 in appropriate cases with criteria like age, health condition and the antecedents of the accused, the nature of the crime, the need for other forms of custody and the ability to enforce the terms of the house arrest. We would also indicate under Section 309 also that judicial custody being custody ordered, subject to following the criteria, the courts will be free to employ it in deserving and suitable cases.

**https://main.sci.gov.in/supremecourt/2014/5034/5034_2014_35_1501_27915_Judgement_06-May-2021.pdf; 2021 0 Supreme(SC) 236;** Guru Dutt Pathak Vs State of Uttar Pradesh; Criminal Appeal No. 502 of 2015: 06-05-2021

The High Court has rightly observed that when there is a direct evidence in the form of eyewitnesses and the eyewitnesses are trustworthy and reliable, absence of motive is insignificant. In the present case, in the 313 statement itself, the appellant - original accused no.4 has also stated that there was an enmity. Therefore, even according to the accused also, there was an enmity.

**Non-Examination of Independent Witness is not fatal to prosecution**

Even in his 313 statement, the only defence of the appellant -accused no.4 was that he has been falsely implicated in the case due to enmity and that he was not there. He has not led any evidence to prove that he was elsewhere.

**https://main.sci.gov.in/supremecourt/2010/29862/29862_2010_34_1501_27998_Judgement_07-May-2021.pdf; 2021 0 Supreme(SC) 241; MALLAPPA VS STATE OF KARNATAKA; CRIMINAL APPEAL NO.1993 OF 2010 : 07-05-2021 (THREE JUDGE BENCH)**

Club is a common implement which can be found at random in rural households of this country and in absence of any cogent evidence demonstrating that the club seized was used to assault the deceased, the prosecution

Prosecution Replenish

story seeking to establish commission of the offence by circumstantial evidence of discovery of the weapon of assault fails.

**https://main.sci.gov.in/supremecourt/2019/32350/32350_2019_31_1505_28001_Judgement_07-May-2021.pdf; 2021 0 Supreme(SC) 242; SANJAY KUMAR RAI Vs. STATE OF UTTAR PRADESH & ANR.; CRIMINAL APPEAL NO.472 OF 2021 [ARISING OUT OF SPECIAL LEAVE PETITION (CRL.) NO. 10157 OF 2019]: 07-05-2021: (THREE JUDGE BENCH)**

orders framing charges or refusing discharge are neither interlocutory nor final in nature and are therefore not affected by the bar of Section 397 (2) of CrPC.

an order of the Court taking cognizance or issuing processes is an interlocutory order, but the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial.

**https://main.sci.gov.in/supremecourt/2010/17395/17395_2010_31_1504_28001_Judgement_07-May-2021.pdf; 2021 0 Supreme(SC) 243; ACHHAR SINGH Vs. STATE OF HIMACHAL PRADESH: CRIMINAL APPEAL NOS. 1140-1141 OF 2010 WITH BUDHI SINGH Vs. STATE OF HIMACHAL PRADESH: CRIMINAL APPEAL No. 1144 of 2010: 07-05-2021(THREE JUDGE BENCH)**

Merriam-Webster defines the term “exaggerate” as to “enlarge beyond bounds or the truth”. The Concise Oxford Dictionary defines it as “enlarged or altered beyond normal proportions”. These expressions unambiguously suggest that the genesis of an ‘exaggerated statement’ lies in a true fact, to which fictitious additions are made so as to make it more penetrative. Every exaggeration, therefore, has the ingredients of ‘truth’.

An exaggerated statement contains both truth and falsity, whereas a false statement has no grain of truth in it (being the ‘opposite’ of ‘true’).

While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate cour t is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law

Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth.

It is not necessary for the prosecution to examine every cited or possible witness. So long as the prosecution case can withstand the test of proof beyond doubt, non-examination of all or every witness is immaterial.

The court cannot compel the prosecution to examine one witness or the other as its witness.

**https://main.sci.gov.in/supremecourt/2009/38202/38202_2009_31_1503_28001_Judgement_07-May-2021.pdf; 2021 0 Supreme(SC) 244; JAYAMMA & ANR.Vs. STATE OF KARNATAKA; CRIMINAL APPEAL No. 758 OF 2010 WITH LACHMA S/O CHANDYANAIKA & ANR. Vs STATE OF KARNATAKA: CRIMINAL APPEAL No. 573 of 2016: 07-05-2021**

We hasten to add that the law does not compulsorily require the presence of a Judicial or Executive Magistrate to record a dying declaration or that a dying declaration cannot be relied upon as the solitary piece of evidence unless recorded by a Judicial or Executive Magistrate. It is only as a rule of prudence, and if so permitted by the facts and circumstances, the dying declaration may preferably be recorded by a Judicial or Executive Magistrate so as to muster additional strength to the prosecution case.

**CRIMINAL PETITION No.2862 of 2021; 07-05-2021;**

The Court should consider the private complaint under the provision of SC & ST POA act, 1989, without insisting on production of caste certificates of the accused.

**Crl.P.No.3741 of 2018 =; 07-05-2021; Dandamudi Sai Krishna Ravi Sekhar Vs. Nuthakki Sri Lakshmi**

As far as, the offence under Section 498-A of IPC is concerned, the allegations in the charge sheet would not show any allegation against the petitioner for any action in India amounting to an offence under Sections 498-A of IPC or 406 of IPC. As no sanction has been obtained from the central Government, the petitioner cannot be subjected to a trial in relation to this offence.

**http://tshcstatus.nic.in/hcorders/2021/crlp/crlp_3872_2021.pdf; Sri. SHAHID KHAN vs State Of Telangana**

High Court directed to issue SECOND 41A CrPC notice.

**Criminal Procedure Code, 1973 — S. 167(2) — Default bail — Accused's right to default bail — When becomes indefeasible — Scope of such right:** The moment accused files application for bail on default of investigating agency in filing charge-sheet within prescribed period and offers to furnish bail bond as directed by court, he is deemed to have "availed of" his indefeasible right to be released on bail. "Availed of" means actual release from custody by furnishing bail and complying with terms and conditions of bail order within time stipulated by court. **[M. Ravindran v. Directorate of Revenue Intelligence, (2021) 2 SCC 485]**

**Penal Code, 1860 — Ss. 302/34, 324/34, 325/34 and 323:** In this case, there was assault by accused persons using weapons, leading to death of 2 persons and injuries to 3 others. Appellant-accused and 3 others whether shared common intention to murder. Injured witnesses (parents of one deceased victim) were found reliable and truthful. There was no reason why they would falsely implicate another, when deceased was their own minor son. Evidence of injured witnesses stood corroborated by medical evidence. Bloodstained lathi and bloodstained clothes of appellant were recovered on his confession and sharing of common intention to murder on the part of appellant-accused, held, was clearly evident. Hence, conviction of appellant under Ss. 302/34, stood confirmed. **[Asharam Tiwari v. State of M.P., (2021) 2 SCC 608]**

**Penal Code, 1860 — Ss. 376, 376(2)(a), 376(2)(g) & 34 r/w S. 228-A (as inserted by Amendment Act 43 of 1983) — Rape victim:** In this case, victim was held entitled to treatment as rape victim by all authorities for grant of compensation and other rehabilitation measures for herself and her children, such as free education for the children, housing, police security and other measures. Hence, further directions for relief and rehabilitation of victim and her children, in the facts and circumstances of the case, issued. **[X v. State of Jharkhand, (2021) 2 SCC 598]**

**https://indiankanoon.org/doc/95251386/; In Re; Contagion of Covid Virus in prisons in the State of Andhra Pradesh=; 20.05.2021**

Taking into consideration the recommendations made by the High Powered Committee in its meeting held on 12.05.2021 and the order passed by the Division Bench, we not only direct the Principal Secretary, Home Department, to issue directions to the Director General of Police and to Station House Officers of State of Andhra Pradesh to scrupulously follow the directions of the Hon'ble Supreme Court in Arnesh Kumar vs. State of Bihar (supra) referred to above while arresting offenders in relation to the offences punishable with imprisonment for a term which may extend up to 7 years or less, but also direct release on interim bail ali convicts and under trial prisoners who have been released on interim bail earlier pursuant to resolutions of the High Powered Committee on 26.03.2020 and 28.03.2020 and have been re-admitted to the prison, unless otherwise they are disqualified. We also direct the release of other convicts and under trial prisoners who are in custody in connection with offences punishable for a term which may extend up to 7 years or less with or without fine and qualified for such release as per the resolutions of the High Powered Committee dated 26.03.2020 i.e., except those who either second offender or convicted or facing trial for the offence punishable under Section 376 I.P.C. and POCSO Act. Having regard to the difficulty expressed by learned Public Prosecutor in tracing out inter-state dacoits after their release, the accused who are either convicted or facing trial for the offence punishable under Section 395 I.P.C. (dacoity) or Section 397 dacoity with murder, shall not also be given the benefit of interim bail.

We also direct all the Principal District Judges to ensure that the Magistrates of the concerned areas shall make themselves available on being asked by the Superintendent of Jails of that areas for accepting the bail bonds of those who are entitled for release, which shall be to the satisfaction of the said Magistrates. We further direct that the interim bail granted pursuant to this order, shall be for a period of 90 days. Further, an undertaking shall be taken before the release of the convict or under trial prisoner that he/she shall remain in home quarantine, for a period of 14 days in his home under the surveillance of the Doctor or the Police, as the case may be, and in case of any violation, the interim bail granted may be cancelled. Basing on the resolutions of the committee this Court also requests the Principal Secretary, Home, and the Director General of Prisons to ensure adequate transport facilities to the convicts released, enabling them to return to their respective native places keeping in view of the covid guidelines and the restrictions imposed on the movement by the Government. In case of prisoners who are not willing to get themselves released, having regard to the social background and fear of becoming victims of virus, the jail authorities are directed to ensure that proper medical facilities are provided to all prisoners in case of they getting infected with covid. Further, the authorities are directed to take all possible steps to maintain hygiene and also the covid protocols in the prisons so as to prevent transmission of deadly virus amongst the inmates of the prison.

In so far as the inmates of Juvenile Remand Homes are concerned, it is reiterated that considering number of inmates and space available, social distancing shall be maintained. It is needless to mention that even in Juvenile Remand Homes the authorities shall maintain all the Covid protocols. Before parting, we also direct the Director General of Prisons to upload the prison capacity and occupancy in all the jails in the State of Andhra Pradesh on the website of the Jail Department and to share the data with the APSLSA and such data shall also be uploaded on the websites of the APSLSA and the High Court of Andhra Pradesh.

Prosecution Reporter

The above directions shall be remain in force for a period of eight weeks from today and the authorities concerned, including the Principal District Judges, shall forthwith take steps in implementing the directions given above.

**https://main.sci.gov.in/supremecourt/2021/5071/5071_2021_31_1503_28042_Judgement_28-May-2021.pdf; CrlA No. 522/2021; NAthu Singh Vs State of U.P; 28.05.2021**

Even when the Court is not inclined to grant anticipatory bail to an accused, there may be circumstances where the High Court is of the opinion that it is necessary to protect the person apprehending arrest for some time, due to exceptional circumstances, until they surrender before the Trial Court. For example, the applicant may plead protection for some time as he/she is the primary caregiver or breadwinner of his/her family members, and needs to make arrangements for them. In such extraordinary circumstances, when a strict case for grant of anticipatory bail is not made out, and rather the investigating authority has made out a case for custodial investigation, it cannot be stated that the High Court has no power to ensure justice. It needs no mentioning, but this Court may also exercise its powers under Article 142 of the Constitution to pass such an order.

However, such discretionary power cannot be exercised in an untrammeled manner. The Court must take into account the statutory scheme under Section 438, Cr.P.C., particularly, the proviso to Section 438(1), Cr.P.C., and balance the concerns of the investigating agency, complainant and the society at large with the concerns/interest of the applicant. Therefore, such an order must necessarily be narrowly tailored to protect the interests of the applicant while taking into consideration the concerns of the investigating authority. Such an order must be a reasoned one.

**https://main.sci.gov.in/supremecourt/2010/15016/15016_2010_31_1502_28042_Judgement_28-May-2021.pdf ; 2021 0 Supreme(SC) 270; GURMEET SINGH Vs. STATE OF PUNJAB CRIMINAL APPEAL NO. 1731 OF 2010 Decided on : 28-05-2021 THREE JUDGE BENCH**

Therefore, the argument raised by the counsel on behalf of the appellant cannot be accepted as the offences under Section 498-A and Section 304-B, IPC are distinct in nature. Although cruelty is a common thread existing in both the offences, however the ingredients of each offence are distinct and must be proved separately by the prosecution. If a case is made out, there can be a conviction under both the sections.

"soon before her death". This Court in catena of judgments have held that, "soon before" cannot be interpreted to mean "immediately before", rather the prosecution has to show that there existed a "proximate and live link" between the cruelty and the consequential death of the victim.

Section 304-B, IPC does not take a pigeonhole approach in categorizing death as homicidal or suicidal or accidental. The reason for such non categorization is due to the fact that death occurring "otherwise than under normal circumstances" can, in cases, be homicidal or suicidal or accidental."

**https://main.sci.gov.in/supremecourt/2009/70857/70857_2009_31_1501_28042_Judgement_28-May-2021.pdf ; https://indiankanoon.org/doc/59224804/; 2021 0 Supreme(SC) 271; SATBIR SINGH & ANR Vs. STATE OF HARYANA; CRIMINAL APPEAL Nos.1735-1736 OF 2010; 28-05-2021;**

the guidelines relating to trial under Section 304-B, IPC:

i. Section 304-B, IPC must be interpreted keeping in mind the legislative intent to curb the social evil of bride burning and dowry demand.

ii. The prosecution must at first establish the existence of the necessary ingredients for constituting an offence under Section 304-B, IPC. Once these ingredients are satisfied, the rebuttable presumption of causality, provided under Section 113-B, Evidence Act operates against the accused.

iii. The phrase "soon before" as appearing in Section 304-B, IPC cannot be construed to mean 'immediately before'. The prosecution must establish existence of "proximate and live link" between the dowry death and cruelty or harassment for dowry demand by the husband or his relatives.

iv. Section 304-B, IPC does not take a pigeonhole approach in categorizing death as homicidal or suicidal or accidental. The reason for such non categorization is due to the fact that death occurring "otherwise than under normal circumstances" can, in cases, be homicidal or suicidal or accidental.

v. Due to the precarious nature of Section 304- B, IPC read with 113-B, Evidence Act, Judges, prosecution and defence should be careful during conduction of trial.

vi. It is a matter of grave concern that, often, Trial Courts record the statement under Section 313, CrPC in a very casual and cursory manner, without specifically questioning the accused as to his defense. It ought to be noted that the examination of an accused under Section 313, CrPC cannot be treated as a mere procedural formality, as it based on the fundamental principle of fairness. This aforesaid provision incorporates the valuable principle of natural justice "audi alteram partem" as it enables the accused to offer an explanation for the incriminatory material appearing against him. Therefore, it imposes an obligation on the court to question the accused fairly, with care and caution.

vii. The Court must put incriminating circumstances before the accused and seek his response. A duty is also cast on the counsel of the accused to prepare his defense since the inception of the

Prosecution Review

Trial with due caution, keeping in consideration the peculiarities of Section 304-B, IPC read with Section 113-B, Evidence Act.
viii. Section 232, CrPC provides that, "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". Such discretion must be utilized by the Trial Courts as an obligation of best efforts.
ix. Once the Trial Court decides that the accused is not eligible to be acquitted as per the provisions of Section 232, CrPC, it must move on and fix hearings specifically for 'defence evidence', calling upon the accused to present his defense as per the procedure provided under Section 233, CrPC, which is also an invaluable right provided to the accused.
x. In the same breath, Trial Courts need to balance other important considerations such as
the right to a speedy trial. In this regard, we may caution that the above provisions should not be allowed to be misused as delay tactics.
xi. Apart from the above, the presiding Judge should follow the guidelines laid down by this Court while sentencing and imposing appropriate punishment.
xii. Undoubtedly, as discussed above, the menace of dowry death is increasing day by day. However, it is also observed that sometimes family members of the husband are roped in, even though they have no active role in commission of the offence and are residing at distant places. In these cases, the Court need to be cautious in its approach."

## NOSTALGIA

**Reckoning period of detention for Sec 167 Cr.P.C**
in Chaganti Satyanarayan & Ors. v. State of Andhra Pradesh (1986) 3 SCC 141), the period of 90 days will commence only from the date of remand and not from any anterior date in spite of the fact that the accused may have been taken into custody earlier.

**Habeas Corpus Vs Remand**
In State of Maharashtra v. Tasneem Rizwan Siddiquee dated 5th September 2018 of a three judge bench of the Supreme Court in Crl. A. 1124 of 2018, reiterated the settled position in law, as explained in the decisions in Manubhai Ratilal Patel v. State of Gujarat, (2013) 1 SCC 314 and Saurabh Kumar v. Jailor, Koneil Jail, (2014) 13 SCC 436, that once a person is in judicial custody pursuant to a remand order passed by a magistrate in connection with an offence under investigation, a writ of habeas corpus is not maintainable.

**Role of prosecution to explain the injuries on accused:**
In the case of Takhaji Hiraji v. Thakore Kubersing Chamansing (2001) 6 SCC 145 in paragraph 18, which reads as under:

> "17. ... the view taken consistently is that it cannot be held as a matter of law or invariably a rule that whenever the accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so the prosecution case should be disbelieved. Before non-explanation of the injuries on the persons of the accused persons by the prosecution witnesses may affect the prosecution case, the court has to be satisfied of the existence of two conditions: (i) that the injury on the person of the accused was of a serious nature; and (ii) that such injuries must have been caused at the time of the occurrence in question. Non-explanation of injuries assumes greater significance when the evidence consists of interested or partisan witnesses or where the defence gives a version which competes in probability with that of the prosecution. Where the evidence is clear, cogent and creditworthy and where the court can distinguish the truth from falsehood the mere fact that the injuries on the side of the accused persons are not explained by the prosecution cannot by itself be a sole basis to reject the testimony of the prosecution witnesses and consequently the whole of the prosecution case.
> 18. The High Court was therefore not right in overthrowing the entire prosecution case for non-explanation of the injuries sustained by the accused persons."
> 19. The injuries of serious nature received by the accused in the course of the same occurrence would indicate that there was a fight between both the parties. In such a situation, the question as to the genesis of the fight, that is to say, the events leading to the fight and which party initiated the first attack assumes great importance in reaching the ultimate decision. It is here that the need to explain the injuries of serious nature received by the accused in the course of same occurrence arises. When explanation is given, the correctness of the explanation is liable to be tested. If there is an omission to explain, it may lead to the inference that the prosecution has suppressed some of the relevant details concerning the incident. The Court has then to consider whether such omission casts a reasonable doubt on the entire prosecution story or it will have any effect on the other reliable evidence available

having bearing on the origin of the incident. Ultimately, the factum of non-explanation of injuries is one circumstance which has to be kept in view while appreciating the evidence of prosecution witnesses. In case the prosecution version is sought to be proved by partisan or interested witnesses, the non-explanation of serious injuries may prima facie make a dent on the credibility of their evidence. So also where the defence version accords with probabilities to such an extent that it is difficult to predicate which version is true, then, the factum of non-explanation of the injuries assumes greater importance. Much depends on the quality of the evidence adduced by the prosecution and it is from that angle, the weight to be attached to the aspect of non-explanation of the injuries should be considered. The decisions above-cited would make it clear that there cannot be a mechanical or isolated approach in examining the question whether the prosecution case is vitiated by reason of non-explanation of injuries. In other words, the non-explanation of injuries of the accused is one of the factors that could be taken into account in evaluating the prosecution evidence and the intrinsic worth of the defence version."

**Non-Examination of Independent Witness is not fatal to prosecution**

In the case of Manjit Singh v. State of Punjab (2019) 8 SCC 529, it is observed and held by this Court that reliable evidence of injured eyewitnesses cannot be discarded merely for reason that no independent witness was examined.

In the recent decision in the case of Surinder Kumar v. State of Punjab (2020) 2 SCC 563, it is observed and held by this Court that merely because prosecution did not examine any independent witness, would not necessarily lead to conclusion that accused was falsely implicated.

In the case of Rizwan Khan v. State of Chhattisgarh (2020) 9 SCC 627, after referring to the decision of this Court in the case of State of H.P. v. Pardeep Kumar (2018) 13 SCC 808, it is observed and held by this Court that the examination of independent witnesses is not an indispensable requirement and such non-examination is not necessarily fatal to the prosecution case.

# NEWS

- Part II- Section 3 –Sub-Section(II)- The Central Government Hereby Appoints 01st Day Of June 2021 As The Date From Which The Certificate Of Disability Will Only Be Granted On Unique Disability Identity Card Portal
- A.P. COVID-19 - NOTIFICATION OF MUCORMYCOSIS UNDER EPEDEMIC DISEASES ACT, 1897. **[G.O.Ms.No.56, Health, Medical & Family Welfare (B2), 20th May, 2021.]**
- Orders Of Conferring Of Special Executive Magisterial Powers On Ten (10) Ias Probationers Of 2020 Batch. **[G.O.Rt.No.451, Law (L & LA & J - Home - Courts.B), 4th May, 2021.]**
- List Of Socially And Educationally Backward Classes - Concessions In Regard To Reservations In Services And Educational Institutions - Extension For A Further Period Of 10 Years. **[G.O.Ms.No.3, Backward Classes Welfare (F),19th May, 2021.]**
- Setting Up Of Anti Human Trafficking Units (AHTU's) In Ten Districts Of A.P. At Chittoor, East Godavari, Kadapa, Kurnool, Krishna, Nellore, Prakasam, Srikakulam, Visakhapatnam And Vizianagaram For Preventing And Combating Crime Of Trafficking In Persons Police Station Status To Proposed Ten (10) AHTU's Along With Existing Three (3) AHTU's At Eluru, Guntur, Ananthapur (Total 13 AHTU's) With Dedicated Team Of Officers. **[G.O.Ms.No.47, Home (Services.III), 18th May, 2021.]**
- Sanctioned Orders Issued To Award Of Pathakams For The Personnel Working Under The Control Of The Director General, Anti Corruption Bureau, Andhra Pradesh, Vijayawada On The Eve Of "Ugadi" (Telugu New Year's Day) 2020. **[G.O.Ms.No.45, Home (SC.A), 7th May, 2021.]**
- Sanctioned Orders Issued To Award Of Pathakams For Police And Fire Services Officers / Men On The Eve Of Ap Formation Day 2020 I.E., 1st November, 2020. **[G.O.Ms.No.44, Home (SC.A), 7th May, 2021.]**
- Appointment Of Special Judicial Magistrates Of II Class In Krishna, Kadapa, East Godavari, West Godavari.

**THE COPIES OF THESE CIRCULARS, GAZETTES MENTIONED IN NEWS SECTION OF THIS LEAFLET ARE AVAILABLE IN OUR "PROSECUTION REPLENISH" CHANNEL IN TELEGRAM APP. *http://t.me/prosecutionreplenish* AND ALSO ON OUR WEBSITE** http://prosecutionreplenish.com/

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# ON A LIGHTER VEIN

A college student group asked a lawyer
"Sir, what does 'advocacy' mean?"
The lawyer replied:
"I will present an example for this
Suppose two people come to me, one is very clean and the other is very dirty. I advise both of them to get clean and take bath.
Now you guys tell me, who among them will take a shower ?? "
One student said: "The one who is dirty will take a shower."
The lawyer said:
"No, but the clean person will do it, because he has the habit of bathing, while the dirty does not know the importance of cleaning
Now tell me who will take a shower ?? "
The second student said: "Clean person"
The lawyer said:
"No, but the dirty person will take a bath because he is the one who needs cleaning.
Now tell who will take a shower ?? "
Two students said: "The one who is dirty will take a shower."
The lawyer said:
"No, but both will take a bath because the clean person has a habit of bathing, while the dirty one needs a bath.
Now tell me again who will take a shower ?? "
Now three students speak together: "Both of them will take a shower."
The lawyer said:
"Wrong, no one will take a bath, because the dirty is not used to bathing, whereas clean one does not need to bath
Now tell me once again who will take a shower ?? "
A student politely said:
"Sir, you give a different answer every time and every answer seems to be correct. How do we know the correct answer ???"
The lawyer said:
"This is just 'advocacy'! It is not important what the reality is,
The important thing is, how many possible arguments can you offer to prove your point"

While due care is taken while preparing this information. The patrons are requested to verify and bring it to the notice of the concerned regarding any misprint or errors immediately, so as to bring it to the notice of all patrons. Needless to add that no responsibility for any result arising out of the said error shall be attributable to the publisher as the same is inadvertent.

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NOTICE:

- ✓ For the notice of the Patrons preparing the articles for the commemorative edition of our leaflet,
- ✓ We have received the articles on the following subjects, so please avoid them in your preparation.
  - Should Perjury & Hostility Win?


# 93-Year-Old Man becomes the Oldest Indian to Beat COVID-19

A 93-year-old & his 88-year-old wife got infected from their daughter & son-in-law, who returned from Italy

The nonagenarian also suffers from hypertension & diabetes which puts him more at risk

After being treated at Kottayam Medical College Hospital, Kerala both tested negative & have been discharged

The couple's recovery has been hailed by medical professionals as 'Ray of Hope'

Dated: 23 April, 2020


# Meet Nitai Das Mukherjee The Man Who Survived 38 Days on a Ventilator

The 52-year-old Social worker tested positive for COVID-19 was admitted at AMRI Dhakuria hospital, Kolkata on 29th March

As his condition worsened, tracheostomy was performed & kept on ventilator for 38 days,by far the longest on life support for COVID-19

After an immense struggle for 42 days, he left for home on 8th May amidst applause from the medicos & his well wishers

His recovery is a great success for our Covid warriors who are fighting this deadly virus day & night

Photo credit : https://www.bbc.com/news/world-asia-india-52874008

Dated: 24 June, 2020


# Meet the 94-yr-old woman & her 71-yr-old daughter who recovered from COVID

After testing positive, 94-year-old Gowri & her daughter Jayalakshmi were admitted to Prime India Hospital in Arumbakkam, Chennai

After intense treatment for five days, the duo tested negative of the virus

They were discharged on August 26 after recovering from Coronavirus

Dated: 7 September, 2020


# Meet Reshma Mohandas

## A Nurse Who Beat COVID-19, Back to Work Saving Lives

Reshma contracted the virus while treating Kerala's oldest couple, 93-year-old Thomas & 88-year-old Mariyamma

The 32-year-old nurse was treated at Kottayam Medical College in isolation ward

On April 3, Reshma was discharged, but resolved to return & serve patients

She resumed her work after days of mandatory quarantine receiving praises for her dedication & selfless service

Dated: 21 May, 2020

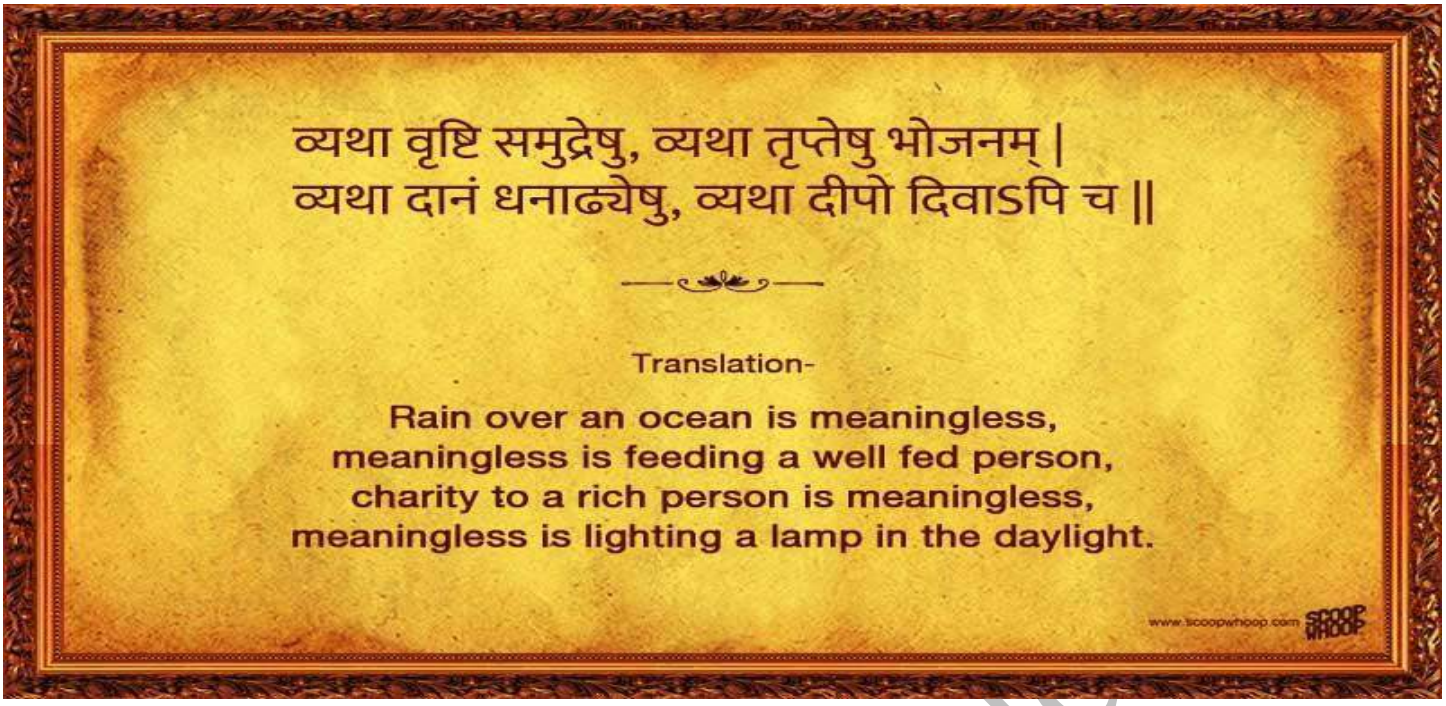
Vol- X
Part-7

# Prosecution Replenish

An Endeavour for Learning and Excellence

## July, 2021

AanoBhadraKrtavoYantuVishwatah.(RIG VEDAM)
"Let Noble Thoughts Come To Me From All Directions"




## *EVALUATION OF EVIDENCE OF SOLITARY EYEWITNESS IN CRIMINAL CASES*

### ➢ *INTRODUCTION*

It is a cardinal principle of criminal jurisprudence that prosecution has to prove its case by establishing the guilt of the accused. In criminal cases the standard of proof for establishing the guilt of the accused is proof beyond reasonable doubt. The Evidence Act envisages that a fact is to be proved and a fact can be proved either by oral evidence *i.e.*, statements made by the witnesses in the court or by documentary evidence. Section 59 of Evidence Act states that all facts, except the contents of documents or electronic records, may be proved by oral evidence. Chapter IX of Evidence Act deals with *"Of Witnesses".* Section 118 of the Evidence Act deals with Who may testify. Every person is competent to testify unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions due to tender years, extreme old age, disease whether of body or mind or any other cause of same kind. However, as per the explanation to the section a lunatic is competent to testify unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them. Section 134 of Evidence Act deals with the number of witnesses required to prove a fact or facts. The Section says that no particular number of witnesses shall in any case be required for proof of any fact. This section emphasizes the importance of quality rather than quantity. Section 134 acknowledges the well recognized maxim that evidence has to be weighed and not counted. It is a daunting task to judge whether a witness is speaking truth or not. The evidence or testimony of a witness depends upon several factors. The reliability of the evidence of the eye-witness generally depends upon the accuracy of the observation of the events which the witness describes, the correctness and the extent of what the witness remembers and the veracity of the witness. Witnesses are the eyes and ears of justice. The evidence of eyewitness requires careful assessment and evaluation for its credibility. The credibility of a witness is tested by way of cross-examination. The correct method of evaluation and assessing evidence of a witness is by scrutinizing it on its merits. Minor contradictions and omissions cannot be the basis for rejecting the evidence of eye witness or witnesses.

The Hon'ble Supreme Court of India in ***Himanshu Singh Sabharwal V. State of Madhya Pradesh and Ors.,(2008) 4 SCR 783*** enunciated the importance of witness in criminal trial and held as follows:

"14. "Witnesses" as Benthem said are the eyes and ears of justice. Hence, the importance and primacy of the quality of trial process. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralyzed, and it no longer can constitute a fair trial. The incapacitation may be due to several factors like the witness being not in a position for reasons beyond control to speak the truth in the Court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by Courts on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary considerations at the instance of those in power, their henchmen and hirelings, political clouts and patronage and innumerable other corrupt practices ingenuously adopted to smoother and stifle truth and realities coming out to surface rendering truth and justice, to become ultimate casualties. Broader public and societal interests require that the victims of the crime who are not ordinarily parties to prosecution and the interests

Prosecution Repo

of State represented by their prosecuting agencies do not suffer even in slow process but irreversibly and irretrievably, which if allowed would undermine and destroy public confidence in the administration of justice, which may ultimately pave way for anarchy, oppression and injustice resulting in complete breakdown and collapse of the edifice of rule of law, enshrined and jealously guarded and protected by the Constitution. There comes the need for protecting the witness. Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that ultimate truth is presented before the Court and justice triumphs and the trial is not reduced to mockery. The State has a definite role to play in protecting the witnesses, to start with at least in sensitive cases involving those in power, who has political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty. As a protector of its citizens it has to ensure that during a trial in Court the witness could safely depose truth without any fear of being haunted by those against whom he has deposed. Some legislative enactments like the Terrorist and Disruptive Activities (Prevention) Act, 1987 (in short the 'TADA Act') have taken note of the reluctance shown by witnesses to depose against dangerous criminals-terrorists. In a milder form also the reluctance and the hesitation of witnesses to depose against people with muscle power, money power or political power has become the order of the day. If ultimately truth is to be arrived at, the eyes and ears of justice have to be protected so that the interests of justice do not get incapacitated in the sense of making the proceedings before Courts mere mock trials as are usually seen in movies.

15. Legislative measures to emphasize prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the Courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair as noted above to the needs of the society. On the contrary, the efforts should be to ensure fair trial where the accused and the prosecution both get a fair deal. Public interest in the proper administration of justice must be given as much importance if not more, as the interests of the individual accused. In this courts have a vital role to play."

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- ***WHAT ARE THE GUIDING PRINCIPLES FOR THE COURTS IN APPRECIATING THE EVIDENCE OF SINGLE EYE-WITNESS. IS IT NECESSARY THAT THE TESTIMONY OF SINGLE EYEWITNESS REQUIRES CORROBORATION***

The Hon'ble Supreme Court of India in ***Vadivelu Thevar V. The State of Madras, AIR 1957 SC 614*** held that the following propositions are firmly established (1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character. (2) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character. (3) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes. Section 134 of the Indian Evidence Act has categorically laid it down that *"no particular number of witnesses shall in any case be required for the proof of any fact."* The legislature determined, as long ago as in 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. The section enshrines the well recognized maxim that *"Evidence has to be weighed and not counted".* Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. It is a sound and well- established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for, proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

In the first category of proof, the court should have no difficulty in coming to its conclusion either way-it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court, equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony.

In ***Shivaji Sahebrao Bobade & Anr V. State of Maharashtra., (1973) 2 SCC 793,*** the Court held that even where a case hangs on the evidence of a single eye witness it may be enough to sustain the conviction given sterling testimony of a competent, honest man although as a rule of prudence courts call for corroboration. "It is a platitude to say that witnesses have to be weighed and not counted since quality matters more than quantity in human affairs".

In ***Anil Phukan V. State of Assam., (1993) 3 SCC 282 ,*** the Court observed; "Indeed, conviction can be based on the testimony of a single eye witness and there is no rule of law or evidence which says to the contrary provided the sole witness passes the test of reliability. So long as the single eye-witness is a wholly reliable witness the courts have no difficulty in basing conviction on his testimony alone. However, where the single eye witness is not found to be a wholly reliable witness, in the sense that there are some circumstances which may show that he could have an interest in the prosecution, then the courts generally insist upon some independent corroboration of his testimony, in material particulars, before recording conviction. It is only when the courts find that the single eye witness is a wholly unreliable witness that his testimony is discarded in toto and no amount of corroboration can cure that defect."

In ***Jagdish Prasad and Others V. State of Madhya Pradesh, AIR 1994 SC 1251,*** the Court held that as a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Indian Evidence Act, 1872. But, if there are doubts about the testimony the courts will insist on corroboration. It is for the court to act upon the testimony of witnesses. It is not the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. On this principle stands the edifice of Section 134 of the Evidence Act. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise.

In ***Kartik Malhar V. State of Bihar., (1996) 1 SCC 614,*** referring to several cases, the Court observed that "On a conspectus of these decisions, it clearly comes out that there has been no departure from the principles laid down in Vadivelu Thevar case and, therefore, conviction can be recorded on the basis of the statement of a single eye witness provided his credibility is not shaken by any adverse circumstance appearing on the record against him and the court, at the same time, is convinced that he is a truthful witness. The court will not then insist on corroboration by any other eye witness particularly as the incident might have occurred at a time or place when there was no possibility of any other eye witness being present. Indeed, the courts insist on the quality, and, not on the quantity of evidence."

In ***Chittar Lal V. State of Rajasthan.,(2003) 6 SCC 397*** the Court had an occasion to consider the sole testimony of a young boy of 15 years whose evidence was relied upon for recording an order of conviction. The court held that the legislative recognition of the fact that no particular number of witnesses can be insisted upon is amply reflected in Section 134 of the Indian Evidence Act, 1872. Administration of justice can be affected and hampered if number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of one witness, leaving aside those cases which are not of unknown occurrence where determination of guilt depends entirely on circumstantial evidence. If plurality of witnesses would have been the legislative intent cases where the testimony of a single witness only could be available, in number of crimes offender would have gone unpunished. It is the quality of evidence of the single witness whose testimony has to be tested on the touchstone of credibility and reliability. If the testimony is found to be reliable, there is no legal impediment to convict the accused on such proof. It is the quality and not the quantity of evidence which is necessary for proving or disproving a fact.

In ***Bhimapa Chandappa Hosamani and Others V. State Of Karnataka.,(2006) 11 SCC 323,*** the Court held that testimony of a solitary witness can be made the basis of conviction. The credibility of the witness requires to be tested with reference to the quality of his evidence which must be free from blemish or suspicion

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and must impress the Court as natural, wholly truthful and so convincing that the Court has no hesitation in recording a conviction solely on his uncorroborated testimony.

In ***Namdeo V. State of Maharashtra,(2007) 14 SCC 150.,*** the Court observed that Indian legal system does not insist on plurality of witnesses. Neither the Legislature (Section 134 of Evidence Act, 1872) nor the judiciary mandates that there must be particular number of witnesses to record an order of conviction against the accused. Our legal system has always laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. The bald contention that no conviction can be recorded in case of a solitary eye witness, therefore, has no force and must be negatived.

In ***Vithal Pundalik Zendge V. State of Maharashtra, AIR 2009 SC 1110,*** the Hon'ble Supreme Court while dealing with the question whether in a murder case the court should insist upon plurality of witnesses. The Hon'ble Supreme Court observed that as a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character. Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character. Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes. Therefore, there is no hesitation in holding that the contention that in a murder case the court should insist upon plurality of witnesses, is much too broadly stated.

In ***Rai Sandeep @ Deepu V. State of NCT of Delhi.,(2012) 8 SCC 21*** it was observed by the Supreme Court that 'sterling witness' should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross- examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.

- ***IN ORDER TO PROVE THE GUILT OF THE ACCUSED IS IT NECESSARY TO EXAMINE ALL THOSE PERSONS WHO WERE PRESENT AT THE SPOT AND WITNESSED THE INCIDENT OR EVIDENCE OF SINGLE WITNESS IS SUFFICIENT***

In ***S.P.S. Rathore V. C.B.I & Anr, AIR 2016 SC 4486*** it was held that no particular number of witnesses is required for proving a certain fact. It is the quality and not the quantity of the witnesses that matters. Evidence is weighed and not counted. Evidence of even a single eye witness, truthful, consistent and inspiring confidence is sufficient for maintaining conviction. It is not necessary that all those persons who were present at the spot must be examined by the prosecution in order to prove the guilt of the accused. Having examined all the witnesses, even if other persons present nearby are not examined, the evidence of eye-witnesses cannot be discarded.

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➢ ***CAN THE EVIDENCE OF SOLITARY EYE- WITNESS WHO HAPPENED TO BE A CHANCE WITNESS AND WHO GAVE DIFFERENT VERSIONS ABOUT THE INCIDENT BE RELIED***

A 3 judge bench of the Hon'ble Supreme Court of India in ***Shankarlal V. State Of Rajasthan, AIR 2004 SC 3559*** held that where the solitary eye-witness was a chance witness whose presence at the spot was highly doubtful and he did not tell any one about the incident though several persons were available and gave conflicting versions about the incident, his evidence cannot be relied.

➢ ***ONLY EYE WITNESS IS THE RELATIVE OF THE DECEASED/VICTIM. WHETHER SUCH EVIDENCE IS TO BE DISCARDED AS IT HAS NOT BEEN CORROBORATED IN MATERIAL PARTICULARS BY OTHER WITNESSES***

In ***Namdeo V. State of Maharashtra, (2007) 14 SCC 150.,*** the Court observed that a witness who is a relative of the deceased or victim of a crime cannot be characterized as 'interested'. The term 'interested' postulates that the witness has some direct or indirect 'interest' in having the accused somehow or other convicted due to animus or for some other oblique motive.

In ***Sambhu Das @ Bijoy Das & Anr V. State of Assam., (2010) 10 SCC 374,*** the Court dealt with the evaluation of evidence of the wife of the deceased on whom the prosecution case solely rested. The Court observed that the wife of the deceased had withstood the test of cross examination and there were no significant contradictions from her previous statement though her statement was recorded under Section 161 Cr.P.C., she had not implicated four other accused persons but certainly implicated the appellants and two other accused persons. Merely because she has made some improvement in the FIR lodged by her, totally her testimony cannot be discarded and further her testimony was corroborated by autopsy report.

In ***Mano Dutt & Anr V. State of Uttar Pradesh., (2012) 4 SCC 79,*** the Supreme Court held that more often than not, in cases involving family members of both sides, it is a member of the family or a friend who comes to rescue the injured. Those alone are the people who take the risk of sustaining injuries by jumping into such a quarrel and trying to defuse the crisis. The Court can convict an accused on the statement of a sole witness, even if he was a relative of the deceased and thus, an interested party. The condition precedent to such an order is that the statement of such witness should satisfy the legal parameters namely credible, reliable, trustworthy, admissible in accordance with the law. Once those parameters are satisfied and the statement of the witness is trustworthy, cogent then the Court would not fall in error of law in relying upon the statement of such witness. It is only when the Courts find that the single eye-witness is wholly unreliable witness that his testimony is discarded in toto and no amount of corroboration can cure its defect. There would hardly be any reason for the Court to reject such evidence merely on the ground that the witness was family member or interested witness or person known to the affected party. There can be cases where it would be but inevitable to examine such witness because, as the events occurred, he would be the natural or the only eye witness available to give the complete version of the incident.

In ***Satbir Singh and Ors V. State of Uttar Pradesh., (2009) 13 SCC 790,*** the Court held it is now a well-settled principle of law that only because the witness/witnesses is/are not independent one/ones may not by itself be a ground to discard the prosecution case. If the prosecution case has been supported by the witness/witnesses and no cogent reason has been shown to discredit his/their statement/statements, a judgment of conviction can certainly be based thereupon.

In ***Dalip Singh and Ors V. State of Punjab., AIR 1953 SC 364.,*** it has been laid down that a witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last person to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts.

➢ ***IN CASE OF UNLAWFUL ASSEMBLY WITH A LARGE NUMBER OF ACCUSED, WHETHER THE EVIDENCE OF SINGLE EYE-WITNESS IS SUFFICIENT TO CONVICT THE ACCUSED***

The Hon'ble Supreme Court of India ***Masalti V. State of Uttar Pradesh., AIR 1965 SC 202,*** wherein the Court observed that under the Indian Evidence Act, trustworthy evidence given by a single witness would be enough to convict an accused person, whereas evidence given by half a dozen witnesses which is not trustworthy would not be enough to sustain the conviction. That, no doubt is true, but where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or

Prosecution Replenish

more witnesses who give a consistent account of the incident. In a sense, the test may be described as mechanical, but it is difficult to see how it can be treated as irrational or unreasonable.

In ***Muthu Naicker and Others V. State of Tamil Nadu, AIR 1978 SC 1647,*** the court held in a situation where a witness has been attacked by the members of an unlawful assembly composed of a large number of persons, the court should carefully consider the question of the credibility of such a witness. Where the court is of the view that the testimony of such a witness is in the facts and circumstances of the case not reliable, it should insist that such testimony be corroborated by one or more other witness before it can be accepted by the court.

In ***Binay Kumar Singh V. State of Bihar, AIR 1997 SC 322,*** the Hon'ble Supreme Court held that there is no rule of evidence that no conviction can be based unless a certain minimum number of witnesses have identified a particular accused as a member of the unlawful assembly. It is axiomatic that evidence is not to be counted but only weighed and it is not the quantity of evidence but the quality that matters. Even the testimony of one single witness, if wholly reliable, is sufficient to establish the identification of an accused as a member of an unlawful assembly. All the same, where the size of the unlawful assembly is quite large and many persons would have witnessed the incident, it would be prudent exercise to insist on at least two reliable witnesses to vouchsafe the identification of an accused as a participant.

In ***Ranjit Singh V. State of Madhya Pradesh, AIR 2011 SC 255,*** the Hon'ble Supreme Court held that in a case involving an unlawful assembly with a large number of persons, there is no rule of law that states that there cannot be any conviction on the testimony of a sole eye-witness, unless that the court is of the view that the testimony of such sole eye-witness is not reliable. Though, generally it is a rule of prudence followed by the courts that a conviction may not be sustained if it is not supported by two or more witnesses who give a consistent account of the incident in a fit case the court may believe a reliable sole eye-witness if in his testimony he makes specific reference to the identity of the individual and his specific overacts in the incident. The rule of requirement of more than one witness applies only in a case where a witness deposes in a general and vague manner, or in the case of a riot.

- ***EVALUATION AND APPRECIATION OF THE EVIDENCE OF INJURED WHO IS THE SOLE WITNESS***

In ***Brahm Swaroop & Anr V. State of Uttar Pradesh, AIR 2011 SC 280,*** the Supreme Court observed and held that Injured witness in the case has been examined, his testimony cannot be discarded, as his presence on the spot cannot be doubted, particularly, in view of the fact that immediately after lodging of FIR, the injured witness had been medically examined without any loss of time on the same day. The injured witness had been put through a grueling cross-examination but nothing can be elicited to discredit his testimony. 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".

The evidence of the stamped witness must be given due weightage as his presence on the place of occurrence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present at the time of occurrence. Thus, the testimony of an injured witness is accorded a special status in law. Such a witness 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". Thus, the evidence of an injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. ***(See: Bhajan Singh @ Harbhajan Singh & Ors V. State of Haryana., AIR 2011 SC 2552., and Abdul Sayeed V. State Of Madhya Pradesh., (2010) 10 SCC 259)***

In ***State of U.P V. Naresh and Ors., (2011) 4 SCC 324.***, it was held by the Supreme Court that the evidence of an injured witness must be given due weight-age being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless

Prosecution Replenish

there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. Mere contradictions on trivial matters could not render his deposition untrustworthy.

➢ ***WHETHER MINOR DISCREPANCIES IN THE EVIDENCE OF EYE WITNESS AFFECT THE CORE OF PROSECUTION'S CASE***

The Hon'ble Supreme Court of India in ***State of Uttar Pradesh V. M.K. Anthony., AIR 1985 SC 48,*** held that 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 scrutinize the evidence more particularly keeping in view the deficiencies, draw-backs 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.

It is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the prosecution's case, may not prompt the Court to reject the evidence in its entirety. "Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions." Difference in some minor detail, which does not otherwise affect the core of the prosecution case, even if present, would not itself prompt the court to reject the evidence on minor variations and discrepancies. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution witness. As the mental capabilities of a human being cannot be expected to be attuned to absorb all the details, minor discrepancies are bound to occur in the statements of witnesses. ***(See: State Represented by Inspector of Police V. Saravanan & Anr., AIR 2009 SC 152).***

In ***Bharwada Bhoginbhai Hirjibhai vs State Of Gujarat., AIR 1983 SC 753*** it was observed that undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the root of the matter and shake the basic version of the prosecution witnesses. A witness cannot be accepted to possess a photographic memory and to recall the deals of an incident verbatim. Ordinarily, it so happens that a witness is overtaken by events. A witness could not have been anticipated the occurrence which very often has an element of surprise. The mental faculties cannot, therefore, be expected to be attuned to absorb all the details. Thus, minor discrepancies were bound to occur in the statement of witnesses.

In ***Sunil Kumar V. State Govt. of NCT of Delhi., AIR 2004 SC 552,*** it was held that merely because of the fact that there were some minor omissions, which are but natural, considering the fact that the examination in court took place years after the occurrence the evidence does not become suspect. Necessarily there cannot be exact and precise reproduction in any mathematical manner. What needs to be seen is whether the version presented in the court was substantially similar to what was stated during investigation. It is only when exaggerations fundamentally change the nature of the case, the court has to consider whether the witness was telling the truth or not.

➢ ***EVALUATION AND RELIABILITY OF DEFENCE WITNESS***

In the Hon'ble Supreme Court of India in ***Munshi Prasad and Others V. State of Bihar, AIR 2001 SC 3031,*** it was held that the evidence tendered by the defence witness cannot always be termed to be a tainted one by reason of the factum of the witness being examined by the defence. The defence witness is entitled to equal respect and treatment as that of the prosecution. The issue of credibility and the trustworthiness ought also to be attributed to the defence witness at par with that of the prosecution witness. A lapse on the part of the defence witness cannot be differentiated and be treated differently than that of the prosecutors' witness or witnesses.

➢ ***CONCLUSION***

In summing up it need not be over emphasized that the Court can record conviction of the accused on the basis of the evidence of solitary witness without insisting on corroboration provided the evidence of solitary eye witness is unblemished, reliable, cogent, credible, trustworthy and admissible in accordance with the law. The question of seeking corroboration arises only when the evidence deposed by the witness is not wholly reliable to inspire confidence in the mind of the Court about the involvement of the accused in the imputed crime. Truth is the

Prosecution Rejoinder

quintessence of justice. The role of an eyewitness is of paramount importance in the administration of justice and in justice delivery system. An eyewitness plays a stellar role in the system and the evidence of eye witness is significant for the trial process and to maintain the justness of the justice delivery system.

**DVRTejoKarthik**
**JMFC, Spl.Mobile Court,**
**Mahabubnagar**

*(Prosecution Replenish conveys its heartfelt thanks to **Sri D.V.R. TejoKarthik,** Judicial Magistrate of First Class, Special Mobile Court, Mahabubnagar, for contributing this article for our leaflet)*

# CITATIONS

**2021 0 Supreme(SC) 277; Sorathia Bindi Vs. The State of Gujarat & Anr; SLA (Crl.) No(s). 3162 of 2021; 01-06-2021;**

In such serious matter, when the High Court exercised its power of granting ad interim protection from arrest to the respondent no.2 herein, the least that is expected by the High Court is to record some reasons as to why it chooses to exercise its extra-ordinary jurisdiction.

**2021 0 Supreme(SC) 278; IN RE : CONTAGION OF COVID 19 VIRUS IN PRISONS; IA No. 63600, 63602 & 63598 of 2021; 01-06-2021**

The order dated 07.05.2021 passed by this Court pertains to parole and interim bail.

The non-consideration of the pre-mature release of prisoners by this Court in its order dated 07.05.2021 shall not deter the competent authorities to consider the pre-mature release of the prisoners in accordance with law.

**2021 0 Supreme(SC) 283; IN RE CONTAGION OF COVID 19 VIRUS IN CHILDREN PROTECTION HOMES; SMW (C) NO.4 OF 2020 (IA No. 64373 of 2021); 07-06-2021.**

(1) The State Governments/Union Territories are directed to continue identifying the children who have become orphans or lost a parent after March, 2020 either due to Covid-19 or otherwise and provide the data on the website of the NCPCR without any delay. The identification of the affected children can be done through Childline (1098), health officials, Panchayati Raj Institutions, police authorities, NGOs etc.

(2) The DCPU is directed to contact the affected child and his guardian immediately on receipt of information about the death of the parent/parents. Assessment shall be made about the suitability and willingness of the guardian to take care of the child. The DCPU should ensure that adequate provisions are made for ration, food, medicine, clothing etc. for the affected child. Financial assistance to which the disconsolate child is entitled to under the prevailing schemes by the Central Government and the State Governments/Union Territories should be provided without any delay.

(3) The DCPO should furnish his phone number and the name and phone number of the local official who can be contacted by the guardian and the child. There should be a regular follow up by the concerned authorities with the child at least once in a month.

(4) If the DCPO is of the prima facie opinion that the guardian is not suitable to take care of the child, he should produce the child before the CWC immediately.

(5) CWC should provide for the essential needs of the child during the pendency of the inquiry without fail. The inquiry should be completed expeditiously. CWC shall ensure that all financial benefits to which the child is entitled are provided without any delay.

(6) The State Governments/Union Territories are directed to make provisions for continuance of education of the children both in Government as well as in private schools.

(7) The State Governments/Union Territories are directed to take action against those NGOs/individuals who are indulging in illegal adoptions.

(8) Wide publicity should be given to the provisions of the JJ Act, 2015 and the prevailing schemes of the Union of India and the State Governments/Union Territories which would benefit the affected children.

(9) DPCO shall take the assistance of government servants at the Gram Panchayat level to monitor the welfare of the disconsolate children who are devastated by the catastrophe of losing their parent/parents.

**2021 0 Supreme(SC) 277; Sorathia Bindi Vs.The State of Gujarat & Anr.; Petition(s) for Special Leave to Appeal (Crl.) No(s). 3162 of 2021 (Arising out of impugned final judgment and order dated 16-03-2021 in CRLMA No. 4045/2021 passed by the High Court Of Gujarat At Ahmedabad)**
**Decided On : 01-06-2021;**
Petitioner allowed to apply for assisting prosecution and also to be granted an opportunity to be heard, in Sessions case.
High Court has to record reasons, for extending protection from arrest, in an application for anticipatory bail.

**http://tshcstatus.nic.in/hcorders/2021/crlrc/crlrc_133_2021.pdf; CRLRC No.133 OF 2021: 01-06-2021; A. Revanth Reddy Vs. The State of Telangana through ACB, CIU, Hyderabad.**
The principle laid down by the Apex Court in P.V. Narasimha Rao v. State (CBI/SPE) {(1998) 4 SCC 626} with regard to the finding that a Member of Parliament is a public servant and whether the immunity granted can or cannot extend to cases where bribery for making a speech or vote in a particular manner in the House, is referred to a larger bench in Sita Soren v. Union of India{Crl.A. No.451 of 2019}. The judgments relied on by the petitioner shows that act of casting of vote by the de facto complainant is merely exercise of franchise and not proceedings of legislative.

**http://tshcstatus.nic.in/hcorders/2021/crlp/crlp_4327_2021.pdf; CRLP No.4327 OF 2021;10.6.2021; Rekulapally Ramesh Babu vs The State of Telangana and another**
Police having already issued 41A CrPC notice are directed to follow 41A CrPC notice and the guidelines in Arnesh Kumar Vs State of Bihar and not to arrest the petitioners.

**http://tshcstatus.nic.in/hcorders/2020/crlp/crlp_2041_2020.pdf; CRLP No. 2041 of 202: 9.6.2021 : Sriram Bhadraiah,vs Jogiparthy Venkatesh Gupta,**
Having regard to the facts and circumstances of the case and since both the parties are claiming rights over the disputed property, I am of the considered view that continuation of criminal proceedings against the petitioner/accused will be a futile exercise and would amount to abuse of the process of Court.

**http://tshcstatus.nic.in/hcorders/2021/crlp/crlp_3315_2021.pdf; CRLP No. 3315 of 2021; 8.6.2021 ;Yedukondala Venkatesham vs The State of Telangana**
Police to follow the procedure laid down under Section 41-A of 2 Cr.P.C., and also the guidelines issued by the Apex Court in Arnesh Kumar v. State of Bihar and another1 . The Police are directed not to arrest the petitioner till the completion of investigation and filing of charge sheet.

**http://tshcstatus.nic.in/hcorders/2016/crlp/crlp_6949_2016.pdf; CRL.P.No.6949 of 2016; 4.6.2021; M/S. GABA PHARMACEUTICAL PVT LTD. 3 OTHERSvs UNION OF INDIA REP., BY ASST., SOLICITOR GENERAL**
D & C Act -As per Section 36AB of the Act, the Special Court is constituted only for trying the offences relating to adulterated drugs and spurious drugs and Section 27 (d) of the Act is conspicuously excluded from the amendment conferring jurisdiction to Special Courts. Therefore, the trial of offence under Section 16 (1) (a) punishable under Section 27 (d) of the Act still remains with the 6 Magistrate's Court. In the absence of vesting any jurisdiction to try the offence under Section 27 (d) of the Act, the learned Sessions Judge is incompetent to try the case.
**http://tshcstatus.nic.in/hcorders/2021/crlp/crlp_1390_2021.pdf; CRLP 1390 of 2021; 3.6.2021; Yerra Ramesh vs The State of Telangana, And Another**
Sec 304A IPC case has been quashed in view of the compromise entered between the petitioner and respondent

Prosecution Replies

http://tshcstatus.nic.in/hcorders/2019/crlp/crlp_4130_2019.pdf; CRLP 4130/2019; 2.6.2021; **Mr. Madhu Koneru vs THE DIRECTOR OF ENFORCEMENT**

It is a well-settled principle of constitutional law that sovereign legislative bodies can make laws with retrospective operation; and can make laws whose operation is dependent upon facts or events anterior to the making of the law. However, criminal law is excepted from such general rule, under another equally well-settled principle of constitutional law i.e. no ex post facto legislation is permissible with respect to criminal law. Article 20 contains such exception to the general authority of the sovereign legislature functioning under the Constitution to make retrospective or retroactive laws."

**http://tshcstatus.nic.in/hcorders/2021/crlrc/crlrc_82_2021.pdf; CRLRC 82/2021: 2.6.2021; B.Shankar Naik vs The State of Telangana**

A combined reading of all the above judgments shows that in order to discharge a person under 239 Cr.P.C., the Court has to necessarily see whether there is any prima facie material available on record to charge the accused. The Courts can discharge the accused if the material available on record is insufficient to connect the accused with the commission of the offence or that the trial Court is barred by law to proceed with the case i.e., cases where prior permission is needed to prosecute the accused or if the trial is allowed to proceed, the same will be an abuse of process of law, but not otherwise.

**http://tshcstatus.nic.in/hcorders/2020/crlp/crlp_5561_2020.pdf; CRIMINAL PETITION Nos.5474, 5561, 5611, 5612, 5613, 5628 & 5629 OF 2020 AND WRIT PETITION Nos.3481, 3483, 3489 AND 3505 OF 2021; 1.6.2021; P Siva Kumar vs State of Telangana**

**Depositors Act :** As stated above, the entire transaction between the Company and respondent No.2 and other alleged victims are oral. Respondent No.2 and others have not filed any document to show that they have deposited the said amount with the Company and the accused have promised them to pay half-yearly returns @ 4%. As discussed above, except the said payment through cheque, there is no other piece of evidence produced by respondent No.2 and other alleged victims to show that it is a deposit and the petitioners / other accused have agreed to pay half-yearly returns @ 4% and in the event of their failure, to register land in their favour by the petitioners. Even the details of number of victims, the amount alleged to have collected by the accused are also differs from the complaint and the statement of respondent No.2 and other victims recorded under Section - 161 of Cr.P.C. CASE QUASHED.

**http://tshcstatus.nic.in/hcorders/2021/crlp/crlp_4396_2021.pdf; Dt. 22.06.2021 CRLP NOs.4396 AND 4400 OF 2021; Bailly Gui Landry Vs. State of Telangana**

A perusal of both the judgments would reveal that learned Magistrate did not give any reasons for ordering deportation of the petitioner. There is no reason mentioned by the learned Magistrate in the judgments both dated 06.05.2021 that the petitioner herein a foreign citizen staying in India in contravention of the Act. As discussed above, learned Magistrate is not having power to order deportation of any foreign citizen even in case of violation of the provisions of the Act or otherwise. 5 Learned Magistrate has to confine his findings with regard to either acquittal or conviction of accused therein under Section 248 of the Cr.P.C., Learned Magistrate is not having power to order deportation of any foreign citizen for any violation.

there is no dispute that the visa granted to the petitioner was expired on 07.02.2020 itself. A perusal of a copy of visa filed by the Sub Inspector of Police, Cyber Crimes Police Station would reveal the said fact. It is also not in dispute that the petitioner is having Ivory Coast passport bearing No.17AP18083 valid till 30.10.2022. Thus, deportation of a foreign national for any violation is specifically mentioned in the Act and Regulations mentioned therein. The Police have already invoked said procedure and an order dated 18.05.2021 was passed by the FRRO. The efforts are being made to send the petitioner to his native place.

**http://tshcstatus.nic.in/hcorders/2021/crlp/crlp_3446_2021.pdf; CRLP No.3446 OF 2021, dt. 14-06-2021; Jakka Vinod Kumar Reddy & another vs. State of Telangana & another.**

| S. | Decision | The dispute arose out of | Whether the Second (2nd) |
|---|---|---|---|

Prosecution Replenish

| No. | | | FIR or Multiple FIR filed are Valid or Invalid |
|---|---|---|---|
| 1. | Ram Lal Narang v. State (Delhi Administration) and Om Prakash Narang & Ors v. State (Delhi Administration) MANU/SC/0216/1979: (1979) 2 SCC 322 | Arose out of theft of two sandstone pillars of great antiquity | Valid |
| 2. | M. Krishna v. State of Karnataka, MANU/SC/0127/1999: (1999) 3 SCC 247 | Arose out of amassing wealth disproportionate to one's source of income | Valid |
| 3. | V.K. Sharma v. Union of India, MANU/SC/0215/2000: (2000) 9 SCC 449 | Arose out of swindling a large number of depositors on the false pretext that their deposits would be returned with interest on a subsequent date. (White Collar Crime) | Valid (Multiple FIRs) |
| 4. | Mohan Bhaitha v. State of Bihar, MANU/SC/0217/2001: (2001) 4 SCC 350 | Arose out of a dowry death. Note: The question involved here is not concerned about whether there can be more FIRs than one but whether there can be more trials than one. | Held: Offences more than one committed by the same persons could be tried at one trial, if they can be held to be in one series of facts so as to form the same transaction. |
| 5. | T.T. Antony v. State of Kerala, (2001) 6 SCC 350 | Arose out of police firing resulting into deaths of few people and injuries to a large number of people. | Third (3rd) FIR invalid. |
| 6. | Narinderjit Singh Shani and another v. Union of India, MANU/SC/0644/2001: (2002) 2 SCC 210 | Arose out of swindling of a large number of depositors on the false pretext that their deposits would be returned with interest on a subsequent date. | Valid (Multiple FIRs) |
| 7. | Kari Chaudhary v. Most, Sita Devi and Ors, MANU/SC/0781/2001: (2002) 1 SCC 714 | Arose out of murder case | Valid |
| 8. | State of Punjab v. Rajesh Syal, MANU/SC/0867/2002: (2002) 8 SCC 158 | Arose out of swindling of a large number of depositors on the false pretext that their deposits would be returned with interest on a subsequent date. (White Collar Crime) | Valid (Multiple FIRs) |
| 9. | Upkar Singh v. Ved prakash, MANU/SC/0733/2004: (2004) 13 SCC 292 | Arose out of an attempt to murder and house trespass cases | Valid |
| 10. | Rameshchandra Nandlal Parikh v. State of Gujarat MANU/SC/2289/2006: (2006) 1 SCC 732 | Arose out of swindling of a large number of depositors on the false pretext that their deposits would be returned with interest on a subsequent date. | Valid (Multiple FIRs) |
| 11. | Vikram v.State of Maharashtra, MANU/SC/7628/2007: | Arose out of murder case | Valid |

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|---|---|---|---|
| | (2007) 12 SCC 332 | | |
| 12. | Pramod Kumar Saxena v. Union of India and Ors, MANU/SC/8060/2008: (2008) 9 SCC 685 | Arose out of swindling of a large number of depositors on the false pretext that their deposits would be returned with interest on a subsequent date. | Valid (Multiple FIRs) |
| 13. | Nirmal Singh Kahlon v. State of Punjab and Others, MANU/SC/8189/2008: (2009) 1 SCC 441 | Arose out of scandal involving selection of Panchayat Secretaries | Valid |
| 14. | C. Muniappan and others v. State of Tamil Nadu, MANU/SC/0655/2010: (2010) 9 SCC 567 | Arose out of setting fire to a university bus and several public buses. | Investigation of the Second FIR was clubbed with the investigation of the First FIR. In essence, two complaints/ FIRs are clubbed together and investigated jointly. |
| 15. | Bahubhai v. State of Gujarat, MANU/SC/0643/2010: (2010) 12 SCC 254 | Arose out of altercation that took place between members of the two communities. | Invalid |
| 16. | Chirra Shivraj v. State of AP, MANU/SC/0992/2010: (2010) 14 SCC 444 | Arose out of an attempt to murder case | Second F.I.R. held valid because SHO made a mistake by recording information as a fresh F.I.R. and that this mistake should not make the case of prosecution weak especially when no prejudice had been caused. |
| 17. | Shiv Shankar Singh v.State of Bihar, MANU/SC/1373/2011: (2012) 1 SCC 130 | Arose out of dacoity and murder | Valid |
| 18. | Surender Kaushik and others v. State of UP, MANU/SC/0131/2013: (2013) 5 SCC 148 | Arose out of fake and fraudulent documents prepared by the accused persons. | Invalid |
| 19. | Amitbhai Anilchandra Shah v. CBI, MANU/SC/0329/2013: (2013) 6 SCC 348 | Arose out of murder cases | Invalid |
| 20. | Anju Chowdry v. State of UP, MANU/SC/1129/2012: (2013) 6 SCC 384 | Arose out of hate speech | Valid |
| 21. | Yanab Sheikh @ gagu v. State of West Bengal MANU/SC/1122/2012: (2013) 6 SCC 428 | Arose out of a murder case. | Invalid |

The sum and substance of the above said judgments is that there is no embargo for registration of two FIRs on the following circumstances/grounds:

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(a) where the allegations made in both the FIRs are from different spectrum, where there are different versions from different persons;
(b) same set of facts may constitute different offences;
(c) where there are two distinct offences having different ingredients;
(d) where the allegations are different and distinct;
(e) when there are rival versions in respect of same episode, they would normally take shape of two different FIRs and investigation can be carried out under both of them by the same Investigating Agency.

**http://tshcstatus.nic.in/hcorders/2007/crlp/crlp_655_2007.pdf; CRLP No.655 of 2007; Dt. 10-06-2021; M/s. Deccan Tobacco Processors Limited & another Vs. Union of India, rep. by Commissioner (Prosecution) Custom and Central Excise, Hyderabad & another**
It is settled law that the standard of proof in criminal proceedings is higher than the standard of proof in civil/departmental proceedings. In a reverse case, where criminal proceedings ended in acquittal but simultaneous departmental proceedings continued, the result of the criminal proceedings will not have any bearing on the departmental proceedings, as judgment of the criminal Court is not binding in civil or departmental proceedings. However, in the instant case, when the departmental proceedings ended in favour of the accused and moreover, when the prosecution launched is on the same set of facts and allegations, the continuance of prosecution would be gross abuse of process of law.

**CRLA NO. 533 OF 2021 (@ Special Leave Petition (Crl.) No.308 of 2021) SHAIK AHMED VS STATE OF TELANGANA; 28.6.2021**
the essential ingredients to convict an accused under Section 364A which are required to be proved by prosecution are as follows:-
(i) Kidnapping or abduction of any person or keeping a person in detention after such kidnapping or abduction; and
(ii) threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt or;
(iii) causes hurt or death to such person in order to compel the Government or any foreign State or any Governmental organization or any other person to do or abstain from doing any act or to pay a ransom.

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## NOSTALGIA

**No review of bail order**
In Abdul Basit Vs. Mohd. Abdul Kadir Chaudhary {(2014) 10 SCC 754} , the Hon'ble Apex Court held that since there is no express provision for review of the order granting bail exists under the Cr.P.C., the High Court becomes functus officio and Section 362 of Cr.P.C. applies barring review of the judgment and order of the Courts granting bail to the accused.

**Absence of Prosecutor {Prosecution Replenish thanks Sri Shamshud Hasan ji for contributing this precedent}**
LALA DHANPAT RAI VS STATE, 16 Jan 1959; 1959 0 AIR(All) 425; 1959 0 CrLJ 806;
For example if the presiding officer of the Court fails to attend the court on a particular date and the complainant is also absent then in such a case the accused will not get the benefit of the provisions of Section 247, Cr. P. C.
It is not possible to interpret the law in a manner which would necessitate that for every magistrates Court a separate Public Prosecutor should be appointed. Under the existing circumstances the Public prosecutor appears before several Magistrates and therefore when he is functioning in a Court he should be deemed to be present in all those Courts which are in his charge. It is only when he is not functioning in any Court that it can be said that he was absent. There is nothing on the record of the case to indicate that the particular Public Prosecutor who was in charge o this prosecution was not functioning in the courts of law on that date. The magistrate cannot insist that the moment they take up a case the Public Prosecutor must immediately appear before them. The Magistrates have to come to an understanding between themselves and the Public Prosecutors as to when their attendance is desired before a particular court.

# NEWS

- **GOVERNMENT OF ANDHRA PRADESH-** RULES - Special Rules – Amendment to the Andhra Pradesh State Prosecution Service Rules, 1992 - Notification – Orders – Issued vide G.O.MS.No. 56 HOME (COURT.A) DEPARTMENT Dated: 15-06-2021.

- **GOVERNMENT OF ANDHRA PRADESH- LAW OFFICERS – HIGH COURT OF ANDHRA PRADESH –** State Public Prosecutor and Additional Public Prosecutors in the High Court of Andhra Pradesh – Enhancement of rates of fee and conveyance allowance **–** Revised orders – Issued- G.O.RT.No. 159- LAW (G) DEPARTMENT Dated: 07-06-2021.

- **GOVERNMENT OF ANDHRA PRADESH-** Public Services – Prosecuting officers – Recruitment to the category of Assistant Public Prosecutor - Appointment – Notification – Orders – Issued- G.O.Ms.No.55 HOME (COURTS.A) DEPAERTMENT Dated:14-06-2021.

- **GOVERNMENT OF TELANGANA** The Telangana Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order 2018 - Scheme for Organization for Local Cadres in PROSECUTIONS DEPARTMENT - Approved - Orders Issued. GENERAL ADMINISTRATION (SPF) DEPARTMENT G.O.Ms.No. 129 Dated: 30-06-2021

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# ON A LIGHTER VEIN

ATTORNEY: Do you recall the time that you examined the body?

WITNESS: The autopsy started around 8:30 PM

ATTORNEY: And Mr. Denton was dead at the time?

WITNESS: If not, he was by the time I finished.

While due care is taken while preparing this information. The patrons are requested to verify and bring it to the notice of the concerned regarding any misprint or errors immediately, so as to bring it to the notice of all patrons. Needless to add that no responsibility for any result arising out of the said error shall be attributable to the publisher as the same is inadvertent.

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NOTICE:

- ✓ For the notice of the Patrons preparing the articles for the commemorative edition of our leaflet,
- ✓ We have received the articles on the following subjects, so please avoid them in your preparation.
  - Should Perjury & Hostility Win?
  - Solitary witness vs sterling quality

Prosecution Replenish

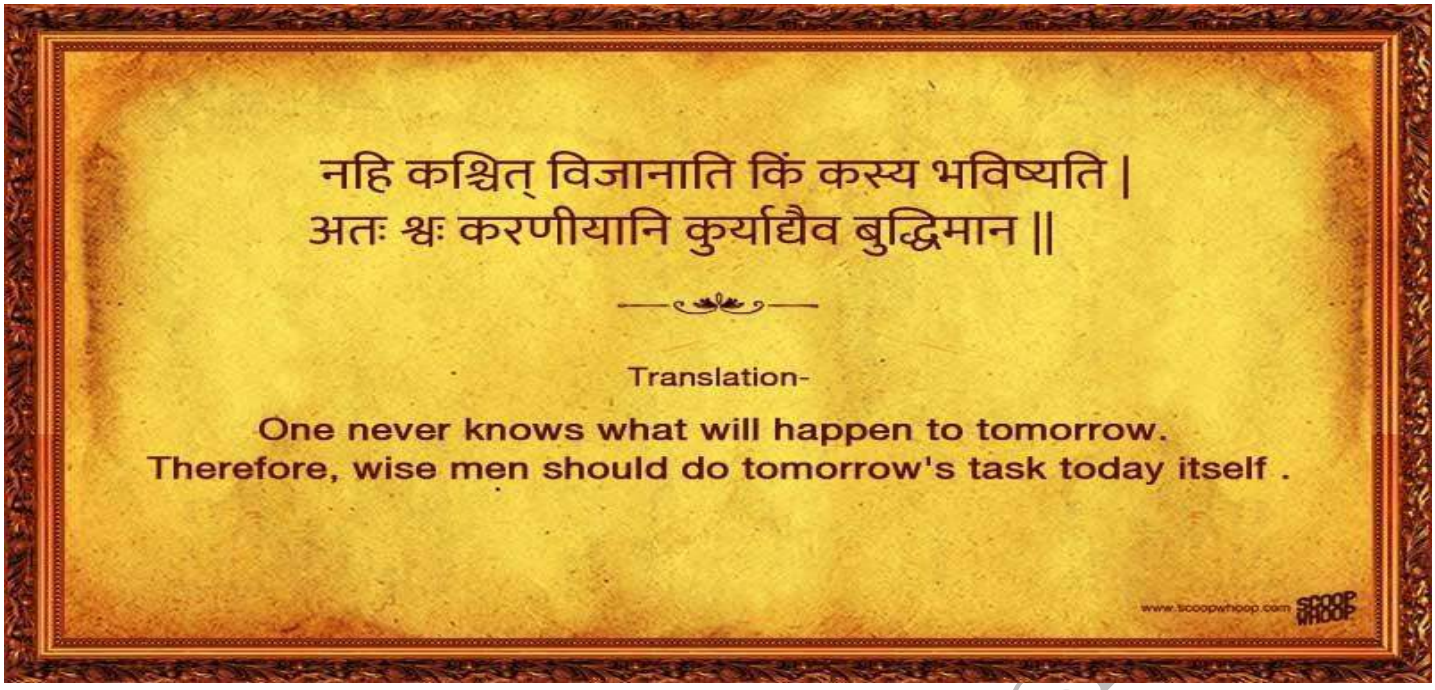
Vol- X
Part-8

# Prosecution Replenish

An Endeavour for Learning and Excellence

## August, 2021

Aano Bhadra Krtavo Yantu Vishwatah.(RIG VEDAM)
"Let Noble Thoughts Come To Me From All Directions"




***CHILD IN CONFLICT WITH LAW UNDER JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT 2015 AND LAW OF ANTICIPATORY BAIL***

**DVRTejoKarthik**
**JMFC, Spl.Mobile Court,**
**Mahabubnagar**

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This article is principally intended to discuss whether juvenile/child in conflict with law can seek anticipatory bail. Before venturing into the fulcrum of the subject for discussion, it would be in the fitness of things to discuss the object of the Juvenile Justice Act, 2015, the definitions of juvenile, child and child in conflict with law, the kinds of offences contemplated in the Act, powers and function of the JJ Board, mandate when the child alleged to be in conflict with law is apprehended and bail to a child in conflict with law. A discussion about these aspects would facilitate the readers to have a broad perspective about the aim of the Act in order to appreciate the topic intended for discussion. The article is divided into nine segments which are as under:

(1) Introduction & Object
(2) Juvenile, Child & Child in Conflict with Law
(3) Kinds of Offences under the Act
(4) Powers, Functions and Responsibilities of the Juvenile Justice Board
(5) Apprehension of Child alleged to be in Conflict with Law
(6) Bail to a Child in Conflict with Law
(7) Whether Child in Conflict with Law can seek Anticipatory Bail
(8) Position in the State of Telangana
(9) Conclusion

- ***Introduction & Object***

Children are considered as the pillars of any progressive nation and they are the builders of the future world and also they are the ultimate assets of any nation and thence every endeavour and effort should be made to provide them equal opportunities for their development. Due to the social disorganization there is significant rise in juvenile delinquency which is the greatest concern and hour of need in maintenance of social and cultural system of any nation. The object of the Juvenile Justice (Care and Protection of Children) Act 2015 is to cater the needs of children alleged and found to be in conflict with law and children in need of care and protection through proper care, protection, development, treatment, social re-

integration, by adopting a child friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided and institutions and bodies established under the Act.

The Constitution of India confers powers and impose duties on the State under Articles 15(3), 39(e),(f), 45 and 47 to ensure that all the needs of children are met and that their basic human rights are fully protected. The Government of India acceded to the Convention on the Rights of the Child in 1992, adopted by the General Assembly of United Nations. The Convention had prescribed a set of standards to be adhered to by all State parties in securing the best interest of the child.

The Parliament had initially enacted Act No. 53 of 1986, then replaced it with Act No.56 of 2000 and thereafter re-enacted Act No. 2 of 2016 to make comprehensive provisions for children alleged and found to be in conflict with law and children in need of care and protection, taking into consideration the standards prescribed in the Convention on the Rights of the Child. The Parliament while enacting the law of Juvenile Justice took into account the United Nations Standard Minimum Rules for Administration of Juvenile Justice, 1985 (also known as Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990, the Hague Convention on Protection of Children and Co-operation in Respect of Inter-Country Adoption, 1993 and other related international instruments.

The Juvenile Justice Act, 2015 is a beneficial piece of legislation and therefore the provisions of the Act shall receive due interpretation advancing the cause of legislation and to confer the benefits thereof to the category of persons for whom the legislation has been made.

- ***Juvenile, Child & Child in Conflict with Law***

As per Section 2(35) of the Act, ***'juvenile'*** means a child below the age of eighteen years.
As per Section 2(12) of the Act, ***'child'*** means a person who has not completed eighteen years of age.
As per Section 2(13) of the Act, ***'child in conflict with law'*** means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence.

- ***Kinds of Offences under the Act***

The Act had classified the offences under three heads namely Petty Offences, Serious Offences and Heinous Offences.
As per Section 2(45) of the Act ***"petty offences"*** includes the offences for which the maximum punishment under the Indian Penal Code, 1860 or any law for the time being in force is imprisonment up to three years.
As per Section 2(54) of the Act ***"serious offences"*** includes the offences for which the punishment under the Indian Penal Code, 1860 or any other law for the time being in force, is imprisonment between three to seven years.
As per Section 2(33) of the Act ***"heinous offences"*** includes the offences for which the **minimum punishment** under the Indian Penal Code, 1860 or any other law for the time being in force is imprisonment for seven years or more.

- ***Powers, Functions and Responsibilities of the Juvenile Justice Board***

Section 8 of the Act provides the functions and responsibilities of the Board. The Board constituted for any District shall have the power to deal exclusively with all the proceedings under the Act, relating to children in conflict with law, in the area of jurisdiction of the Board. The powers conferred on the Board under the Act, may also be exercised by the High Court and the Children's Court, when the proceedings come before them under Section 8 or in appeal, revision or otherwise.

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The functions and responsibilities of the Juvenile Justice Board shall include:

- ensuring the informed participation of the child and the parent or guardian in every step of the process.
- ensuring the child rights are protected throughout the process of apprehending the child, inquiry and rehabilitation and availability of legal aid for the child through the legal services institutions.
- directing the Probation Officer or in case a Probation Officer is not available the Child Welfare Officer to undertake a social investigation into the case and submit a report to ascertain circumstances in which the alleged offence was committed and inquire into the case and dispose of the matter and pass final order that includes an individual care plan for the child's rehabilitation including follow up by the Probation Officer or the District Child Protection Unit, as required.
- conducting inquiry for declaring fit persons' regarding care of children in conflict with law, conducting regular inspection visits of residential facilities foe children in conflict with law (minimum one inspection visit in a month) and recommend action for improvement in quality of services to the District Child Protection Unit and the State Government, order the police for registration of FIR for offences committed against child in conflict with law, under the Act or any other law for the time being in force on a complaint made in that regard, conduct jail inspection to check if any child is lodged in such jails and to take immediate measures for transfer of such a child to the observation home and any other function that may be prescribed.

➢ ***Apprehension of Child alleged to be in Conflict with Law***

Section 10 of the Act provides that as soon as a child alleged to be in conflict with law is apprehended by the police, then the child shall be placed under the charge of the special juvenile police unit or the designated child welfare police officer. The special juvenile police unit or the designated child welfare police officer shall produce the child before the Board without any loss of time but within a period of twenty-four hours of apprehending the child excluding the time necessary for the journey, from the place where the child was apprehended. However, a child alleged to be in conflict with law, shall not be placed in a police lockup or lodged in a jail. State Government shall make rules consistent with the Act, to provide for person through whom including registered voluntary NGOs any child alleged to be in conflict with law may be produced before the Board and to provide for the manner in which the child alleged to be in conflict with law may be sent to an observation home or place of safety, as the case may be.

➢ ***Bail to a Child in Conflict with Law***

Section 12 of the Act provides that when any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before the Board, then such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a Probation Officer or under the care of any fit person. The person shall not be released if there appears reasonable grounds for believing that the release is likely to bring this person into association with any known criminal or expose the said person to moral, physical or psychological danger or that the person's release would defeat the ends of justice. The Board shall record the reasons for denying the bail and circumstances that led to such a decision. When a person having been apprehended is not released on bail under this section by the officer in-charge of the police station, then the officer shall keep the person in an observation home in such manner as may be prescribed until the person can be brought before the Board. When the person is not released on bail by the Board, it shall make an order sending him to an observation home or place of safety, during the period of pendency of the inquiry regarding that person, for a period that may be specified in the order. When a child in conflict with law is unable to furnish bail within seven days of the bail order, then such child shall be produced before the Board for modification of the conditions of bail.

➢ ***Whether Child in Conflict with Law can seek Anticipatory Bail***

Now coming to the pivot of the article whether the juvenile/child in conflict with law is entitled to seek anticipatory bail, it is interesting to note that there is no provision for the grant of anticipatory bail in the

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Juvenile Justice Act, 2015. The concept of anticipatory bail is dealt under Section 438 of Cr.P.C. It is quite interesting to note that the word *"anticipatory bail"* was not employed in Section 438. The heading of the Section 438 is *'Direction for grant of bail to person apprehending arrest'.* The expression anticipatory bail is a misnomer. There is a popular misconception that anticipatory bail is granted in anticipation of arrest. Whenever the courts grant anticipatory bail they make an order that in the event of arrest, a person shall be released on bail. There can be no question of bail unless a person is arrested and thus, it is only on the arrest of a person that the order granting anticipatory bail becomes operative.

When one looks at the scheme of the JJ Act, 2015 in so far as the provision of bail is concerned it is more liberal. Notwithstanding anything contained in Code of Criminal Procedure or any other law in force for the time being the Juvenile /Child in conflict with law be released on bail with or without surety or the Board can place the Child in conflict with law under the supervision of the Probation Officer or under the care of a fit person. If the Board is of the opinion that the Child in conflict with law cannot or should not be released then the Board can do so only when there appears reasonable grounds for believing to the satisfaction of the Board that the release of the Child in Conflict with Law is likely to bring him into association with any known criminal or expose the juvenile to moral, physical or psychological danger or that the release of the juvenile would defeat the ends of justice. As per Rule 8 of Model Rules, 2016, no FIR shall be registered against the juvenile except where a heinous offence is alleged to have been committed or when such offence is alleged to have been committed jointly with adults. When such is the scenario can the Child in Conflict with Law ask for anticipatory bail especially the power to apprehend the juvenile shall only be exercised with regard to heinous offences. Even under Section 12 of the Act, nature of offence has no relevance, irrespective of the fact whether the child in conflict with law has committed petty offence or serious offence or heinous offence, the child in conflict with law shall be released on bail.

Under this backdrop it would be apposite to survey the decisions of different High Courts and to understand how the jurisprudential conception concerning Juvenile and anticipatory bail had developed.

Firstly, we will look at the judgments of various High Courts which have held that the application seeking anticipatory bail by the juvenile is not maintainable in law.

The Hon'ble High Court of Madras between ***K. Vignesh v. State rep. By Inspector of Police., 2017 SCC OnLine Mad 28442,*** comprising of Hon'ble Justice S. Nagamuthu and Hon'ble Justice Anita Sumanth, while answering a reference which was made in view of the conflicting orders on important legal whether an application seeking anticipatory bail under Section 438 of the Code of Criminal Procedure at the instance of a juvenile in conflict with law in terms of the Juvenile Justice (Care and Protection of Children) Act, 2000 is maintainable before the High Court or before the Court of Sessions, speaking through S. Nagamuthu, J. had held that a deep reading of Sections 2(13) & 10 of the Act, 2015 would make it crystal clear that no police officer has been empowered to arrest a child in conflict with law and instead he has been empowered only to apprehend a child in conflict with law. While enacting the Juvenile Justice (Care and Protection of Children) Act, 2015, the Legislature was well aware of Chapter V of the Code of Criminal Procedure more particularly Section 46 of the Code of Criminal Procedure as to how a person could be arrested. Had it been the intention of the Legislature, that a police officer should be empowered to arrest a child in conflict with law, the Legislature would have very well used the expression 'arrest' instead of using the expression 'apprehend' in Section 10 of the Juvenile Justice (Care and Protection of Children) Act, 2015. The Legislature has, thus, consciously omitted to use the expression 'arrest' in Section 10 of the Act, which means that the Legislature did not want to empower the police to arrest a child in conflict with law. The Legislature, being aware of the consequences that ensue the arrest, has avoided to empower the police to arrest a child in conflict with law. At the same time, the child in conflict with law cannot be let free as it would not be in the interest of the child in conflict with law as well as the society. Therefore, the Legislature had obviously thought it fit to give only a limited power to the police. In other words, the Legislature has empowered the police simply to apprehend a child in conflict with law and immediately, without any delay, cause his production before the Juvenile Justice

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Board. The Juvenile Justice Board has also not been empowered to pass any order of remand of the child in conflict with law either with the police or in jail. The proviso to Section 10 of the Act makes it very clear that in no case a child alleged to be in conflict with law shall be placed in a police lock-up or lodged in a jail. The Board has been obligated to send the child either to an observation home or a place of safety. There are lot of other safeguards in the Act as well as in the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 to ensure that the child so apprehended by a police or any other authority shall not in any manner be disturbed emotionally, psychological or physically. Thus, a reading of the entire scheme of the Act would inform that no authority, including the police, has been empowered to arrest a child in conflict with law but instead the child in conflict with law could only be apprehended and produced before the Juvenile Justice Board. From the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, one can understand, without any doubt whatsoever, that a child in conflict with law cannot be arrested and thus there cannot be apprehension of arrest and so an application at the instance of a child in conflict with law either before the High Court or before the Court of Sessions under Section 438 Cr.P.C. is not maintainable. The the Juvenile Justice (Care and Protection of Children) Act, 2015 is a self-contained Code which is both substantive as well as procedural. The Act takes care of the interest of the child in conflict with law on the child being apprehended. In the light of these safeguards, and in the light of the legal position that the child in conflict with law cannot be arrested, the child in conflict with law need not apply for anticipatory bail.

A Division Bench of Hon'ble High Court of Calcutta between ***Krishna Garai v. State., 2016 SCC OnLine Cal 6012,*** consisting of Hon'ble Justice Patherya and Hon'ble Justice Debi Prosad Dey had held that the application under Section 438 of the Code of Criminal Procedure is not applicable to a juvenile/child in conflict with law as Juvenile Justice (Care and Protection of Children) Act, 2000 (old Act) is a special act carved out from the code of criminal procedure which is a 1973 Act and meant especially for juveniles, the said Act will prevail over the Code of Criminal Procedure enacted in the year 1973.

The Hon'ble High Court of Madhya Pradesh (Jabalpur Bench) in ***Kapil Durgwani v. The State of Madhya Pradesh.,2010 SCC OnLine MP 641 = (2011) 97 AIC 310 (MP).,*** speaking through Hon'ble Justice N.K. Gupta held that provision of Section 12 of the JJ Act does not provide power to the Board which is equivalent to Section 438 of Cr.P.C,. The Board has no jurisdiction to entertain an application under Section 438 of Cr.P.C. As per Section 6 of the JJ Act, the powers of the Board can be exercised by the Court of Sessions as well as by the High Court in an appeal, revision or otherwise. Apart from it if a Board constituted under the JJ Act, rejects a bail application of the Juvenile, an appeal shall lie to the Sessions Court and against the order of the Sessions Court, revision may be preferred to High Court. Therefore, if the bail application is decided by the High Court for the first time and it is rejected, then the opportunity of appeal and revision will be lost by the juvenile. Thus, directly approaching to High Court under the provisions of Section 438 of Cr.P.C., shall result in a loss of the opportunity to prefer appeal and revision to a Juvenile, therefore such practice should be discouraged.

In ***Satendra Sharma v. The State of Madhya Pradesh, (Miscellaneous Criminal Case No.4183 of 2014, decided on 08.07.2014)*** the Hon'ble High Court of Madhya Pradesh (Gwalior Bench) speaking through Hon'ble Justice B.D. Rathi held that only provision for bail of Juvenile is given under Section 12 of the Act ,2000 (old Act – *pari materia* to Act, 2015) and that application for grant of anticipatory bail by the juvenile cannot be entertained by the High Court or the Court of Session by applying the provision contained under Section 6(2) of the Act. The powers conferred on the Board can be used by High Court and the Court of Session only when proceedings come before them in appeal, revision or otherwise except under Sections 438 and 439 of Cr.P.C.

The Hon'ble High Court of Madhya Pradesh (Indore Bench) in ***Kamlesh Gurjar v The State of Madhya Pradesh., (Miscellaneous Criminal Case No. 10345 of 2019, decided on 20.03.2019)*** speaking through Hon'ble Justice Virender Singh held that no provision in the Act, 2015 or in the Code of Criminal Procedure enables the juvenile to move an application for anticipatory bail either before the Court of

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Sessions or High Court or even before the Board, which has been exclusively constituted for the purpose of dealing with the proceedings pertaining to a juvenile. Therefore, in absence of specific provisions in the Act, 2015, juvenile is not entitled to move application under Section 438 of Cr.P.C.

The Hon'ble High Court of Madhya Pradesh (Jabalpur Bench) in ***Vinayak Pandey v. The State of Madhya Pradesh., (Miscellaneous Criminal Case No. 22489 of 2019, decided on 18.12.2017)*** the bench headed by Hon'ble Justice Rajeev Kumar Dubey held that the application filed under Section 438 of Cr.P.C. for anticipatory bail by the juvenile is not maintainable in law.

The Hon'ble High Court of Chhattisgarh in ***Preetam Pathak v. State of Chhattisgarh., 2014 SCC OnLine Chh 125 = (2015) 147 AIC 529 = (2015) 3 Crimes 638.,*** speaking through Hon'ble Justice Sanjay K. Agarwal held that apart from section 12 of the Act, 2000 (old Act – analogous to Act, 2015), there is no other provisions in the Act, 2000 like section 438 of Cr.P.C. giving powers to the Board to grant anticipatory bail to the juvenile and thus, power and jurisdiction to grant anticipatory bail has not been conferred to the juvenile Justice Board, and therefore, the provisions contained in section 438 of Cr.P.C. cannot be exercised by the High Court or Court of Session to grant anticipatory bail to the juvenile.

However some of the High courts have taken a different view holding that a juvenile is entitled to the relief of anticipatory bail. Let us now look at those judgments.

The Hon'ble High Court of Jharkhand in ***Birbal Munda and Others v. State of Jharkhand, 2019 SCC OnLine Jhar 1794,*** speaking through his lordship Justice Anil Kumar Choudhary, held that non obstante clause appearing in Section 12 of Juvenile Justice (Care and Protection of Children) Act, 2015 does not take away various provisions of bail or anticipatory bail envisaged in the Code of Criminal Procedure but only removes various barriers for grant of bail under the provisions of the Code of Criminal Procedure and authorizes the Juvenile Justice Board that in-spite of such barriers for granting of bail as envisaged in Section 436 and 437 of the Code of Criminal Procedure for releasing the juvenile. Thus, certainly the said non obstante clause does not exclude the availability of remedy of applying for grant of anticipatory bail on behalf of a child in conflict with law as envisaged under section 438 of the Code of Criminal Procedure and certainly keeping in view the objects and reasons of the enactments in view Section 12 of Juvenile Justice (Care and Protection of Children) Act, 2015 cannot be interpreted to the detriment of a child in conflict with law and the interpretation that the said provision dis-entitles a child in conflict with law to the statutory scheme of seeking anticipatory bail provided under Section 438 of the Code of Criminal Procedure will not be a rational construction of non obstante clause appearing in Section 12 of Juvenile Justice (Care and Protection of Children) Act, 2015 as the said non obstante clause only seeks to put the child in conflict with law in a better position as compared to any other person who is not a child in conflict with law by providing that in absence of existence of three specified grounds exhaustively enumerated in the said section the child in conflict with law has to be granted bail and interpreting the said non obstante clause by giving it a wide amplitude as to exclude the statutory remedy of applying for anticipatory bail by a child in conflict with law will be an illogical interpretation.

Likewise the Hon'ble High Court of Chattisgarh between ***Mohan (In Jail) v. State Of Chhattisgarh., 2005 CriLJ 3271,*** the bench headed by Hon'ble Justice V. K. Shrivastava observed that Section 438 of the Code of Criminal Procedure empowers High Court of Session for issuing directions to release the person, against whom there is accusation of having committed a non-bailable offence, on bail in the event of arrest. Section 439 of the Code of Criminal Procedure confers special powers on High Court or Court of Session regarding bail. Juvenile Justice Board has not been conferred with any power for issuing directions in accordance with Section 438 of the Code of Criminal Procedure nor has been conferred special powers as enumerated under Section 439 of the Code of Criminal Procedure. Therefore, the non obstante clause, contained in Section 12 of the Act, does not erode the provisions of Sections 438 and 439 of the Code of Criminal Procedure.

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The Hon'ble High Court of Kerala in ***Mr. X v. The State of Kerala, Through The Station House Officer, Hosdurg Police Station, Represented by The Public Prosecutor, High Court of Kerala., (Bail Application No. 3320 of 2018., decided On, 05.06.2018)*** headed by Hon'ble Justice R. Narayana Pisharadi held that Section 10 of the Act empowers the police for apprehending a child alleged to be in conflict with law. It does not provide for arresting a child alleged to be in conflict with law. Section 46(1) of the Code deals with how arrests are to be made. It provides that 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. Apprehending a person necessarily involves touching or confining the body of that person or submission of the person to the control of the police officer. Therefore, apprehending a person involves arrest of the person. Apprehending a person curtails his personal freedom and liberty. In my view, merely for the reason that Section 10 of the Act provides for apprehending a child in conflict with law and not for arresting him, it cannot be held that an application under Section 438 of the Code by him/her is not maintainable.

Similarly the High Court of Kerala in ***A.V. Gopakumar v. State of Kerala., 2012 (4) KHC 841 = 2012 (4) KLT 755.,*** speaking through Hon'ble Justice S.S. Satheesachandran while considering provisions contained in the Act of 2000 held that a juvenile in conflict with law apprehending arrest in a non-bailable offence, no doubt, will be entitled to seek the discretionary relief of pre-arrest bail envisaged under Section 438 of the Code because that Section takes within its ambit 'any person' to seek such relief when he has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence.

In ***Tara Chand v. State of Rajasthan., 2007 CriLJ 3047,*** the Hon'ble High Court of Rajasthan headed by Justice Dalip Singh while dealing with an application under Section 438 Cr.P.C. filed by a juvenile under the Juvenile Justice (Care and Protection of Children) Act, 2000 against whom a case under Sections 341, 354 IPC and under Section 3(1)(xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been registered, held, the provisions of Section 12 of the Act of 2000 shall have an overriding effect over the provisions of Section 18 of the Act of 1989 and a Juvenile who is brought before the Board or "appears" even by means of an application for being granting anticipatory bail, then notwithstanding the provisions of Section 18 of the Act of 1989 could be dealt with by the Board in the light of Section 6(2) of the Act of 2000 as Section 12 is a special provision meant exclusively for juveniles as such the exclusion of Section 438 Cr.P.C. under Section 18 of the Act of 1989 shall not apply in the case of a juvenile who is to be governed by the Act of 2000 and dealt as such.

In ***Sudhir Sharma v. State of Chhattisgarh., 2017 SCC OnLine Chh 1554 = (2017) 3 CGLJ 405 (DB),*** a division bench was called upon to answer a reference made under Rule 32 of the High Court of Chhattisgarh Rules, 2007, whether the application at the behest of a Juvenile before the Sessions Court or High Court under Section 438 Cr.P.C. would lie. The Bench consisting of Hon'ble Justice Manindra Mohan Shrivastava and Hon'ble Justice Goutam Bhaduri, answered the reference holding that an application for grant of anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 at the behest of Child in Conflict with Law before the High Court or the Court of Sessions is maintainable under the law and the said remedy is not excluded by operation of Section 12 of the Act of 2000 or Section 12 of the Act of 2015.

The Hon'ble High Court of Gujarat in ***Kureshi Irfan Hasambhai Through Kureshi Kalubhai Hasambhai v. State of Gujarat., (R/Criminal Misc. Application No. 6978 of 2021, Decided on 09.06.2021)*** speaking through Hon'ble Justice A.Y. Kogje observed that there is no express bar of application of anticipatory bail under Section 438 of Code of Criminal Procedure, to the Child in Conflict with Law as covered by the Juvenile Justice Act, 2015. It is pertinent to observe that for any child in conflict with law, necessary procedure to be adopted as prescribed under Section 12 of the Act, 2015 and therefore, even where the application under Section 438 of the Code is decided in any which way, the protection of Section 12 of the Act, 2015 will always be available. The question with regards to

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fruitfulness to invoke Section 438 of the Code for the child in conflict with law may arise, in other words, even of invoking Section 438 of the Code no useful purpose will be served as the child in conflict with law have to undergo the process of Section 12 of the Act, 2015. The parameters of practical usage and/or application of parameters cannot lead to inferring of bar of application of a provision, Section 438 of the Code.

In ***Kumari Shivani and Another v. State of Madhya Pradesh.,(Gwalior Bench)., 2019 SCC OnLine MP 4803,*** headed by Hon'ble Justice S.A. Dharmadhikari held that an application for anticipatory bail by the juvenile is maintainable and the Court had granted anticipatory bail to the petitioners who were juveniles alleged to have committed offences punishable under Sections 147, 148, 149 and 302 IPC.

The Hon'ble High Court of Punjab & Haryana between ***Krishan Kumar Minor Through His Mother v. State of Haryana.,(CRM-M-19907-2020, decided on 27.07.2020)*** speaking through Hon'ble Justice H.S. Madaan held that Juvenile Justice (Care and Protection of Children)Act, 2015 is a piece of social welfare legislation, which was enacted to take care of welfare of the children and to avoid their turning into hardened criminals. The basic purpose of this legislation was to ensure that a child under age of 18 some time coming in conflict with law by committing an offence is to be tried in a manner and under such environment, which may take him to the path of reformation rather than allowing such children to mix up with criminals in the jail and themselves turning into hardened criminals. This is exactly the purpose of putting the juvenile in conflict with law, in the separate observation homes rather than in normal jail. Even if a juvenile in conflict with law is found to have committed some offence, then instead of awarding deterrent punishment, his rehabilitation and social integration is sought. If this special enactment is silent as regard a particular provision then that has to be read with the general law i.e. Criminal Procedure Code. An inference can certainly be not drawn that the legislature intended to debar a juvenile from seeking relief of pre-arrest bail. If it was also, then a specific provision in that regard would have been there on analogy of Section 18 The Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act, 1989, which clearly bars grant of pre-arrest bail to a person alleged to have committed offence under the said act. Even otherwise, the Juvenile Justice (Care and Protection of Children) Act, 2015 providing that children below age of 18 years coming within definition of juvenile be treated with kindness and compassion even if they are found in conflict with law. It could certainly be not intention of the legislature that such juvenile should be first apprehended and then produce before Juvenile Justice Board, in the process denying relief to a juvenile, which is available to the other persons, who are accused of heinous offences.

From the above discussed precedents we can find that there is sharp cleavage of opinions expressed by various High Courts in the Country.

Nevertheless, the Hon'ble High Court of Allahabad contemplated two situations while dealing with an application by a juvenile seeking the relief of anticipatory bail. In ***Shahaab Ali (Minor) And Another v. State of U.P., 2020 SCC OnLine All 45 = 2020 Cri LJ 4479 = (2020) 5 All LJ 570,*** headed by Hon'ble Justice Yashwant Varma observed that there are two situations that are to be considered with respect to whether anticipatory bail to a juvenile can be granted or not. First situation would be where the juvenile approaches the Court after the registration of FIR alleging commission of a cognizable offence. While, the second situation could be where a Juvenile apprehends apprehension prior to lodging of FIR. With regard to the first situation, the Juvenile Justice Act 2015, is a comprehensive code in itself and from the reading of Section 1(4) of the Act, which gives the Act exclusivity, it is indicative that Section 438 of Cr.P.C has no application. Sections 10 and 12 of the Act lays down a comprehensive mechanism to be mandatorily followed consequent to the apprehension of a child in conflict with law. Under Section 10 in case of a child is apprehended by Police, he needs to be immediately placed in custody of the Special Juvenile Police Unit and produced before the Juvenile Board. Thereafter under Section 12 the Board is obligated to forthwith release the child unless it forms the opinion that his release would fall within the ambit of the Proviso to Section 12. The need to invoke the jurisdiction of either the High Court or the Court of Session

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as conferred by Section 438 of the Criminal Procedure Code is clearly debarred in the first situation. While in the second situation, where the child is apprehending apprehension or detention and FIR has not been lodged, Sections 10 and 12 of the Act, as well as Rules 8 and 9 of the Model Rules, 2016, will come into play only when information of an offence is recorded or FIR is lodged. Therefore in such a situation, the juvenile has no remedy under the 2015 Act. Therefore, *the right conferred by Section 438 of the Criminal Procedure Code would be entitled to be invoked by a child apprehending detention prior to the registration of a First Information Report in the case of a heinous offence or recordal of information in respect of other offences and prior to Section 10 and other provisions of the 2015 Act coming into play. It is only within this limited window that perhaps the right of a child in conflict with law to invoke Section 438 can possibly be recognized.*

*On similar lines the Hon'ble High Court of Madhya Pradesh (Gwalior Bench) in* **Sandeep Singh Tomar v. State of Madhya Pradesh, (Miscellaneous Criminal Case No. 9816 of 2013, decided on 10.03.2014)** *speaking through Hon'ble Justice Sheel Nagu observed that the terminology used in Section 12 indicates that it does not relate to concept of anticipatory bail. However, the said provision excludes the operation of the Code of Criminal Procedure, but that exclusion pertains only to a juvenile who is either arrested or detained or appears or is brought before a Board but not to a juvenile apprehending detention.*

- **Position in the State of Telangana**

So far as the State of Telangana is concerned, the Hon'ble High Court for the State of Telangana had an occasion to decide whether a juvenile can seek anticipatory bail and in particular by way of writ petition. In ***Mohammed Bin Ziyad, a minor represented By his mother Smt. Noor v. The State Of Telangana & Another.,(Writ Petition No. 12422 of 2021, decided on 21.06.2021)*** Hon'ble Justice K. Lakshman had exhaustively and intricately dealt with the provisions of the Act, 2015 and also discussed the object and purport of the Act, 2015 and thoroughly considered the precedents of different High Courts and ultimately held that filing of an anticipatory bail application by a juvenile under section 438 of the Code of Criminal Procedure in a writ petition is not maintainable and that the juvenile has to avail the remedy under Section 12 of the JJ Act, 2015. His lordship agreed with the principle laid down by the Hon'ble High Court of Madras in *Vignesh's case.*

Following the decisions of the Hon'ble High Court of Telangana in *Mohammed Bin Ziyad's case* and Hon'ble High Court of Madras in *Vignesh's case,* the Hon'ble High Court of Punjab & Haryana in ***Piyush minor through his natural mother Smt. Nirmla Devi wife of Sh. Narender v. State of Haryana., (CRM-M-21406-2021., decided on 05.07.2021)*** speaking through Hon'ble Justice Rajesh Bhardwaj held that a careful perusal of statutory provisions and the judicial precedents, would show that the legislature in the best of its wisdom has legislated the Act with highest of the sensitivity which is apparent from the various safeguards provided in the Act. The language of Section 12 of the Act would show the intention of the legislature in safeguarding the welfare of juvenile wherein it mandates the production of the child before the Board. The underlying purpose of the scheme appears to be that legislature wanted the personal interaction of the juvenile with the Board before arriving at a decision regarding his bail. On the other hand, such a provision do not have any place under Section 438 Cr.P.C and hence safeguard provided to a juvenile is automatically bypassed. Even otherwise the Act mandates the provision of granting the bail to a juvenile in a bailable or non-bailable offence notwithstanding anything contained in Cr.P.C.

- ***Conclusion***

On overall analysis it could be understood that the majority of the decisions of the High Courts did not favour grant of anticipatory bail to a juvenile holding that the Juvenile Justice (Care and Protection of Children) Act, 2015 is a self-contained Code being substantive as well as procedural. The Act takes care of the interest of the child in conflict with law on the child being apprehended. When we look at the provisions dealing with bail in the Code of Criminal Procedure, the accused who applies for bail has to make out a case for grant of bail, but the position is reverse in the case where bail is applied by a juvenile.

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The juvenile/child in conflict with law need not make out a case for grant of bail and it is for the prosecution to satisfy the Board as to why a juvenile should not be released on bail. A juvenile is entitled to bail as a matter of right notwithstanding the seriousness of the crime, unless the Board is satisfied that the case of the juvenile falls within the four corners of the proviso to Section 12(1) of the Act. When such a liberal approach is envisaged in the Act for grant of bail, whether the juvenile can seek anticipatory bail is no doubt a moot point. Be that as it may, there is no dictum of Hon'ble Supreme Court of India on the issue whether juvenile is entitled for anticipatory bail or not. There is apparent dichotomy and sharp division of views expressed by different High Courts about the right of Juvenile seeking anticipatory bail under Section 438 of Cr.P.C. This duality of opinions can only be resolved by the Hon'ble Supreme Court of India, else, in every State the precedent to be followed would be different which is not an healthy sign particularly in view of the legislation governing the entire country as the JJ Act, 2015 is a central legislation. Having different views on the same subject by various High Courts across the length and breadth of the Country will have potent ramifications in the ultimate administration of justice. We can only hope that the Supreme Court would sooner or later resolve the ambiguity.

*(Prosecution Replenish conveys its heartfelt thanks to **Sri D.V.R. TejoKarthik,** Judicial Magistrate of First Class, Special Mobile Court, Mahabubnagar, for contributing this article for our leaflet)*

# CITATIONS

The documents already taken note by this Court indicates that there is prima facie material against the respondent No. 2. Though the appellant herein, i.e., the wife of the deceased has been examined and a contention has been put forth with regard to her statement, it is not the evidence in its entirety and it is premature to conclude on the basis of a stray sentence. Further, merely classifying the appellant as the principal star witness and referring to her statement is of no consequence since the entire evidence will have to be assessed by the Sessions Court before arriving at a conclusion. If that be the position when this Court at an earlier instance had taken note of all aspects and had arrived at the conclusion that there is prima facie material against the respondent No. 2, the mere examination of the appellant herein cannot be considered as a change in circumstance for the High Court to consider the fourth bail application of the respondent No. 2 and enlarge him on bail.

**2021 0 Supreme(SC) 318; Mamta Nair Vs. State of Rajasthan & Anr; Criminal Appeal No. 586 of 2021 (Arising Out of SLP (Criminal) No. 3679 of 2021) : 12-07-2021(THREE JUDGE BENCH)**

One is required to consider the entire evidence as a whole with the other evidence on record. Mere one sentence here or there and that too to the question asked by the defence in the cross-examination cannot be considered stand alone. Even otherwise it is to be noted that what is stated by the Doctor/Medical officer can at the most be said to be his opinion. He is not the eye-witness to the incident. PW1 & PW2 have categorically stated that the other accused inflicted the blows by knives. The same is supported by the medical evidence and the deposition of PW2.

There may be some minor contradictions, however, as held by this Court in catena of decisions, minor contradictions which do not go to the root of the matter and/or such contradictions are not material contradictions, the evidence of such witnesses cannot be brushed aside and/or disbelieved.

**2021 0 Supreme(SC) 310; RAKESH AND ANOTHER Vs. STATE OF U.P. AND ANOTHER; CRIMINAL APPEAL NO. 556 OF 2021; 06-07-2021**

Our Constitution specifically envisages the independence of the district judiciary. This is implicit in Article 50 of the Constitution which provides that the State must take steps to separate the judiciary from the executive in the public services of the State. The district

judiciary operates under the administrative supervision of the High Court which must secure and enhance its independence from external influence and control. This compartmentalization of the judiciary and executive should not be breached by interfering with the personal decision-making of the judges and the conduct of court proceedings under them.

43 There is no gainsaying that the judiciary should be immune from political pressures and considerations. A judiciary that is susceptible to such pressures allows politicians to operate with impunity and incentivizes criminality to flourish in the political apparatus of the State.

44 India cannot have two parallel legal systems, "one for the rich and the resourceful and those who wield political power and influence and the other for the small men without resources and capabilities to obtain justice or fight injustice." The existence of a dual legal system will only chip away the legitimacy of the law. The duty also falls on the State machinery to be committed to the rule of law and demonstrate its ability and willingness to follow the rules it itself makes, for its actions to not transgress into the domain of "governmental lawlessness[12][Upendra Baxi, The Crisis of Legitimation of Law in The Crisis of the Indian Legal System: Alternative Developments in Law (Vikas Publishing House, 1982).]".

**2021 0 Supreme(SC) 370; Somesh Chaurasia Vs. State of M.P. & Anr.; Criminal Appeal Nos 590-591 of 2021 @ SLP (Crl) Nos. 4998-4999 of 2021; 22-07-2021**

filing of an anticipatory bail application by a juvenile under Section - 438 of Cr.P.C. in a writ petition is not maintainable, and that the juvenile has to avail the remedy under Section - 12 of the JJ Act, 2015.

**WP No.12422 OF 2021; 21-06-2021; Mr. Mohammed Bin Ziyad, a minor, rep. By his mother Smt. Noor Vs. The State of Telangana & another**

**GUTKA**

As far as Section - 328 of IPC is concerned, it deals with causing hurt by means of poison, etc., with intent to commit an offence. As per the said provision, whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such

person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Therefore, there should be administering poison, intoxicating etc., with intent to cause hurt to such person or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt. As stated above, the allegations in the entire batch of criminal petitions are lacking. Therefore, according to this Court, the contents of the complaints / charge sheets lacks the ingredients of Section - 328 of IPC.

As far as Section - 336 of IPC is concerned, it deals with an act endangering life or personal safety of others, and as per which, whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both. In the complaints / charge sheets, there is no such allegation of rash and negligent act which endangers human life or personal safety of others. Therefore, according to this Court, the contents of the complaints / charge sheets lacks the ingredients of Section - 336 of IPC.

As far as Section - 420 of IPC is concerned, it deals with Cheating and dishonestly inducing delivery of property. There is no such inducement either at the inception or at a later stage. Thus, the contents of complaints / charge sheet lack the ingredients of Section - 420 of IPC.

As far as Section - 269 of IPC is concerned, it deals with negligent act likely to spread infection of disease dangerous to life, and as per which, whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the

infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both. But, a perusal of the contents of complaints / charge sheets in the present batch of cases, such ingredients are lacking and, therefore, Section - 269 of IPC does not arise in the present batch of cases.

In view of the above said discussion, according to this Court, transportation, possession, storage, sale and purchase of tobacco products are not totally banned in the State of Telangana and also in the Country.

Therefore, it cannot be said that Sections - 269, 270, 271, 272 and 273, 328, 336 and 420 of IPC are attracted to the cases in this batch.

in Chidurala Shyamsubder {Crl.P. No.3731 of 2018 & batch, decided on 27.08.2018 }, the learned Single Judge following the guidelines laid down by the Hon'ble Supreme Court in Bhajan Lal{1992 Supp (1) SCC 335 } held that the police are incompetent to take cognizance of the offences punishable under Sections - 54 and 59 (1) of the FSS Act, investigating into the offences along with other offences under the provisions of the IPC. It was further held that filing charge sheet is a grave illegality, as the Food Safety Officer alone is competent to investigate and to file charge sheet following the Rules laid down under Sections - 41 and 42 of FSS Act.

Section - 20 of COTP Act deals with punishment for failure to give specified warning and nicotine and tar contents. But, in the complaints / charge sheets, there is no allegation against the petitioners that they were carrying on trade or commerce in contraband or any other tobacco products without label and specified warning on the said products. In view of the same, the contents of the complaints / charge sheets lack the ingredients of Section - 20 (2) of the COTP Act. Even, there is no allegation that the seized products do not contain labels with statutory warning. Thus, registering the crimes for the said offence against the petitioners is not only contrary to Section - 20 (2) of COTP Act.

**CRLP No.152 OF 2020 & Batch : 05-07-2021: Crl.P. No.152 of 2020: Mr. Mohd. Jameel Ahmed Vs. The State of Telangana.**

The right to summon document(s), indeed, is available but that has to be exercised when the trial is in progress and not when the trial is completed, including after the statement of accused under Section 313 of Criminal Procedure Code had been recorded. The efficacy of the trial cannot be whittled down by such belated application.

**CRLA No. 585 OF 2021 (Arising out of SLP(Crl.) No. 3191 of 2019) MD. GHOUSEUDDIN Vs. SYED RIAZUL HUSSAIN & ANR.: 12.7.2021:**

Section 306 IPC is much broader in its application and takes within its fold one aspect of Section 304B IPC. These two sections are not mutually exclusive. If a conviction for causing a suicide is based on Section 304B IPC, it will necessarily attract Section 306 IPC. However, the converse is not true.

**CRLA NO.601 OF 2021 (Arising out of SLP(Criminal) No.9487 of 2019) BHAGWANRAO MAHADEO PATIL Vs. APPA RAMCHANDRA SAVKAR & ORS.; 14.7.2021.**

It is only in a case where there is a gross
contradiction between medical evidence and oral evidence, and the medical evidence makes the ocular testimony improbable and rules out all possibility of ocular evidence being true, the ocular evidence may be disbelieved.

**CRLA NO. 177 OF 2014; PRUTHIVIRAJ JAYANTIBHAI VANOL Vs. DINESH DAYABHAI VALA AND OTHERS: 26.07.2021.**

genuineness, reliability or otherwise of the dying declaration will be tested by the trial Court on consideration of entire evidence, both oral and documentary. The Investigating Officer is not having power to discard the said dying declaration during the course of investigation.

**CRLP No.2246 OF 2021; 05-07-2021; Mrs. Manasa alias Jwala Vs. State of Telangana (HC)**

When a report is lodged with the police alleging constitution of cognizable offences and when no action has been taken by the police concerned on the said complaint, the aggrieved person has a right to file a private complaint under Section 200 of Cr.P.C., before the Magistrate concerned. There is no necessity to file a copy of the complaint submitted to the police on earlier occasion. Without there being such copy, the Magistrate is justified in referring the subject complaint under Section 156 (3) Cr.P.C to the Station House Officer concerned for investigation and report.

**CrlP No.1621 of 2021; 02.07.2021; Dr. A. Chandrasekhar and others Vs State of Telangana;(HC)**

NDPS - It is important to emphasise that the interpretation of the term "accused" in section 25 of the Evidence Act is materially different from that contained in Article 20(3) of the Constitution. The scope of the section is not limited by time - it is immaterial that the person was not an accused at the time when the confessional statement was made.

section 67(c) of the NDPS Act, the expression used is "examine" any person acquainted with the facts and circumstances of the case. The "examination" of such person is again only for the purpose of gathering information so as to satisfy himself that there is "reason to believe" that an offence has been committed. This can, by no stretch of imagination, be equated to a "statement" under section 161 of the CrPC,

there could be a situation in which a section 42 officer, as designated, is different from a section 53 officer, in which case, it would be necessary for the section 42 officer to first have "reason to believe" that an offence has been committed, for the purpose of which he gathers information, which is then presented not only to his superior officer under section 42(2), but also presented to either an officer-in-charge of a police station, or to an officer designated under section 53 - see section 52(3).

A statute may expressly make Section 173 of the Cr.P.C applicable to inquiries and investigations under that statute. However, in the case of a statute like the NDPS Act, where the provisions of the Cr.P.C do not apply to any inquiry/investigation, except as provided therein, it cannot be held that the officer has all the powers of a police officer to file a report under Section 173 of the Cr.P.C. The NDPS Act does not even contain any provision for filing a report in a Court of law which is akin to a police report under Section 173 of the Cr.P.C.

As per the well established norms of judicial discipline and propriety, a Bench of lesser strength cannot revisit the proposition laid down by at least three Constitution Benches, that an officer can be deemed to be a police officer within the meaning of Section 25 of the Evidence Act only if the officer is empowered to exercise all the powers of a police officer including the power to file a report under Section 173 of the Cr.P.C.

When a statutory provision is clear and there is no ambiguity, this Court cannot alter that provision by its interpretation. To do so, would be to legislate, which this Court is not competent to do. If a provision is free from ambiguity or vagueness, and is clear, but violative of a fundamental right, the Court will have to strike the same down. Any omission in a statute cannot be filled in by Court as to do that would amount to the legislation and not construction. The Court cannot fill in casus omissus and language permitting Court should avoid creating casus omissus where there is none. In the interpretation of statute the Courts must always presume that legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect.

a Statute is an edict of the legislature and has to be construed according to "the intent of those that make it.

**Compulsion** is an essential ingredient of the bar of Article 20 (3) of the Constitution. Article 20 (3) does not bar the admission of a statement, confessional in effect, which is made without any inducement, threat or promise, even though it may have subsequently been retracted. The article also does not debar the accused from voluntarily offering himself to be examined as a witness. The constitutional protection against compulsion to be a witness is available only to persons "accused of an offence", and not persons other than the accused. It is a protection against compulsion to be a witness and it is a protection against compulsion resulting in giving evidence against himself.

Section 25 of the Evidence Act does not differentiate between evidence in a trial for non cognizable offence and evidence in a trial for cognizable offence. The admissibility of evidence does not depend on whether an offence is 'cognizable' or non-cognizable'. The mere fact that an offence was cognizable, enabling the police to arrest without warrant, should not make any difference to the admissibility or the probative value of the evidence adduced by the prosecution during the trial of the offence.

**2020 0 AIR(SC) 5592; 2021 1 RCR(Cri) 1; 2021 2 Supreme 1; 2020 0 Supreme(SC) 646;Tofan Singh Vs State of T.N.**

Contrasted with Section 195(1)(b)(i), Section 195(1)(b)(ii) of the CrPC speaks of offences described in Section 463, and punishable under Sections 471, 475 or 476 of the IPC, when such offences are alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court. What is conspicuous by its absence in Section 195(1)(b)(ii) are the words “or in relation to”, making it clear that if the provisions of Section 195(1)(b)(ii) are attracted, then the offence alleged to have been committed must be committed in respect of a document that is custodia legis, and not an offence that may have occurred prior to the document being introduced in court proceedings.

**2021 (1) ALD Crl 706(SC); 2020 0 AIR(SC) 4247; 2020 4 Supreme 582; 2020 0 Supreme(SC) 522; M/s Bandekar Brothers Pvt. Ltd. & Anr. Vs. Prasad Vassudev Keni : Criminal Appeal Nos. 546-550 of 2017: 02-09-2020**

the bail granted under Section 167(2) Cr.P.C. could be cancelled under Section 439(2) Cr.P.C..

The proviso to Section 167 itself clarifies that every person released on bail under Section 167(2) shall be deemed to be so released under Chapter XXXIII. Therefore, if a person is illegally or erroneously released on bail under Section 167(2), his bail can be cancelled by passing appropriate order under Section 439(2) CrPC.

**2021 1 ALD Crl 739(SC); 2021 0 AIR(SC) 335; 2020 4 Crimes(SC) 415; 2021 0 CrLJ 978; 2020 6 KHC 468; 2021 1 Supreme 490; 2020 0 Supreme(SC) 668;Venkatsan Balasubramaniyan Vs. The Intelligence Officer, D.R.I. Bangalore: Criminal Appeal No.801 of 2020 (arising out of SLP (Crl.) No.1452/2019): Villayutham Nagu Vs. The Intelligence Officer, D.R.I. Bangalore: Criminal Appeal No.802 of 2020 (arising out of SLP (Crl.) No.1820/2019) Vijaya Kumar L. Vs. The Intelligence Officer, D.R.I. Bangalore: Criminal Appeal No.803 of 2020 (arising out of SLP (Crl.) No.1443/2019): 20-11-2020**

the charge sheet filed for offence U/sec 188 IPC is in violation of the mandatory provision of Section 195 (1) (a) of Cr.P.C.

**http://tshcstatus.nic.in/hcorders/2020/crlp/crlp_5930_2020.pdf; T.V.Rama Krishna Raju vs State of Telangana; 2021 1 ALD Crl. 869(T.S.);**

this Court has noticed that Police Officials have been registering several FIRs by mentioning the offences as Sections - 107, 110 and other provisions of the Code and the said registration of crime by mentioning the said sections is illegal.
the police officials are burdening themselves by committing the very same illegality registering the FIRs mentioning the offences under Sections - 107, 110 and other provisions of the Code and they are also burdening this Court, which has to be avoided.
**2021 1 ALD Crl 878(TS); 2021 0 Supreme(Telangana) 29;Reddygari Srinivas Reddy & others Vs. State of Telangana; WP No. 685 OF 2021: 02-02-2021:**

there is a vast difference between "law and order" and "public order". The offences which are committed against a particular individual fall within the ambit of "law and order". It is only when the public at large is adversely affected by the criminal activities of a person, is the conduct of a person said to disturb the public order. Moreover, individual cases can be dealt with by the criminal justice system. Therefore, there is no need for the detaining authority to invoke the draconian preventive detention laws against an individual. For the invoking of such law adversely effects the fundamental right of personal liberty, which is protected and promoted by Article 21 of the Constitution of India. Hence, according to the Hon'ble Apex Court, the detaining authority should be wary of invoking the immense power under the Act.
Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large.
**2021 1 ALD Crl 973(TS); 2021 0 Supreme(Telangana) 40;Charakonda Chinna Chennaiah Vs. The State of Telangana and others : W.P. No.18013 of 2020: 23-02-2021**

Although there is no need to separately prove the court records emanating during trial but no legal presumption can be extended to the veracity of the contents of such documents.
It has been settled through a catena of decisions that there is no difference of power, scope, jurisdiction or limitation under the CrPC between appeals against judgments of conviction or of acquittal. An appellate Court is free to re-consider questions of both law and fact, and re-appreciate the entirety of evidence on record. There is, nonetheless, a self-restraint on the exercise of such power, considering the interests of justice and the fundamental principle of presumption of innocence. Thus, in practice, appellate Courts are reluctant to interfere with orders of acquittal, especially when two reasonable conclusions are possible on the same material, Ramabhupala Reddy v. State of Andhra Pradesh, (1970) 3 SCC 474.
It would be gainsaid that lack of independent witnesses are not fatal to the prosecution case, Kalpnath Rai v. State, (1998) AIR SC 201, 9. However, such omissions cast an added duty on Courts to adopt a greater-degree of care while scrutinising the testimonies of the police officers, which if found reliable can form the basis of a successful conviction.
**2021 1 ALD Crl. 1014(SC); 2020 0 AIR(SC) 5375; 2020 4 Crimes(SC) 389; 2020 4 RCR(Cri) 873; 2020 6 Supreme 547; 2020 0 Supreme(SC) 629;Raveen KumarVs. State of Himachal Pradesh: CRLA Nos. 2187-88 of 2011: 26-10-2020**

Ocular evidence is considered the best evidence unless there are reasons to doubt it. The evidence of PW-2 and PW-10 is unimpeachable. It is only in a case where there is a gross contradiction between medical evidence and oral evidence, and the medical evidence makes the ocular testimony improbable and rules out all possibility of ocular evidence being true, the ocular evidence may be disbelieved.

The criminal jurisprudence developed in this country recognizes that the eye sight capacity of those who live in rural areas is far better than compared to the town folks. Identification at night between known persons is acknowledged to be possible by voice, silhouette, shadow, and gait also.

**2021 0 Supreme(SC) 382; Pruthiviraj Jayantibhai Vanol Vs. Dinesh Dayabhai Vala and Others: CRLA No. 177 of 2014: 26-07-2021**

the power of the court to grant consent for a withdrawal petition is similar to the power under Section 320 of the CrPC to compound offences. The court in both the cases will not have to enquire into the issue of conviction or acquittal of the accused person, and will only need to restrict itself to providing consent through the exercise of jurisdiction in a supervisory manner. It was held that though Section 321 does not provide any grounds for seeking withdrawal, "public policy, interest of administration, in expediency to proceed with the prosecution for reasons of State, and paucity of evidence" are considered valid grounds for seeking withdrawal. Further, it was held that the court in deciding to grant consent to the withdrawal petition must restrict itself to only determining if the Prosecutor has exercised the power for the above legitimate reasons:

The persons who have been named as the accused in the FIR in the present case held a responsible elected office as MLAs in the Legislative Assembly. In the same manner as any other citizen, they are subject to the boundaries of lawful behaviour set by criminal law. No member of an elected legislature can claim either a privilege or an immunity to stand above the sanctions of the criminal law, which applies equally to all citizens. The purpose and object of the Act of 1984 was to curb acts of vandalism and damage to public property including (but not limited to) destruction and damage caused during riots and public protests.

**2021 0 Supreme(SC) 386; The State of Kerala Vs. K. Ajith & Ors: CRLA No 697 of 2021 @ SLP (Crl) No 4009 of 2021 and Criminal Appeal No 698 of 2021 @SLP (Crl) No 4481 of 2021 : 28-07-2021**

It is well settled law that an order passed under Section 451 Cr.P.C relating to interim custody of the vehicle is amenable for revisional jurisdiction under Section 397(1) Cr.P.C. It is not an interlocutory order to attract the bar under Section 397(2) Cr.P.C.

**Criminal Petition No.1745 of 2021=; K R KUMAR REDDY Vs. STATE OF AP: 30.07.2021**


**UNWARRANTED ACQUITTALS WOULD NOT ONLY GIVE WRONG SIGNAL TO THE SOCIETY BUT WOULD POSE A THREAT TO LAW AND ORDER.**

In the landmark Judgment of **Shivaji Sahebrao Bobade & anr. vs. State of Maharashtra, 1973 AIR 2622**, the Supreme Court has held that -

"In law there are no fetters on the plenary power of the appellate court to review the whole evidence on which the order of acquittal is founded and, indeed, it has a duty' to scrutinise the probative material de novo informed, however, by the weighty thought that the rebuttable innocence attributed to the accused having been converted into an acquittal the homage our jurisprudence owes to individual liberty constrains the higher court not to upset the holding without very convincing reasons and comprehensive consideration."

"**The dangers of exaggerated devotion to the rule of benefit of doubt** at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim and the community, demand especial emphasis in the contemporary context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent

martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community. The evil of acquitting a guilty person lightheartedly as a learned author(1) has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. ..... For all these reasons it is true to say', with Viscount Simon, that "a miscarriage of justice may arise from the acquittal of the ,guilty no less than from the conviction of the innocent. .."-In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing enhance possibilities as good enough to set the delinquent free arid chopping the logic of preponderant probability to, punish marginal innocents. We have adopted these cautious in analysing the evidence and appraising the soundness of the contrary conclusions reached by the courts below. Certainly, in the last analysis reasonable doubts must operate to the advantage of the appellant. In India the law has been laid down on these lines long ago. This Court had ever since its inception considered the correct principle to be applied by the Court in an appeal against an order of acquittal and held that the High Court has full power to review at large I the evidence upon which the order of acquittal was founded and to reach the conclusion that upon that evidence the order of acquittal should be reversed."

"If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicated 'persons' and more severe punishment of those who are found guilty. Thus too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless."

**CONTRADICTING THE EVIDENCE OF A WITNESS:**

The Supreme Court in the case of State of Karnataka v/s. Yarappa Reddy, (1999) 8 SCC 715, in which the Judgment of acquittal passed by High Court was set aside and the conviction and sentence passed by the trial Court was upheld. The Supreme Court has observed thus :

"The general rule of evidence is that no witness shall be cited to contradict another witness if the evidence is intended only to shake the credit of another witness.

The Supreme Court has further observed as follows :

"The basic requirement for adducing such contradictory evidence is that the witness, whose impartiality is sought to be contradicted with the help of such evidence, should have been asked about it and he should have denied it. Without adopting such a preliminary recourse it would be meaningless, if not unfair, to bring in a new witness to speak something fresh about a witness already examined. In Vijayan v. State, [1999] 4 SCC 36, this Court has held that "the rule limiting the right to call evidence to contradict a witness on collateral issues excludes all evidence of facts which are incapable of affording any reasonable presumption or inference as to the principal matter in dispute.""

**DEFECTIVE INVESTIGATION**

Dhanaj Singh @ Shera & ors. vs. State of Punjab, 2004(2) SCR 938, wherein it has been observed that :

"5. In the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect;

to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective."

"The contaminated conduct of officials should not stand on the way of evaluating the evidence by the courts; otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party."

**Revision against Section 91 CrPC petition is maintainable**

in Girish Kumar Suneja v. Central Bureau of Investigation, (2017) 14 SCC 809, would contend that the order passed by the Trial Court was amenable to the revisional jurisdiction of the High Court.

**Absence of Chemical Examination report not fatal**

In Bhupendra v. State of M.P. [(2014) 2 SCC 106: (2014) 1 SCC (Cri) 1: (2013) 13 Scale 552], the Court held that the production of chemical examination report is not mandatory. The Court held as follows: (SCC p. 112, para 23).

"23. These decisions clearly bring out that a chemical examination of the viscera is not mandatory in every case of a dowry death; even when a viscera report is sought for, its absence is not necessarily fatal to the case of the prosecution when an unnatural death punishable under Section 304-B IPC or under Section 306 IPC takes place; in a case of an unnatural death inviting Section 304-B IPC (read with the presumption under Section 113-B of the Evidence Act, 1872) or Section 306 IPC (read with the presumption under Section 113-A of the Evidence Act, 1872) as long as there is evidence of poisoning, identification of the poison may not be absolutely necessary."

**Hear say evidence:**

The Privy Council in Subramanian vs. Public Prosecutor, 1956 (1) WLR 965, in which case, the appellant was tried for being in possession of ammunition illegally. His defence was that he had been captured by terrorists and he was put in duress. Evidence of the conversation by the terrorists was shut out by the court on the basis that it constituted hearsay. The Privy Council did not approve of the said view. It laid down as follows:

"In ruling out peremptorily the evidence of conversation between the terrorists and the appellant the trial judge was in error. Evidence of a statement made to a witness by a person who is not himself called as a witness may or may no be hearsay. **It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made.** The fact that the statement was made, quite apart from its truth, is frequently relevant in considering the mental state and conduct thereafter of the witness or of some other person in whose presence the statement was made. In the case before their Lordships statements could have been made to the appellant by the terrorists, which, whether true or not, if they had been believed by the appellant, might reasonably have induced in him an apprehension of instant death if he failed to conform to their wishes.

# NEWS

- Prosecution replenish congratulates APP's Smt Upanishad Vani and Smt Swathi for being selected as JCJ.
- Prosecution replenish congratualtes Senior Assistant PP. Sri K.Rama Krishna on his promotion as Addl.PP Gr-II.
- GOVERNMENT OF ANDHRA PRADESH - Budget Estimates 2021-22 - Comprehensive Budget Release Order for Rupees Seven crore thirty one lakh ninety four thousand only (Rs.7,31,94,000/-) - Quarterly Distribution of Budget for the Prosecutions Department - Orders - Issued. FINANCE ( FMU-Home&Courts ) DEPARTMENT G.O.Rt.No.:1629 Dated:08-07-2021
- GOVERNMENT OF ANDHRA PRADESH ABSTRACT Home Department – Directorate of Prosecutions – Hiring of two (2) private vehicles, one for the use of Additional Director of Prosecutions and another for the use of (2) Joint Director of Prosecutions, for the Financial Year 2021-22 – Permission – Accorded. HOME (BUDGET) DEPARTMENT G.O.Rt.No.616 Dated: 08.07.2021
- GOVERNMENT OF ANDHRA PRADESH ABSTRACT Public Services – Re-Constitution of Departmental Promotion Committee for the First and Second level Gazetted

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posts in Prosecutions Department – Orders - Issued. HOME (COURTS-A) DEPARTMENT G.O.RT.No. 611 Dated: 07-07-2021

- GOVERNMENT OF ANDHRA PRADESH ABSTRACT Public Services – Prosecutions Department - Promotions – Senior Assistant Public Prosecutors - Promotion to the post of Additional Public Prosecutor Grade-II on temporary basis – Orders – Issued. HOME (COURTS.A) DEPARTMENT G.O.Ms.No.79 Dated:26-07-2021.

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# ON A LIGHTER VEIN

Two friends went out to play golf and were about to tee off, when one fellow noticed that his partner had but one golf ball.

"Don't you have at least one other golf ball?", he asked. The other guy replied that no, he only needed the one. "Are you sure?", the friend persisted. "What happens if you lose that ball?" The other guy replied, "This is a very special golf ball. I won't lose it so I don't need another one."

Well," the friend asked, "what happens if you miss your shot and the ball goes in the lake?"

"That's okay," he replied, "this special golf ball floats. I'll be able to retrieve it."

"Well what happens if you hit it into the trees and it gets lost among the bushes and shrubs?"

The other guy replied, "That's okay too. You see, this special golf ball has a homing beacon. I'll be able to get it back -- no problem."

Exasperated, the friend asks, "Okay. Let's say our game goes late, the sun goes down, and you hit your ball into a sand trap. What are you going to do then?"

"No problem," says the other guy, "you see, this ball is fluorescent. I'll be able to see it in the dark."

Finally satisfied that he needs only the one golf ball, the friend asks, "Hey, where did you get a golf ball like that anyway?"

The other guy replies, "I found it."

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## September, 2021

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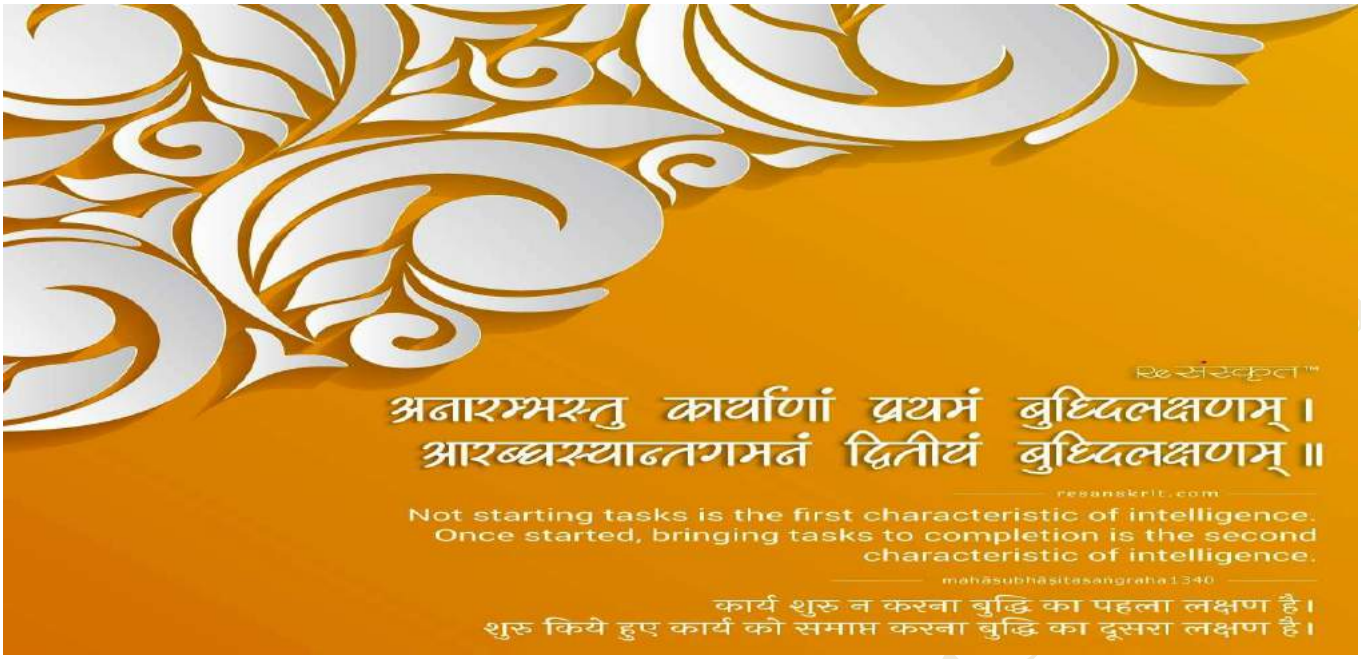


# *APPRECIATION AND EVALUATION OF CIRCUMSTANTIAL EVIDENCE IN CRIMINAL CASES*

**DVR Tejo Karthik**
**JMFC, Spl.Mobile Court,**
**Mahabubnagar**

## ➢ *INTRODUCTION*

The primal principle of Anglo – Saxon criminal jurisprudence is that the prosecution has to establish the guilt of the accused beyond shadow of doubt. For establishing the guilt of the accused, the prosecution is required to prove a fact or facts. Fact means and includes anything, state of things or relations of things, capable of being perceived by the senses or any mental condition of which any person is conscious. A proof of fact can be either by direct evidence or by circumstantial evidence. Direct evidence means that from which the existence of a given thing or fact is proved either by its actual production or by the testimony or admissible declaration by some one who has perceived it. In case of circumstantial evidence certain fact is proved from which the existence of a given fact is inferred. The fact from which the existence of fact in issue is to be inferred must be proved by direct evidence.

**Circumstantial evidence**, in law, evidence not drawn from direct observation of a fact in issue. If a witness testifies that he saw a defendant fire a bullet into the body of a person who then died, this is direct testimony of material facts in murder, and the only question is whether the witness is telling the truth. If, however, the witness is able to testify only that he heard the shot and that he arrived on the scene seconds later to see the accused standing over the corpse with a smoking pistol in his hand, the evidence is circumstantial; the accused may have been shooting at the escaping killer or merely have been a bystander who picked up the weapon after the killer had dropped it. The notion that one cannot be convicted on circumstantial evidence is, of course, false. Most criminal convictions are based on circumstantial evidence, although it must be adequate to meet established standards of proof. ***(see., Encyclopaedia Britannica).***

Circumstantial evidence is defined by Peter W. Murphy, Professor at South Texas College of Law, Houston, Texas and Barrister of Middle Temple and of the Carlifornia and Texas Bars in his book ***"Murphy on Evidence, 10th Edition, Oxford University Press"*** as "evidence from which the desired conclusion may be drawn but which requires the tribunal of fact not only to accept the evidence presented but also draw an inference from it."

## ➢ *WHAT ARE THE GUIDING PRINCIPLES FOR THE COURTS IN APPRECIATING THE EVIDENCE OF CIRCUMSTANTIAL EVIDENCE*

In ***R. v. Hodge, 168 ER 1136 (1838, England)*** the court held that before a person is convicted entirely on circumstantial evidence, the court must be satisfied not only that those circumstances were consistent with

his having committed the act, but also that the facts were such, so as to be inconsistent with any other rational conclusion other than the one that the accused is the guilty person. The observed in the following words:

*"...the case was made up of circumstances entirely; and that, before they could find the prisoner guilty, they must be satisfied not only that those circumstances were consistent with his having committed the act, but they must also be satisfied that the facts were such as to be inconsistent with any other rational conclusion than that the prisoner was the guilty person."*

The rule in Hodge's Case developed to deal with the differences between direct and circumstantial evidence. A Court faced with direct evidence must only address whether that evidence is to be believed. In contrast, circumstantial evidence requires a multi-layered approach since the Court must ask both whether the evidence is to be believed and what inferences may be drawn from the evidence. The rule in Hodge's Case addresses a potentially latent danger in circumstantial evidence by requiring that in convictions based on circumstantial evidence alone that guilt must be the only rational inference from the evidence.

In ***Mezzo v. The Queen, 1986 CanLII 16 (SCC) = (1986) 1 SCR 802,*** the Supreme Court of Canada observed that *"(W)here all the evidence is circumstantial the accused can be found guilty only if the evidence is both consistent with guilt and inconsistent with any other rational conclusion."*

In another Canadian case between ***R.* v. *McIver***, 1964 CanLII 248 (ON SC) = (1965) 1 O.R. 306 the Ontario High Court of Justice had aptly explained the rule in Hodge's Case as follows: *"Before you can find the prisoner guilty you must be satisfied beyond a reasonable doubt that the circumstances are consistent with the prisoner having committed the act and you must also be satisfied beyond a reasonable doubt that the facts are such as to be inconsistent with any other rational conclusion than that the prisoner was the guilty person".* (also see., **R. v. Alberta Hot Oil Services Ltd., *2007 ABQB 155*** in the **Court of Queen's Bench of Alberta** )

In McIver Case the Court emphasized that inferences must be rational conclusions based upon proven facts, not speculative suggestions.

Likewise in ***Regina v. Torrie, 1967 CanLII 285 (ON CA)*** again the Ontario Court of Appeal observed that the Court cannot make a finding of reasonable doubt on non-existent evidence.

Again in **R. v. Paul*, (1975) 1 SCR 181,*** the Supreme Court of Canada held that *"The rule (in* Hodge's Case*) makes it clear that the case is to be decided on the facts, that is, the facts proved in evidence and the conclusions alternative to the guilt of the accused must be rational conclusions based on inferences drawn from proven facts. No conclusion can be rational conclusion that is not founded on evidence. Such a conclusion would be a speculative, imaginative conclusion, not a rational one."*

The Supreme Court of Canada in **R. v. Villaroman, *2016 SCC 33 (CanLII),*** at para 37 stated as: "When assessing circumstantial evidence the trier of fact should consider "*other plausible theories*" and "*other reasonable possibilities*" which are inconsistent with guilt."

The Court of Appeal for Alberta in the case of **R. v. McEwan, *1932 CanLII 308*** held that proof by circumstantial evidence being a matter of logical reasoning from facts admitted or established in evidence there is always the danger of the tribunal of fact, whether it be Judge or jury, jumping to conclusions from certain facts without due regard to other facts which are inconsistent with the hypothesis which the first set of facts seems to point to. There being no direct evidence, the case must rest, on the circumstantial evidence alone, and the general rule is that to amount to proof such evidence must be not merely consistent with guilt but inconsistent with innocence.

The High Court of Australia on appeal from the Supreme Court of Victoria in ***Martin v. Osborne (1936) HCA 23 = (1936) 55 CLR 367*** speaking through Justice Dixon held that If an issue is to be proved by circumstantial evidence facts subsidiary to or connected with the main fact must be established from which the conclusion follows as a rational inference. In the inculpation of an accused person the evidentiary circumstances must bear no other reasonable explanation. This means that, according to the common course of human affairs, the degree of probability that the occurrence of the facts proved would be accompanied by the occurrence of the fact to be proved is so high that the contrary cannot reasonably be supposed. The circumstances which may be taken into account in this process of reasoning include all facts and matters which form constituent parts or ingredients of the transaction itself or explain or make intelligible the course of conduct pursued. The moral tendencies of persons, their proneness to acts or omissions of a particular description, their reputations and their associations are in general not matters which it is lawful to take into account, and evidence disclosing them, if

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not otherwise relevant, is rigidly excluded. But the class of acts and occurrences that may be considered includes circumstances whose relation to the fact in issue consists in the probability or increased probability, judged rationally upon common experience, that they would not be found unless the fact to be proved also existed. The application of this, as of any other general statement about relevancy is subject to the well-known specific rules of exclusion.

Sir Alfred Wills in his admirable book ***"William Wills" "An Essay on The Principles of Circumstantial Evidence, Illustrated by Numerous Cases"., 6th Edition, Butterworth & Company, London, 1912*** in Chapter VI ***"Rules of Induction Specially Applicable to Circumstantial Evidence"*** lays down the following rules specially to be observed in the case of circumstantial evidence:

Rule (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum;

Rule (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability;

Rule (3) in all cases, whether of direct of circumstantial evidence the best evidence must be adduced which the nature of the case admits;

Rule (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt; and

Rule (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.

The law regarding the nature and character of proof of circumstantial evidence is no longer *res integra* insofar as India is concerned and it has been settled by several authorities of Ho'ble Supreme Court of India as also of the Hon'ble High Courts. The *locus classicus* of the decision of the Hon'ble Supreme Court is the one rendered in the case of ***Hanumant v. The State of Madhya Pradesh, AIR 1952 SC 343 = 1953 CriLJ 129,*** where Hon'ble Justice Mahajan, had clearly expounded the various concomitants of the proof of a case based purely on circumstantial evidence, and pointed out thus: *"It is well to remember that in cases where the evidence in of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and pendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused....."*

The Supreme Court in the case of ***Sharad Birdhi Chand Sarda v State of Maharashtra*** reported in ***(1984) 4 SCC 116*** elucidated five golden principles popularly known panchsheel of the proof of a case based on circumstantial evidence and the Court has held as under:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in ***Shivaji Sahebrao Bobade & Anr v State of Maharashtra, (1973) 2 SCC 793*** where the observations were made:

> *"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."*

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

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In ***C. Chenga Reddy and Ors v. State of Andhra Pradesh (1996) 10 SCC 193,*** wherein it has been observed by the Hon'ble Supreme Court of India that in a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.

In ***Padala Veera Reddy v. State of Andhra Pradesh and Others., AIR 1990 SC 79*** it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

(1) The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of guilt of the accused and such evidence should not only be consistent with the guilty of the accused but should be inconsistent with his innocence.

In ***Vinay D. Nagar v. State of Rajasthan, (2008) 5 SCC 597***, the Supreme Court held that the principle of law is well established that where the evidence is of a circumstantial nature, circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and the facts, so established, should be consistent only with the hypothesis of the guilt of the accused. The circumstances should be of a conclusive nature and they should be such as to exclude hypothesis than the one proposed to be proved. In other words, there must be chain of evidence so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

The observation made by the Supreme Court in ***Kali Ram v. State of Himachal Pradesh, (1973) 2 SCC 808,*** is worth mentioning. The Court observed that the golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence.

In ***State of Uttar Pradesh v. Ashok Kumar Srivastava., AIR 1992 SC 840 = (1992) Crl LJ 1104*** it was pointed out by the Hon'ble Supreme Court that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

In ***Dhananjoy Chatterjee v. State of West Bengal.,(1994) 2 SCC 220,*** the Court held that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof.

It has been consistently laid down by the Supreme Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances.

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In ***Bhagat Ram v. State of Punjab, AIR 1954 SC 621*** it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt.

It is now well-settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well-settled that suspicion, however, grave may be, cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence. (See., ***Anil Kumar Singh v. State of Bihar., (2003) 9 SCC 67*** and ***Reddy Sampatha Kumar v. State of Andhra Pradesh., (2005) 7 SCC 603*** ).

In ***Bhim Singh & Anr v. State of Uttarakhand, (2015) 4 SCC 281.,*** held that when the conviction is based on circumstantial evidence solely, then there should not be any snap in the chain of circumstances. If there is a snap in the chain, the accused is entitled to benefit of doubt.

In ***Gurpreet Singh v. State of Haryana, (2002) 8 SCC 18.,*** the Court has held that if some of the circumstances in the chain can be explained by any other reasonable hypothesis, then the accused is entitled to benefit of doubt. But in assessing the evidence, imaginary possibilities have no place. The Court considers ordinary human probabilities.

- ***MOTIVE IN CASES OF CIRCUMSTANTIAL EVIDENCE***

While considering the motive in cases of circumstantial evidence, the Supreme Court in ***State of Uttar Pradesh v. Kishanpal & Ors., (2008) 16 SCC 73,*** examined the importance of motive in cases of circumstantial evidence and observed that the motive is a thing which is primarily known to the accused himself/themselves and it is not possible for the prosecution to explain what actually promoted or excited him/them to commit the particular crime. The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitness/eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitness/eyewitnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eyewitness/eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction.

The evidence regarding the existence of a motive which operates in the mind of the accused is very often very limited, and may not be within the reach of others. The motive driving the accused to commit an offence may be known only to him and to no other. In a case of circumstantial evidence, motive may be a very relevant factor. However, it is the perpetrator of the crime alone who is aware of the circumstances that prompted him to adopt a certain course of action, leading to the commission of the crime. Therefore, if the evidence on record suggests adequately, the existence of the necessary motive required to commit a crime, it may be conceived that the accused has in fact, committed the same. (Vide: ***Subedar Tewari v. State of Utter Pradesh & Ors, AIR 1989 SC 733; Suresh Chandra Bhari v. State of Bihar, AIR 1994 SC 2420; and Dr. Sunil Clifford Daniel v. State of Punjab, (2012) 11 SCC 205***).

In ***G. Parshwanath v. State of Karnataka, AIR 2010 SC 2914*** it was held that in a case based on circumstantial evidence where proved circumstances complete the chain of evidence, it cannot be said that in absence of motive, the other proved circumstances are of no consequence. The absence of motive, however, puts the court on its guard to scrutinize the circumstances more carefully to ensure that suspicion and conjecture do not take place of legal proof. There is no absolute legal proposition of law that in the absence of any motive an accused cannot be convicted. Effect of absence of motive would depend on the facts of each case.

In ***Sanjeev v. State of Haryana, (2015) 4 SCC 387***, 3 Judge Bench of the Court while dealing with a case of murder held that it is settled principle of law that, to establish commission of murder by an accused, motive is not required to be proved. Motive is something which prompts a man to form an intention. The intention can be formed even at the place of incident at the time of commission of crime. It is only either intention or knowledge on the part of the accused which is required to be seen in respect of the offence of culpable homicide. In order to read either intention or knowledge, the courts have to examine the circumstances, as there cannot be any direct evidence as to the state of mind of the accused.

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When facts are clear, it is immaterial whether motive was proved. Absence of motive does not break the link in the chain of circumstances connecting the accused with the crime. Further, proof of motive or ill-will is unnecessary to sustain conviction where there is clear evidence. (vide:***Bhimsingh v. State of Uttarakhand, (2015) 4 SCC 281***).

In ***Mulakh Raj Etc v. Satish Kumar and Others., (1992) 3 SCC 43 = AIR 1992 SC 1175*** it was held that undoubtedly, in cases of circumstantial evidences motive bears important significance. Motive always locks up in the mind of the accused and some time it is difficult to unlock. People do not act wholly without motive. The failure to discover the motive of an offence does not signify its non-existence. The failure to prove motive is not fatal as a matter of law. Proof of motive is never indispensable for conviction. When facts are clear it is immaterial that motive has been proved. Therefore, absence of proof of motive does not break the link in the chain of circumstances connecting the accused with the crime, nor militates against the prosecution case.

In ***Amitava Banerjee @ Amit @ Bappa Banerjee v. State of West Bengal, AIR 2011 SC 2913*** it was observed by the Court as: "Motive for the commission of an offence no doubt assumes greater importance in cases resting on circumstantial evidence than those in which direct evidence regarding commission of the offence is available. And yet failure to prove motive in cases resting on circumstantial evidence is not fatal by itself. All that the absence of motive for the commission of the offence results in is that the court shall have to be more careful and circumspect in scrutinizing the evidence to ensure that suspicion does not take the place of proof while finding the accused guilty. Absence of motive in a case depending entirely on circumstantial evidence is a factor that shall no doubt weigh in favour of the accused, but what the Courts need to remember is that motive is a matter which is primarily known to the accused and which the prosecution may at times find difficult to explain or establish by substantive evidence. Human nature being what it is, it is often difficult to fathom the real motivation behind the commission of a crime. And yet experience about human nature, human conduct and the frailties of human mind has shown that inducements to crime have veered around to what Wills has in his book "Circumstantial Evidence" said:

> *"The common inducements to crime are the desires of revenging some real or fancied wrong; of getting rid of rival or an obnoxious connection; of escaping from the pressure of pecuniary or other obligation or burden of obtaining plunder or other coveted object; or preserving reputation, either that of general character or the conventional reputation or profession or sex; or gratifying some other selfish or malignant passion."*

- ***ASPECT OF LAST SEEN THEORY AND CIRCUMSTANTIAL EVIDENCE***

While considering the aspect of last seen, the Supreme Court in ***State of Uttar Pradesh v. Satish., (2005) 3 SCC 114*** held that the last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases.(See., ***Bodh Raj @ Bodha & Ors. v. State of Jammu & Kashmir., AIR 2002 SC 3164*** ).

Similarly in ***Ramreddy Rajesh Khanna Reddy & Anr v. State of Andhra Pradesh., (2006) 10 SCC 172*** it was observed that the last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case the courts should look for some corroboration.

In ***Mohibur Rahman and Anr. v. State of Assam., AIR 2002 SC 3064,*** it was held by the Court that the circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. There may be cases where on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability for the homicide.

In ***Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681,*** the Court held as : "Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime."

In **Rohtash Kumar v. State of Haryana*, (2013) 14 SCC 290,*** it was observed by the Court that the doctrine of "last seen together" shifts the burden of proof on the accused, requiring him to explain how the incident had occurred. Failure on the part of the accused to furnish any explanation in this regard, would give rise to a very strong presumption against him.

In ***Ashok v. State of Maharashtra, (2015) 4 SCC 393*** it was observed that the initial burden of proof is on prosecution to adduce sufficient evidence pointing towards guilt of accused. However, in case it is established that accused was last seen together with the deceased, prosecution is exempted to prove exact happening of incident as accused himself would have special knowledge of incident and thus would have burden of proof as per Section 106, Evidence Act. But last seen together itself is not conclusive proof but along with other circumstances surrounding the incident like relations between accused and deceased, enmity between them, previous history of hostility, recovery of weapon from accused, etc. non-explanation of death of deceased, etc.etc. may lead to a presumption of guilt of accused.

In ***State of West Bengal v. Mir Mohammad Omar & Ors etc. etc., AIR 2000 SC 2988,*** the Court held that if fact is especially in the knowledge of any person, then burden of proving that fact is upon him. It is impossible for prosecution to prove certain facts particularly within the knowledge of accused. Section 106 is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the Section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the Court to draw a different inference. Section 106 of the Evidence Act is designed to meet certain exceptional cases, in which, it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused.

- ***CONDUCT OF THE ACCUSED AND THE CIRCUMSTANTIAL EVIDENCE***

In ***Joydeep Neogi @ Bubai v. State of West Bengal, (2009) 15 SCC 83*** it was observed that a criminal trial is not an enquiry into the conduct of an accused or any purpose other than to determine his guilt. It is not disputed piece of conduct which is not connected with the guilt of the accused is not relevant. But at the same time, however, unnatural, abnormal or unusual behaviour of the accused after the offence may be relevant circumstance against him. Such conduct is inconsistent with his innocence. So the conduct which destroys the presumption of innocence can be considered as relevant and material.

Where the accused had absconded after committing the murder, it has been held that the conduct of the accused in such cases is very relevant u/s 8 of the Evidence Act *(See.,* **Sidhartha Vashisht @ Manu Sharma v. State *(*NCT of Delhi*). (*2010*) 6 SCC 1 )***

In ***Kundula Bala Subrahmanyam and Anr v. State of Andhra Pradesh, (1993) 2 SCC 684*** it was held that indeed, absconding by itself may not be a positive circumstance consistent only with the hypothesis of guilt of the accused because it is not unknown that even innocent persons may run away for fear of being falsely involved in a criminal case and arrested by the police, but coupled with the other circumstances , the absconding of the accused assumes importance and significance.

- ***CONCLUSION***

In summation it would be apt to note the observation of the Supreme Court that a criminal trial is not a fairy tale wherein one is free to give flight to one's imagination and fantasy. Crime is an event in real life and is the product of an interplay between different human emotions. In arriving at a conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case, in the final analysis, would have to depend upon its own facts. The court must bear in mind that "human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions." Though an offence may be gruesome and revolt the human conscience, an accused can be convicted only on legal evidence and not on surmises and conjecture. The

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law does not permit the court to punish the accused on the basis of a moral conviction or suspicion alone. "The burden of proof in a criminal trial never shifts and it is always the burden of the prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence." In fact, it is a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof required, since a higher degree of assurance is required to convict the accused. The fact that the offence was committed in a very cruel and revolting manner may in itself be a reason for scrutinizing the evidence more closely, lest the shocking nature of the crime induce an instinctive reaction against dispassionate judicial scrutiny of the facts and law. (Vide : Kashmira Singh v. State of Madhya Pradesh, AIR 1952 SC 159; State of Punjab v. Jagir Singh Baljit Singh & Anr., AIR 1973 SC 2407; Shankarlal Gyarasilal Dixit v. State of Maharashtra, AIR 1981 SC 765; Mousam Singha Roy & Ors. v. State of West Bengal, (2003) 12 SCC 377; and Aloke Nath Dutta &Ors. v. State of West Bengal, (2007) 12 SCC 230).

Further the Supreme Court in Paramjeet Singh @ Pamma v. State Of Uttarakhand, (2010) 10 SCC 439 that in a criminal trial involving a serious offence of a brutal nature, the court should be wary of the fact that it is human instinct to react adversely to the commission of the offence and make an effort to see that such an instinctive reaction does not prejudice the accused in any way. In a case where the offence alleged to have been committed is a serious one, the prosecution must provide greater assurance to the court that its case has been proved beyond reasonable doubt.

Though a conviction may be based solely on circumstantial evidence, this is something that the court must bear in mind while deciding a case that the prosecution's case must stand or fall on its own legs and cannot derive any strength from the weakness of the defence put up by the accused. The Court must assure itself that various links in the chain of circumstantial evidence are in themselves complete and the circumstances from which the conclusion of guilt is to be drawn should be amply established and conclusive in nature that in all human probability the act was committed done by the accused there by excluding every possible hypothesis except the one to be proved.

*(Prosecution Replenish conveys its heartfelt thanks to **Sri D.V.R. TejoKarthik,** Judicial Magistrate of First Class, Special Mobile Court, Mahabubnagar, for contributing this article for our leaflet)*

## CITATIONS

**2021 0 Supreme(SC) 425; Surajdeo Mahto and Another Vs. The State of Bihar: Criminal Appeal No. 1677 of 2011:Decided On : 04-08-2021(THREE JUDGE BENCH)**

The case of the prosecution in the present case heavily banks upon the principle of "Last seen theory." Briefly put, the last seen theory is applied where the time interval between the point of when the accused and the deceased were last seen together, and when the victim is found dead, is so small that the possibility of any other person other than the accused being the perpetrator of crime becomes impossible. Elaborating on the principle of "last seen alive" a three judge bench of this Court in the case of Satpal vs. State of Haryana, (2018) 6 SCC 610 has, however, cautioned that unless the fact of last seen is corroborated by some other evidence, the fact that the deceased was last seen in the vicinity of the accused, would by itself, only be a weak kind of evidence. The Court further held:

> ".....Succinctly stated, it may be a weak kind of evidence by itself to found conviction upon the same singularly. But when it is coupled with other circumstances such as the time when the deceased was last seen with the accused, and the recovery of the corpse being in very close proximity of time, the accused owes an explanation under Section 106 of the Evidence Act with regard to the circumstances under which death may have taken place. If the accused offers no explanation, or furnishes a wrong explanation, absconds, motive is established and there is corroborative evidence available inter-alia in the form of recovery or otherwise forming a chain of circumstances leading to the only inference for guilt of the accused, incompatible with any possible hypothesis of innocence, conviction can be based on the same. If there be any doubt or break in the link of chain of circumstances, the benefit of doubt must go to the accused. Each case will therefore have to be examined on its own facts for invocation of the doctrine."

The contention that most of the prosecution witnesses were either related or close to the complainant party and their testimony could not be relied upon in the absence of corroboration by any independent witnesses, in our opinion, is without much substance. It is trite in law that the job of the prosecution is to put forth the best evidence that is collected during the investigation. Although it is ideal that the prosecution case is further substantiated through independent witnesses, but it would

be unreasonable to expect the presence of third- parties in every case. This Court has consistently held that the prosecution's case cannot be discarded merely on a bald plea of all witnesses being related to the complainant party. Hence, in order to draw an adverse inference against the non-examination of independent witnesses, it must also be shown that though the best evidence was available, but it was withheld by the prosecution.

As to what materials would prima-facie satisfy the court and/or are sufficient for discharging the initial burden cannot be catalogued nor can it be laid down as to what weight should be given to a specific piece of evidence which may be sufficient to raise presumption of juvenility but the documents referred to in Rules 12(3)(a)(i) to (iii) shall definitely be sufficient for prima-facie satisfaction of the court about the age of the delinquent necessitating further enquiry under Rule 12. The statement recorded under Section 313 of the Code is too tentative and may not by itself be sufficient ordinarily to justify or reject the claim of juvenility. **The credibility and/or acceptability of the documents like the school leaving certificate or the voters' list, etc. obtained after conviction would depend on the facts and circumstances of each case and no hard-and-fast rule can be prescribed that they must be prima-facie accepted or rejected....."**

(Emphasis Supplied)

**2021 0 Supreme(SC) 426; M/S. CHEMINOVA INDIA LTD. & ANR. Vs. STATE OF PUNJAB & ANR.; CRIMINAL APPEAL NO.749 OF 2021 [ARISING OUT OF S.L.P.(CRL.) NO.4102 OF 2020]; DECIDED ON : 04-08-2021**

Merely because a further request is made for sending the sample to the Central Insecticide Testing Laboratory, as contemplated under Section 24(4) of the Act, which report was received on 09.12.2011, receipt of such analysis report on 09.12.2011 cannot be the basis for commencement of limitation. The report of analysis received from the Insecticide Testing Laboratory, Ludhiana on 14.03.2011 itself indicates misbranding, as stated in the complaint, thus, the period of limitation within the meaning of Section 469, Cr.PC commences from 14.03.2011 only.

**2021 0 Supreme(SC) 427; M/S. CHEMINOVA INDIA LTD. & ANR.Vs. STATE OF PUNJAB & ANR. CRIMINAL APPEAL NO. 750 OF 2021 (Arising out of SLP (Crl.) No.4144 OF 2020): On : 04-08-2021**

Similarly, with regard to the procedure contemplated under Section 202 of the Code of Criminal Procedure, the same is to be viewed, keeping in mind that the complainant is a public servant who has filed the complaint in discharge of his official duty. The legislature in its wisdom has itself placed the public servant on a different pedestal, as would be evident from a perusal of proviso to Section 200 of the Code of Criminal Procedure. Object of holding an inquiry/investigation before taking cognizance, in cases where accused resides outside the territorial jurisdiction of such Magistrate, is to ensure that innocents are not harassed unnecessarily. By virtue of proviso to Section 200 of Code of Criminal Procedure, the Magistrate, while taking cognizance, need not record statement of such public servant, who has filed the complaint in discharge of his official duty. Further, by virtue of Section 293 of Code of Criminal Procedure, report of the Government Scientific Expert is, per se, admissible in evidence. The Code of Criminal Procedure itself provides for exemption from examination of such witnesses, when the complaint is filed by a public servant. In the present case, 2nd Respondent/Public Servant, in exercise of powers under provisions of the Insecticides Act, 1968, has filed complaint, enclosing several documents including reports of the Government Laboratories, it is always open for the Magistrate to issue process on such complaint which is supported by documents. In any event, we do not find any merit in the submissions of the learned Counsel that proceedings are to be quashed only on the ground that, the Magistrate has taken cognizance without conducting inquiry and ordering investigation. In absence of showing any prejudice caused to the appellant at this stage, the same is no ground to quash the proceedings in exercise of power under Section 482 of the Code of Criminal Procedure.

**2021 0 Supreme(SC) 414; BANKA SNEHA SHEELA Vs. THE STATE OF TELANGANA & ORS.: Criminal Appeal No. 733 of 2021 [Arising out of SLP (Criminal) No. 4729 of 2021] Decided on : 02-08-2021**

it is clear that at the highest, a possible apprehension of breach of law and order can be said to be made out if it is apprehended that the Detenu, if set free, will continue to cheat gullible persons. This

may be a good ground to appeal against the bail orders granted and/or to cancel bail but certainly cannot provide the springboard to move under a preventive detention statute.

**2021 0 Supreme(SC) 417; NEERAJ GARG Vs. SARITA RANI AND ORS ; CIVIL APPEAL NOs. 4555 4559 OF 2021 (Arising out of SLP (C) Nos.86438647 of 2021)Decided On : 02-08-2021**
While it is of fundamental importance in the realm of administration of justice to allow the judges to discharge their functions freely and fearlessly and without interference by anyone, it is equally important for the judges to be exercising restraint and avoid unnecessary remarks on the conduct of the counsel which may have no bearing on the adjudication of the dispute before the Court.

**2021 0 Supreme(SC) 445; Siddharth Vs. State of Uttar Pradesh and Another: Criminal Appeal No. 838 of 2021, SLP (Crl.) No. 5442 of 2021: Decided On : 16-08-2021**
It has rightly been observed on consideration of Section 170 of the Cr.P.C. 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 of the Cr.P.C. 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.
12. 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 vs. State of U.P. and Others, (1994) 4 SCC 260]. 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.
13. We are, in fact, faced with a situation where contrary to the observations in Joginder Kumar’s case 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 pre-requisite formality to take the charge-sheet on record in view of the provisions of Section 170 of the Cr.P.C. We consider such a course misplaced and contrary to the very intent of Section 170 of the Cr.P.C.

**2021 0 Supreme(SC) 450; MADHAV Vs. STATE OF MADHYA PRADESH : Criminal Appeal No. 852 of 2021 (@ Special Leave Petition (Crl.) No.2345 of 2019): WITH Criminal Appeal No. 853 of 2021 (@ Special Leave Petition (Crl.) No.9326 of 2018): Decided On : 18-08-2021**
we are clearly of the view that the investigation in this case was carried out by PW14, not with the intention of unearthing the truth, but for burying the same fathom deep, for extraneous considerations and that it was designed to turn the informant and her family members as the accused and allow the real culprits named in the FIR to escape.

**SARANYA Vs. BHARATHI AND ANOTHER: CRIMINAL APPEAL NO.873 OF 2021: DECIDED ON : 24-08-2021**
It also appears that during the course of the investigation, the investigating officer has collected very important evidence in the form of call details between A1 & A2 which are in the proximity of the time of commission of offence and even thereafter. Therefore, in the facts and circumstances of the case, when respondent no.1 herein has been chargesheeted for the offences under Sections 420, 302 r/w 109 IPC and as observed hereinabove when there is ample material to show at least a prima facie case against respondent no.1 herein – A2, the High Court has committed a grave error in quashing the chargesheet/entire criminal proceedings qua her in exercise of powers under Section 482 Cr.P.C. Quashing the chargesheet against the accused is not justified. The High Court has evidently ignored

what has emerged during the course of investigation. The High Court has entered into the appreciation of the evidence and considered whether on the basis of the evidence, the accused is likely to be convicted or not, which as such is not permissible at all at this stage while considering the application under Section 482 Cr.P.C. The High Court was not as such conducting the trial and/or was not exercising the jurisdiction as an appellate court against the order of conviction or acquittal. Therefore, in the facts and circumstances of the case, the High Court ought not to have quashed the chargesheet qua respondent no.1 herein – original accused no.2.

**Harjit Singh Vs. Inderpreet Singh @ Inder and Another: Criminal Appeal No. 883 of 2021 (Arising from S.L.P.(Criminal) No. 3739 of 2021) Decided On : 24-08-2021**

At this stage, a recent decision of this Court in the case of Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana (koli) 2021 (6) SCALE 41 is also required to be referred to. In the said decision, this Court considered in great detail the considerations which govern the grant of bail, after referring to the decisions of this Court in the case of Ram Govind Upadhyay (Supra); Prasanta Kumar Sarkar (Supra); Chaman Lal vs. State of U.P. (2004) 7 SCC 525; and the decision of this Court in Sonu vs. Sonu Yadav 2021 SCC Online SC 286. After considering the law laid down by this Court on grant of bail, in the aforesaid decisions, in paragraphs 20, 21, 36 & 37 it is observed and held as under:

> "20. The first aspect of the case which stares in the face is the singular absence in the judgment of the High Court to the nature and gravity of the crime. The incident which took place on 9 May 2020 resulted in five homicidal deaths. The nature of the offence is a circumstance which has an important bearing on the grant of bail. The orders of the High Court are conspicuous in the absence of any awareness or elaboration of the serious nature of the offence. The perversity lies in the failure of the High Court to consider an important circumstance which has a bearing on whether bail should be granted. In the two-judge Bench decision of this Court in Ram Govind Upadhyay v. Sudharshan Singh, the nature of the crime was recorded as "one of the basic considerations" which has a bearing on the grant or denial of bail. The considerations which govern the grant of bail were elucidated in the judgment of this Court without attaching an exhaustive nature or character to them. This emerges from the following extract: "4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:
>
> (a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.
>
> (b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.
>
> (c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.
>
> (d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."
>
> 21. This Court further laid down the standard for overturning an order granting bail in the following terms:
>
> "3. Grant of bail though being a discretionary order -- but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained."
>
> xxx xxx xxx
>
> 36. Grant of bail under Section 439 of the CrPC is a matter involving the exercise of judicial discretion. Judicial discretion in granting or refusing bail - as in the case of any other discretion which is vested in a court as a judicial institution - is not unstructured. The duty to record reasons is a significant safeguard which ensures that the discretion which is entrusted to the court is exercised in a judicious manner. The recording of reasons in a judicial order ensures that the thought process underlying the order is subject to scrutiny and that it meets objective standards of reason and justice. This Court in Chaman Lal v. State of U.P (2004) 7 SCC 525 in a similar vein

has held that an order of a High Court which does not contain reasons for prima facie concluding that a bail should be granted is liable to be set aside for non-application of mind. This Court observed:

"8. Even on a cursory perusal the High Court's order shows complete non-application of mind. Though detailed examination of the evidence and elaborate documentation of the merits of the case is to be avoided by the Court while passing orders on bail applications. Yet a court dealing with the bail application should be satisfied, as to whether there is a prima facie case, but exhaustive exploration of the merits of the case is not necessary. The court dealing with the application for bail is required to exercise its discretion in a judicious manner and not as a matter of course.

9. There is a need to indicate in the order, reasons for prima facie concluding why bail was being granted particularly where an accused was charged of having committed a serious offence…"

**MANJEET SINGH Vs. STATE OF HARYANA & ORS.: CRIMINAL APPEAL NO.875 OF 2021: DECIDED ON : 24-08-2021**

The ratio of the aforesaid decisions on the scope and ambit of the powers of the Court under Section 319 CrPC can be summarized as under:

(i) That while exercising the powers under Section 319 CrPC and to summon the persons not charge-sheeted, the entire effort is not to allow the real perpetrator of an offence to get away unpunished;

(ii) for the empowerment of the courts to ensure that the criminal administration of justice works properly;

(iii) the law has been properly codified and modified by the legislature under the CrPC indicating as to how the courts should proceed to ultimately find out the truth so that the innocent does not get punished but at the same time, the guilty are brought to book under the law;

(iv) to discharge duty of the court to find out the real truth and to ensure that the guilty does not go unpunished;

(v) where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial;

(vi) Section 319 CrPC allows the court to proceed against any person who is not an accused in a case before it;

(vii) the court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency;

(viii) Section 319 CrPC is an enabling provision empowering the court to take appropriate steps for proceeding against any person not being an accused for also having committed the offence under trial;

(ix) the power under Section 319(1) CrPC can be exercised at any stage after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Sections 207/208 CrPC, committal, etc. which is only a pretrial stage intended to put the process into motion;

(x) the court can exercise the power under Section 319 CrPC only after the trial proceeds and commences with the recording of the evidence;

(xi) the word "evidence" in Section 319 CrPC means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents;

(xii) it is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under Section 319 CrPC is to be exercised and not on the basis of material collected during the investigation;

(xiii) if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under Section 319 CrPC and can proceed against such other person(s);

(xiv) that the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, powers under Section 319 CrPC can be exercised;

(xv) that power under Section 319 CrPC can be exercised even at the stage of completion of examination-in-chief and the court need not has to wait till the said evidence is tested on cross-examination;

(xvi) even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well who were named in FIR but not implicated in the charge-sheet has gone, in that case also, the Court is still not powerless by virtue of Section 319 CrPC and even those persons named in FIR but not implicated in the charge-sheet can be summoned to face the trial, provided during the trial some evidence surfaces against the proposed accused (may be in the form of examination-in-chief of the prosecution witnesses);
(xvii) while exercising the powers under Section 319 CrPC the Court is not required and/or justified in appreciating the deposition/evidence of the prosecution witnesses on merits which is required to be done during the trial.

**Lala @ Anurag Prakash Aasre Vs. The State Of Maharashtra: Criminal Appeal No. 540 of 2018: Decided On : 24-08-2021**
While it is true that the FIR is silent on the name of the appellant, we cannot entirely throw out the prosecutorial case on such a basis as other reliable evidence are available in the case. The FIR is certainly the starting point of the investigation, but it is well within the rights of the prosecution to produce witness statements as they progress further into the investigation and unearth the specific roles of accused persons. The FIR as is known, only sets the investigative machinery, into motion.

**Syed Taruj Ahmed Vs. State of Telangana; 11.08.2021; CRLP No. 3598 OF 2021;**
where even no limitation has been prescribed, the petition must be filed within a reasonable time

**2021 2 ALD Crl 179(SC); 2021 0 Supreme(SC) 182; SONU @ Subhash Kumar Vs. State of Uttar Pradesh & Anr: Criminal Appeal No 233 of 2021 (Arising out of SLP (Crl) No 11218 of 2019):Decided On : 01-03-2021**
There is no allegation to the effect that the promise to marry given to the second respondent was false at the inception. On the contrary, it would appear from the contents of the FIR that there was a subsequent refusal on the part of the appellant to marry the second respondent which gave rise to the registration of the FIR.

**2021 0 AIR(SC) 1381; 2021 0 CrLJ 2193; 2021 0 Supreme(SC) 133; 2021 2 ALD Crl 184(SC); Krishna Lal Chawla Vs State of U.P. & Anr.: Criminal Appeal No. 283 of 2021, (arising out of S.L.P. (Crl.) No. 6432 of 2020): Decided On : 08-03-2021**
It is said that every trial is a voyage of discovery in which the truth is the quest. In India, typically, the Judge is not actively involved in 'fact-finding' owing to the adversarial nature of our justice system. However, Section 165 of the Indian Evidence Act, 1872 by providing the Judge with the power to order production of material and put forth questions of any form at any time, marks the influence of inquisitorial processes in our legal system. This wide-ranging power further demonstrates the central role played by the Magistrate in the quest for justice and truth in criminal proceedings, and must be judiciously employed to stem the flow of frivolous litigation.
Permitting multiple complaints by the same party in respect of the same incident, whether it involves a cognizable or private complaint offence, will lead to the accused being entangled in numerous criminal proceedings. As such, he would be forced to keep surrendering his liberty and precious time before the police and the Courts, as and when required in each case. As this Court has held in Amitbhai Anilchandra Shah (supra), such an absurd and mischievous interpretation of the provisions of the CrPC will not stand the test of constitutional scrutiny, and therefore cannot be adopted by us.
**2021 2 ALD Crl 217(SC); 2021 0 AIR(SC) 1241; 2021 1 Crimes(SC) 454; 2021 0 Supreme(SC) 114; Kapil Agarwal AND OTHERS Vs. SANJAY SHARMA AND OTHERS : CRIMINAL APPEAL NO.142 OF 2021: Decided on : 01-03-2021**
merely because on the same set of facts with the same allegations and averments earlier the complaint is filed, there is no bar to lodge the FIR with the police station with the same allegations and averments.
in the FIR, neither there is any reference to the application under Section 156(3) Cr.P.C. which is pending before the learned Magistrate, nor there is a reference of the complaint under Section 138 of the NI Act. Under the circumstances, the impugned FIR is nothing but an abuse of process of law and can be said to be filed with a view to harass the appellants.

**2021 2 ALD Crl 312(AP); Taiboyina Peraiah Mahesh Vs State of A.P. :W.P.No.24672 of 2020:06.03.2021:**

As regards the Standing Order 602(2) of the A.P. Police Standing Orders is concerned, even though the said Standing Order enables the police to continue the rowdy sheet even when the petitioner is not figuring as an accused in any pending case, a careful reading of the aforesaid Order makes it manifest that the concerned authority can continue the rowdy sheet only when the activities of the petitioner are found to be prejudicial to the maintenance of public order or affecting peace and tranquillity in the area or where the victims are not coming forward to give complaint against him on account of threat from him. So, three grounds are contemplated to continue the rowdy sheet under Standing Order 602(2) of the A.P. Police Standing Orders viz., (i) that the concerned authority must have material before him that the activities of the petitioner are prejudicial to the maintenance of public order; (ii) his conduct must be of such a nature which affecting the peace and tranquillity in the area; and (iii) that the victims are not coming forward to give any complaint against him on account of threat from him. Existence of any one of these three grounds is sine qua non for extending the period of rowdy sheet from time to time even though when the petitioner is not figured as an accused in any pending case. As can be seen from the material available on record, the respondent police officials did not produce any order passed extending the period of rowdy sheet based on the aforesaid three grounds contemplated under Standing Order 602(2) of the A.P. Police Standing Orders. Mere making a bald assertion in the counter-affidavit sans producing any material to substantiate the said version cannot be countenanced to justify extension of the rowdy sheet against the petitioner

## NOSTALGIA

**PERJURY- PROCEDURE**

in the case of KTMS Mohammad and Another vs. Union of India, 1992 (3) SCC 178 wherein it is observed as hereunder:-

> "37. The mere fact that a deponent has made contradictory statements at two different stages in a judicial proceeding is not by itself always sufficient to justify a prosecution for perjury under Section 193 IPC but it must be established that the deponent has intentionally given a false statement in any stage of the 'judicial proceeding' or fabricated false evidence for the purpose of being used in any stage of the judicial proceeding. Further, such a prosecution for perjury should be taken only if it is expedient in the interest of justice."
>
> Further, in the case of Amarsang Nathaji vs. Hardik Harshadbhai Patel and Others, 2017 (1) SCC 113 relied on by the learned counsel for the appellant, this Court on referring to the case of KTMS Mohammad vs. Union of India (supra) has held as hereunder:-

"6. The mere fact that a person has made a contradictory statement in a judicial proceeding is not by itself always sufficient to justify a prosecution under Sections 199 and 200 of the Penal Code, 1860 (45 of 1860) (hereinafter referred to as "IPC") but it must be shown that the defendant has intentionally given a false statement at any stage of the judicial proceedings or fabricated false evidence for the purpose of using the same at any stage of the judicial proceedings. Even after the above position has emerged also, still the court has to form an opinion that it is expedient in the interests of justice to initiate an inquiry into the offences of false evidence and offences against public justice and more specifically referred to in Section 340 (1) Cr.P.C. having regard to the overall factual matrix as well as the probable consequences of such a prosecution. The court must be satisfied that such an inquiry is required in the interests of justice and appropriate in the facts of the case."

**Circumstantial Evidence**

in its much-celebrated judgment of Sharad Birdhichand Sarda vs. State of Maharashtra, (1984) 4 SCC 116, The SC has elaborately considered the standard necessary for recording a conviction on the basis of circumstantial evidence and has further held:

> "153. xxx xxx xxx

(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established.

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) The circumstances should be of a conclusive nature and tendency.

(4) They should exclude every possible hypothesis except the one to be proved.

(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

These five cardinal principles have been reiterated on numerous occasions, including in the recent decisions in Mohd. Younus Ali Tarafdar vs. State of West Bengal, (2020) 3 SCC 747 and R. Damodaran vs. State Represented by the Inspector of Police, 2021 SCC Online SC 134.

**Proof of Circumstantial Evidence**

The position of law is well settled that the links in the chain of circumstances is necessary to be established for conviction on the basis of circumstantial evidence. This has been articulated in one of the early decisions of this Court in the case of Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116. The relevant paragraphs are as hereunder:

"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

159. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier viz. before a false explanation can be used as additional link, the following essential conditions must be satisfied:

(1) various links in the chain of evidence led by the prosecution have been satisfactorily proved,

(2) the said circumstance points to the guilt of the accused with reasonable definiteness, and

(3) the circumstance is in proximity to the time and situation.

160. If these conditions are fulfilled only then a court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise. On the facts and circumstances of the present case, this does not appear to be such a case. This aspect of the matter was examined in Shankarlal case where this Court observed thus: [SCC para 30, p. 43: SCC (Cri) p. 322]

"Besides, falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea can at best be considered as an additional circumstances, if other circumstances point unfailingly to the guilt of the accused."

**NONMATCHING OF BLOOD GROUPS**

In R. Shaji vs. State of Kerala, (2013) 14 SCC 266 this Court took note of almost all previous decisions starting from Prabhu Babaji Navle vs. State of Bombay, AIR 1956 SC 51 and including those in Raghav Prapanna Tripathi (supra); Teja Ram (supra), Gura Singh (supra); John Pandian vs. State, (2010) 14 SCC 129; and Sunil Clifford Daniel vs. State of Punjab, (2012) 11 SCC 205 and came to the conclusion that once the recovery is made in pursuance of a disclosure statement made by the accused, the matching or nonmatching of blood groups loses significance.

Therefore, as pointed out by this Court in Balwan Singh vs. State of Chhattisgarh, (2019) 7 SCC 781 there cannot be any fixed formula that the prosecution has to prove, or need not prove that the blood groups match. But the judicial conscience of the Court should be satisfied both about the recovery and about the origin of the human blood.

# NEWS

- The Constitution (One Hundred and Fifth Amendment) Act, 2021, published 18.08.2021
- GOVERNMENT OF TELANGANA - Public Services – State and Subordinate Services – Prescription of minimum service for promotion/ appointment by transfer to next higher class, category of grade– Ad-hoc Rule – Issued. G.O.Ms.No. 259 GENERAL ADMINISTRATION (SER.A) DEPARTMENT Dated: 30-08-2021
- The Adoption (First Amendment) Regulations, 2021 published 11.08.2021
- The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021 published 7.8.2021
- GOVERNMENT OF TELANGANA -Public Services Prosecuting Officers - Promotion and postings to certain Senior Assistant Public Prosecutors as Additional Public Prosecutors Grade-II on temporary basis Orders Issued. G.O.Rt.No.1517 -HOME (COURTS.A1) DEPARTMENT Dated:30-08-2021

| Sl. No. (1) | Name and Designation (2) | Place of Posting on Promotion (3) |
|---|---|---|
| 1. | S.Shoba Rani, Sr.APP, JMFC Court Nalgonda | *VIII* Addi. Assistant Sessions Court, LB Nagar, RR District |
| 2. | E.Kirankumar Reddy, Sr.APP, JMFC Court, Bodhan | Assistant Sessions Court, Adilabad |
| 3. | P.J. Ramakrishna, Sr.APP, JMFC Court, Medak | Assistant Sessions Court, Shadnagar, Mahabubnagar District |
| 4. | Dharavath Sharath, Sr.APP, JMFC Court, Narsampet | Assistant Sessions Court, Huzurabad, Karimnagar |
| 5. | L.H.Rajeshwara Rao, Sr.APP, working on OD as CLI in TSPA, Hyderabad | Faculty Member TSPA, TS |
| 6. | K.Naresh Kumar, Sr.APP, XI ACMM Court, Secunderabad | Assistant Sessions Court, Ibrahimpatnam, RR District |

prosecutorsdigest

| | | |
|---|---|---|
| 7. | K.V.Beena, Sr.APP, I ACMM, Court Hyderabad | *VII* Addi. Assistant Sessions Court, LB Nagar RR District |
| 8. | P.Krishna Murthy, Sr.APP, II AMM Court, LB Nagar, Ranga Reddy District | VI Addi. Assistant Sessions Court, Medchal, RR District |
| 9. | P.Sathyanarayana, Sr.APP, XII ACMM Court, Hyderabad | Assistant Sessions Court, Bhonglr, Nalgonda |
| 10. | M.Santoshl, Sr.APP, I AJMFC Court, Waranqal | Assistant Sessions Court, Jagitial, Karimnagar District |
| 11. | PVD Lakshmi, Sr.APP, I AJMFC Court, Khammam | Addi. Assistant Sessions Court, Kothagudem, Khammam |
| 12. | M.Rajini, Sr.APP, II ACMM Court, Hyderabad | IX Addi. Assistant Sessions Court, LB Nagar RR District |
| 13. | G.Bhadradri, Sr.APP, JMFC Court, Adllabad | Principal Assistant Sessions Court, Warangal |
| 14. | A.Phanl Kumar, Sr.APP, PJMFC Court, Kothaaudem | Principal Assistant Sessions Court, LB Nagar, RR District |
| 15. | D.Upender, Sr.APP, JMFC Court, Luxettipet | Assistant Sessions Court, Asifabad, Adilabad |
| 16. | T.Rajeshwar, Sr.APP, JMFC Court, Tandur | Assistant Sessions Court, Vikarabad, RR District |
| 17. | G.V.Ramakrishna Rao, Sr.APP, PJMFC Court, Bhongir | I Addi. Assistant Sessions Court, LB Nagar, RR District |
| 18. | S.Komalatha Subbaiah, Sr.APP, IX ACMM Court, Hyderabad | II Addi. Assistant Sessions Court, LB Nagar, RR District |

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# ON A LIGHTER VEIN

Former Prime Minister of the United Kingdom, Winston Churchill, once said: "I took a taxi one day to the BBC offices for an interview.

When I arrived, I asked the driver to wait for me for Forty Minutes until I 'll get back, but the driver apologized and said, "I can't, because I have to go home to listen to Winston Churchill's speech".

I was amazed and delighted with the man's desire to listen to my speech! So I took out 20 pounds and gave it to the taxi driver instead of 5 Pounds without telling him who I was. When the driver collected the money, he said: "I'll wait for hours until you come back sir! And let Churchill go to hell".

You can see how Principles have been modified in favour of money; Nations were sold for money; Honour sold for money; Families split for money; Friends separated for money; People killed for money; and people being made slaves for money.

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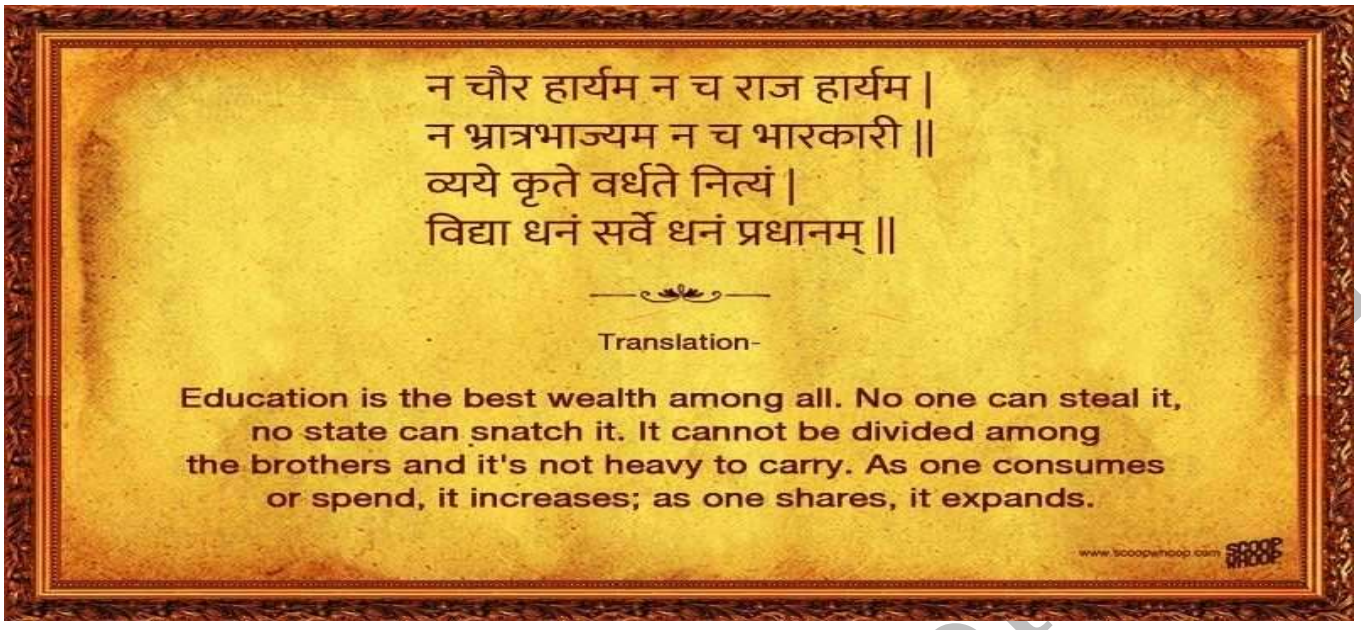
# Prosecution Replenish

An Endeavour for Learning and Excellence

## October, 2021

Aano Bhadra Krtavo Yantu Vishwatah.(RIG VEDAM)
"Let Noble Thoughts Come To Me From All Directions"




# VICTIM COMPENSATION

DVR Tejo Karthik
Judicial Magistrate of First Class,
Special Mobile Court,
Mahabubnagar

## INTRODUCTION

Section 2(wa) of the Code of Criminal Procedure defines "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; Victim compensation is a financial reimbursement to a victim for an expense that resulted from a crime. Sections 357 and 357-A of the Code of Criminal Procedure, 1973 deals with the procedure for granting compensation to the victims of crime in India. Section 357 deals with order to pay compensation. Under Sub Section (1) of Section 357 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 passing judgment, order the whole or any part of the fine recovered. Such order for recovery of fine is to be applied for defraying the expenses properly incurred in the prosecution, 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, 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, entitled to recover damages from the person sentenced for the loss resulting to them from such death and 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 bonafide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto. Under Sub-Section (3) of Section 357 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. So far as Sub-Section (1) is concerned imposition of a substantive sentence of fine is a sine qua non for an order of compensation. But under Sub-Section (3) even in the absence of fine thereof court can direct payment of compensation. A State

Prosecution Reporter

person against whom an offence is committed belongs to Scheduled Castes or Scheduled Tribes except when both the accused persons and the person against whom an offence is committed belong either to such castes or tribes, the Court shall order compensation. Under Sub-Section (3) when a Court imposes a sentence of which fine does not form a part, the Court may, and where a person against whom an offence is committed belongs to Scheduled Castes or Scheduled Tribes the Court Shall, 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, provided that the Court may not order the accused person to pay by way of compensation any amount, if both the accused person and the person against whom an offence is committed belong either to the Scheduled Castes or the Scheduled Tribes.

**DIFFERENCE BETWEEN FINE AND COMPENSATION**

In **Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. & Anr., (2007) 6 SCC 528** while considering the difference between Sub-Sections (1) and (3) of Section 357 Cr.P.C. i.e.,fine and compensation, the Court observed thus:

> *"The distinction between sub-Sections (1) and (3) of Section 357 is apparent. Sub-Section (1) provides for application of an amount of fine while imposing a sentence of which fine forms a part; whereas sub-Section (3) calls for a situation where a Court imposes a sentence of which fine does not form a part of the sentence. Compensation is awarded towards sufferance of any loss or injury by reason of an act for which an accused person is sentenced. Although it provides for a criminal liability, the amount which has been awarded as compensation is considered to be recourse of the victim in the same manner which may be granted in a civil suit."*
>
> *"The purposes for application of fine imposed has been set out in clauses (a) to (d) of subSections (1) of Section 357. Clause (b) of sub- Section (1) of Section 357 provides for payment of compensation out of the amount of fine. The purpose enumerated in clause (b) of sub-Section (1) of Section 357 is the same as sub-Section (3) thereof, the difference being that whereas in a case under sub-Section (1) fine imposed forms a part of the sentence, under sub-Section (3) compensation can be directed to be paid whence fine does not form a part of the sentence. The fine can be imposed only in terms of the provisions of the Act. Fine which can be imposed under the Act, however, shall be double of the amount of the cheque which stood dishonoured. When, however, fine is not imposed, compensation can be directed to be paid for loss or injury caused to the complainant by reason of commission of the offence. Clause (b) of sub-Section (1) of Section 357 only provides for application of amount of fine which may be in respect of the entire amount or in respect of a part thereof. Sub-Section (3) of Section 357 seeks to achieve the same purpose. We must, however, observe that there exists a distinction between fine and compensation, although, in a way it seeks to achieve the same purpose. An amount of compensation can be directed to be recovered as a 'fine' but the legal fiction raised in relation to recovery of fine only, it is in that sense `fine' stands on a higher footing than compensation awarded by the Court."*

A Constitution Bench of 5 Judges constituting of Chief Justice Y.V. Chandrachud, Justices P.N. Bhagwati, V.R. Krishna Iyer, Syed Murtaza Fazalali and A.D.Koshal in **Maru Ram Etc. Etc v. Union of India & Anr., AIR 1980 SC 2147** speaking through Justice V.R. Krishna Iyer observed as: "…….We are afraid there is a confusion about fundamentals mixing up victimology with penology to warrant retributive severity by the backdoor. If crime claims a victim, criminology must include victimology as a major component of its concerns. Indeed, when a murder or other grievous offence is committed the dependants or other aggrieved persons must receive reparation and the social responsibility of the criminal to restore the loss or heal the injury is part of the punitive exercise. But the length of the prison term is no reparation to the crippled or bereaved and is futility compounded with cruelty…..……"

Prosecution Replenish

"…….victimology a burgeoning branch of humane criminal justice, must find fulfillment, not through barbarity but by. compulsory recoupment by the wrong-doer of the damage inflicted, not by giving more pain to the offender but by lessening the loss of the forlorn……"

In **Hari Kishan & Anr v. Sukhbir Singh & Ors, AIR 1988 SC 2127** the Court observed that Sub-section (1) of Section 357 of the Code of Criminal Procedure provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused and subsection (3) of Section 357 is an important provision but Courts have seldom invoked it, perhaps due to ignorance of the object of it. It empowers the Court to award compensation to victims while passing judgment of conviction. In addition to conviction, the Court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused. It may be noted that this power of Courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to re-assure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent a constructive approach to crimes. It is indeed a step forward in our criminal justice system. The Court further recommended that all Courts to exercise this power liberally so as to meet the ends of justice in a better way. The payment by way of compensation must, however, be reasonable. What is reasonable may depend upon the facts and circumstances of each case. The quantum of compensation may be determined by taking into account the nature of crime, the justness of claim by the victim and the ability of accused to pay. If there are more than one accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment may also vary depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary by installments, may also be given. The Court may enforce the order by imposing sentence in default.

In **Ankush Shivaji Gaikwad v. State of Maharashtra., AIR 2013 SC 2454 = (2013) 6 SCC 770** the Court while dealing with the compensation to victim(s) of a crime and whether Courts have a duty to advert to the question of awarding compensation to the victim and record reasons while granting or refusing relief to them observed as follows:

✔The language of Section 357 Cr.P.C. at a glance may not suggest that any obligation is cast upon a Court to apply its mind to the question of compensation. Sub-section (3) of Section 357 further empowers the Court by stating that it "may" award compensation even in such cases where the sentence imposed does not include a fine.

✔The legal position is, however, well- established that cases may arise where a provision is mandatory despite the use of language that makes it discretionary.

✔The provision Section 357 confers a power coupled with a duty on the Courts to apply its mind to the question of awarding compensation in every criminal case in view of the background and context in which it was introduced.

✔The power to award compensation was intended to reassure the victim that he or she is not forgotten in the criminal justice system.

✔The victim would remain forgotten in the criminal justice system if despite Legislature having gone so far as to enact specific provisions relating to victim compensation, Courts choose to ignore the provisions altogether and do not even apply their mind to the question of compensation.

✔It follows that unless Section 357 is read to confer an obligation on Courts to apply their mind to the question of compensation, it would defeat the very object behind the introduction of the provision.

✔If application of mind is not considered mandatory, the entire provision would be rendered a dead letter.

✔Section 357 Cr.P.C. confers a duty on the Court to apply its mind to the question of compensation in every criminal case. It necessarily follows that the Court must disclose that it has applied its mind to this question in every criminal case.

Prosecution Replenish

✔The power to award compensation under Section 357 is not ancillary to other sentences but in addition thereto. It would necessarily follow that the Court has a duty to apply its mind to the question of awarding compensation under Section 357 too.

✔While the award or refusal of compensation in a particular case may be within the Court's discretion, there exists a mandatory duty on the Court to apply its mind to the question in every criminal case.

✔Application of mind to the question is best disclosed by recording reasons for awarding/ refusing compensation.

✔It is axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion.

✔It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused.

✔Capacity of the accused to pay which constitutes an important aspect of any order under Section 357 Cr.P.C. would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to do so.

Such an enquiry can precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family.

In **Arun Garg v. State of Punjab & Anr, (2004) 8 SCC 251**, it was observed by the Supreme Court that Section 357(3) of the Code contemplates a situation where the complainant has suffered any loss or injury and for which the accused person has been found prima facie responsible. It is also pertinent to note that Section 357 (5) of the Cr.P.C. says that 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. The direction to pay compensation under Section 357(3) is on the assumption of basic civil liability on the part of person who committed the offence to redress the victim or his dependents by payment of compensation.

In **Hari Singh v. Sukhbir Singh & Ors.,(supra)** while emphasizing the need for making liberal use of the provisions contained in Section 357 of the Code the Court has observed thus: *"It may be noted that this power of Courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system."*

However, in awarding compensation, it is necessary for the Court to decide if the case is a fit one in which compensation deserves to be awarded. If the Court is convinced that compensation should be paid, then quantum of compensation is to be determined by taking into consideration the nature of the crime, the injury suffered and the capacity of the convict to pay compensation etc. It goes without saying that the amount of compensation has to be reasonable, which the person concerned is able to pay. If the accused is not in a position to pay the compensation to the injured or his dependents to which they are held to be entitled to, there could be no reason for the Court to direct such compensation. (See: **Sarwan Singh & Ors. v.State of Punjab., (1978) 4 SCC 111**).

In **Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. & Anr.., (2007) 6 SCC 528** explaining the scope and the purpose of imposition of fine and/or grant of compensation, this Court observed as follows: "The purpose of imposition of fine and/or grant of compensation to a great extent must be considered having the relevant factors therefor in mind. It may be compensating the person in one way or the other. The amount of compensation sought to be imposed, thus, must be reasonable and not arbitrary. Before issuing a direction to pay compensation, the capacity of accused to pay the same must be judged. A fortiori, an enquiry in this behalf even in a summary way may be necessary. Some

Prosecution Replenish

reasons, which may not be very elaborate, may also have to be assigned; the purpose being that whereas the power to impose fine is limited and direction to pay compensation can be made for one or the other factors enumerated out of the same; but sub- Section (3) of Section 357 does not impose any such limitation and thus, power thereunder should be exercised only in appropriate cases. Such a jurisdiction cannot be exercised at the whims and caprice of a judge."

In **Sube Singh v. State of Haryana & Ors., (2006) 3 SCC 178.**, it was observed by the Court that the quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under section 357 of Code of Criminal Procedure.

In **Shanti Lal v. State of Madhya Pradesh., (2007) 11 SCC 243** it was held that the term of imprisonment in default of payment of fine is not a sentence. It is a penalty which a person incurs on account of non-payment of fine. The sentence is something which an offender must undergo unless it is set aside or remitted in part or in whole either in appeal or in revision or in other appropriate judicial proceedings or otherwise. A term of imprisonment ordered in default of payment of fine stands on a different footing. A person is required to undergo imprisonment either because he is unable to pay the amount of fine or refuses to pay such amount. He, therefore, can always avoid to undergo imprisonment in default of payment of fine by paying such amount. It is, therefore, not only the power, but the duty of the court to keep in view the nature of offence, circumstances under which it was committed, the position of the offender and other relevant considerations before ordering the offender to suffer imprisonment in default of payment of fine.

In **Vijayan v. Sadanandan K. & Anr., (2009) 6 SCC 652,** it was observed by the Supreme Court that The provisions of Sections 357(3) and 431 Cr.P.C., when read with Section 64 IPC, empower the Court, while making an order for payment of compensation, to also include a default sentence in case of non-payment of the same. While awarding compensation under Section 357(3) Cr.P.C., the Court is within its jurisdiction to add a default sentence of imprisonment

Section 357A of the Code deals with Victim Compensation Scheme. The provision has been incorporated in the Code of Criminal Procedure vide Act V of 2009 and the amendment duly came into force in view of the Notification dated 31st December, 2009. The object and purpose of the provision is to enable the Court to direct the State to pay compensation to the victim where the compensation under Section 357 was not adequate or where the case ended in acquittal or discharge and the victim was required to be rehabilitated. The provision was incorporated on the recommendation of 154th Report of Law Commission. It recognizes compensation as one of the methods of protection of victims. Under Sub-Section (1) of Section 357A 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. Under Sub-Section (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). As per Sub-Section (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. Sub-Section (4) envisages that 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. Sub-Section (5) mandates that 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.

Prosecution Replenish

As per Sub-Section (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.

In **Suresh & Anr v. State of Haryana., AIR 2015 SC 518 = (2015) 2 SCC 227,** the Court dealt with compensation, interim compensation and rehabilitation of the victims of crime and the object and purport of Section 357A and the duty of the Court to ascertain financial need of victim arising out of crime immediately and to grant interim compensation suo motu irrespective of application by the victim and factors to be considered for grant of compensation.

After discussing various judicial precedents, the Court observed thus:

✔It is the duty of the Courts, on taking cognizance of a criminal offence, to ascertain whether there is tangible material to show commission of crime, whether the victim is identifiable and whether the victim of crime needs immediate financial relief.

✔On being satisfied on an application or on its own motion, the Court ought to direct grant of interim compensation, subject to final compensation being determined later.

✔Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim.

✔At the stage of final hearing it is obligatory on the part of the Court to advert to the provision and record a finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation and how much.

✔Award of such compensation can be interim.

✔Gravity of offence and need of victim are some of the guiding factors to be kept in mind, apart from such other factors as may be found relevant in the facts and circumstances of an individual case.

✔The discretion to decide the quantum has been left with the State/District legal authorities.

✔The State of Telangana is directed to notify the scheme within one month from receipt of a copy of the order

**THE TELANGANA VICTIM COMPENSATION SCHEME, 2015**

In pursuance to Section 357A of the Code and in compliance with the directions issued by the Hon'ble Supreme Court of India in Suresh's case, the Government of Telangana vide G.O.Ms. No. 9 issued by LAW (LA,LA & J – HOME – COURTS.B) Department, dated 07.03.2015 framed the victim compensation scheme which came into force with effect from 1st April, 2015. This scheme dealt with the offences committed against the human body of the victim. As per the scheme apart from the victim even the dependent of the victim can also claim the compensation.

In Tekan alias Tekram v. State of Madhya Pradesh (Now Chhattisgarh), (2016) 4 SCC 461., the Supreme Court while considering victim compensation schemes of different States and the Union Territories and different schemes for relief and rehabilitation of victims of rape, observed that insofar as victim compensation schemes of different States and the Union Territories are concerned no uniform practice is being followed in providing compensation to the rape victim for the offence and for her rehabilitation and in most of the schemes the compensation amount is ranging between from Rs.20,000/- to Rs.10,00,000/- for the offence of rape under Section 357A. The Court observed that this practice of giving different amount ranging from Rs.20,000/- to Rs.10,00,000/- as compensation for the offence of rape needs to be introspected by all the States and the Union Territories and they should consider and formulate a uniform scheme specially for the rape victims in the light of the scheme framed in the State of Goa which has decided to give compensation up to Rs.10,00,000/-.

Prosecution Replenish

A Scheme was made by the National Commission of Women (NCW) on the direction of the Supreme Court in **Delhi Domestic Working Women's Forum vs. Union of India and Ors., (1995) 1 SCC 14** whereby the Court inter alia had directed the National Commission for Women to evolve a "scheme" so as to wipe out the tears of unfortunate victims of rape. This scheme has been revised by the NCW on 15th April 2010. The application under this scheme will be in addition to any application that may be made under Sections 357 and 357A of the Code of Criminal Procedure as provided in paragraph 22 of the Scheme. Under this scheme maximum of Rs.3,00,000/- can be given to the victim of the rape for relief and rehabilitation in special cases like the present case where the offence is against an handicapped woman who required specialized treatment and care.

In **Nipun Saxena v. Union of India., 2018 SCC OnLine SC 2439,** Writ Petition(s) (Civil)No(s).565/2012, dated 11.05.2018., the Supreme Court observed that , NALSA has framed the "Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes – 2018 and the Scheme prepared by NALSA with the assistance of learned amicus curiae Smt Indira Jaising, Senior Advocate contains the best practices of all similar schemes and should be implemented by all the State Governments and Union Territory Administrations and that the Scheme postulates only the minimum requirements. This does not preclude the State Governments and Union Territory Administrations from adding to the Scheme. However, nothing should be taken away from the Scheme.

In pursuance to the directions of the Supreme Court, the Government of Telangana vide G.O.Ms. No. 9 issued by LAW (LA,LA & J – HOME – COURTS.B) Department, dated 28.02.2019 implemented the directions of the Supreme Court and made suitable amendments to the Telangana Victim Compensation Scheme, 2015 and notified the NALSA's Compensation Scheme for women victims/survivors of sexual assault/other crimes, 2018 as Additional Chapter to the Telangana Victim Compensation Scheme, 2015 which came into force with effect from 2nd October, 2018. This scheme is specially framed for the women victims/survivors of sexual assault/other crimes. As per the scheme "Sexual Assault Victims" means female who has suffered mental or physical injury or both as a result of sexual offence including Sections 376 (A) to (E), Section 354 (A) to (D), Section 509 IPC and "Woman Victim/ survivor of other crime" means a woman who has suffered physical or mental injury as a result of any offence mentioned in the attached Schedule including Sections 304 B, Section 326A, Section 498A IPC (in case of physical injury of the nature specified in the schedule) including the attempts and abetment.

In **Laxmi v. Union of India, (2014) 4 SCC 427 and also in (2016) 3 SCC 699.**, the Supreme Court had fixed the minimum compensation of Rs.3,00,000/- (Rupees three lakhs only) per acid attack victim. The Court further directed that full medical assistance should be provided to the victims of acid attack and that private hospitals should also provide free medical treatment to such victims. Action may be taken against hospital/clinic for refusal to treat victims of acid attacks and other crimes in contravention of the provisions of Section 357C of the Code of Criminal Procedure, 1973. The Court also gave directions to the hospitals that the hospital, where the victim of an acid attack is first treated, should give a certificate that the individual is a victim of an acid attack. This certificate may be utilized by the victim for treatment and reconstructive surgeries or any other scheme that the victim may be entitled to with the State Government or the Union Territory, as the case may be.

In case of any compensation claim made by any acid attack victim, the matter will be taken up by the District Legal Services Authority, which will include the District Judge and such other co-opted persons who the District Judge feels will be of assistance, particularly the District Magistrate, the Superintendent of Police and the Civil Surgeon or the Chief Medical Officer of that District or their nominee. This body will function as the Criminal Injuries Compensation Board for all purposes.

Victims of Acid attack are also entitled to additional compensation of Rs. 1 lakh under Prime Minister's National Relief Fund vide memorandum no. 24013/94/Misc./2014-CSR-III/GoI/MHA dated 09.11.2016. Victims of Acid Attack are also entitled to additional special financial assistance up to Rs.

Prosecution Replenish

5 lakhs who need treatment expenses over and above the compensation paid by the respective State/UTs in terms of Central Victim Compensation Fund Guidelines-2016, no. 24013/94/Misc/2014-CSR.III, MHA/GoI. Collocation of scheme, 2015 and additional chapter, 2018

On juxtaposition of the schemes it could be noticed that 2015 scheme is intended to cover the crimes committed against human body and furthermore it is gender neutral. However, all the offences affecting the human body are not covered and it took in its sweep only the offences affecting human life and hurt. The scheme of 2015 did not cover the offences of wrongful restraint and wrongful confinement, criminal force and assault including kidnapping and abduction though they are the offences affecting human body and cover under the Chapter – XVI – of offences affecting human body under IPC. Insofar as 2018 additional chapter is concerned it is a special chapter intended to compensate the women victims/survivors of sexual assault and other crimes committed against women. This chapter is gender specific and it covers offences pertaining to life, rape, sexual assault, hurt causing grievous physical injury, offences causing of miscarriage , pregnancy on account of rape acid attacks and burning cases. Most importantly the additional chapter of 2018 does not apply to minor victims under POCSO Act, 2012 as the compensation issues are to be dealt with only by the Special Courts under Section 33 (8) of POCSO Act, 2012 and Rule 7 of the POCSO Rules, 2012. The main purport of the scheme 2015 and additional chapter of 2018 is to pay compensation to the victims or their dependents who suffer loss or injury as a result of crime and also to provide rehabilitation. This scheme also covers offences of rape or sexual assault committed against physically handicapped women.

(Prosecution Replenish conveys its heartfelt thanks to **Sri D.V.R. Tejo Karthik,** Judicial Magistrate of First Class, Special Mobile Court, Mahabubnagar, for contributing this article for our leaflet)

## CITATIONS

**2021 0 Supreme(SC) 499; Kanchan Sharma Vs. State of Uttar Pradesh and Another; Criminal Appeal No. 1022 of 2021, S.L.P. (Crl.) No. 7554 of 2019: Decided On : 17-09-2021**

'Abetment' involves mental process of instigating a person or intentionally aiding a person in doing of a thing. Without positive act on the part of the accused to instigate or aid in committing suicide, no one can be convicted for offence under Section 306, IPC. To proceed against any person for the offence under Section 306 IPC it requires an active act or direct act which led the deceased to commit suicide, seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide. There is nothing on record to show that appellant was maintaining relation with the deceased and further there is absolutely no material to allege that appellant abetted for suicide of the deceased within the meaning of Section 306, IPC. Even with regard to offence alleged under Section 3(2)(v) of the Act it is to be noticed that except vague and bald statement that the appellant and other family members abused deceased by uttering casteist words but there is nothing on record to show to attract any of the ingredients for the alleged offence also.

Except the statement that the deceased was in relation with the appellant, there is no material at all to show that appellant was maintaining any relation with the deceased. In fact, at earlier point of time when the deceased was stalking the appellant, the appellant along with her father went to the police station complained about the calls which were being made by the deceased to the appellant. Same is evident from the statement of S.I. Manoj Kumar recorded on 05.07.2018. In his statement recorded he has clearly deposed that the father along with the appellant went to the police post and complained against the deceased who was continuously calling the appellant and proposing that she should marry him with a threat that he will die otherwise. Having regard to such material placed on record and in absence of any material within the meaning of Section 107 of IPC, there is absolutely no basis to proceed against the appellant for the alleged offence under Section 306 IPC and Section 3(2)(v) of the

Replenish

Act. It would be travesty of justice to compel the appellant to face a criminal trial without any credible material whatsoever.

**2021 0 Supreme(SC) 503; Bhagwan Narayan Gaikwad Vs. The State of Maharashtra and Others: Criminal Appeal No. 1039 of 2021, SLP (Crl.) No. 7001 of 2021, Diary No. 14956 of 2021: Decided On : 20-09-2021**

Giving punishment to the wrongdoer is the heart of the criminal delivery system, but we do not find any legislative or judicially laid down guidelines to assess the trial Court in meeting out the just punishment to the accused facing trial before it after he is held guilty of the charges. Nonetheless, if one goes through the decisions of this Court, it would appear that this Court takes into account a combination of different factors while exercising discretion in sentencing, that is proportionality, deterrence, rehabilitation, etc.

The compromise if entered at the later stage of the incident or even after conviction can indeed be one of the factor in interfering the sentence awarded to commensurate with the nature of offence being committed to avoid bitterness in the families of the accused and the victim and it will always be better to restore their relation, if possible, but the compromise cannot be taken to be a solitary basis until the other aggravating and mitigating factors also support and are favourable to the accused for molding the sentence which always has to be examined in the facts and circumstances of the case on hand.

As already observed, we have not be able to record our satisfaction in reference to the kind of compromise which has now been obtained and placed on record after 28 years of the incident and this Court cannot be oblivious of the sufferings which the victim has suffered for such a long time and being crippled for life and the leg and arm of the victim are amputated in the alleged incident dated 13th December, 1993 and since then he has been fighting for life and is pursuing his daily chores with a prosthetic arm and leg and has lost his vital organs of his body and became permanently disabled and such act of the appellant is unpardonable.

**2021 0 Supreme(SC) 508; Union of India through Narcotics Control Bureau, Lucknow Vs. Md. Nawaz Khan : Criminal Appeal No. 1043 of 2021 (Arising out of SLP (Crl) No.1771 of 2021): Decided On : 22-09-2021**

What amounts to “conscious possession” was also considered in Dharampal Singh v. State of Punjab, (2010) 9 SCC 608, where it was held that the knowledge of possession of contraband has to be gleaned from the facts and circumstances of a case. The standard of conscious possession would be different in case of a public transport vehicle with several persons as opposed to a private vehicle with a few persons known to one another. In Mohan Lal v. State of Rajasthan, (2015) 6 SCC 222, this Court also observed that the term “possession” could mean physical possession with animus; custody over the prohibited substances with animus; exercise of dominion and control as a result of concealment; or personal knowledge as to the existence of the contraband and the intention based on this knowledge.

In line with the decision of this Court in Rattan Mallik ((2009) 2 SCC 624), we are of the view that a finding of the absence of possession of the contraband on the person of the respondent by the High Court in the impugned order does not absolve it of the level of scrutiny required under Section 37(1)(b)(ii) of the NDPS Act.

**2021 0 Supreme(SC) 498; Mohd. Rafiq @ Kallu Vs. The State of Madhya Pradesh; Criminal Appeal No. 856 of 2021: Decided On : 15-09-2021**

The use of the term “likely” in several places in respect of culpable homicide, highlights the element of uncertainty that the act of the accused may or may not have killed the person. Section 300 IPC which defines murder, however refrains from the use of the term likely, which reveals absence of ambiguity left on behalf of the accused. The accused is for sure that his act will definitely cause death. It is often difficult to distinguish between culpable homicide and murder as both involve death. Yet, there is a subtle distinction of intention and knowledge

involved in both the crimes. This difference lies in the degree of the act. There is a very wide variance of degree of intention and knowledge among both the crimes.

The decision in State of Andhra Pradesh vs. Rayavarapu Punnayya and Another, 1976 (4) SCC 382 notes the important distinction between the two provisions, and their differing, but subtle distinction. The court pertinently pointed out that:

> "12. In the scheme of the Penal Code, "culpable homicide" is genus and "murder" its specie. All "murder" is "culpable homicide" but not vice-versa. Speaking generally, "culpable homicide" sans "special characteristics of murder" is "culpable homicide not amounting to murder." For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The first is, what may be called, "culpable homicide of the first degree." This is the greatest form of culpable homicide, which is defined in Section 300 as "murder." The second may be termed as "culpable homicide of the second degree." This is punishable under the first part of Section 304. Then, there is "culpable homicide of the third degree." This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304.
>
> 13. The academic distinction between "murder" and "culpable homicide not amounting to murder" has vexed the courts for more than a century. The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300."

**2021 0 Supreme(SC) 473; Gumansinh @ Lalo @ Raju Bhikhabhai Chauhan & Anr. Vs. The State Of Gujarat: Criminal Appeal Nos. 940-941 OF 2021 Arising Out Of Special Leave Petition (Crl.) Nos. 2860-2861 OF 2019: Decided On : 03-09-2021**

Most often the offence of subjecting the married woman to cruelty is committed within the boundaries of the house which in itself diminishes the chances of availability of any independent witness and even if an independent witness is available whether he or she would be willing to be a witness in the case is also a big question because normally no independent or unconnected person would prefer to become a witness for a number of reasons. There is nothing unnatural for a victim of domestic cruelty to share her trauma with her parents, brothers and sisters and other such close relatives. The evidentiary value of the close relatives/interested witness is not liable to be rejected on the ground of being a relative of the deceased. Law does not disqualify the relatives to be produced as a witness though they may be interested witness.

A three-Judge Bench of this Court in the case of Maranadu and Anr. Vs. State by Inspector of Police, Tamil Nadu, (2008) 16 SCC 529, while considering this issue, has observed as under:-

> "Merely because the eyewitnesses are family members their evidence cannot per se be discarded. When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. We shall also deal with the contention regarding interestedness of the witnesses for furthering prosecution version.
>
> "….Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

**2021 0 Supreme(SC) 483; SHAKUNTALA SHUKLA Vs. STATE OF UTTAR PRADESH AND ANOTHER; CRIMINAL APPEAL NO.876 TO 879 OF 2021; DECIDED ON : 07-09-2021**

First of all, let us consider what is “judgment”. “Judgment” means a judicial opinion which tells the story of the case; what the case is about; how the court is resolving the case and why. “Judgment” is defined as any decision given by a court on a question or questions or issue between the parties to a proceeding properly before court. It is also defined as the decision or the sentence of a court in a legal proceeding along with the reasoning of a judge which leads him to his decision. The term “judgment” is loosely used as judicial opinion or decision. Roslyn Atkinson, J., Supreme Court of Queensland, in her speech once stated that there are four purposes for any judgment that is written:

i) to spell out judges own thoughts;
ii) to explain your decision to the parties;
iii) to communicate the reasons for the decision to the public; and
iv) to provide reasons for an appeal court to consider

9.3 It is not adequate that a decision is accurate, it must also be reasonable, logical and easily comprehensible. The judicial opinion is to be written in such a way that it elucidates in a convincing manner and proves the fact that the verdict is righteous and judicious. What the court says, and how it says it, is equally important as what the court decides.

Every judgment contains four basic elements and they are (i) statement of material (relevant) facts, (ii) legal issues or questions, (iii) deliberation to reach at decision and (iv) the ratio or conclusive decision. A judgment should be coherent, systematic and logically organised. It should enable the reader to trace the fact to a logical conclusion on the basis of legal principles. It is pertinent to examine the important elements in a judgment in order to fully understand the art of reading a judgment. In the Path of Law, Holmes J. has stressed the insentient factors that persuade a judge. A judgment has to formulate findings of fact, it has to decide what the relevant principles of law are, and it has to apply those legal principles to the facts. The important elements of a judgment are:

i) Caption
ii) Case number and citation
iii) Facts
iv) Issues
v) Summary of arguments by both the parties
vi) Application of law
vii) Final conclusive verdict

9.4 The judgment replicates the individuality of the judge and therefore it is indispensable that it should be written with care and caution. The reasoning in the judgment should be intelligible and logical. Clarity and precision should be the goal. All conclusions should be supported by reasons duly recorded. The findings and directions should be precise and specific. Writing judgments is an art, though it involves skilful application of law and logic. We are conscious of the fact that the judges may be overburdened with the pending cases and the arrears, but at the same time, quality can never be sacrificed for quantity. Unless judgment is not in a precise manner, it would not have a sweeping impact. There are some judgments that eventually get overruled because of lack of clarity. Therefore, whenever a judgment is written, it should have clarity on facts; on submissions made on behalf of the rival parties; discussion on law points and thereafter reasoning and thereafter the ultimate conclusion and the findings and thereafter the operative portion of the order. There must be a clarity on the final relief granted. A party to the litigation must know what actually he has got by way of final relief. The aforesaid aspects are to be borne in mind while writing the judgment, which would reduce the burden of the appellate court too. We have come across many judgments which lack clarity on facts, reasoning and the findings and many a times it is very difficult to appreciate what the

learned judge wants to convey through the judgment and because of that, matters are required to be remanded for fresh consideration. Therefore, it is desirable that the judgment should have a clarity, both on facts and law and on submissions, findings, reasonings and the ultimate relief granted.

**2021 0 Supreme(SC) 516; M.A Khaliq & Ors. Vs. Ashok Kumar & Anr.: Criminal Appeal No.1003 of 2021 (Arising Out of Special Leave Petition (Crl.) No. 10427 of 2019): Decided On : 15-09-2021**

The mere fact that no crime was registered, could not be a defence, nor would it be an escape from the rigour of the decisions rendered by this Court. As a matter of fact, summoning the person without there being any crime registered against him and detaining him would itself be violative of basic principles.

However, considering the facts and circumstances on record, the substantive sentence of three months as recorded in paragraph 32 of the decision of the Single Judge is modified to 15 days leaving rest of the incidents of sentence completely intact.

**2021 0 Supreme(SC) 518; Shri Mahadev Meena Vs. Raveen Rathore and Another: Criminal Appeal No. 1089 of 2021 (Arising Out of SLP (Criminal) No. 4072 of 2021: Decided On : 27-09-2021**

A two-judge Bench of this Court in Ram Govind Upadhyay v. Sudharshan Singh, (2002) 3 SCC 598 has listed the considerations that govern the grant of bail without attributing an exhaustive character to them. This Court has observed:

> "4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:
>
> (a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.
>
> (b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.
>
> (c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.
>
> (d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

This Court has further elucidated on the power of the court to interfere with an order of bail in the following terms:

> "3. Grant of bail though being a discretionary order -- but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained."

The above principles have been reiterated by a two judge Bench of this Court in Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496 :

> "9. … It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
(ii) nature and gravity of the accusation;
(iii) severity of the punishment in the event of conviction;
(iv) danger of the accused absconding or fleeing, if released on bail;
(v) character, behaviour, means, position and standing of the accused;
(vi) likelihood of the offence being repeated;
(vii) reasonable apprehension of the witnesses being influenced; and
(viii) danger, of course, of justice being thwarted by grant of bail.
[internal citation omitted]"

In Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana, 2021 (6) SCC 230, a two judge Bench of this Court of which one of us (Justice DY Chandrachud) was a part, has held that the High Court while granting bail must focus on the role of the accused in deciding the aspect of parity. This Court observed:

"26.…The High Court has evidently misunderstood the central aspect of what is meant by parity. Parity while granting bail must focus upon the role of the accused. Merely observing that another accused who was granted bail was armed with a similar weapon is not sufficient to determine whether a case for the grant of bail on the basis of parity has been established. In deciding the aspect of parity, the role attached to the accused, their position in relation to the incident and to the victims is of utmost importance. The High Court has proceeded on the basis of parity on a simplistic assessment as noted above, which again cannot pass muster under the law."

**2021 0 Supreme(SC) 522; Ravindranatha Bajpe Vs. Mangalore Special Economic Zone Ltd. & Others: Criminal Appeal Nos.1047-1048 of 2021: Decided On : 27-09-2021**

As observed by this Court in the case of Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749 and even thereafter in catena of decisions, summoning of an accused in a criminal case is a serious matter. Criminal Law cannot be set into motion as a matter of course. In paragraph 28 in Pepsi Foods Limited (supra), it is observed and held as under :

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

As held by this Court in the case of India Infoline Limited (supra), in the order issuing summons, the learned Magistrate has to record his satisfaction about a prima facie case against the accused who are Managing Director, the Company Secretary and the Directors of the Company and the role played by them in their respective capacities which is sine qua non for initiating criminal proceedings against them.

**https://indiankanoon.org/doc/83715386/: Udari Laxman And Lachaiah vs The State Of Telangana on 3 September, 2021; (Advocates Vaman Rao & Nagamani murder case)**

Filing of charge sheet does not entitle the accused for bail.

Sec 41A CrPC notices given in case registered under Sections 120-B, 302, 201 read with Section 34 IPC.

**https://indiankanoon.org/doc/78753963/; The State Of Andhra Pradesh vs K. Shyam Rao on 28 September, 2021**

Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

**https://indiankanoon.org/doc/12531248/; Yamusani Venkatesh vs The State Of Telangana And 4 Others on 28 September, 2021.**

The Petitioner who was not cooperating when called for counselling by the Police, was directed to cooperate with the Investigating Officer by furnishing information and documents as sought by him in concluding the investigation by receiving notice issued under Section 41-A Cr.P.C and submitting reply to the same along with documents, if any in support of his contentions.

**2021 2 ALT(Cri)(SC) 201; 2021 2 Crimes(SC) 258; 2021 5 SCC 543; 2021 0 Supreme(SC) 243; ACHHAR SINGH Vs. STATE OF HIMACHAL PRADESH; CRIMINAL APPEAL NOS. 1140-1141 OF 2010: WITH BUDHI SINGH Vs. STATE OF HIMACHAL PRADESH; CRIMINAL APPEAL No. 1144 of 2010 Decided on : 07-05-2021**

There is, thus, a marked differentia between an ‘exaggerated version’ and a ‘false version’. An exaggerated statement contains both truth and falsity, whereas a false statement has no grain of truth in it (being the ‘opposite’ of ‘true’). It is well said that to make a mountain out of a molehill, the molehill shall have to exist primarily. A Court of law, being mindful of such distinction is duty bound to disseminate ‘truth’ from ‘falsehood’ and sift the grain from the chaff in case of exaggerations. It is only in a case where the grain and the chaff are so inextricably intertwined that in their separation no real evidence survives, that the whole evidence can be discarded.

There is no gainsaid that homicidal deaths cannot be left to judicium dei. The Court in their quest to reach the truth ought to make earnest efforts to extract gold out of the heap of black sand. The solemn duty is to dig out the authenticity. It is only when the Court, despite its best efforts, fails to reach a firm conclusion that the benefit of doubt is extended.

**2021 2 ALD Crl 460(TS); 2021 0 Supreme(Telangana) 76; Smt. Farhat Kausar Vs. State of Telangana, Writ Petition No.19999 of 2020 Decided On : 14-06-2021 (DB)**

it is apt to state that the power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution, even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention may be made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is not a bar to an order of preventive detention and an order of preventive detention is also not a bar to prosecution. It cannot be considered to be a parallel proceeding. The anticipated behaviour of a person based on his past conduct in the light of surrounding circumstances may provide sufficient ground for detention. The basis of preventive detention is suspicion and its justification is necessary.

Though the detaining authority had relied over a single case, the material placed on record, as indicated above, reveals that a mentally challenged minor girl was repeatedly sexually assaulted by the detenu and others, the manner in which the sexual assault was committed repeatedly would certainly cause fear in the minds of the public at large. In view of the material on record, the apprehension of detaining authority is justified. Therefore, the contention raised by the petitioner is unsustainable. The detaining authority had sufficient material to record subjective satisfaction that the detention of the detenu was necessary to maintain public order and even tempo of life of the community. The order of detention does not suffer from any illegality. The grounds of detention, as indicated in the impugned order, are found to be relevant and in tune with the provisions of the P.D. Act. Since the detenu was granted bail in the aforesaid case relied by the detaining authority, there is nothing wrong on the part of the detaining authority in raising an apprehension that there is possibility of the detenu indulging in similar shameful and inhuman acts of sexual assault on minor girls and women exploiting their innocence in a deceptive manner in due course, which would again certainly affect the public morale at large. The manner in which the alleged offence committed by the detenu makes it amply clear that there is every possibility of detenu committing similar offences in future, which are prejudicial to the maintenance of public order. The subjective satisfaction of the detaining authority is not tainted or illegal on any account. Further, the material placed on record reveals that the detenu was supplied with the material relied upon by the detaining authority in the language known to him, i.e., Hindi apart from 'English'. The acts of the detenu cannot be effectively dealt with under ordinary criminal law. Under these circumstances, the detaining authority is justified in passing the impugned detention order. Therefore, the impugned orders are legally sustainable.

NOSTALGIA

**NDPS:**

This Court Karnail Singh v. State of Haryana, (2009) 8 SCC 539 held that though the writing down of information on the receipt of it should normally precede the search and seizure by the officer, in exceptional circumstances that warrant immediate and expedient action, the information shall be written down later along with the reason for the delay:

> "35. […](c) In other words, the compliance with the requirements of Sections 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is, after the search, entry and seizure. The question is one of urgency and expediency.
>
> (d) While total non-compliance with requirements of subsections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with Section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending of a copy of such information to the official superior forthwith, may not be treated as violation of Section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of Section 42 of the Act. Similarly, where the police officer does not record the information at

all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to Section 42 by Act 9 of 2001."

**REVENUE RECORDS**

Right from 1997, the law is very clear. In the case of Balwant Singh v. Daulat Singh (D) By Lrs., reported in (1997) 7 SCC 137, this Court had an occasion to consider the effect of mutation and it is observed and held that mutation of property in revenue records neither creates nor extinguishes title to the property nor has it any presumptive value on title. Such entries are relevant only for the purpose of collecting land revenue. Similar view has been expressed in the series of decisions thereafter.

In the case of Suraj Bhan v. Financial Commissioner, (2007) 6 SCC 186, it is observed and held by this Court that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. Entries in the revenue records or jamabandi have only "fiscal purpose", i.e., payment of land revenue, and no ownership is conferred on the basis of such entries. It is further observed that so far as the title of the property is concerned, it can only be decided by a competent civil court. Similar view has been expressed in the cases of Suman Verma v. Union of India, (2004) 12 SCC 58; Faqruddin v. Tajuddin (2008) 8 SCC 12; Rajinder Singh v. State of J&K, (2008) 9 SCC 368; Municipal Corporation, Aurangabad v. State of Maharashtra, (2015) 16 SCC 689; T. Ravi v. B. Chinna Narasimha, (2017) 7 SCC 342; Bhimabai Mahadeo Kambekar v. Arthur Import & Export Co., (2019) 3 SCC 191; Prahlad Pradhan v. Sonu Kumhar, (2019) 10 SCC 259; and Ajit Kaur v. Darshan Singh, (2019) 13 SCC 70.

**NON-EXAMINATION OF ALL WITNESSES**

It is not necessary for the prosecution to examine every cited or possible witness. So long as the prosecution case can withstand the test of proof beyond doubt, non-examination of all or every witness is immaterial.

In Sarwan Singh v. State of Punjab, (1976) 4 SCC 369, 13. was of the view that:

"13.…The onus of proving the prosecution case rests entirely on the prosecution and it follows as a logical corollary that the prosecution has complete liberty to choose its witnesses if it is to prove its case. The court cannot compel the prosecution to examine one witness or the other as its witness. At the most, if a material witness is withheld, the court may draw an adverse inference against the prosecution…**The law is well-settled that the prosecution is bound to produce only such witnesses as are essential for unfolding of the prosecution narrative.** In other words, before an adverse inference against the prosecution can be drawn it must be proved to the satisfaction of the court that the witnesses who had been withheld were eyewitnesses who had actually seen the occurrence and were therefore material to prove the case. **It is not necessary for the prosecution to multiply witnesses after witnesses on the same point; it is the quality rather than the quantity of the evidence that matters.** In the instant case, the evidence of the eyewitnesses does not suffer from any infirmity or any manifest defect on its intrinsic merit…" (emphasis supplied)

# NEWS

- The Adoption (Amendment) Regulations, 2021 by including Chapter IV-A Procedure For Children Adopted Under The Hindu Adoption And Maintenance Act, 1956, By Parents Who Desire To Relocate Child Abroad, published.
- Prosecution replenish congratulates all the Prosecuting officers and the Judicial officers, on their promotion.

| SL NO. | NAME AND DESIGNATION OF THE OFFICER | POSTED AS | HAND OVER CHARGE OF HIS/HER POST TO | TAKE CHARGE OF HIS/HER POST FROM |
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| (1) | (2) | (3) | (4) | (5) |
| 1. | Smt. S.Sailaja, Principal Junior Civil Judge, Kavali, Nellore District. | Senior Civil Judge, Adoni, Kurnool District. (post kept vacant) | Additional Junior Civil Judge, Kavali, Nellore District. | Additional Junior Civil Judge, Kurnool. |
| 2. | Sri G.Yagna Narayana, Junior Civil Judge, Jangareddigudem, West Godavari District. | Senior Civil Judge, Parvathipuram, Vizianagaram District. (post kept vacant) | Judicial Magistrate of First Class, Jangareddigudem, West Godavari District. | Senior Civil Judge, Vizianagaram. |
| 3. | Sri N.Ramesh Naidu, Principal Junior Civil Judge, Kakinada, East Godavari District. | Senior Civil Judge, Markapur, Prakasam District. (post kept vacant) | I Additional Junior Civil Judge, Kakinada, East Godavari District. | Principal Senior Civil Judge, Ongole, Prakasam District. |
| 4. | Sri N.Vijaya Babu, Principal Junior Civil Judge, Ongole, Prakasam District. | Senior Civil Judge, Kandukur, Prakasam District. (post kept vacant) | II Additional Junior Civil Judge, Ongole, Prakasam District. | Additional Senior Civil Judge, Ongole, Prakasam District. |
| 5. | Sri R.Sanyasi Naidu, VI Metropolitan Magistrate, for Railways, Visakhapatnam. | VII Additional Senior Civil Judge, Visakhapatnam. (post kept vacant) | VII Additional Metropolitan Magistrate (Special Mobile Court), Visakhapatnam. | VI Additional Senior Civil Judge, Visakhapatnam. |
| 6. | Sri T.V.S.S.Prakash, II Additional Junior Civil Judge, Bheemunipatnam, Visakhapatnam District. | I Additional Chief Metropolitan Magistrate, Vijayawada, Krishna District. (post kept vacant) | I Additional Junior Civil Judge, Bheemunipatnam, Visakhapatnam District. | Chief Metropolitan Magistrate, Vijayawada, Krishna District. |
| 7. | Smt. P.Vijaya, Principal Junior Civil Judge-cum-IV Additional M.M. Bheemunipatnam, Visakhapatnam District. | Additional Senior Civil Judge, Eluru, West Godavari District. (post kept vacant) | I Additional Junior Civil Judge, Bheemunipatnam, Visakhapatnam District. | Principal Senior Civil Judge, Eluru, West Godavari District. |
| 8. | Smt. K.Vani, I Additional Junior Civil Judge, Ongole, Prakasam District. | Additional Senior Civil Judge, Tenali, Guntur District. Vice Sri T.Ramachandrudu transferred. | III Additional Junior Civil Judge, Ongole, Prakasam District. | Additional Senior Civil Judge, Tenali, Guntur District. |
| 9. | On relief, Sri T.Ramachandrudu, Additional Senior Civil Judge, Tenali, Guntur District. | Principal Senior Civil Judge, Tenali, Guntur District. (post kept vacant) | --- | Shall assume charge as Principal Senior Civil Judge. |
| 10. | Sri G.Shiva Prasad Yadav, Principal Junior Civil Judge, Tirupathi, Chittoor District. | Senior Civil Judge, Proddatur, Kadapa District. (post kept vacant) | III Additional Junior Civil Judge, Tirupati, Chittoor District. | Principal Senior Civil Judge, Kadapa. |
| 11. | Sri T.Vasudevan, Principal Junior Civil Judge, Chilakaluripet, Guntur District. | Senior Civil Judge, Bobbili, Vizianagaram District. (post kept vacant) | Additional Junior Civil Judge, Chilakaluripet, Guntur District. | Senior Civil Judge, Vizianagaram. |

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| 12. | Smt. A.Padma, Principal Junior Civil Judge, Kurnool. | Additional Senior Civil Judge, Kurnool. Vice Sri T. Kesava transferred. (post kept vacant) | I Additional Junior Civil Judge, Kurnool. | Additional Senior Civil Judge, Kurnool. |
| 13. | On relief, Sri T.Kesava, Additional Senior Civil Judge, Kurnool. | Principal Senior Civil Judge, Kurnool (post kept vacant) | --- | Shall assume charge as Principal Senior Civil Judge, Kurnool |
| 14. | Smt. D.Naga Venkata Lakshmi, Principal Junior Civil Judge, Ananthapuram. | Senior Civil Judge, Sattenapalle, Guntur District. (post kept vacant) | Additional Junior Civil Judge, Ananthapuramu. | Additional Senior Civil Judge, Narasaraopet, Guntur District. |
| 15. | Smt. S.Hemalatha, Principal Junior Civil Judge, Kadapa. | Additional Senior Civil Judge, Kadapa. (post kept vacant) | II Additional Junior Civil Judge, Kadapa. | Principal Senior Civil Judge, Kadapa. |
| 16. | Sri G.Ganga Raju, Junior Civil Judge, Kanigiri, Prakasam District. | Additional Senior Civil Judge, Anakapalle, Visakhapatnam District. Vice Sri P.Goverdan, transferred. | Junior Civil Judge, Podili, Prakasam District. | Additional Senior Civil Judge, Gajuwaka, Visakhapatnam District. |
| 17. | Sri Ch.Yugandhar, I Additional Junior Civil Judge, Rajamahendra-varam, East Godavari District. | I Additional Chief Metropolitan Magistrate, Visakhapatnam (post kept vacant) | II Additional Junior Civil Judge, Rajamahendravaram, East Godavari District. | Chief Metropolitan Magistrate, Visakhapatnam. |
| 18. | Smt. K.Aruna, VI Additional Junior Civil Judge, Guntur. | Senior Civil Judge, Srikalahasti, Chittoor District. (post kept vacant) | V Additional Junior Civil Judge, Guntur. | Additional Senior Civil Judge, Tirupathi, Chittoor District. |
| 19. | Smt. M.V.N. Padmaja, Special Mobile Court for trial of cases under PCR Act-cum-III Additional Junior Civil Judge, Kurnool. | II Additional Senior Civil Judge, Kakinada, East Godavari District. (post kept vacant) | Special Judicial Magistrate of First Class, Excise Court, Kurnool. | III Additional Senior Civil Judge, Kakinada, East Godavari District. |
| 20. | Smt. K.Madhavi Devi, IV Additional Junior Civil Judge, Nellore. | Senior Civil Judge, Ramachandrapuram, East Godavari | Special Judicial Magistrate of First Class, Excise Court, | I Additional Senior Civil Judge, Kakinada, East |

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| 21. | Smt. A.Sunitha Rani, Principal Junior Civil Judge, Guntur. | IV Additional Senior Civil Judge, Guntur. (post kept vacant) | II Additional Junior Civil Judge, Guntur. | I Additional Senior Civil Judge, Guntur. |
| 22. | Smt. K.Madhavi, I Additional Junior Civil Judge, Kovvur, West Godavari District. | Senior Civil Judge, Pithapuram, East Godavari District. (post kept vacant) | Principal Junior Civil Judge, Kovvur, West Godavari District. | Senior Civil Judge, Peddapuram, East Godavari District. |
| 23. | Smt. A.Shobha Rani, I Additional Junior Civil Judge, Tirupathi, Chittoor District. | Additional Senior Civil Judge, Narasaraopet, Guntur District. Vice Smt. Sunkara Sridevi transferred. | IV Additional Junior Civil Judge, Tirupathi, Chittoor District. | Additional Senior Civil Judge, Narasaraopet, Guntur District. |
| 24. | On relief, Smt. Sunkara Sridevi, Additional Senior Civil Judge, Narasaraopet, Guntur District. | Principal Senior Civil Judge, Narasaraopet, Guntur District. (post kept vacant) | --- | Shall assume charge as Principal Senior Civil Judge, Narsaraopet. |
| 25. | Sri M.Babu, Principal Junior Civil Judge, Kandukur, Prakasam District. | Senior Civil Judge, Rajam, Srikakulam District. (post kept vacant) | Additional Junior Civil Judge, Kandukur, Prakasam District. | Principal Senior Civil Judge, Srikakulam. |
| 26. | Sri K.Vasudeva Rao, Principal Junior Civil Judge, Tadepalligudem, West Godavari District. | Senior Civil Judge, Punganur, Chittoor District. (post kept vacant) | I Additional Junior Civil Judge, Tadepalligudem, West Godavari District. | Principal Senior Civil Judge, Madanapalle, Chittoor District. |
| 27. | Sri K.Prakash Babu, Junior Civil Judge, Kotabommali, Srikakulam District. | Senior Civil Judge, Tadepalligudem, West Godavari District. | Shall handover charge of his post and also the posts of Junior Civil Judge, Pathapatnam, Junior Judge, Tekkali, Junior Civil Judge, Palasa, to Junior Civil Judge, Kottur and also handover charge of the posts of Junior Civil Judge, Ichapuram, Junior Civil Jude, Narasannapet, Prl and Addl. Junior Civil Judge, Sompeta to Judicial Magistrate of First Class, Special Mobile Court, | Senior Civil Judge, Tanuku, West Godavari District. |

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| 28. | Sri Yalamarthi Srinivasa Rao, Junior Civil Judge, Udayagiri, Nellore District. | Senior Civil Judge, Narsapur, West Godavari District. (post kept vacant) | Additional Junior Civil Judge, Kavali, Nellore District. | Senior Civil Judge, Bhimavaram, West Godavari District. |
| 29. | Smt. S.Arunasri, Principal Junior Civil Judge, Puttur, Chittoor District. | Senior Civil Judge, Chodavaram, Visakhapatnam District. (post kept vacant) | Additional Junior Civil Judge, Puttur, Chittoor District. | Principal Senior Civil Judge, Anakapalle/Addl. Senior Civil Judge, Gajuwaka, Visakhapatnam District, as the case may be. |
| 30. | Sri G.L.V.Prasad, Principal Junior Civil Judge, Tuni, East Godavari District. | Senior Civil Judge, Darsi, Prakasam District (post kept vacant) | Principal Junior Civil Judge, Pithapuram, East Godavari District. | Senior Civil Judge, Addanki, Prakasam District. |
| 31. | Sri H.Amara Rangeswara Rao, Principal Junior Civil Judge, Alamur, East Godavari District. | Additional Senior Civil Judge, Anakapalle, Visakhapatnam District Vice (post kept vacant) | Additional Junior Civil Judge, Ramachandrapuram. East Godavari District. | Additional Senior Civil Judge, Gajuwaka, Visakhapatnam District. |
| 32. | Sri B.Leela Venkata Seshadri, V Additional Junior Civil Judge, Nellore. | Senior Civil Judge, Gurazala, Guntur District (post kept vacant) | Special Judicial Magistrate of First Class, Excise Court, Nellore. | Additional Senior Civil Judge, Narasaraopet, Guntur Dsitrict. |
| 33. | Sri Marpu Sreedhar, Principal Junior Civil Judge, Vijayawada, Krishna District. | Senior Civil Judge, Kothapet, East Godavari District. (post kept vacant) | I Additional Junior Civil Judge, Vijayawada, Krishna District. | Senior Civil Judge, Amalapuram, East Godavari District. |
| **34.** | Smt. K.Prathush Kumari, Junior Civil Judge, Lakkireddipalli, Kadapa District. | Secretary, District Legal Services Authority, Rajamahendravaram, East Godavari District. VICE Smt. K.V.L.Hima Bindhu, transferred. | Principal Junior Civil Judge, Rayachoti, Kadapa District. | Principal Senior Civil Judge, Rajamahendravaram, East Godavari District. |
| **35.** | Sri P.Goverdhan, Principal Senior Civil Judge, Anakapalle, Visakhapatnam District. | Principal Senior Civil Judge, Visakhapatnam. (post kept vacant) | Addl. Senior Civil Judge, Gajuwaka, Visakhapatnam District. | I Additional Senior Civil Judge, Visakhapatnam. |

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| 36. | Smt. K.V.L.Hima Bindhu, Secretary, District Legal Services Authority, East Godavari at Rajamahendravaram. | II Additional Chief Metropolitan Magistrate, (Juvenile Court) Visakhapatnam. (post kept vacant) | Principal Senior Civil Judge, Rajamahendravaram, East Godavari District. | III Additional Chief Metropolitan Magistrate, Visakhapatnam. |
| 37. | Sri S.Praveen Kumar, Additional Senior Civil Judge, Kadapa. | I Additional Senior Civil Judge, Rajamahendravaram, East Godavari District. (post kept vacant) | Principal Senior Civil Judge, Kadapa. | Principal Senior Civil Judge, Rajamahendravaram, East Godavari District. |

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| Sl. No. | Name of the Assistant Public Prosecutor | Promotion and Place of posting | To whom charge to be handover | From whom Charge to be taken |
|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 |
| 1 | Sri. M. Adinarayana, Assistant Public Prosecutor, Judicial First Class Magistrate Court, Sompeta, Srikakulam District | Senior Assistant Public Prosecutor, Chief Metropolitan Magistrate Court, Visakhapatnam | Ms.R.Santhi Santhoshi, Assistant Public Prosecutor, Additional Judicial First Class Magistrate Court, Sompeta, Srikakulam District.<br><br>She is placed as incharge to the post of Assistant Public Prosecutor, JFCM Court, Sompeta, Srikakulam District, until further orders | Assumed Charge |
| 2 | Sri.G.Chinna Rao, Assistant Public Prosecutor/ Legal Advisor-cum-Special Public Prosecutor, Anti-Corruption Bureau, Visakhapatnam | Senior Assistant Public Prosecutor, Additional Judicial First Class Magistrate Court, Vizianagaram | As directed by the Director General, ACB, A.P, Vijayawada | Sri.P.Kesava Rao, Assistant Public Prosecutor,- Judicial First Class Magistrate Court, S.Kota, Vizianagaram Dist. |

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| Sl. No. | Name of the Assistant Public Prosecutor | Promotion and Place of posting | To whom charge to be handover | From whom Charge to be taken |
|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 |
| 1 | Smt.N.Umavathi, Assistant Public Prosecutor, Special Mobile (PCR) Court, Eluru, West Godavari District | Senior Assistant Public Prosecutor, II Additional Judicial First Class Magistrate Court, Machilipatnam, Krishna Dist. | Sri.B.Gangadhar Assistant Public Prosecutor, Judicial First Class Magistrate Court, Bhimadolu, West Godavari District.<br><br>He is placed as incharge to the post of Assistant Public Prosecutor, Special Mobile (PCR) Court, Eluru, W.G.District | Smt.G.Aruna Madhuri, Assistant Public Prosecutor, Judicial First Class Magistrate Court, Bantumilli, Krishna District. |
| 2 | Sri.K.Srikrishna, Assistant Public Prosecutor/ Legal Advisor-cum-Public Prosecutor, O/o Additional Director General of Police, Intelligence Department, Andhra Pradesh, Vijayawada | Senior Assistant Public Prosecutor/ Legal Advisor-cum-Public Prosecutor, O/o Additional Director General of Police, Intelligence Department, Andhra Pradesh, Vijayawada | As directed by the Additional Director General of Police, Intelligence Department, A.P, Vijayawada | |

➢

| Sl. No. | Name of the Assistant Public Prosecutor | Promotion and Place of posting | To whom charge to be handover | From whom Charge to be taken |
|---|---|---|---|---|
| 1 | 2 | 3 | | |
| 1 | Sri.P.Sunil Kumar Assistant Public Prosecutor, II Additional Judicial First Class Magistrate Court, Narasaraopet, Guntur District | Senior Assistant Public Prosecutor, I Additional Judicial First Class Magistrate Court, Tenali, Guntur District | Sri.L.Lakshmi Ram Naik, Senior Assistant Public Prosecutor, I Additional Judicial First Class Magistrate Court, Narasararaopet, Guntur District<br><br>He is placed as incharge to the post of Assistant Public Prosecutor, II Additional Judicial First Class Magistrate Court, Narasaraopet, Guntur Dist. | Smt.K.Kalavathi, Senior Assistant Public Prosecutor, IV Additional Judicial First Class Magistrate Court,Guntur |

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# ON A LIGHTER VEIN

Why do we tell actors to "break a leg?"
Because every play has a cast

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# Prosecution Replenish

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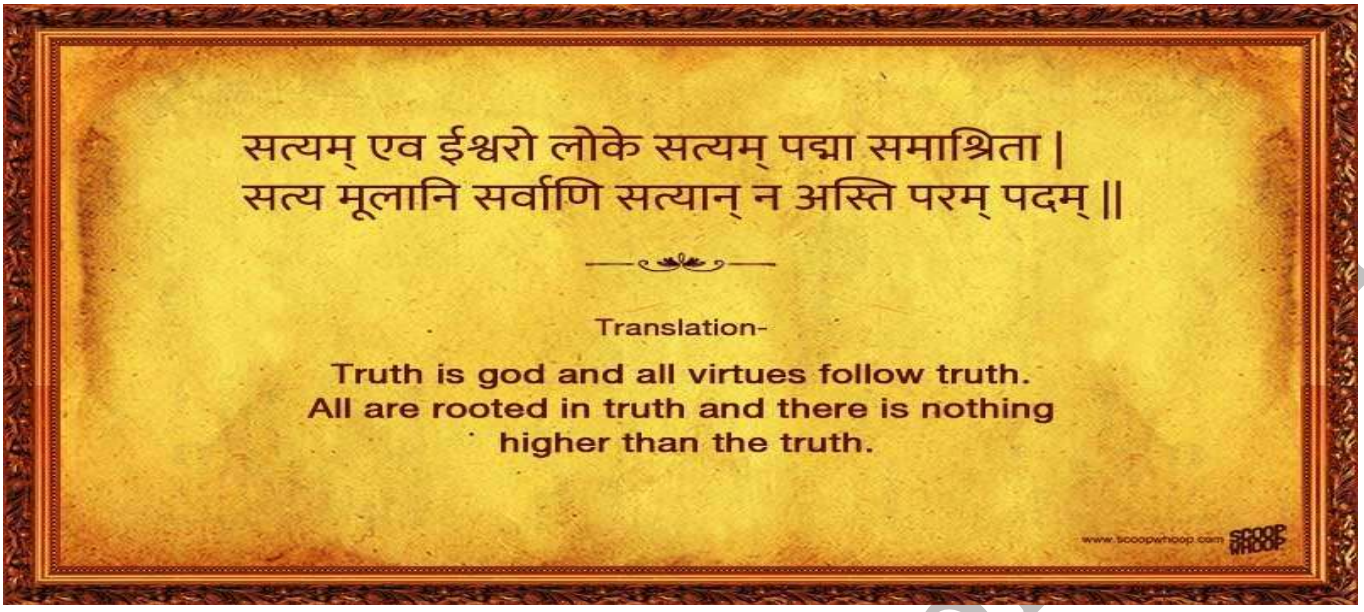
## November, 2021

AanoBhadraKrtavoYantuVishwatah.(RIG VEDAM)
"Let Noble Thoughts Come To Me From All Directions"




**APPRECIATION AND EVALUATION OF EVIDENCE OF HOSTILE WITNESS**

**DVR TEJO KARTHIK**
ADMINISTRATIVE OFFICER
TELANGANA STATE JUDICIAL ACADEMY
SECUNDERABAD.

Hon'ble Justice J.B. Pardiwala, Judge, High Court of Gujarat in ***Bhikhalal Kalyanji Jethava v. Central Bureau of Investigation & Others, 2017 SCC Online Guj 716***as a prelude to the judgment observed about of the importance of a witness as follows*: "Witnesses"* as Benthem said are the eyes and ears of justice. Hence the importance and primacy of the quality of trial process. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed, and it no longer can constitute a fair trial. The incapacitation may be due to several factors, like the witness being not in a position for reasons beyond control to speak the truth in the Court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by Courts on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary considerations at the instance of those in power, their henchmen and hirelings, political clouts and patronage and innumerable other corrupt practices ingenuously adopted to smoother and stifle truth and realities coming out to surface rendering the truth and justice, to become ultimate casualties. Broader public and societal interests require that the victims of the crime who are not ordinarily parties to prosecution and the interests of State represented by their prosecuting agencies do not suffer even in slow process but irreversibly and irretrievably, which if allowed would undermine and destroy public confidence in the administration of justice, which may ultimately pave way for anarchy, oppression and injustice resulting in complete breakdown and collapse of the edifice of rule of law, enshrined and jealously guarded and protected by the Constitution. There comes the need for protecting the witness. Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that ultimate truth is presented before the Court and justice triumphs and that the trial is not reduced to mockery. The State has a definite role to play in protecting the witnesses, to start with at least in sensitive cases involving those in power, who has political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty. As a protector of its citizens, it has to ensure that during a trial in Court the witness could safely depose truth without any fear of being haunted by those against whom he has deposed. Some legislative enactments like the Terrorist and Disruptive Activities (Prevention) Act, 1987(in short, the "TADA Act") have taken note of the reluctance shown by witnesses to depose against dangerous criminals terrorists. In a milder form also the reluctance and the hesitation of witnesses to depose against people with muscle power, money power or political power has become the order of the day. If ultimately truth is to be

Prosecution Rep

incapacitated in the sense of making the proceedings before Courts mere mock trials as are usually seen in movies."

In ***Zahira Habibullah Sheikh & Anr v. State of Gujarat & Ors., (2006) 3 SCC 374.,*** the Hon'ble Supreme Court of India quoted two stanzas (14 and 18) of Eighth Chapter of Manu Samhita dealing with role of witnesses. They read as follows:

Stanza 14***: "Jatro dharmo hyadharmena Satyam Jatranrutenacha Hanyate prekshyamananam Hatastrata Sabhasadah"***

*(Where in the presence of Judges "dharma" is overcome by "adharma" and "truth" by "unfounded falsehood", at that place they (the Judges) are destroyed by sin).*

Stanza 18:***"Padodharmasya Kartaram Padah sakshinomruchhati Padah sabhasadah sarban pado rajanmruchhati"***

*(In the adharma flowing from wrong decision in a Court of law, one fourth each is attributed to the person committing the adharma, witness, the judges and the ruler).*

The word "Hostile" has not been defined in the Evidence Act, 1872. Section 154 of the Indian Evidence Act, 1872 deals with question by party to his own witness. Sub-Section (1) says that the Court may, in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party. Sub-Section (2) says that nothing in the section shall disentitle the person so permitted under Sub-Section (1), to rely on any part of the evidence of such witness.

The terms "hostile", "adverse" or "unfavourable" witnesses are alien to the Indian Evidence Act. The terms "hostile witness", "adverse witness", "unfavourable witness", "unwilling witness" are all terms of English Law. The rule of not permitting a party calling the witness to cross examine are relaxed under the common law by evolving the terms "hostile witness and unfavourable witness". Under the common law a hostile witness is described as one who is not desirous of telling the truth at the instance of the party calling him and a unfavourable witness is one called by a party to prove a particular fact in issue or relevant to the issue who fails to prove such fact, or proves the opposite test. In India the right to cross-examine the witnesses by the party calling him is governed by the provisions of the Indian Evidence Act, 1872. Section 142 requires that leading questions cannot be put to the witness in examination-in-chief or in re-examination except with the permission of the court. The Court can, however, permit leading question as to the matters which are introductory or undisputed or which have, in its opinion, already been sufficiently proved. Section 154 of the Evidence Act authorizes the court in its discretion to permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party. The courts are, therefore, under a legal obligation to exercise the discretion vesting in them in a judicious manner by proper application of mind and keeping in view the attending circumstances. The permission for cross-examination in terms of Section 154 of the Evidence Act, cannot and should not be granted, at the mere asking of the party calling the witness. The discretion conferred by Section 154 on the court is unqualified and untrammelled, and is apart from any question of 'hostility'. It is to be liberally exercised whenever the court from the witnesses' demeanour, temper, attitude, bearing, or the tenor and tendency of his answers, or from a perusal of his previous inconsistent statement, or otherwise, thinks that the grant of such permission is expedient to extract the truth and to do justice. The grant of such permission does not amount to an adjudication by the court as to the veracity of the witness.***(See., Baikuntha Nath v. Prasannamoyi, AIR 1922 PC 409)***

In ***Sat Paul v. Delhi Administration., AIR 1976 SC 294*** it was held that to steer clear of the controversy over the meaning of the terms 'hostile witness', 'adverse witness', 'unfavourable witness' which had given rise to considerable difficulty and conflict of opinion in England, the authors of the Indian Evidence Act, 1872 seem to have advisedly avoided the use of any of those terms so that, in India, the grant of permission to cross-examine his own witness by a party is not conditional on the witness being declared 'adverse' or 'hostile'. Whether it be the grant of permission under Sec.142 to put leading questions, or the leave under Section 154 to ask questions which might be put in cross- examination by the adverse party, the Indian Evidence Act leaves the matter entirely to the discretion of the court. It is important to note that the English statute differs materially from the law contained in the Indian Evidence Act in regard to cross-examination and contradiction of his own witness by a party. Under the English Law, a party is not permitted to impeach the credit of his own witness by general evidence of his bad character, shady antecedents or previous conviction. In India, this can be done with the consent of the court under Section 155 of the Evidence Act. Under the English Act of 1865, a party calling the witness, can 'cross-examine' and contradict a witness in respect of his previous inconsistent statements with the leave of the court, only when the court considers the witness to be 'adverse'. No such condition has been laid down in Sections 154 and 155 of the Indian Evidence Act and the grant of such leave has been left completely to the discretion of the court, the exercise of which is not fettered by or dependent upon the

Prosecution Replenish

'hostility' or 'adverseness' of the witness. In this respect, the Indian Evidence Act is in advance of the English Law. The Criminal Law Revision Committee of England in its 11thReporthas recommended the adoption of a modernised version of Section 3 of the Criminal Procedure Act, 1865, allowing contradiction of both unfavourable and hostile witnesses by other evidence without leave of the court. The Report is, however, still in favour of retention of the prohibition on a party's impeaching his own witness by evidence of bad character. Even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as a matter of prudence, discard his evidence in toto.

In ***Gura Singh v. State of Rajasthan, 2000 (8) Supreme 402.,*** the Supreme Court while dealing with the effect on the testimony of a witness declared hostile observed that it is a misconceived notion that merely because a witness is declared hostile his entire evidence should be excluded or rendered unworthy of consideration. The Court then took note of ***Bhagwan Singh v. State of Haryana., AIR 1976 SC 202*** which held that merely because the Court gave permission to the Public Prosecutor to cross- examine his own witness describing him as hostile witness does not completely efface his evidence. The evidence remains admissible in the trial and there is no legal bar to base conviction upon the testimony of such witness.

In ***Rabindra Kumar Dey v. State of Orissa., AIR 1977 SC 170*** it was observed that by giving permission to cross-examine nothing adverse to the credit of the witness is decided and the witness does not become unreliable only by his declaration as hostile. Merely on this ground his whole testimony cannot be excluded from consideration. In a criminal trial where a prosecution witness is cross-examined and contradicted with the leave of the Court by the party calling him for evidence cannot, as a matter of general rule, be treated as washed off the record altogether. It is for the court of fact to consider in each case whether as a result of such cross-examination and contradiction the witness stands discredited or can still be believed in regard to any part of his testimony. In appropriate cases the court can rely upon the part of testimony of such witness if that part of the deposition is found to be creditworthy.

In ***Anil Rai v. State of Bihar, AIR 2001 SC 3137*** the Court held that the mere fact that the Court gave the permission to the Public Prosecutor to cross-examine his own witness by declaring him hostile does not completely efface the evidence of such witness. The evidence remains admissible in the trial and there is no legal bar to base conviction upon his testimony, if corroborated by other reliable evidence.

In ***Bhajju @ Karan Singh v. State of M.P., (2012) 4 SCC 327*** the Court discussed the effect of hostile witnesses as well as the worth of the defence put forward on behalf of the accused and observed that normally, when a witness deposes contrary to the stand of the prosecution and his own statement recorded under Section 161 of the Cr.P.C., the prosecutor, with the permission of the Court, can pray to the Court for declaring that witness hostile and for granting leave to cross-examine the said witness. If such a permission is granted by the Court, then the witness is subjected to cross-examination by the prosecutor as well as an opportunity is provided to the defence to cross-examine such witnesses, if he so desires. In other words, there is a limited examination-in-chief, cross-examination by the prosecutor and cross-examination by the counsel for the accused. It is admissible to use the examination-in-chief as well as the cross-examination of the said witness in so far as it supports the case of the prosecution. It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence. Section 154 of the Act enables the Court, in its discretion, to permit the person, who calls a witness, to put any question to him which might be put in cross-examination by the adverse party. The view that the evidence of the witness who has been called and cross-examined by the party with the leave of the court, cannot be believed or disbelieved in part and has to be excluded altogether, is not the correct exposition of law. The Courts may rely upon so much of the testimony which supports the case of the prosecution and is corroborated by other evidence. It is also now a settled cannon of criminal jurisprudence that the part which has been allowed to be cross-examined can also be relied upon by the prosecution.

A witness may turn hostile at any stage during the trial either in the course of examination in chief or in the cross examination. Even where a witness is declared as hostile as per Section 154 of Indian Evidence Act

Prosecution Reprint

read with Section 162 proviso of the Code of Criminal Procedure, nonetheless, the testimony will not be discarded from consideration altogether, merely because the witness was declared as hostile. The grant of such permission of declaring a witness as hostile does not amount to an adjudication by the Court as to the veracity of the witness.

The Courts in India do not follow the maxim ***"Falsus in Uno Falsus in Omnibus"(false in one, false in all).*** The maxim has not received general acceptance in India and it did not occupy the position of rule of law. In ***Ugar Ahir and Ors. v. The State of Bihar., AIR 1965 SC 277,*** the Hon'ble Supreme Court of India speaking through his lordship Hon'ble Justice Koka Subba Rao observed that the maxim *falsus in uno, falsus 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.

Similarly in ***Sohrab s/o Belinayata & Anr v. The State of Madhya Pradesh., AIR 1972 SC 2020.,*** the Supreme Court held that falsus in uno, falsus in omnibus is not a sound rule for the reason that hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishments. In most cases, the witnesses when asked about details venture to give some answer, not necessarily true or relevant for fear that their evidence may not be accepted in respect of the main incident which they have witnessed but that is not to say that their evidence as to the salient features of the case after cautious scrutiny cannot be considered.

In ***Gangadhar Behera and Ors v. State of Orissa., (2002) 8 SCC 381.,*** the Supreme Court observed that the principle of falsus in uno, falsus in omnibus is clearly untenable. Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co- accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of a particular material witness or material particular would not ruin it from the beginning to end. The maxim falsus in uno, falsus in omnibus has no application in India and the witnesses cannot be branded as liars. The maxim falsus in uno, falsus in omnibus has not received general acceptance nor has this maxim come to occupy the status of the rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called a mandatory rule of evidence. Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a court to differentiate the accused who had been acquitted from those who were convicted. The doctrine is a dangerous one especially in India for if a whole body of the testimony were to be rejected, because a witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate the grain from the chaff, truth from falsehood. Where it is not feasible to separate the truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. Normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorised. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. It is thus clear that the maxim- falsus in uno, falsus in omnibus has no application in India and witnesses cannot be branded as liars. The Indian Courts have consistently declined to apply the maxim as a

Prosecution Replenish

general proposition of law. Even if major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, his conviction can be maintained. This maxim at the most is merely a rule of caution involving the question of weight of evidence which a Court may apply in a given set of circumstances but not what may be called a mandatory rule of evidence. Keeping in mind the Indian context the doctrine if applied could be dangerous. Each case must be examined as to what extent the evidence is worthy of acceptance. The maxim - falsus in uno, falsus in omnibus is not a sound rule and definitely not in the Indian context for hardly one comes across any witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment.

Thus, the law is well settled that evidence of a witness need not necessarily be true in all respects. It may be partly true and partly untrue and the said maxim *"falsus in uno falsus in omnibus"* is not applicable in India and it is open to the Court in India to accept a part of evidence of a witness while rejecting the rest of it.

In ***Dahyabhai Chhaganbhai Thakkar v. State of Gujrat, AIR 1964 SC 1563***, the Hon'ble Apex Court has held that to confine the operation of Section 154 of the Evidence Act to a particular stage in the examination of a witness is to read words in the section which are not there. We cannot also agree with the High court that if a party calling a witness is permitted to put such questions to the witness after he has been cross-examined by the adverse party, the adverse party will not have any opportunity to further cross-examine the witness on the answers elicited by putting such questions. In such an event the court certainly, in exercise of its discretion, will permit the adverse party to cross-examine the witness on the answers elicited by such questions. The court, therefore, can permit a person, who calls a witness, to put questions to him which might be put in the cross-examination at any stage of the examination of the witness, provided it takes care to give an opportunity to the accused to cross examine him on the answers elicited which do not find place in the examination-in-chief.

Further in ***State of Bihar v. Lalu Prasad alias Lalu Prasad Yadav., AIR 2002 SC 2432,*** the Hon'ble Apex Court has held that it would have been a different position if the witness stuck to his version, he was expected to say by the party who called the witness, in the examination-in-chief, but he showed propensity to favour the adverse party only in cross-examination. In such case, the party who called him has a legitimate right to put cross questions to the witness. But if he resiled from his expected stand even in chief-examination, the permission to put cross-questions should have been sought then.

In ***Karuppanna Thevar and Ors. v. The State of Tamil Nadu., AIR 1976 SC 980,*** the Court however observed that the Courts should be slow to act on the testimony of such a hostile witness and normally look for corroboration. Likewise in ***State of Rajasthan v. Bhawani & Anr., AIR 2003 SC 4230*** the Supreme Court held that the fact that the witness was declared hostile by the Court at the request of the prosecuting counsel and he was allowed to cross-examine the witness, no doubt furnishes no justification for rejecting enbloc the evidence of the witness. But the Court has at least to be aware that prima facie, a witness who makes different statements at different times has no regard for truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to the same. The Court should be slow to act on the testimony of such a witness and, normally, it should look for corroboration to his evidence.

The Hon'ble Supreme Court of India in ***Krishna Mochi v. State of Bihar., (2002) 6 SCC 81*** observed that it is matter of common experience that in recent times there has been sharp decline of ethical values in public life even in developed countries much less developing one, like ours, where the ratio of decline is higher. Even in ordinary cases, witnesses are not inclined to depose or their evidence is not found to be credible by courts for manifold reasons. One of the reasons may be that they do not have courage to depose against an accused because of threats to their life, more so when the offenders are habitual criminals or high-ups in the Government or close to powers, which may be political, economic or other powers including muscle power. These days it is not difficult to gain over a witness by money power or giving him any other allurence or giving out threats to his life and/or property at the instance of persons, in/or close to powers and muscle men or their associates. Such instances are also not uncommon where a witness is not inclined to depose because in the prevailing social structure, he wants to remain indifferent. Thus, in a criminal trial a prosecutor is faced with so many odds. 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 ivory tower. These days when crime is looming large and humanity is suffering and 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 world over and courts have been compelled to accept that "society suffers by wrong convictions and it equally suffers by wrong acquittals".

In ***State Through., P.S., Lodhi Colony, New Delhi v. Sanjeev Nanda., AIR 2012 SC 3104,*** the Court while expressing its anguish observed that witness turning hostile is a major disturbing factor faced by the criminal courts in India. Reasons are many for the witnesses turning hostile, but of late, we see, especially in

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high profile cases, there is a regularity in the witnesses turning hostile, either due to monetary consideration or by other tempting offers which undermine the entire criminal justice system and people carry the impression that the mighty and powerful can always get away from the clutches of law thereby, eroding people's faith in the system.

The Supreme Court in ***Ramesh v. State of Haryana., (2017) 1 SCC 529.,*** on the analysis of various cases observed that the Court cannot close its eyes to the disturbing fact in the instant case where even the injured witness, who was present on the spot, turned hostile and formulated the following reasons which make witnesses retracting their statements before the Court and turning hostile:(i) Threat/intimidation., (ii) Inducement by various means., (iii) Use of muscle and money power by the accused., (iv) Use of Stock Witnesses., (v) Protracted Trials., (vi) Hassles faced by the witnesses during investigation and trial., (vii) Non-existence of any clear-cut legislation to check hostility of witness." Threat and intimidation has been one of the major causes for the hostility of witnesses.

The Supreme Court in ***Mahender Chawla & Ors v. Union of India & Ors., (2019) 14 SCC 615.,*** observed that in recent year's extremism, terrorism and organized crimes have grown and are becoming stronger and more diverse. In the investigation and prosecution of such crimes, it is essential that witnesses have trust in criminal justice system. Witnesses need to have the confidence to come forward to assist law enforcement and prosecuting agencies. They need to be assured that they will receive support and protection from intimidation and the harm that criminal groups might seek to inflict upon them in order to discourage them from co-operating with the law enforcement agencies and deposing before the court of law. Hence, it is high time that a scheme is put in place for addressing the issues of witness protection uniformly in the country. The Court gave its imprimatur to the Scheme and approved Witness Protection Scheme, 2018 prepared by Union of India.

Witness Protection may be as simple as providing a police escort to the witness up to the Courtroom or using modern communication technology (such as audio video means) for recording of testimony. In other more complex cases, involving organised criminal group, extraordinary measures are required to ensure the witness's safety viz. anonymity, offering temporary residence in a safe house, giving a new identity, and relocation of the witness at an undisclosed place. However, Witness protection needs of a witness may have to be viewed on case-to-case basis depending upon their vulnerability and threat perception. The scheme envisages identifying categories of threat perceptions, preparation of a "Threat Analysis Report" by the Head of the Police, types of protection measures like ensuring that the witness and accused do not come face to face during investigation etc. protection of identity, change of identity, relocation of witness, witnesses to be apprised of the scheme, confidentiality and preservation of records, recovery of expenses etc. Since it is beneficial and benevolent scheme which is aimed at strengthening the criminal justice system in this country, which shall in turn ensure not only access to justice but also advance the cause the justice itself, all the States and Union Territories also accepted that suitable directions can be passed by the court to enforce the said Scheme as a mandate of the court till the enactment of a statute by the Legislatures.

The Court directed the Union of India as well as States and Union Territories to enforce the Witness Protection Scheme, 2018 in letter and spirit.

In line with the provisions contained in the Scheme, in all the district courts in India, vulnerable witness deposition complexes shall be set up by the States and Union Territories. The Court held that this should be achieved within a period of one year, i.e., by the end of the year 2019. The Court also directed the Central Government to also support this endeavour of the States/Union Territories by helping them financially and otherwise. The Court further noted that the directions of Delhi High Court and setting up of special centres for vulnerable witnesses as observed by the Court are consistent with the decision of the Court and supplement the same. The Court directed that all High Courts can adopt such guidelines if the same have not yet been adopted with such modifications as may be deemed necessary. Setting up of one centre for vulnerable witnesses may be perhaps required almost in every district in the country. All the High Courts may take appropriate steps in this direction in due course in phases. At least two such centres in the jurisdiction of each High Court may be set up within three months from the date of judgment as rendered by the Court. Thereafter, more such centres may be set up as per decision of the High Courts. The Court further observed that there is a paramount need to have witness protection regime, in a statutory form, which all the stakeholders and all the players in the criminal justice system concede. At the same time no such legislation has been brought about. These are the considerations which had influenced the Court to have a holistic regime of witness protection which should be considered as law under Article 141 of the Constitution till a suitable law is framed. The Court further held that it shall be the 'law' under Articles 141/142 of the Constitution, till the enactment of suitable Parliamentary and/or State Legislations on the subject.

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***CONCLUSION***

In summation it can be said that purely because a witness was declared hostile his whole evidence cannot be excluded or rendered unworthy of consideration. Merely because the Court gave permission to the Public Prosecutor to examine his own witness in the nature of cross describing him as hostile witness does not completely obliterate his evidence. The evidence remains acceptable and admissible in the trial and there is no legal bar to base conviction upon the testimony of such witness. However, the Courts should be slow to act on the testimony of such hostile witness and as a rule of prudence look for some corroboration. The maxim *'falsus in uno falsus in omnibus'* is not applicable in India. It is only a rule of caution. Even where major portion of evidence of a witness is found untrustworthy, yet if the remaining part of the evidence inspires confidence and is sufficient to prove the guilt of the accused, conviction can be based thereupon. Courts have to separate the chaff from the grain and to find in each case as to what extent the evidence is acceptable. If separation cannot be done, the evidence has to be rejected in toto.

(Prosecution Replenish conveys its heartfelt thanks to **Sri D.V.R. TejoKarthik,** Administrative Officer, Telangana State Judicial Academy, Secunderabad, for contributing this article for our leaflet)

## CITATIONS

In each case this Court has called for report from the Special Courts and earlier also directed the Special Courts to dispose of these extension petitions at the earliest. It is stated that for service of notices to accused, matters were repeatedly adjourned, then accused was seeking time for filing counter. There cannot be any delay in serving notices to the accused. Notices can be served to accused and endorsement can also be taken from the Superintendent of Jail and when the extension petition was coming up for hearing, it can be fixed for appearance of the accused.

6. In NDPS cases, with regard to extension petitions, it is between the Court and prosecution and the Court should not adjourn the matter for counter of accused and the same shall be disposed of expeditiously, the order copy shall be uploaded on the same day and even the certified copy also shall be furnished as expeditiously as possible, within three (03) days.

**https://indiankanoon.org/doc/58602358/; CRIMINAL PETITION No.3735 of 2021 Dated: 26.10.2021;**

DNA is unique to an individual (barring twins) and can be used to identify a person's identity, trace familial linkages or even reveal sensitive health information. Whether a person can be compelled to provide a sample for DNA in such matters can also be answered considering the test of proportionality laid down in the unanimous decision of this Court in K.S. Puttaswamy v. Union of India, 2019 (1) SCC 1, wherein the right to privacy has been declared a constitutionally protected right in India. The Court should therefore examine the proportionality of the legitimate aims being pursued, i.e. whether the same are not arbitrary or discriminatory, whether they may have an adverse impact on the person and that they justify the encroachment upon the privacy and personal autonomy of the person, being subjected to the DNA Test.

The learned Judge while noting the sensitivities involved with the issue of ordering a DNA test, opined that the discretion of the court must be exercised after balancing the interests of the parties and whether a DNA Test is needed for a just decision in the matter and such a direction satisfies the test of "eminent need".

The above decision in Bhabani Prasad Jena (supra) was considered and approved in Dipanwita Roy vs. Ronobroto Roy, (2015) 1 SCC 365, where the Court noticed from the facts that the husband alleged infidelity against his wife and questioned the fatherhood of the child born to his wife. In those circumstances, when the wife had denied the charge of infidelity, the Court opined that but for the DNA test, it would be impossible for the husband to establish the assertion made in the pleadings. In these facts, the decision of the High Court to order for DNA testing was approved by the Supreme Court. Even then, Justice J.S. Khehar, writing for the Division Bench, considered it appropriate to record a caveat to the effect that the wife may refuse to comply with the High Court direction for the DNA test but in that case, presumption may be drawn against the party.

In circumstances where other evidence is available to prove or dispute the relationship, the court should ordinarily refrain from ordering blood tests. This is because such tests impinge upon the right of privacy of an individual and could also have major societal repercussions. Indian law leans towards

legitimacy and frowns upon bastardy. The presumption in law of legitimacy of a child cannot be lightly repelled.

**2021 0 Supreme(SC) 534; Ashok Kumar Vs. Raj Gupta & Ors.: Civil Appeal No. 6153 of 2021 (Arising out of SLP(C) No. 11663 of 2019) Decided On : 01-10-2021**

The ground of parity with co-accused Daksh Adya invoked by the High Court is equally unwarranted. The allegations in the FIR against the Respondent-Mother-in-Law and her younger Son Daksh Adya are materially different. It is indubitable that some of the allegations against all the family members are common but there are other specific allegations accusing the Respondent-Accused of playing a key role in the alleged offence. The conduct of the Respondent-Accused in absconding for more than two years without any justifiable reason should have weighed in mind while granting her any discretionary relief. These facts put her on a starkly different pedestal than the co-accused with whom she seeks parity. We are, thus, of the considered view that the High Court has wrongly accorded the benefit of parity in favour of the Respondent-Accused.

Even if there was any procedural irregularity in declaring the Respondent-Accused as an absconder, that by itself was not a justifiable ground to grant pre-arrest bail in a case of grave offence save where the High Court on perusal of case-diary and other material on record is, prima facie, satisfied that it is a case of false or over-exaggerated accusation.

At the outset, it would be fruitful to recapitulate the well-settled legal principle that the cancellation of bail is to be dealt on a different footing in comparison to a proceeding for grant of bail. It is necessary that 'cogent and overwhelming reasons' are present for the cancellation of bail. Conventionally, there can be supervening circumstances which may develop post the grant of bail and are non-conducive to fair trial, making it necessary to cancel the bail. This Court in Daulat Ram and Others vs. State of Haryana, (1995) 1 SCC 349, observed that:

> "Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of Justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial."

These principles have been reiterated time and again, more recently by a 3-judge Bench of this Court in X vs. State of Telegana and Another, (2018) 16 SCC 511.

In addition to the caveat illustrated in the cited decisions, bail can also be revoked where the court has considered irrelevant factors or has ignored relevant material available on record which renders the order granting bail legally untenable. The gravity of the offence, conduct of the accused and societal impact of an undue indulgence by Court when the investigation is at the threshold, are also amongst a few situations, where a Superior Court can interfere in an order of bail to prevent the miscarriage of justice and to bolster the administration of criminal justice system. This Court has repeatedly viewed that while granting bail, especially anticipatory bail which is per se extraordinary in nature, the possibility of the accused to influence prosecution witnesses, threatening the family members of the deceased, fleeing from justice or creating other impediments in the fair investigation, ought not to be overlooked.

Broadly speaking, each case has its own unique factual scenario which holds the key for adjudication of bail matters including cancellation thereof. The offence alleged in the instant case is heinous and protrudes our medieval social structure which still wails for reforms despite multiple efforts made by Legislation and Judiciary.

**2021 0 Supreme(SC) 541; Vipan Kumar Dhir Vs State of Punjab and Another ; Criminal Appeal Nos. 1161-1162 of 2021, SLP (Crl.) Nos. 5404-5405 of 2021; Decided On : 04-10-2021 (THREE JUDGE BENCH)**

What is required to constitute an alleged abetment of suicide under Section 306 IPC is there must be an allegation of either direct or indirect act of incitement to the commission of offence of suicide and mere allegations of harassment of the deceased by another person would not be sufficient in itself, unless, there are allegations of such actions on the part of the accused which compelled the commission of suicide. Further, if the person committing suicide is hypersensitive and the allegations attributed to the accused is otherwise not ordinarily expected to induce a similarly situated person to take the extreme step of committing suicide, it would be unsafe to hold the accused guilty of abetment of suicide. Thus, what is required is an examination of every case on its own facts and circumstances and keeping in consideration the surrounding circumstances as well, which may have bearing on the alleged action of the accused and the psyche of the deceased.

If, a student is simply reprimanded by a teacher for an act of indiscipline and bringing the continued act of indiscipline to the notice of Principal of the institution who conveyed to the parents of the student for the purposes of school discipline and correcting a child, any student who is very emotional or sentimental commits suicide, can the said teacher be held liable for the same and charged and tried for the offence of abetment of suicide under section 306 IPC.

Our answer to the said question is 'No'.

**2021 0 Supreme(SC) 542; Geo Varghese Vs. The State Of Rajasthan & Anr.; Criminal Appeal No. 1164 OF 2021 (Arising out of S.L.P (Crl.) No. 4512 OF 2019)' Decided On : 05-10-2021**

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 (S.37), PMLA (S.45), UAPA (S.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 Vs. State of UP, 2021 SCC online SC 615)

**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 uner NDPS S. 37, 45 PMLA, 212(6) Companies Act 43 d(5) of UAPA, POSCO etc."

4. Needless to say that the category A deals with both police cases and complaint cases.

5. 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.

**2021 0 Supreme(SC) 603; SATENDER KUMAR ANTIL Vs. CENTRAL BUREAU OF INVESTIGATION & ANR. : Petition(s) for Special Leave to Appeal (Crl.) No(s). 5191 of 2021; Decided On : 07-10-2021**

The registration of a Regular Case can have disastrous consequences for the career of an officer, if the allegations ultimately turn out to be false. In a Preliminary Enquiry, the CBI is allowed access to documentary records and speak to persons just as they would in an investigation, which entails that information gathered can be used at the investigation stage as well. Hence, conducting a Preliminary Enquiry would not take away from the ultimate goal of prosecuting accused persons in a timely manner. However, we once again clarify that if the CBI chooses not to hold a Preliminary Enquiry, the accused cannot demand it as a matter of right. As clarified by this Court in Managipet (supra), the purpose of Lalita Kumari (supra) noting that a Preliminary Enquiry is valuable in corruption cases was not to vest a right in the accused but to ensure that there is no abuse of the process of law in order to target public servants.

**2021 0 Supreme(SC) 607; Central Bureau of Investigation (CB) and Anr. Vs. Thommandru Hannah Vijayalakshmi @ T. H. Vijayalakshmi and Anr. : Criminal Appeal No. 1045 of 2021 (Arising out of SLP (Crl) No. 1597 of 2021) Decided On : 08-10-2021; THREE JUDGE BENCH**

it has also been argued on behalf of Suryabhan Singh that while the appellant's statement under Section 164 of the Cr.P.C. is that Suryabhan also shot at the appellant, the FIR and his statement under Section 161 of the Cr.P.C. only record that he hit him with the butt of the gun. The trial is yet to take place where the evidence adduced by the prosecution will be appreciated, and the veracity of appellant's claim in his statement under Section 164 can be determined there. However, at the present stage, the FIR and both the appellant's statements under Section 161 and 164 are consistent in as much as that Surbhayan Singh did hit him in his head with the butt of the gun.

the High Court has not addressed the clear deficiencies in the course of the investigation which have been highlighted in the order of the JMFC dated 13 February 2021 and the trial Court's order dated 24 March 2021. These are, inter-alia: (i) the failure to notice eyewitness statements; (ii) reliance on CCTV footage for the period of time after incident had occurred, ignoring prior or contemporaneous footage; (iii) not collecting CCTV footage between Jabalpur and the scene of offence; (iv) relying on CDRs without determining if Joginder Singh and Suryabhan Singh had actually used the number and (v) not conducting any finger print analysis. In the order dated 13 February 2021, the JMFC identified these deficiencies with the investigation and directed further investigation.

**2021 0 Supreme(SC) 608; Prashant Singh Rajput Vs. The State of Madhya Pradesh and Another; Criminal Appeal Nos. 1202, 1203 of 2021, SLP (Crl) Nos. 5786, 5788 of 2021; Decided On : 08-10-2021**

We may hasten to add that the fact that the Investigating Agency was unable to collect material during investigation against the writ petitioner-Mohan Nayak.N for offence under Section 3(1) of the 2000 Act, does not mean that the information regarding commission of a crime by him within the meaning of Section 3(2), 3(3) or 3(4) of the 2000 Act cannot be recorded and investigated against him as being a member of the organized crime syndicate and/or having played role of an abettor, being party to the conspiracy to commit organized crime or of being a facilitator, as the case may be. For the latter category of offence, it is not essential that more than two chargesheets have been filed against the person so named, before a competent court within the preceding period of ten years and that court had taken cognizance of such offence. That requirement applies essentially to an offence punishable only under Section 3(1) of the 2000 Act.

24. As regards offences punishable under Section 3(2), 3(3), 3(4) or 3(5), it can proceed against any person sans such previous offence registered against him, if there is material to indicate that he happens to be a member of the organized crime syndicate who had committed the offences in question and it can be established that there is material about his nexus with the accused who is a member of the organized crime syndicate. This position is expounded in the case of Ranjitsingh Brahmajeetsing Sharma vs. State of Maharashtra, (2005) 5 SCC 294 which has been quoted with approval in paragraph 85 of the judgment in Prasad Shrikant Purohit[29][supra at Footnote No.10].

The same reads thus:

"85. A reading of para 31 in Ranjitsing Brahmajeetsing Sharma case[30][supra at Footnote No.28] shows that in order to invoke MCOCA even if a person may or may not have any direct role to play as regards the commission of an organised crime, if a nexus either with an accused who is a member of an "organised crime syndicate" or with the offence in the nature of an "organised crime" is established that would attract the invocation of Section 3(2) of MCOCA. **Therefore, even if one may not have any direct role to play relating to the commission of an "organised crime", but when the nexus of such person with an accused who is a member of the "organised crime syndicate" or such nexus is related to the offence in the nature of "organised crime" is established by showing his involvement with the accused or the offence in the nature of such "organised crime", that by itself would attract the provisions of MCOCA.** The said statement of law by this Court, therefore, makes the position clear as to in what circumstances MCOCA can be applied in respect of a person depending upon his involvement in an organised crime in the manner set out in the said paragraph. In paras 36 and 37, **it was made further clear that such an analysis to be made to ascertain the invocation of MCOCA against a person need not necessarily go to the extent for holding a person guilty of such offence and that even a finding to that extent need not be recorded.** But such findings have to be necessarily recorded for the purpose of arriving at an objective finding on the basis of materials on record only for the limited purpose of grant of bail and not for any other purpose. Such a requirement is, therefore, imminent under Section 21(4)(b) of MCOCA." (emphasis supplied)

**2021 0 Supreme(SC) 616; KAVITHA LANKESH Vs. STATE OF KARNATAKA & ORS.; CRIMINAL APPELLATE JURISDICTION CRIMINAL APPEAL NO. OF 2021 (ARISING OUT OF S.L.P. (CRIMINAL) NO.__OF 2021) (@ DIARY NO.13309 OF 2021) WITH CRIMINAL APPEAL NO.---- OF 2021 (ARISING OUT OF S.L.P. (CRIMINAL) NO. 5387 OF 2021); Decided on : 21-10-2021; THREE JUDGE BENCH**

Normally, when the accused is 'absconding' and declared as a 'proclaimed offender', there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail.

**2021 0 Supreme(SC) 617; PREM SHANKAR PRASAD Vs. THE STATE OF BIHAR & ANR.: CRIMINAL APPEAL NO.1209 OF 2021; DECIDED ON : 21-10-2021.**

There is a visible distinction between 'preparation' and 'attempt' to commit an offence and it all depends on the statutory edict coupled with the nature of evidence produced in a case. The stage of 'preparation' consists of deliberation, devising or arranging the means or measures, which would be necessary for the commission o f the offence. Whereas, an 'attempt' to commit the offence, starts immediately after the completion of preparation. 'Attempt' is the execution of mens rea after preparation. 'Attempt' starts where 'preparation' comes to an end, though it falls short of actual commission of the crime.

an 'attempt' is a mixed question of law and facts. 'Attempt' is the direct movement towards the commission after the preparations are over. It is essential to prove that the attempt was with an intent to commit the offence. An attempt is possible even when the accused is unsuccessful in committing the principal offence. Similarly, if the attempt to commit a crime is accomplished, then the crime stands committed for all intents and purposes.

**2021 0 Supreme(SC) 626; State of Madhya Pradesh Vs. Mahendra alias Golu : Criminal Appeal No. 1827 of 2011; Decided On : 25-10-2021**

this Court has at innumerable instances expressed its disapproval for imparting criminal color to a civil dispute, made merely to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil dispute. Such an exercise is nothing but an abuse of the process of law which must be discouraged in its entirety.

**2021 0 Supreme(SC) 628; Mitesh Kumar J. Sha Vs The State of Karnataka and Others; Criminal Appeal No. 1285 of 2021, S.L.P (Crl.) No. 9871 of 2019; Decided On : 26-10-2021**

While we understand that the allegations made in these petitions pertain to matters about which ordinary citizens would not have information except for the investigating reporting done by news agencies, looking to the quality of some of the petitions filed, we are constrained to observe that individuals should not file half-baked petitions merely on a few newspaper reports. Such an exercise, far from helping the cause espoused by the individual filing the petition, is often detrimental to the cause itself. This is because the Court will not have proper assistance in the matter, with the burden to even determine preliminary facts being left to the Court. It is for this reason that trigger happy filing of such petitions in Courts, and more particularly in this Court which is to be the final adjudicatory body in the country, needs to be discouraged. This should not be taken to mean that the news agencies are not trusted by the Court, but to emphasize the role that each pillar of democracy occupies in the polity. News agencies report facts and bring to light issues which might otherwise not be publicly known. These may then become the basis for further action taken by an active and concerned civil society, as well as for any subsequent filings made in Courts. But newspaper reports, in and of themselves, should not in the ordinary course be taken to be readymade pleadings that may be filed in Court.

**MANOHAR LAL SHARMA Vs UNION OF INDIA AND ORS. : WRIT PETITION (CRL.) NO. 314 OF 2021, WRIT PETITION (CIVIL) NO. 826, 909, 861, 849, 855, 829, 850, 848, 853, 851, 890 OF 2021; DECIDED ON : 27-10-2021; THREE JUDGE BENCH; PEGASUS CASE**

The Charge Sheet would disclose that the petitioner was arrayed as A5 and he was also shown as the complainant - LW.1. Summons were issued to him to depose as a witness in the capacity of LW 1. The object of Article 20 (3) is to protect the accused from self- incrimination. Right to silence was available to him. He can claim immunity from testifying in the case and refuse to answer the questions which tend to incriminate him. Hence, it is considered fit to direct the trial Court to ignore LW.1 being examined as a witness and to proceed with the case by examining the other witnesses and to complete the trial.

**Doli Sudhakar vs The State Of Telangana on 28 October, 2021; CRIMINAL REVISION CASE No.2653 of 2015**

SC ST POA Act - sub-section (3) of Section 15A provides that a reasonable and timely notice must be issued to the victim or their dependent. This would entail that the notice is served upon victims or their dependents at the first or earliest possible instance. If undue delay is caused in the issuance of notice, the victim, or as the case may be, their dependents, would remain uninformed of the progress made in the case and it would prejudice their rights to effectively oppose the defense of the accused. It would also ultimately delay the bail proceedings or the trial, affecting the rights of the accused as well

**Criminal Appeal No. 1278 of 2021; Hariram Bhambhi Versus Satyanarayan & Anr.; October 29, 2021.**

It may be that there might not be any serious injuries and/or visible injuries, the hospital might not have issued the injury report. However, production of an injury report for the offence under Section 323 IPC is not a sine qua non for establishing the case for the offence under Section 323 IPC. Section 323 IPC is a punishable section for voluntarily causing hurt. “Hurt” is defined under Section 319 IPC. As per Section 319 IPC, whoever causes bodily pain, disease or infirmity to any person is said to cause “hurt.” Therefore, even causing bodily pain can be said to be causing “hurt.”

“the evidence of injured witnesses has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.” It is further observed in the said decision that “minor discrepancies do not corrode the credibility of an otherwise acceptable evidence.” It is further observed that “mere non-mention of the name of an eyewitness does not render the prosecution version fragile.”

**2021 2 ALD Crl 541(SC); 2021 3 Crimes(SC) 98; 2021 5 Supreme 106; 2021 0 Supreme(SC) 380; Lakshman Singh Vs State of Bihar (Now Jharkhand) With Shiv Kumar Singh and Others Vs. State of Bihar (Now Jharkhand) : Criminal Appeal No. 606, 630-631 of 2021; Decided On : 23-07-2021**

Section 195(1)(b)(i), CrPC will not bar prosecution by the investigating agency for offence punishable under Section 193, IPC, which is committed during the stage of investigation. This is provided that the investigating agency has lodged complaint or registered the case under Section 193, IPC prior to commencement of proceedings and production of such evidence before the trial court. In such circumstance, the same would not be considered an offence committed in, or in relation to, any proceeding in any Court for the purpose of Section 195(1)(b)(i), CrPC.

**2021 2 ALD Crl 638(SC); 2021 0 AIR(SC) 2090; 2021 1 Crimes(SC) 508; 2021 2 KHC(SN) 21; 2021 1 KLD 550; 2021 2 KLT(SN) 46; 2021 2 KLT(SN) 46; 2021 4 Scale 195; 2021 2 Supreme 742; 2021 0 Supreme(SC) 143; Bhima Razu Prasad Vs STATE, REP. BY DEPUTY SUPERINTENDENT OF POLICE, CBI/SPE/ACU-II: Criminal Appeal No. 305 of 2021 (Arising out of SLP (Criminal) No. 5102 of 2020) with Criminal Appeal No. 305 of 2021 (Arising out of SLP (Criminal) No. 6720 of 2020) and Criminal Appeal No. 305 of 2021 (Arising out of SLP (Criminal) No. 6327 of 2020) Decided on : 12-03-2021;**

The said information / documents sought by the Investigating Officer is from the possession of petitioner - accused No. 1 and the same is incriminating material which the Investigating Officer cannot call for from the petitioner - accused No. 1 under Section - 91 of Cr.P.C. Therefore, the impugned notice is illegal and the action of respondent No. 4 in calling for the said information, which is incriminating material, from the possession of accused No. 1 under Section - 91 of Cr.P.C. is illegal, violative of the principle laid down in the aforesaid judgments and against the protection guaranteed under Article - 20(3) of the Constitution of India. Further, respondent No. 4 has no power to direct the petitioner - accused No. 1 to produce the incriminating material from his possession.

**2021 2 ALD Crl 685(TS); 2021 4 ALD 291; 2021 0 Supreme(Telangana) 102; A. Srinivas Reddy Vs The State of Telangana and Ors. Writ Petition No. 7333 of 2021; Decided On : 31-03-2021**

## NOSTALGIA

**Whether refusal to undergo DNA Testing amounts to 'other evidence' or in other words, can an adverse inference be drawn in such situation.**

In Sharda vs. Dharmpal, 2003 (4) SCC 493 a three judges bench in the opinion written by Justice S.B. Sinha rightly observed in paragraph 79 that "if despite an order passed by the court, a person refuses to submit himself to such medical examination, a strong case for drawing an adverse inference" can be made out against the person within the ambit of Section 114 of the Evidence Act.

## NEWS

- S.O. 4063(E), notified regarding coming into force the 150th Amendment of the constitution.
- A.P.State Notified regarding the enhancement of the case-wise remuneration to law officers for defending the contempt petitions.
- the ANDHRA PRADESH GUIDELINES FOR FOSTER CARE, 2021 notified.
- MINES & MINERALS - AMENDMENTS TO ANDHRA PRADESH MINOR MINERAL CONCESSION RULES, 1966 notified.
- A.P. Cadre IPS confirmation on following officers confirmed

| S.No. | Name | Date of Confirmation |
|---|---|---|
| 1. | B.Srinivasulu(SL-1998) | 02.08.2003 |
| 2. | M.Kantha Rao(SL-1998) | 11.07.2006 |
| 3. | D.Nagendra Kumar(SL-1998) | 15.03.2011 |
| 4. | P. Venkatrami Reddy(SL-1998) | 19.12.2012 |
| 5. | G. Pala Raju(SL-1998) | 19.12.2012 |
| 6. | L.K.V. Ranga Rao(SL-1998) | 19.12.2012 |
| 7. | G.V. Ashok Kumar(SL-1998) | 19.12.2012 |
| 8. | G.Vijay Kumar(SL-1998) | 19.12.2012 |
| 9. | S.Hari Krishna(SL-1998) | 19.12.2012 |
| 10. | M.Ravi Prakash(SL-1998) | 19.12.2012 |
| 11. | S.V.Rajasekhar Babu(SL-1998) | 19.12.2012 |
| 12. | K.V.Mohan Rao(SL-1998) | 19.12.2012 |

Prosecution Wing

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# ON A LIGHTER VEIN

"Technology has stopped him from thinking for himself. He's using his GPS to guide him to the bathroom."

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Prosecution Replenish

Vol- X
Part-12

# Prosecution Replenish

An Endeavour for Learning and Excellence

## December, 2021

AanoBhadraKrtavoYantuVishwatah.(RIG VEDAM)
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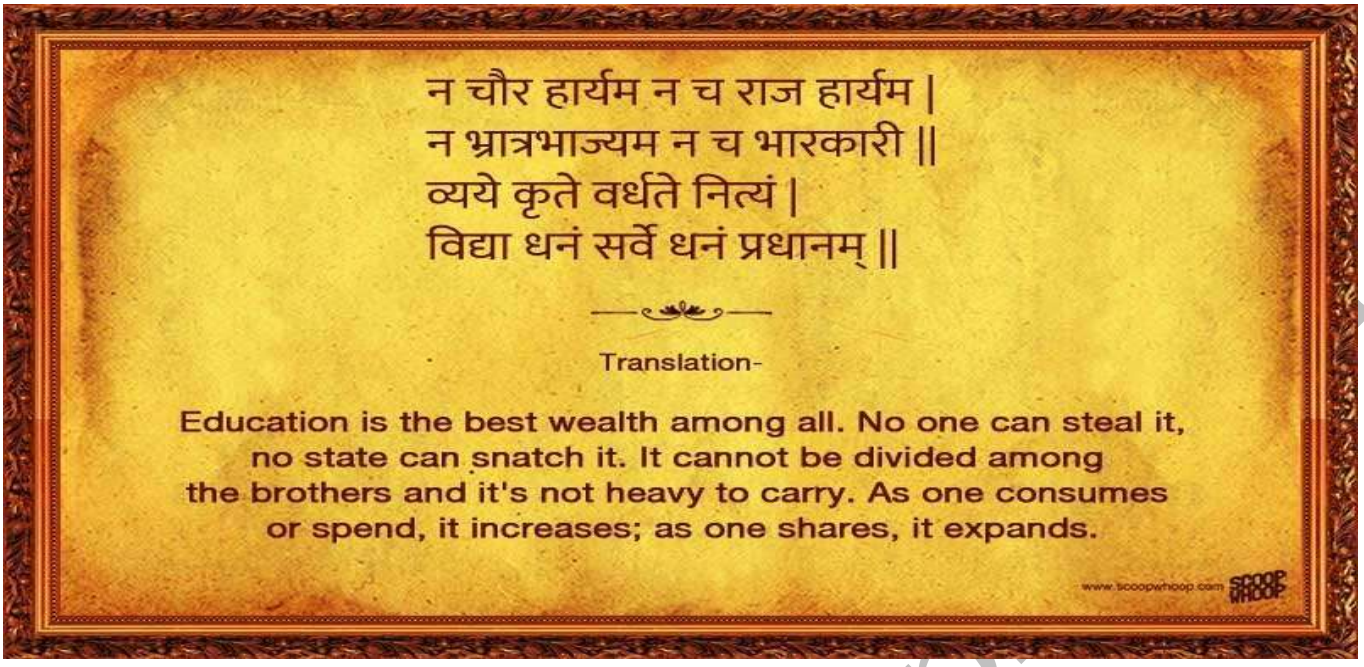


**General Principles pertaining to Appreciation of Oral Evidence**

***DVR Tejo Karthik***
Administrative Officer,
Telangana State Judicial Academy,
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Section 59 of the Indian Evidence Act envisages that all facts, except the contents of documents or electronic records, may be proved by oral evidence. Section 60 of the Evidence Act states that Oral evidence must, in all cases whatever, be direct. If it refers to a fact which could be seen, it must be the evidence of a witness who says who says he saw it. If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it. If it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner. If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds.

Insofar as the opinion of the experts is concerned, the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable. If oral evidence refers to the existence to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

The requirement of the above mentioned Sections is that all facts are to be proved by oral evidence and the oral evidence must be direct. The rider contemplated is if the contents of a document or electronic record are to be proved in such case the contents cannot be proved by oral evidence.

In every criminal case it is the obligation of the prosecution to establish every material fact or facts in order to bring home the guilt of the accused. Fact is defined under Section 3 of the Evidence Act. A fact means and includes anything, state of things, or relation of things, capable of being perceived by the sense or any mental condition of which any person is

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Fact or facts can be established either by oral evidence or documentary evidence. More often than not in criminal cases the guilt of the accused is established by the prosecution by way of oral evidence. While appreciating the evidence of a witness claiming to have witnessed the incident, the court should consider the following parameters appearing in the evidence/testimony of the witness. They are (i) Whether the witness was present on the spot (ii) Whether the witness had seen the incident (iii) Credibility of the witness – how far the testimony of the witness is credible.

Factors which are generally considered while appreciating oral testimony of witness are Contradictions, Inconsistencies, Exaggerations, Embellishments and Divergent statements by two or more witnesses on one and the same fact. The correct method of evaluation and assessing evidence of a witness is by scrutinizing it on its merits. The prosecution on whom burden of proof rests must prove the fact to the satisfaction of the Court. The Court shouls always apply the test of human probabilities.

- ***How oral evidence is to be appreciated – Factors to be considered –***

The Hon'ble Supreme Court of India in ***State of Uttar Pradesh v. Krishna Master & Ors,(2010) 12 SCC 324*** had succinctly dealt as to how oral evidence is to be appreciated. The Court observed that:

- ✓ While appreciating the evidence of a witness, the approach must be whether the evidence of witness read as a whole appears to have a ring of truth.
- ✓ Once that impression is found, it is undoubtedly necessary for the Court to scrutinize 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 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.
- ✓ If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of the evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the Trial Court and unless the reasons are weighty and formidable, it would not be proper for the appellate court to reject the evidence on the ground of variations or infirmities in the matter of trivial details.
- ✓ Minor omissions in the police statements are never considered to be fatal. The statements given by the witnesses before the Police are meant to be brief statements and could not take place of evidence in the court.
- ✓ Small/trivial omissions would not justify a finding by court that the witnesses concerned are liars.
- ✓ The prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a short-coming from which no criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of incongruities obtaining in the evidence. In the latter, however, no such benefit may be available to it. In the deposition of witnesses, there are always normal discrepancies, howsoever, honest and truthful they may be. These discrepancies are due to normal

errors of observation, normal errors of memory due to lapse of time, due to mental disposition, shock and horror at the time of occurrence and threat to the life.

- ✓ It is not un-often that improvements in earlier version are made at the trial in order to give a boost to the prosecution case albeit foolishly. Therefore, it is the duty of the Court to separate falsehood from the truth. In sifting the evidence, the Court has to attempt to separate the chaff from the grains in every case and this attempt cannot be abandoned on the ground that the case is baffling unless the evidence is really so confusing or conflicting that the process cannot reasonably be carried out.

In ***Vadivelu Thevar v. The State of Madras., AIR 1957 SC 614.,*** it was observed that oral testimony may be classified into three categories namely (1) wholly reliable (2) wholly unreliable (3) neither wholly reliable nor wholly unreliable. In the first category of proof, the court should have no difficulty in coming to its conclusion either way it may convict or may acquit on the testimony of a witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.

In the case of ***Leela Ram v. State of Haryana, (1999) 9 SCC 525,*** the Supreme Court held that it is indeed necessary to note that one hardly comes across a witness whose evidence does not contain some exaggeration or embellishment sometimes there could even be a deliberate attempt to offer embellishment and sometimes in their over anxiety they may give a slightly exaggerated account. The court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. Total repulsion of the evidence is unnecessary. The evidence is to be considered from the point of view of trustworthiness. If this element is satisfied, it ought to inspire confidence in the mind of the court to accept the stated evidence though not however in the absence of the same.

While appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without affecting 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. ***(See: State Represented by Inspector of Police v. Saravanan & Anr., Inspector of Police v. Saravanan & Anr AIR 2009 SC 152).***

In ***State of Rajasthan v. Smt. Kalki & Anr.,AIR 1981 SC 1390,*** while dealing with similar issue, the Court observed that in the depositions of witnesses there are always normal discrepancies, however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person.

In ***Bihari Nath Goswami v. Shiv Kumar Singh and Ors., (2004) 9 SCC 186,*** the Court held that exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility.

In ***Sardul Singh v. State of Haryana., AIR 2002 SC 3462,*** it was held that there cannot be a prosecution case with a cast iron perfection in all respects and it is obligatory for the courts to analyse and sift and assess the evidence of record, with particular reference to its

trustworthiness and truthfulness, by a process of dispassionate judicial scrutiny adopting apt objective and reasonable appreciation of the same, without being obsessed by an air of total suspicion of the case of the prosecution. What is to be insisted upon is not implicit proof. Courts have a duty to undertake a complete and comprehensive appreciation of all vital features of the case and the entire evidence with reference to the broad and reasonable probabilities of the case also in their attempt to find out proof beyond reasonable doubt.

The Court in ***Ugar Ahir & Ors v. State of Bihar., AIR 1965 SC 277*** had observed, as to what should be the approach of a Court appreciating the testimony of a witness and held that the maxim falsus in uno, falsus 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 scrutinize 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.

In ***Jakki @ Selvaraj & Anr v. State represented by the Inspector of Police, Coimbatore, (2007) 9 SCC 589,*** the Court held that the maxim falsus in uno, falsus in omnibus has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to is that in such cases testimony may be disregarded, and not that it must be discarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called a mandatory rule of evidence. It is well settled in law that the maxim falsus in uno, falsus in omnibus (false in one false in all) does not apply in criminal cases in India, as a witness may be partly truthful and partly false in the evidence he gives to the Court.

In ***Rizan & another v. State of Chhatisgarh through Chief Secretary Govt. of Chhatisgarh Raipur., AIR 2003 SC 976*** it was observed that witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the Court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be shifted with care.

In ***A. Shankar v. State of Karnataka, AIR 2011 SC 2302.,*** it was held that in all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility. Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions. The omissions

which amount to contradictions in material particulars, i.e., materially affect the trial or core of the prosecution's case; render the testimony of the witness liable to be discredited.

In ***C. Muniappan v. State of Tamil Nadu, AIR 2003 SC 3718*** it was held that it is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses.

There is a marked differentia between an 'exaggerated version' and a 'false version'. An exaggerated statement contains both truth and falsity, whereas a false statement has no grain of truth in it (being the 'opposite' of 'true'). It is well said that to make a mountain out of a molehill, the molehill shall have to exist primarily. A Court of law, being mindful of such distinction is duty bound to disseminate 'truth' from 'falsehood' and sift the grain from the chaff in case of exaggerations. It is only in a case where the grain and the chaff are so inextricably intertwined that in their separation no real evidence survives, that the whole evidence can be discarded. ***(See: Achhar Singh Vs State of Himachal Pradesh, (2021) 5 SCC 543)***

- ***Whether a Court is entitled to reject the evidence of a witness merely because the witness happens to be a government servant or a investigating officer***

This issue came up for consideration before Hon'ble Supreme Court of India in ***State of Gujarat v. Raghunath Vamanrao Bax, AIR 1985 SC 1092.*** The Supreme Court held that a Court is not entitled to reject the evidence of a witness merely because they are government servants , who , in the course of their duties or even otherwise might have come into contact with investigating officers and who might have been requested to assist investigating agencies. If their association with the investigating agencies is unusual, frequent designed; there may be occasion to view their evidence with suspicion. But merely because they are called in to associate themselves with the investigation as they happened to be available or it is convenient to call them, it is no ground to view their evidence with suspicion. Even in cases where officers who in the course of their duties, generally assist the investigation agencies, there is no need to view their evidence h suspicion as an invariable rule. For example, in rural areas, investigating officers would ordinarily think of calling in the village officers, such as, the Headman, the Patel or Patwari to act as punch witnesses, as they are expected to be respectable persons of the locality. It does not mean that their evidence should be viewed with suspicion because they are government servants or because they are generally associated with investigating agencies whenever there is a crime in the village. For that matter it would be wrong to reject the evidence of police officers either on the mere ground that they are interested in the success of the prosecution. The court may be justified in looking with suspicion upon the evidence of officers who have been demonstrated to have displayed excess of zeal in the conduct and success of the prosecution. The Court also observed that in appreciating oral evidence, the question in each case is whether the witness is a truthful witness and whether there is anything to doubt his veracity in any particular matter about which he deposes. Where the witness is found to be untruthful on material facts that is an end of the matter. Where the witness is found to be partly truthful or spring from tainted sources, the court may take the precaution of seeking some corroboration, adequate and reasonable to meet the demands of the situation.

- ***Where the major portion of evidence is found to be deficient, can the residue evidence is sufficient to prove guilt of an accused***

The Court in ***Sucha Singh v. State of Rajasthan., AIR 2003 SC 3617*** observed that even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of number of other co-accused persons, his conviction can be maintained. It is the duty of Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of particular material witness or material particular would not ruin it from the beginning to end.

- ***Oral evidence vis-à-vis medical evidence - evidentiary value***

It is a settled legal proposition that the ocular evidence would have primacy unless it is established that oral evidence is totally irreconcilable with the medical evidence. More so, the ocular testimony of a witness has a greater evidentiary value vis-à-vis medical evidence; when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence if proved, the ocular evidence may be disbelieved. ***(See., State Of U.P v. Hari Chand., (2009) 13 SCC 542.)***

In ***State of Haryana v. Bhagirath and Ors.(1999) 5 SCC 96,*** it was held that the opinion given by a medical witness need not be the last word on the subject. Such an opinion shall be tested by the court. If the opinion is bereft of logic or objectivity, the court is not obliged to go by that opinion. After all opinion is what is formed in the mind of a person regarding a fact situation. If one doctor forms one opinion and another doctor form a different opinion on the same facts it is open to the Judge to adopt the view which is more objective or probable. Similarly if the opinion given by one doctor is not consistent with probability, the court has no liability to go by that opinion merely because it is said by the doctor. Of course, due weight must be given to opinions given by persons who are experts in the particular subject.

Where the medical evidence is at variance with ocular evidence, it has to be noted that it would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eyewitnesses' account which had to be tested independently and not treated as the "variable" keeping the medical evidence as the "constant". Where the eyewitnesses' account is found credible and trustworthy, a medical opinion pointing to alternative possibilities cannot be accepted as conclusive. The eyewitnesses' account requires a careful independent assessment and evaluation for its credibility, which should not be adversely prejudged on the basis of any other evidence, including medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts, the "credit" of the witnesses; their performance in the witness box; their power of observation etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation. ***(Vide: Thaman Kumar v. State of Union Territory of Chandigarh.,(2003) 6 SCC 380*** and ***Krishnan & Anr v. State Rep. By Inspector of Police., (2003) 7 SCC 56).***

When the medical evidence is in consonance with the principal part of the oral/ocular evidence thereby supporting the prosecution story, there is no question of ruling out the ocular evidence merely on the ground that there are some inconsistencies or contradictions in the oral evidence***.(See., Kathi Bharat Vajsur & Anr v. State of Gujarat., AIR 1970 SC 219)***

In conclusion it can be said that the approach of the Courts in appreciating oral evidence of a witness is to see whether the evidence of witness read as a whole appears to have a ring of truth. If once the Courts have come to a conclusion that the evidence if read as a whole appears to be truthful then that Courts must analyze the evidence principally keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and assess them to find out whether it is against the general theme of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief without attaching much significance to minor discrepancies.

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# CITATIONS

**2021 0 Supreme(Sc) 718; Criminal Appeal No. 2373 Of 2010 Surinder Singh Vs State (Union Territory Of Chandigarh)**

illegal use of a licensed or sanctioned weapon per se does not constitute an offence under Section 27, without proving the misdemeanour under Section 5 or 7 of the Arms Act.

It is by now a lucid dictum that for the purpose of constituting an offence under Section 307 IPC, there are two ingredients that a Court must consider, first, whether there was any intention or knowledge on the part of accused to cause death of the victim, and, second, such intent or knowledge was followed by some overt actus rea in execution thereof, irrespective of the consequential result as to whether or not any injury is inflicted upon the victim. The Courts may deduce such intent from the conduct of the accused and surrounding circumstances of the offence, including the nature of weapon used or the nature of injury, if any. The manner in which occurrence took place may enlighten more than the prudential escape of a victim. It is thus not necessary that a victim shall have to suffer an injury dangerous to his life, for attracting Section 307 IPC.

It would also be fruitful at this stage, to appraise whether the requirement of 'motive' is indispensable for proving the charge of attempt to murder under Section 307 IPC.

It is significant to note that 'motive' is distinct from 'object and means' which innervates or provokes an action. Unlike 'intention', 'motive' is not the yardstick of a crime. A lawful act with an ill motive would not constitute an offence but it may not be true when an unlawful act is committed with best of the motive. Unearthing 'motive' is akin to an exercise of manual brain-mapping. At times, it becomes herculean task to ascertain the traces of a 'motive'.

This Court has time and again ruled:

> "that in case the prosecution is not able to discover an impelling motive, that could not reflect upon the credibility of a witness proved to be a reliable eyewitness. Evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence. Such evidence would form one of the links in the chain of circumstantial evidence in such a case. But that would not be so in cases where there are eyewitnesses of credibility, though even in such cases if a motive is properly proved, such proof would strengthen the prosecution case and fortify the court in its ultimate conclusion. But that does not mean that if motive is not established, the evidence of an eyewitness is rendered untrustworthy. Shivaji Genu Mohite vs. State of Maharashtra, (1973) 3 SCC 219 and Bipin Kumar Mondal vs. State of West Bengal, (2010) 12 SCC 91."

**2021 0 Supreme(SC) 719; Mofil Khan & Anr. Vs. The State of Jharkhand ; Review Petition (Criminal) No.641 of 2015 In Criminal Appeal No. 1795 of 2009; Decided on : 26-11-2021**

Article 137 of the Constitution empowers the Supreme Court to review any judgment pronounced by it, subject to the provisions of any law made by Parliament or any rules made under Article 145 of the Constitution of India. Order XLVII, Rule 1 of the Supreme Court Rules, 2013 provides that the Court may review its own judgment or order, but no application for review will be entertained in a civil proceeding except on the ground mentioned in Order XLVII, Rule 1 of the Code of Civil Procedure, 1908 and in a criminal proceeding except on the ground of an error apparent on the face of the record. Needless to mention that the Supreme Court Rules, 2013 are framed under Article 145 of the Constitution. Order XLVII, Rule 1 of the Supreme Court Rules, 2013 is materially the same as Order XL, Rule 1 of the Supreme Court Rules, 1966. In P.N. Eswara Iyar v. Registrar, Supreme Court of India, (1980) 4 SCC 680, this Court observed that Order XL, Rule 1 of the Supreme Court Rules, 1966 limits the grounds for review in criminal proceedings to "errors apparent on the face of the record". Review is not rehearing of the appeal all over again and to maintain a review petition, it has to be shown that there has been a miscarriage of justice (See: Suthendraraja v. State, (1999) 9 SCC 323). An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review (See: Kamlesh Verma v. Mayavati, (2013) 8 SCC 320). An applicant cannot be allowed to reargue the appeal in an application for review on the grounds that were urged at the time of hearing of the appeal. Even if the applicant succeeds in establishing that there may be another view possible on the conviction or sentence of the accused that is not a sufficient ground for review. This Court shall exercise its jurisdiction to review only when a glaring omission or patent mistake has crept in the earlier decision due to judicial fallibility. There has to be an error apparent on the face of the record leading to miscarriage of justice (See: Vikram Singh v. State of Punjab, (2017) 8 SCC 518). Justice Mohan M. Shantanagoudar in Sudam v. State of Maharashtra, (2019) 9 SCC 388 held that review petitioners cannot seek re-appreciation of the evidence on record while hearing review petitions.

**Criminal Appeal No. 186 of 2018 Hari & Anr.Vs.The State of Uttar Pradesh**

It is well settled that the evidence of prosecution witnesses cannot be rejected in toto merely because the prosecution chose to treat them as hostile and crossexamined them. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of testimony which he finds to be creditworthy and act upon it.

The High Court followed the suggestion given by this Court in Masalti's case and held that conviction with the aid of Section 149 IPC can be only in case where at least two witnesses speak about the involvement of person.

Common object is different from common intention as it does not require a prior concert and a common meeting of minds before the attack. It is enough if each has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The common object of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly

These episodes of caste motivated violence in the country demonstrate the fact that casteism has not been annihilated even after 75 years of independence.

**2021 0 Supreme(SC) 665; Bijender @ Mandar Vs State Of Haryana; Criminal Appeal No.2438 Of 2010, Decided On : 08-11-2021**

It may be true that at times the Court can convict an accused exclusively on the basis of his disclosure statement and the resultant recovery of inculpatory material. However, in order to sustain the guilt of such accused, the recovery should be unimpeachable and not be shrouded with elements of doubt. [1][Vijay Thakur vs. State of Himachal Pradesh, (2014) 14 SCC 609] We may hasten to add that circumstances such as (i) the period of interval between the malfeasance and the disclosure; (ii) commonality of the recovered object and its availability in the market; (iii) nature of the object and its relevance to the crime; (iv) ease of transferability of the object; (v) the testimony and trustworthiness of the attesting witness before the Court and/or other like factors, are weighty considerations that aid in gauging the intrinsic evidentiary value and credibility of the recovery. (See: Tulsiram Kanu vs. The State, AIR 1954 SC 1; Pancho vs. State of Haryana, (2011) 10 SCC 165; State of Rajasthan vs. Talevar & Anr, (2011) 11 SCC 666 and Bharama Parasram Kudhachkar vs. State of Karnataka, (2014) 14 SCC 431)

Incontrovertibly, where the prosecution fails to inspire confidence in the manner and/or contents of the recovery with regard to its nexus to the alleged offence, the Court ought to stretch the benefit of doubt to the accused. Its nearly three centuries old cardinal principle of criminal jurisprudence that “it is better that ten guilty persons escape, than that one innocent suffer”. The doctrine of extending benefit of doubt to an accused, notwithstanding the proof of a strong suspicion, holds its fort on the premise that “the acquittal of a guilty person constitutes a miscarriage of justice just as much as the conviction of the innocent”.

18. It may not be wise or prudent to convict a person only because there is rampant increase in heinous crimes and victims are oftenly reluctant to speak truth due to fear or other extraneous reasons. The burden to prove the guilt beyond doubt does not shift on the suspect save where the law casts duty on the accused to prove his/her innocence. It is the bounden duty of the prosecution in cases where material witnesses are likely to be slippery, either to get their statements recorded at the earliest under Section 164 Cr.P.C. or collect such other cogent evidence that its case does not entirely depend upon oral testimonies.

**2021 0 Supreme(Sc) 667; Irappa Siddappa Murgannavar Vs. State Of Karnataka; Criminal Appeal Nos. 1473-1474 Of 2017; Decided On : 08-11-2021**

The witnesses are village residents and as their evidence was recorded nearly a year after the occurrence, they may not have possibly remembered the date of sighting, for

the reason that dates, especially those in the Gregorian calendar, may not be of much relevance or consequence in the rural areas.

**2021 0 Supreme(SC) 675; Jitul Jentilal Kotecha Vs. State of Gujarat & Ors.; Criminal Appeal Nos. 1328-1333 of 2021; Decided On : 12-11-2021**

The allegations in the FIR prima facie indicate that the sixth and seventh respondents entered into champertous agreements with the legal heirs of Shamjibhai and were alleged to be involved in the extortion of money from the appellant. In the impugned judgment, the High Court has held that the allegations on their face disclose that the fourth and fifth respondents committed the offence of extortion under Section 385 of the IPC and directed that the investigation be continued against them. However, the High Court completely failed to examine the allegation of criminal conspiracy qua the other accused where it has been alleged that they were also privy to such extortion.

**2021 0 Supreme(Sc) 676; Sadakat Kotwar And Anr.Vs. The State Of Jharkhand; Criminal Appeal No.1316 Of 2021; Decided On : 12-11-2021**

As observed and held by this Court in catena of decisions nobody can enter into the mind of the accused and his intention has to be ascertained from the weapon used, part of the body chosen for assault and the nature of the injury caused. Considering the case on hand on the aforesaid principles, when the deadly weapon – dagger has been used, there was a stab injury on the stomach and near the chest which can be said to be on the vital part of the body and the nature of injuries caused, it is rightly held that the appellants have committed the offence under Section 307 IPC.

**2021 0 Supreme(Sc) 692; Sagar Lolienkar Vs. The State Of Goa & Anr.; Criminal Appeal No(S). 1415 Of 2021 (Arising Out Of Slp(Crl.) No(S). 931 Of 2021); Decided On : 18-11-2021**

the appellant has been found to be guilty of offences punishable under Sections 279 and 304A IPC for driving rashly and negligently on a public street and his act unfortunately resulted in the loss of the precious human life. But it is pertinent to note that there was no allegation against the appellant that at the time of accident, he was under the influence of liquor or any other substance impairing his driving skills. It was a rash and negligent act simplicitor and not a case of driving in an inebriated condition which is, undoubtedly despicable aggravated offence warranting stricter and harsher punishment.

**2021 0 Supreme(SC) 698; Rishipal Singh Solanki Vs. State of Uttar Pradesh and Others; Criminal Appeal No. 1240 of 2021, SLP (Crl.) No. 6223 of 2021; Decided On : 18-11-2021**

What emerges on a cumulative consideration of the aforesaid catena of judgments is as follows:

(i) A claim of juvenility may be raised at any stage of a criminal proceeding, even after a final disposal of the case. A delay in raising the claim of juvenility cannot be a ground for rejection of such claim. It can also be raised for the first time before this Court.

(ii) An application claiming juvenility could be made either before the Court or the JJ Board.

(ii-a) When the issue of juvenility arises before a Court, it would be under sub-section (2) and (3) of section 9 of the JJ Act, 2015 but when a person is brought before a Committee or JJ Board, section 94 of the JJ Act, 2015 applies.

(ii-b) If an application is filed before the Court claiming juvenility, the provision of sub-section (2) of section 94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of section 9 so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be.

(ii-c) When an application claiming juvenility is made under section 94 of the JJ Act, 2015 before the JJ Board when the matter regarding the alleged commission of offence is pending before a Court, then the procedure contemplated under section 94 of the JJ Act, 2015 would apply. Under the said provision if the JJ Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Board shall undertake the process of age determination by seeking evidence and the age recorded by the JJ Board to be the age of the person so brought before it shall, for the purpose of the JJ Act, 2015, be deemed to be true age of that person. Hence the degree of proof required in such a proceeding before the JJ Board, when an application is filed seeking a claim of juvenility when the trial is before the concerned criminal court, is higher than when an inquiry is made by a court before which the case regarding the commission of the offence is pending (vide section 9 of the JJ Act, 2015).

(iii) That when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the Court to discharge the initial burden. However, the documents mentioned in Rule 12(3)(a)(i), (ii) and (iii) of the JJ Rules 2007 made under the JJ Act, 2000 or sub-section (2) of section 94 of JJ Act, 2015, shall be sufficient for prima-facie satisfaction of the Court. On the basis of the aforesaid documents a presumption of juvenility may be raised.

(iv) The said presumption is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side.

(v) That the procedure of an inquiry by a Court is not the same thing as declaring the age of the person as a juvenile sought before the JJ Board when the case is pending for trial before the concerned criminal court. In case of an inquiry, the Court records a prima-facie conclusion but when there is a determination of age as per sub-section (2) of section 94 of 2015 Act, a declaration is made on the basis of evidence. Also the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it. Thus, the standard of proof in an inquiry is different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the basis of evidence scrutinised and accepted only if worthy of such acceptance.

(vi) That it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.

(vii) This Court has observed that a hyper-technical approach should not be adopted when evidence is adduced on behalf of the accused in support of the plea that he was a juvenile.

(viii) If two views are possible on the same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. This is in order to ensure that the benefit of the JJ Act, 2015 is made applicable to the juvenile in conflict with

law. At the same time, the Court should ensure that the JJ Act, 2015 is not misused by persons to escape punishment after having committed serious offences.

(ix) That when the determination of age is on the basis of evidence such as school records, it is necessary that the same would have to be considered as per Section 35 of the Indian Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would have greater credibility than private documents.

(x) Any document which is in consonance with public documents, such as matriculation certificate, could be accepted by the Court or the JJ Board provided such public document is credible and authentic as per the provisions of the Indian Evidence Act viz. section 35 and other provisions.

(xi) Ossification Test cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in Section 94(2) of the JJ Act, 2015.

Section 94 of the JJ Act, 2015 raises a presumption regarding juvenility of the age of the child brought before the JJ board or the Committee. But in case the Board or Committee has reasonable grounds for doubt about the person brought before it is a child or not, it can undertake the process of determination of age by seeking evidence. Thus, in the initial stage a presumption that the child brought before the Committee or the JJ Board is a juvenile has to be drawn by the said authorities. The said presumption has to be drawn on observation of the child. However, the said presumption may not be drawn when the Committee or the Board has reasonable grounds for doubt regarding the person brought before it is a child or not. In such a case, it can undertake the process of age determination by the evidence which can be in the form of:

(i) Date of birth certificate from the school or the matriculation certificate from the concerned board, if available or in the absence thereof.

(ii) The birth certificate given by a corporation or by a municipal authority or a panchayat and in the absence of the above.

(iii) Age has to be determined by an ossification test or any other medical age determination test conducted on the orders of the committee or the board.

The age recorded by the Committee or the Board to be the age of the person so brought before it shall for the purpose of the JJ Act, 2015 be deemed to be the true age of the person. The deeming provision in sub-section (3) of section 94 of the JJ Act, 2015 is also significant inasmuch as the controversy or the doubt regarding the age of the child brought before the Committee or the JJ Board is sought to be set at rest at the level of the JJ Board or the Committee itself.

**2021 0 Supreme(Sc) 701; Attorney General For India Vs. Satish And Another; Criminal Appeal No.1410 Of 2021 (@ Special Leave Petition (Crl) No. 925 Of 2021) With**

**National Commission For Women Vs The State Of Maharashtra And Another ; Criminal Appeal No.1411 Of 2021 (@ Special Leave Petition (Crl) No. 1339 Of 2021)With**

**The State Of Maharashtravs Satish; Criminal Appeal No.1412 Of 2021 (@ Special Leave Petition (Crl) No. 1159 Of 2021) With**

the expression “sexual intent” having not been explained in Section 7, it cannot be confined to any predetermined format or structure and that it would be a question of fact, however, the submission of Mr. Luthra that the expression ‘physical contact’ used in Section 7 has to be construed as ‘skin to skin’ contact cannot be accepted. As per the rule of construction contained in the maxim “Ut Res Magis Valeat Quam Pereat”, the construction of a rule should give effect to the rule rather than destroying it. Any narrow and pedantic interpretation of the provision which would defeat the object of the provision, cannot be accepted. It is also needless to say that where the intention of the Legislature cannot be given effect to, the courts would accept the bolder construction for the purpose of bringing about an effective result. Restricting the interpretation of the words “touch” or “physical contact” to “skin to skin contact” would not only be a narrow and pedantic interpretation of the provision contained in Section 7 of the POCSO Act, but it would lead to an absurd interpretation of the said provision. “skin to skin contact” for constituting an offence of “sexual assault” could not have been intended or contemplated by the Legislature. The very object of enacting the POCSO Act is to protect the children from sexual abuse, and if such a narrow interpretation is accepted, it would lead to a very detrimental situation, frustrating the very object of the Act, inasmuch as in that case touching the sexual or non sexual parts of the body of a child with gloves, condoms, sheets or with cloth, though done with sexual intent would not amount to an offence of sexual assault under Section 7 of the POCSO Act. The most important ingredient for constituting the offence of sexual assault under Section 7 of the Act is the “sexual intent” and not the “skin to skin” contact with the child.

It may also be pertinent to note that having regard to the seriousness of the offences under the POCSO Act, the Legislature has incorporated certain statutory presumptions. Section 29 permits the Special Court to presume, when a person is prosecuted for committing or abetting or attempting to commit any offence under Section 3, 5, 7 and Section 9 of the Act, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved. Similarly, Section 30 thereof permits the Special Court to presume for any offence under the Act which requires a culpable mental state on the part of the accused, the existence of such mental state. Of course, the accused can take a defence and prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. It may further be noted that though as per sub section (2) of Section 30, for the purposes of the said section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability, the Explanation to Section 30 clarifies that “culpable mental state” includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact. Thus, on the conjoint reading of Section 7, 11, 29 and 30, there remains no shadow of doubt that though as per the Explanation to Section 11, “sexual intent” would be a question of fact, the Special Court, when it believes the existence of a fact beyond reasonable doubt, can raise a presumption under Section 30 as regards the existence of “culpable mental state” on the part of the accused.

the statutory ambiguity should be invoked as a last resort of interpretation. Where the Legislature has manifested its intention, courts may not manufacture ambiguity in order to defeat that intent.
In plain English, to touch is to engage in one of the most basic of human sensory perceptions. The receptors on the surface of the human body are acutely sensitive to the subtleties of a whole range of tactile experiences. The use of a spoon, for instance, to consume food -without touching it with the hand -in no way diminishes the sense of touch that is experienced by the lips and the mouth. Similarly, when a stick, or other object is pressed onto a person, even when clothed, their sense of touch is keen enough to feel it.
In the end, I cannot resist quoting Benjamin Cardozo that "the great tides and currents which engulf the rest of men do not turn aside in their course and pass the judges by." It is, therefore, no part of any judge's duty to strain the plain words of a statute, beyond recognition and to the point of its destruction, thereby denying the cry of the times that children desperately need the assurance of a law designed to protect their autonomy and dignity, as POCSO does.

**2021 0 Supreme(SC) 711; State of Rajasthan Vs Bablu @ Om Prakash; Criminal Appeal No. 1475 of 2021(Arising out of Special Leave Petition (Crl.) No.8676 of 2019); Decided on : 24-11-2021**
In the backdrop of the principles set out in the decisions of this Court, even the version of a single witness, if his testimony is found reliable by the Court, can be the foundation of the order of conviction.
The fact that one of these witnesses had suffered injuries in the transaction and the rest of them had taken the deceased as well as the injured to medical center immediately after the occurrence lends credibility to the case of the prosecution unfolded through these eyewitnesses. Nothing has been brought on record in their cross-examinations to dislodge the credibility of these witnesses.
In the face of such clear, consistent and cogent evidence on record, the High Court was not justified in proceeding on the basis that the eyewitnesses had not named other accused in specific terms or entertaining any doubt and then recording order of acquittal.

**2021 0 Supreme(Sc) 712; Arvind Kumar @ Nemichand & Ors.Vs. State Of Rajasthan; Criminal Appeal No. 753 To 756 Of 2017; Decided On : 22-11-2021**
Findings of fact rendered by both the courts below shall not be interfered with insofar as the conviction rendered and merely because the witnesses are either family members or relatives their evidence cannot be disbelieved.
Specific and clear overt act has been attributed against some of the accused. The multiple injuries suffered would lead to an inference. A defective investigation would not enure to the benefit of the accused. A mere delay per se can never be a ground for acquittal when there is adequate evidence both oral and documentary in support of the prosecution version. The plea of private defence and sudden fight are intrinsically opposed to each other. The presence of the other accused would be sufficient enough to attract Section 149 IPC. Mere discrepancies in the evidence would not make the prosecution version as false. The delay in sending an FIR is not substantial.
An Investigating Officer being a public servant is expected to conduct the investigation fairly. While doing so, he is expected to look for materials available for coming to a

correct conclusion. He is concerned with the offense as against an offender. It is the offense that he investigates. Whenever a homicide happens, an investigating officer is expected to cover all the aspects and, in the process, shall always keep in mind as to whether the offence would come under Section 299 IPC sans Section 300 IPC. In other words, it is his primary duty to satisfy that a case would fall under culpable homicide not amounting to murder and then a murder. When there are adequate materials available, he shall not be overzealous in preparing a case for an offense punishable under Section 302 IPC. We believe that a pliable change is required in the mind of the Investigating Officer. After all, such an officer is an officer of the court also and his duty is to find out the truth and help the court in coming to the correct conclusion. He does not know sides, either of the victim or the accused but shall only be guided by law and be an epitome of fairness in his investigation.

There is a subtle difference between a defective investigation, and one brought forth by a calculated and deliberate action or inaction. A defective investigation per se would not enure to the benefit of the accused, unless it goes into the root of the very case of the prosecution being fundamental in nature. While dealing with a defective investigation, a court of law is expected to sift the evidence available and find out the truth on the principle that every case involves a journey towards truth. There shall not be any pedantic approach either by the prosecution or by the court as a case involves an element of law rather than morality.

A fair investigation would become a colourable one when there involves a suppression. Suppressing the motive, injuries and other existing factors which will have the effect of modifying or altering the charge would amount to a perfunctory investigation and, therefore, become a false narrative. If the courts find that the foundation of the prosecution case is false and would not conform to the doctrine of fairness as against a conscious suppression, then the very case of the prosecution falls to the ground unless there are unimpeachable evidence to come to a conclusion for awarding a punishment on a different charge.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one.

The principle that when a witness deposes falsehood, the evidence in its entirety has to be eschewed may not have strict application to the criminal jurisprudence in our country. The principle governing sifting the chaff from the grain has to be applied. However, when the evidence is inseparable and such an attempt would either be impossible or would make the evidence unacceptable, the natural consequence would be one of avoidance. The said principle has not assumed the status of law but continues only as a rule of caution. One has to see the nature of discrepancy in a given case. When the discrepancies are very material shaking the very credibility of the witness leading to a conclusion in the mind of the court that it is neither possible to separate it nor to rely upon, it is for the said court to either accept or reject.

Motive might lose its significance when adequate evidence in the form of eyewitnesses are available to the acceptance of the court. But, when a motive might have the impact of introducing a perceptible change to the very case projected by the prosecution, in favour of the accused, it cannot be brushed aside. It becomes more relevant when an accused sets up the plea of private defence. A common object and a motive may get

interconnected. Thus, a deliberate and intentional avoidance of unimpeachable evidence qua motive would make the version of the prosecution a serious suspect.
The view that the evidence of an injured witness has to be placed at a higher pedestal may not apply to a case of private defence with the accused also injured.
When the plea of private defence is taken, the quality of material evidence will have to be a bit higher than that of the one required in a normal circumstance.

**2021 0 Supreme(SC) 706; Viram @ Virma Vs. The State of Madhya Pradesh: Criminal Appeal No. 31 of 2019 With Criminal Appeal No.32 of 2019; Decided On : 23-11-2021**
The oral evidence discloses that there was an indiscriminate attack by the accused on the deceased and the other injured eye-witnesses. As found by the Courts below, there is a contradiction between the oral testimony of the witnesses and the medical evidence. In Amar Singh v. State of Punjab (supra), this Court examined the point relating to inconsistencies between the oral evidence and the medical opinion. The medical report submitted therein established that there were only contusions, abrasions and fractures, but there was no incised wound on the left knee of the deceased as alleged by a witness. Therefore, the evidence of the witness was found to be totally inconsistent with the medical evidence and that would be sufficient to discredit the entire prosecution case.

**Criminal Appeal No(S). 1444/2021 (Arising Out Of Special Leave Petition (Crl.) No(S). 5362/2021) Xxx Appellant(S) Versus The State Of Kerala & Ors.**
in view of Section 362 Cr.P.C. the Court does not have the power to alter the judgment and order once passed, except to correct the clerical or arithmetical error. In the present case, by a judgment and order dated 20.04.2021 FIR had been quashed by the High Court by a detailed reasoned order, which has been recalled by the impugned order dated 28.04.2021. There is no power, except under Section 362 Cr.P.C., which only provides for correction of any clerical or arithmetical error. The same does not empower the court to recall the earlier order passed after contest and that too suo moto.

Prosec

## NOSTALGIA

In State of Madhya Pradesh vs. Saleem @ Chamaru & Anr (2005) 5 SCC 554, this Court, while re-appreciating the true import of Section 307 IPC held as follows:
12.To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should

be sufficient under ordinary circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt."

# NEWS

- Ministry Of Law & Justice Department Of Legal Affairs) New Delhi, the 13th October 2021 No. A-35017/8/2012-Admn.I(LA)—The President is pleased to appoint Ms. Sudha Rani Relangi, Joint Secretary and Legislative Counsel, Legislative Department to the post of Director of Prosecution in Central Bureau of Investigation (CBI) for a further period of two years beyond 19.08.2021 or until further orders, whichever is earlier.

- the Registration of Foreigners (Amendment) Rules, 2021dtd. 12th November, 2021 G.S.R. 801(E).

- Delhi Special Police Establishment (Amendment) Ordinance, 2021, notified, dt. 14.11.2021

- Corrigendum The Delhi Special Police Establishment (Amendment) Ordinance, 2021 Dt. 15.11.2021

- IRF declared as an unlawful association, dt 15.11.2021.

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# ON A LIGHTER VEIN

A young boy enters a barber shop...and the barber whispers to his customer, "This is the dumbest kid in the world. Watch while I prove it to you."

The barber puts a dollar bill in one hand and two quarters in the other, then calls the boy over and asks, "Which do you want, son?" The boy takes the quarters and leaves.

"What did I tell you?" said the barber. "That kid never learns!"

Later, when the customer leaves, he sees the same young boy coming out of the ice cream store.

"Hey, son! May I ask you a question?
Why did you take the quarters instead of the dollar bill?"

The boy licked his cone and replied,
"Because the day I take the dollar, the game is over!"

While due care is taken while preparing this information. The patrons are requested to verify and bring it to the notice of the concerned regarding any misprint or errors immediately, so as to bring it to the notice of all patrons. Needless to add that no responsibility for any result arising out of the said error shall be attributable to the publisher as the same is inadvertent.

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सर्वेषां स्वस्ति भवतु,सर्वेषां शान्तिर्भवतु
सर्वेषां पूर्नं भवतु,सर्वेषां मङ्गलं भवतु
सर्वे भवन्तु सुखिनः,सर्वे सन्तु निरामयाः
सर्वे भद्राणि पश्यन्तु, मा कश्चित् दुःख भाग्भवेत्॥

may good befall all, may there be peace for all, may all be fit for perfection, and may all experience that which is auspicious. may all be happy. may all be healthy. may all experience what is good and let no one suffer.

best wishes for new year

Rajeshwer Rao
Prosecutionreplenish