Prosecution Replenish

An Endeavour for learning and excellence

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Aano Bhadr Kratvo Yantu Viswatah
(Let Noble Thoughts Come To Me from All Directions)

उद्धरेदात्मनात्मानं नात्मानमवसादयेत्।
आत्मैव ह्यात्मनो बन्धुरात्मैव रिपुरात्मनः॥

अपने मन की शक्ति द्वारा स्वयं को ऊपर उठाएँ, न कि स्वयं को नीचा दिखाएँ,
क्योंकि मन स्वयं का मित्र भी हो सकता है और शत्रु भी।

Lift yourself up, not degrade yourself, by the power of your mind.
Because the mind can be one's own friend as well as enemy.

CITATIONS

2024 0 INSC 834; 2024 0 Supreme(SC) 988; Subrata Choudhury @ Santosh Choudhury & Ors. Vs. The State of Assam & Anr.; Criminal Appeal No. 4451 of 2024 (Arising out of SLP (Crl.) No.1242 of 2021); Decided On : 05-11-2024

This fundamental rule of our criminal law revealed from this Section enables raising of the special pleas of autrefois acquit and autrefois convict, subject to the satisfaction of the conditions enjoined thereunder. This position has been made clear by this Court in Vijayalakshmi v. Vasudevan, (1994) 4 SCC 656. In the case at hand, the undisputed facts stated hereinbefore would reveal that the appellants were never ever tried before a Court of competent jurisdiction for the aforesaid offence(s) on the basis of the aforesaid set of facts. Therefore, indisputably there was no verdict of conviction or acquittal in regard to the aforesaid Sections in respect of the appellants on the aforesaid set of facts, by a Court of competent jurisdiction.

Firstly, the question as to what are the courses available to a Magistrate on receipt of a negative report is to be looked into and in fact, that question was considered by this Court in Bhagwat Singh v. Commissioner of Police and Anr., (1985) 2 SCC 537 This Court held that on receipt of a negative report, the following four courses are open to the Magistrate concerned: -

1. to accept the report and to drop the proceedings;
2. to direct further investigation to be made by the police.

3. to investigate himself or refer the investigation to be made by another Magistrate under Section 159, Cr.P.C., and

4. to take cognizance of the offence under Section 200, Cr.P.C., as private complaint when materials are sufficient in his opinion as if the complainant is prepared for that course.

The indisputable position is that in the case at hand the learned CJM on receipt of the negative report accepted it after rejecting the written objections/protest petition, which is one of the courses open to a Magistrate on receipt of a negative report, in terms of Bhagwat Singh's case

In view of the confirmance of the judgment of the learned Sessions Judge carrying the following observations/findings it is not inappropriate to delve into them for the limited purpose. They, in so far as relevant, read thus:-

> "(i) Thus, the present complaint in question is truly qualify to the definition of the term complaint and the same has been filed on being aggrieved against the final report, submitted against his previous complaint. Hence, in my considered opinion the learned court below misconstrued the definition of the term complaint, by treating the simple objection petition as Narazi complaint, whereas terming the present complaint in question as second complaint.
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> (ii) Situated thus, the Hon'ble Apex Court of India, in the said decision, (referring to the decision in Abhinandan Jha v. Dinesh Misra, reported in AIR 1968 Supreme Court 117) specifically observed that even after accepting the final report, it is open to the Magistrate to treat the respective protest petitions as complaints and to take further proceedings in accordance with law."

if the earlier disposal of the complaint was on merits and in a manner known to law, the second complaint on "almost identical facts" which were raised in the first complaint would not be maintainable. What has been laid down is that "if the core of both the complaints is same", the second complaint ought not to be entertained.

If the dismissal of the complaint was not on merit but on default of the complainant to be present there is no bar in the complainant moving the Magistrate again with a second complaint on the same facts.

2024 0 INSC 843; 2024 0 Supreme(SC) 997; Directorate of Enforcement Vs. Bibhu Prasad Acharya; Criminal Appeal Nos. 4314-4316 of 2024; Decided on : 06-11-2024

The expression "to have been committed by him while acting or purporting to act in the discharge of his official duty" has been judicially interpreted. A bench of three Hon'ble Judges of this Court in the case of Centre for Public Interest Litigation v. Union of India, (2005) 8 SCC 202, in paragraph no 9, observed thus:

"9………………….. **This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection.** The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty. If the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case." (emphasis added)

8. In the decision of this Court in the case of Prakash Singh Badal and Another3, in paragraph 38, this Court held thus:

"38. **The question relating to the need of sanction under Section 197 of the Code is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding.** The question whether sanction is necessary or not may have to be determined from stage to stage." (emphasis added)

A Bench of three Hon'ble Judges of this Court in the case of P.K. Pradhan v. State of Sikkim, (2001) 6 SCC 704, in paragraphs 5 and 15 held thus:

> "5. The legislative mandate engrafted in sub-section (1) of Section 197 debarring a court from taking cognizance of an offence except with the previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from office save by or with the sanction of the Government, touches the jurisdiction of the court itself. It is a prohibition imposed by the statute from taking cognizance. Different tests have been laid down in decided cases to ascertain the scope and meaning of the relevant words occurring in Section 197 of the Code: "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty". **The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty.** No question of sanction can arise under Section 197, unless the act complained of is an offence; **the only point for determination is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What a court has to find out is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of official duty, though, possibly in excess of the needs and requirements of the situation"**
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> "15. Thus, from a conspectus of the aforesaid decisions, it will be clear that for claiming protection under Section 197 of the Code, it has to be shown by the accused that there is reasonable connection between the act complained of and the discharge of official duty. An official act can be performed in the discharge of official duty as well as in dereliction of it. For invoking protection under Section 197 of the Code, the acts of the accused complained of must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required. If the case as put forward by the prosecution fails or the defence establishes that the act purported to be done is in discharge of duty, the proceedings will have to be dropped. **It is well settled that question of sanction under Section 197 of the Code can be raised any time after the**

cognizance; maybe immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused that the act that he did was in course of the performance of his duty was a reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial.” (emphasis added)

2024 0 INSC 846; 2024 0 Supreme(SC) 1000; Ramji Lal Bairwa & Anr. Vs. State of Rajasthan & Ors.; Criminal Appeal No. 3403 of 2023 (@ SLP (Crl.) No. 12912 of 2022); 07-11-2024

Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.

Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape,

dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed.
in unambiguous terms this Court held that before exercising the power under Section 482, Cr. PC the High Court must have due regard to the nature and gravity of the crime besides observing and holding that heinous and serious offences could not be quashed even though a victim or victim's family and the offender had settled the dispute. This Court held that such offences are not private in nature and have a serious impact on the society. Having understood the position of law on the second question that it is the bounden duty of the court concerned to consider whether the compromise is just and fair besides being free from undue pressure we will proceed to consider the matter further.

https://indiankanoon.org/doc/109412385/; Mrs.Gunjan Sonthalia, vs The State Of Telangana on 6 November, 2024; CRLP 12429 of 2017
A medical practitioner is not liable to be held negligent simply because things went wrong from mischance or misadventure or through an error of judgment in choosing one reasonable course of treatment in preference to another. He would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field. For instance, he would be liable if he leaves a surgical gauze inside the patient after an operation vide Achutrao Haribhau Khodwa & others vs. State of Maharashtra & others, AIR 1996 SC 2377 or operates on the wrong part of the body, and he would be also criminally liable if he operates on someone for removing an organ for illegitimate trade.
38. The higher the acuteness in an emergency and the higher the complication, the more are the chances of error of judgment. At times, the

professional is confronted with making a choice between the devil and the deep sea and has to choose the lesser evil. The doctor is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Which course is more appropriate to follow, would depend on the facts and circumstances of a given case but a doctor cannot be penalized if he adopts the former procedure, even if it results in a failure. The usual practice prevalent nowadays is to obtain the consent of the patient or of the person in-charge of the patient if the patient is not in a position to give consent before adopting a given procedure.

42. When a patient dies or suffers some mishap, there is a tendency to blame the doctor for this. Things have gone wrong and, therefore, somebody must be punished for it. However, it is well known that even the best professionals, what to say of the average professional, sometimes have failures. A lawyer cannot win every case in his professional career but surely he cannot be penalized for losing a case provided he appeared in it and made his submissions.

43. To fasten liability in criminal proceedings e.g. under Section 304A IPC the degree of negligence has to be higher than the negligence which is enough to fasten liability in civil proceedings. Thus, for civil liability it may be enough for the complainant to prove that the doctor did not exercise reasonable care in accordance with the principles mentioned above, but for convicting a doctor in a criminal case, it must also be proved that this negligence was gross amounting to recklessness.

https://indiankanoon.org/doc/190813727/; Pandem Sai Kumar Reddy vs The State Of Telangana on 5 November, 2024;

since the Gazetted Officer is the LW.3 who filed the charge sheet after completion of SKS,J the investigation apart from being a complainant and drawing samples from the packets of the petitioner/accused No.1 at the time of seizure is not conformity with the law laid down by the Apex Court in the case Mohanlal (Supra 3), this Court is of the considered opinion that the proceedings against the petitioner/accused No.1 are liable to be quashed.

https://indiankanoon.org/doc/79577176/; Yepuri Thirapathaiah, Thirapaiah, vs P.P., Hyd on 5 November, 2024; CRLA 729 of 2015

in the case of Uttam v. State of Maharashtra 1, wherein the Hon'ble Supreme Court discussed the effect of Dying Declaration. The following principles are laid down at para 14 of the judgment.

"14. In Paniben v. State of Gujarat [Paniben v. State of Gujarat, (1992) 2 SCC 474 : 1992 SCC (Cri) 403] , on examining the entire conspectus of

the law on the principles governing dying declaration, this Court had concluded thus : (SCC pp. 480-81, para 18) "18. ...

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (Munnu Raja v. State of M.P. [Munnu Raja v. State of M.P., (1976) 3 SCC 104 : 1976 SCC (Cri) 376])

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (State of U.P. v. Ram Sagar Yadav [State of U.P. v. Ram Sagar Yadav, (1985) 1 SCC 552 : 1985 SCC (Cri) 127] ; Ramawati Devi v. State of Bihar [Ramawati Devi v. State of Bihar, (1983) 1 SCC 211 : 1983 SCC (Cri) 169] .)

(iii) This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. (K. Ramachandra Reddy v. Public Prosecutor [K. Ramachandra Reddy v. Public Prosecutor, (1976) 3 SCC 618 : 1976 SCC (Cri) 473] .) (2022) 8 Supreme Court Cases 576

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (Rasheed Beg v. State of M.P. [Rasheed Beg v. State of M.P., (1974) 4 SCC 264 : 1974 SCC (Cri) 426])

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (Kake Singh v. State of M.P. [Kake Singh v. State of M.P., 1981 Supp SCC 25 : 1981 SCC (Cri) 645])

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (Ram Manorath v. State of U.P. [Ram Manorath v. State of U.P., (1981) 2 SCC 654 : 1981 SCC (Cri) 581])

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (State of Maharashtra v. Krishnamurti Laxmipati Naidu [State of Maharashtra v. Krishnamurti Laxmipati Naidu, 1980 Supp SCC 455 : 1981 SCC (Cri) 364] .)

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (Surajdeo Ojha v. State of Bihar [Surajdeo Ojha v. State of Bihar, 1980 Supp SCC 769 : 1979 SCC (Cri) 519] .)

(ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness has said that the

deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (Nanhau Ram v. State of M.P. [Nanhau Ram v. State of M.P., 1988 Supp SCC 152 : 1988 SCC (Cri) 342])

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (State of U.P. v. Madan Mohan [State of U.P. v. Madan Mohan, (1989) 3 SCC 390 :1989 SCC (Cri) 585] .)"

https://indiankanoon.org/doc/42260377/; Poduvu Srinivas vs The State Of Telangana on 4 November, 2024; CRLA 959 of 2024

This criminal appeal is filed questioning the judgment in S.C.No.64 of 2019 dated 28.08.2024 passed by the learned Assistant Sessions Judge, at Chevella, Ranga Reddy District, whereby, the case filed by the police was tried and accused acquitted for the offences under Sections 307 r/w 120(B) of Indian Penal Code.

The proviso under Section 372 of Cr.P.C and the new provision under Section 413 Bharatiya Nagarik Suraksha Sanhita, 2023 ('for short BNSS') contemplates that, if the victim is aggrieved by the quantum of compensation, lesser sentence or acquittal, victim should approach the Court where the appeal would normally lie against the order of conviction. In the present case, the appeal would lie to the Sessions Court in the event of conviction. Accordingly, the appeal is dismissed as not maintainable, granting liberty to the appellant-de facto complainant/victim to approach the concerned Sessions Court to prosecute the appeal in accordance with law.

https://indiankanoon.org/doc/166884262/; The State Of Telangana vs Palle Mohana Krishna on 11 November, 2024; CRLA 508/2024

P.W.1 is major and admits that the accused was a relative and she moved closely, went to movies and other places on account of their love affair. They were also in sexual relation over the said period. The only reason for lodging the complaint is that the accused refused to marry P.W.1. Mere refusal to marry will not amount to an offence of cheating unless it is proved by the prosecution or evident from the circumstances that there was any kind of inducement or mis-statement made deliberately to have physical or sexual relation. In the present complaint, when P.W.1 admits that she was having love affair, went along with the appellant on her own, the question of cheating or committing rape on P.W.1 does not arise.

2024 0 INSC 897; 2024 0 Supreme(SC) 1086; Mahesh Damu Khare Vs. The State Of Maharashtra & Anr.; Criminal Appeal No. of 2024 (@ Special Leave Petition (Crl.) No. 4326 of 2018); Decided On : 26-11-2024

It may be also noted that there may be occasions where a promise to marry was made initially but for various reasons, a person may not be able to keep the promise to marry. If such promise is not made from the very beginning with the ulterior motive to deceive her, it cannot be said to be a false promise to attract the penal provisions of Section 375 IPC, punishable under Section 376 IPC.

In our opinion, the longer the duration of the physical relationship between the partners without protest and insistence by the female partner for marriage would be indicative of a consensual relationship rather than a relationship based on false promise of marriage by the male partner and thus, based on misconception of fact.

Moreover, even if it is assumed that a false promise of marriage was made to the complainant initially by the appellant, even though no such cogent evidence has been brought on record before us to that effect, the fact that the relationship continued for nine long years, would render the plea of the complainant that her consent for all these years was under misconception of fact that the Appellant would marry her implausible. Consequently, the criminal liability attached to such false promise would be diluted after such a long passage of time and in light of the fact that no protest was registered by the complainant during all those years. Such a prolonged continuation of physical relationship without demurral or remonstration by the female partner, in effect takes out the sting of criminal culpability and neutralises it.

It will be very difficult to assume that the complainant who is otherwise a mature person with two grown up children, was unable to discover the deceitful behaviour of the appellant who continued to have sexual relationship with her for such a long period on the promise of marriage. Any such mendacious act of the appellant would have been exposed sooner without having to wait for nine years. The inference one can draw under the circumstances is that there was no such false promise made to the complainant by the appellant of marriage by continuing to have physical relationship so as to bring this act within the province of Section 376 IPC and therefore, there was no vitiation of consent under misconception of fact.

In our view if criminality is to be attached to such prolonged physical relationship at a very belated stage, it can lead to serious consequences. It will open the scope for imputing criminality to such long term relationships after turning sour, as such an allegation can be made even at a belated stage to drag a person in the juggernaut of stringent criminal

process. There is always a danger of attributing criminal intent to an otherwise disturbed civil relationship of which the Court must also be mindful.
We, however, make it clear that our decision in this case and observations made are to be understood in the factual matrix before this Court. Every case must be decided on its own facts and circumstances, for we are dealing with human relationships and psychology which are dynamic and permeated with an array of unpredictable human emotions and sensitivities and hence, every decision relating to human relationships must be based on the peculiar facts and circumstances obtaining in the particular case.

2024 0 INSC 907; 2024 0 Supreme(SC) 1104; Suresh Chandra Tiwari & Anr. Vs. State of Uttarakhand; Criminal Appeal No. 1902 of 2013; Decided On : 28-11-2024
Before parting, we would like to put on record that the High Court also erred in converting the conviction from one punishable under Section 302 to Section 304 Part I of IPC only because, according to it, the fatal injury could be a result of a solitary blow. What it overlooked was that there were multiple injuries on the body of the deceased apart from two incised wounds on the head with underlying fracture of occipital bone of the skull. In such a scenario, whosoever committed the crime had clear intention to kill the deceased. Once that is the position, in a case based on circumstantial evidence, when no effort is made on the part of the accused either to take a plea, or lead evidence to show, that their act would fall in any of the exceptions to Section 300 IPC, there was no justification at all to alter the conviction.

2024 0 INSC 908; 2024 0 Supreme(SC) 1105; Kamaruddin Dastagir Sanadi Vs. State of Karnataka Through Sho Kakati Police; Criminal Appeal No. 551 of 2012; Decided On : 29-11-2024
Even assuming, though there is no evidence that the accused-appellant promised to marry the deceased, that there was such a promise, it is again a simple case of a broken relationship for which there is a different cause of action, but not prosecution or conviction for an offence under Section 306, specially in the facts and circumstances of the case where no guilty intention or mens rea on the part of the accused-appellant had been established.

2024 0 INSC 909; 2024 0 Supreme(SC) 1106; X Vs. State Of Rajasthan & Anr.; Special Leave Petition (Criminal) No. 13378 of 2024; Decided on : 27-11-2024

Ordinarily in serious offences like rape, murder, dacoity, etc., once the trial commences and the prosecution starts examining its witnesses, the Court be it the Trial Court or the High Court should be loath in entertaining the bail application of the accused.

Over a period of time, we have noticed two things, i.e., (i) either bail is granted after the charge is framed and just before the victim is to be examined by the prosecution before the trial court, or (ii) bail is granted once the recording of the oral evidence of the victim is complete by looking into some discrepancies here or there in the deposition and thereby testing the credibility of the victim.

We are of the view that the aforesaid is not a correct practice that the Courts below should adopt. Once the trial commences, it should be allowed to reach to its final conclusion which may either result in the conviction of the accused or acquittal of the accused. The moment the High Court exercises its discretion in favour of the accused and orders release of the accused on bail by looking into the deposition of the victim, it will have its own impact on the pending trial when it comes to appreciating the oral evidence of the victim. It is only in the event if the trial gets unduly delayed and that too for no fault on the part of the accused, the Court may be justified in ordering his release on bail on the ground that right of the accused to have a speedy trial has been infringed.

https://indiankanoon.org/doc/50857093/; B. Partha Sarathi vs The State Of Telangana on 25 November, 2024; CRLP 14202/2024

it appears that the petitioner was not arrayed as accused in the subject Crime. Therefore, the text message sent to the petitioner to attend for enquiry in the subject Crime is not in accordance with law. Therefore, this Court deems it fit to set aside the text message dated 18.11.2024 issued against the petitioner.

NOSTALGIA

Habitual offender

in MAJID BABU V. HOME SECRETARY, GOVERNMENT OF ANDHRA PRADESH {(1987) 2 ALT 904}, in order to classify a person as a habitual offender, he should be involved in more than two criminal cases. Following the aforesaid judgment, this Court in Mansoor Shah Khan v. State of Telangana (W.P.No.22980 of 2020 dated 01.06.2021), held that rowdy sheet cannot be opened against a person unless he is involved in more than two criminal cases.

164CrPC Statement

In R. Shaji v. State of Kerala, MANU/SC/0087/2013 this Court discussed the two-fold objective of a statement under Section 164 CrPC as:

> "15. So far as the statement of witnesses recorded under Section 164 is concerned, the object is two fold; in the first place, to deter the witness from changing his stand by denying the contents of his previously recorded statement, and secondly, to tide over immunity from prosecution by the witness under Section 164. A proposition to the effect that if a statement of a witness is recorded under Section 164, his evidence in Court should be discarded, is not at all warranted …"
>
> The Court also recognized that the need for recording the statement of a witness under Section 164 CrPC arises when the witness appears to be connected to the accused and is prone to changing his version at a later stage due to influence. The relevant para reads thus:
>
> "16. … During the investigation, the Police Officer may sometimes feel that it is expedient to record the statement of a witness under Section 164 Code of Criminal Procedure. This usually happens when the witnesses to a crime are clearly connected to the accused, or where the accused is very influential, owing to which the witnesses may be influenced …"

Discovery U/sec 27 IEA Vs Recovery

In Geejaganda Somaiah vs. State of Karnataka, (2007) 9 SCC 315, this Court has cautioned the courts about misuse of provision of Section 27 of the Evidence Act, 1872 while observing as under:

> "22. As the section is alleged to be frequently misused by the police, the courts are required to be vigilant about its application. The court must ensure the credibility of evidence by police because this provision is vulnerable to abuse. It does not, however, mean that any statement made in terms of the aforesaid section should be seen with suspicion and it cannot be discarded only on the ground that it was made to a police officer during investigation. The court has to be cautious that no effort is made by the prosecution to make out a statement of the accused with a simple case of recovery as a case of discovery of fact in order to attract the provisions of section 27 of the Evidence Act." (Emphasis supplied)

NEWS

- Prosecution Replenish wishes Smt Vyjayanthi, DOP, Telangana, a very happy and healthy retired life.

- A.P.- Public Services- Finance Department- Age of Superannuation of Judicial Officers- Enhancement of age of superannuation of Judicial Officers from 60 years to 61years as per the Andhra Pradesh Public

Employment (Regulation of Age of Superannuation) (Amendment) Act, 2024 w.e.f. 01.11.2024 - Orders- Issued.- GOMS No. 97 FINANCE (HR.IV-FR & LR) DEPARTMENT dt. 29.11.2024

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ON A LIGHTER VEIN

Q: How old is your son, the one living with you?

A: Thirty-eight or thirty-five, I can't remember which.

Q: How long has he lived with you?

A: Forty-five years.

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