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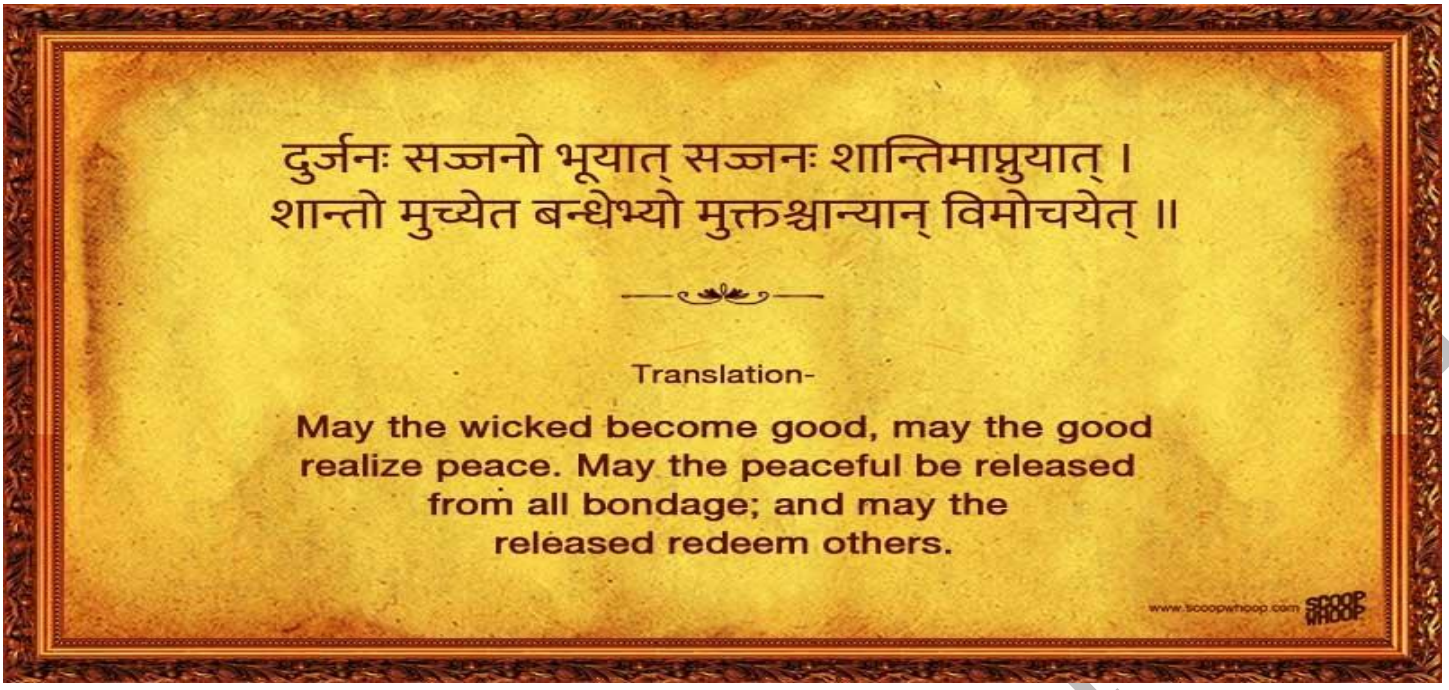
Aano Bhadra Krtavo Yantu Vishwatah.(RIG VEDAM)
"Let Noble Thoughts Come To Me From All Directions"



WITHDRAWAL FROM PROSECUTION

DVR Tejo Karthik
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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

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

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.

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

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**)**

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

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.

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.

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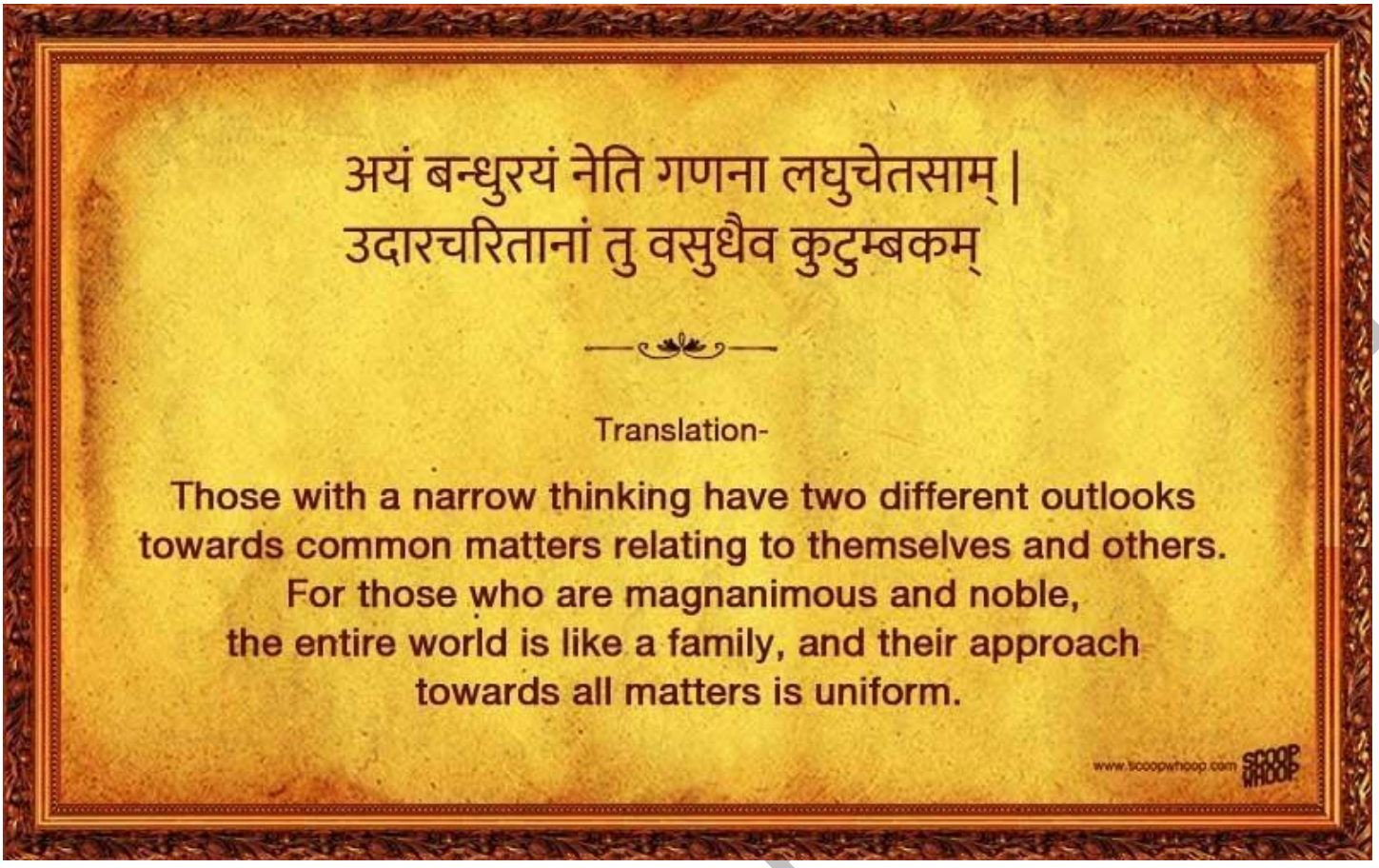
Aano Bhadra Krtavo Yantu Vishwatah.(RIG VEDAM)
"Let Noble Thoughts Come To Me From All Directions"



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

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)

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.

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.

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;

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;

(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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Ministry of Health & Family Welfare Government of India

mygov मेरी सरकार

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

mygov मेरी सरकार

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

myGov मेरी सरकार

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

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Part-3

Prosecution Replenish

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March, 2021

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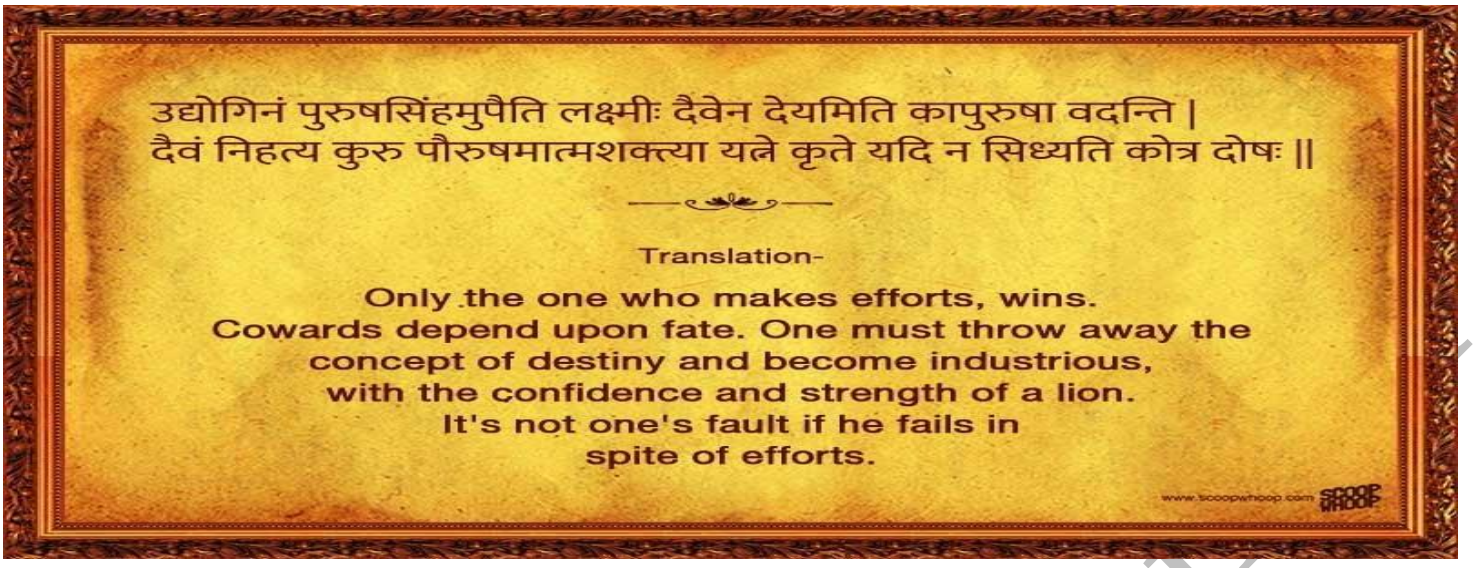

Role of Public Prosecutors, Appearance by Public Prosecutors and Permission to Conduct Prosecution

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

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 :

"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]

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:-

(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.

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

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.

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

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

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:

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.

✍The Prosecution Replenish, 4-235, Gita Nagar, Malkajgiri, Hyderabad, Telangana-500047
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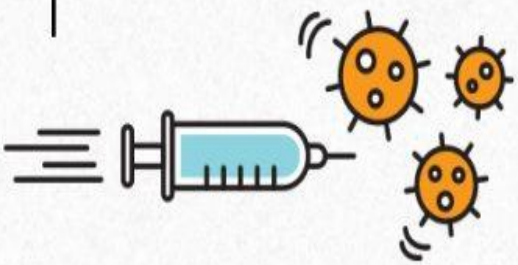
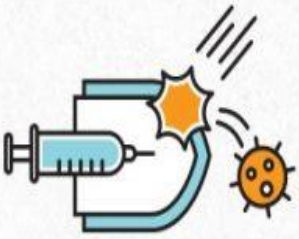
Website : prosecutionreplenish.com

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

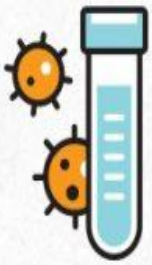


The changes in the variants are not sufficient to make the vaccines ineffective



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

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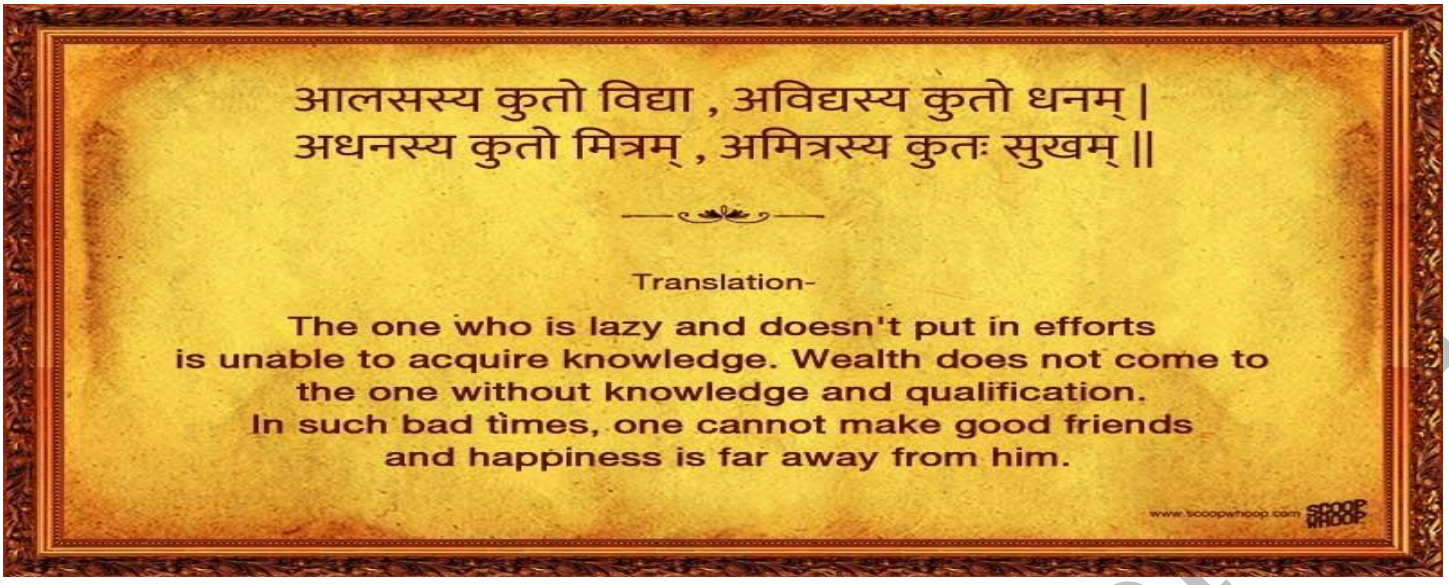
Part-4

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

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

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

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

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 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)*

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.

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

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

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:

"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)"

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.

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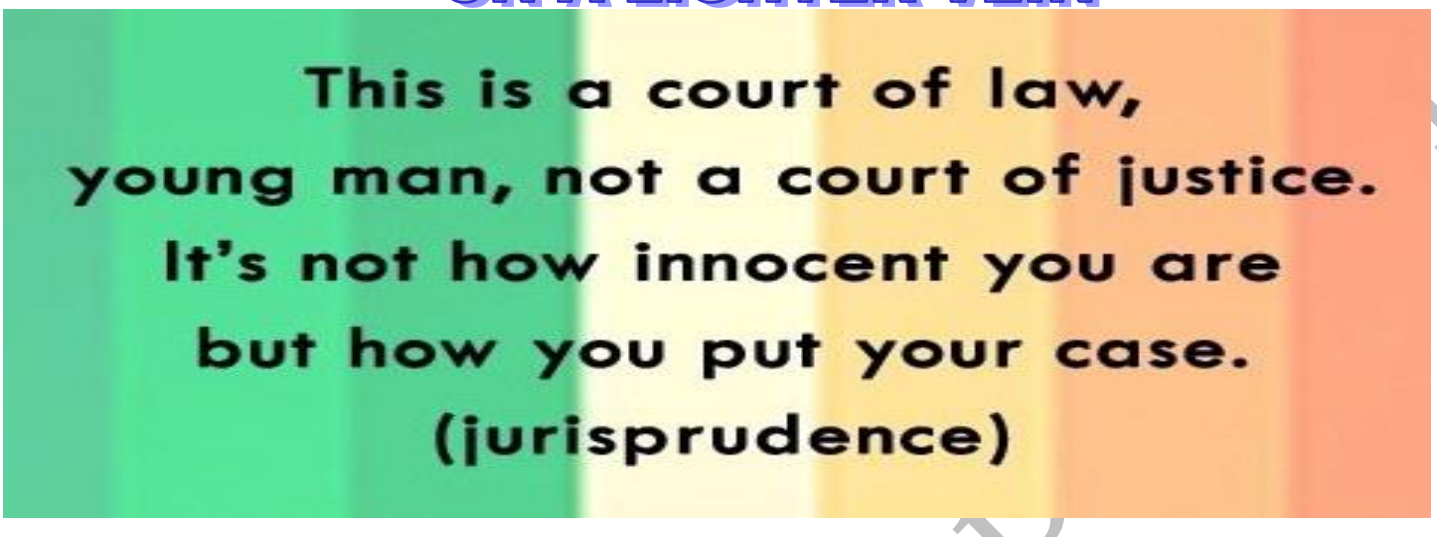
ON A LIGHTER VEIN



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Website : prosecutionreplenish.com

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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Part-5

Prosecution Replenish

An Endeavour for Learning and Excellence

May, 2021

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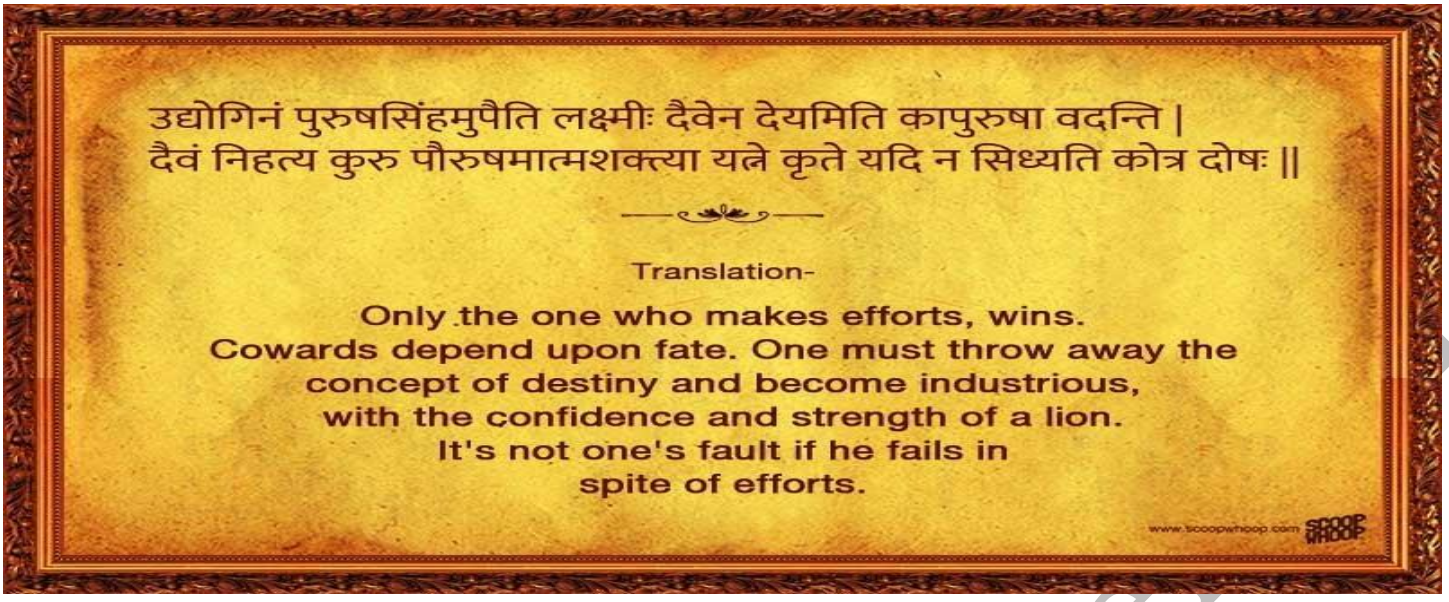
"Let Noble Thoughts Come To Me From All Directions"



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

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).

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

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.

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

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

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

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.

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.

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NOTICE:

- ✓ Our e-leaflet is turning 10 years young. Marking the same, a commemorative e-book containing the articles on various law is being planned. So, all the patrons and prosecutors are requested to kindly contribute to the same.
- ✓ Original, non-duplicated articles are requested from the prosecutors of India for e-publication.
- ✓ 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

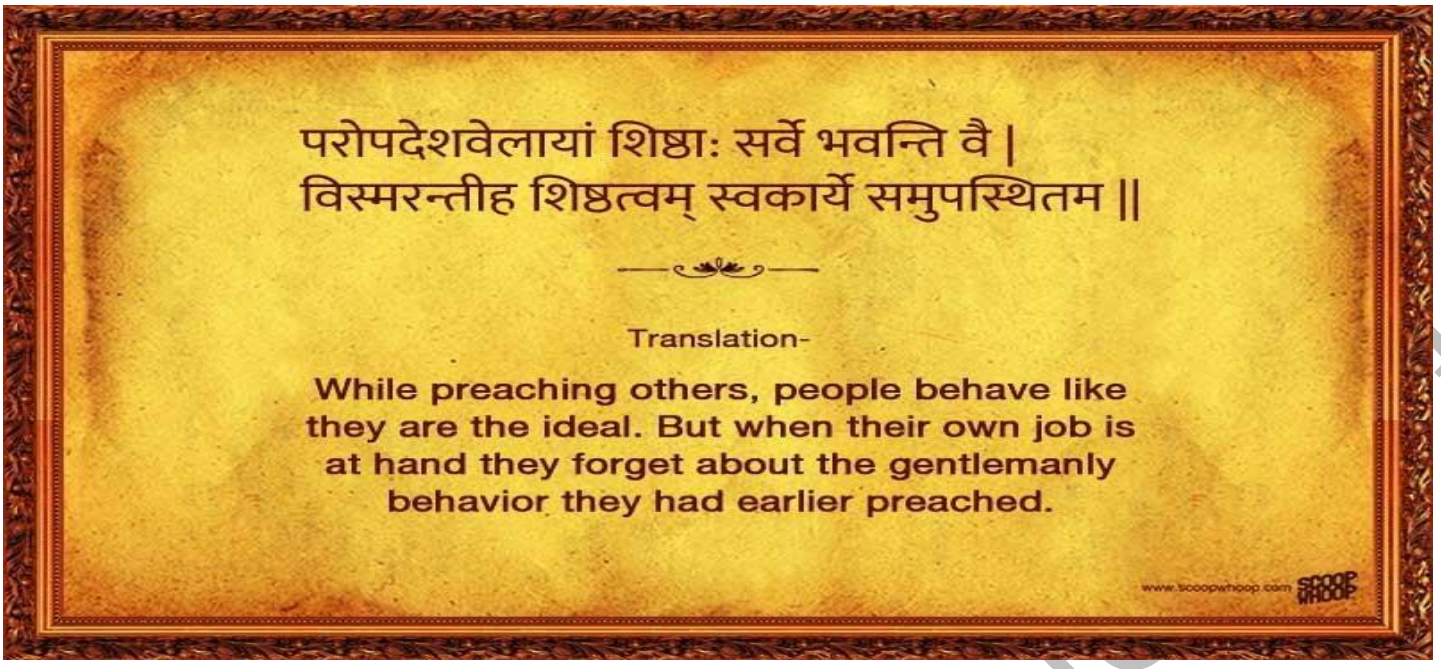
Vol- X
Part-6

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.

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

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

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.

DVRTejoKarthik
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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)*

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

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.

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

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/

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"

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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