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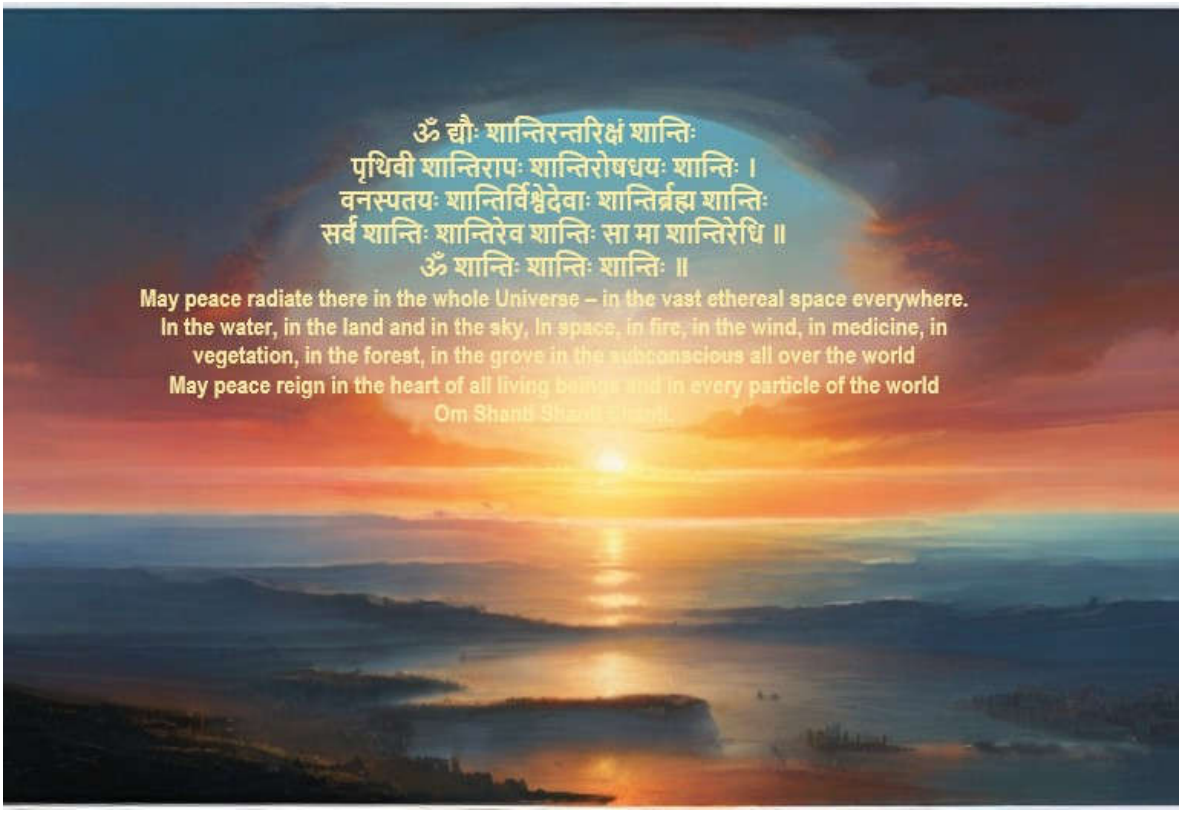
Aano Bhadr Kratvo Yantu Viswatah
(Let Noble Thoughts Come To Me from All Directions)



CITATIONS

2023 0 INSC 1059; 2023 0 Supreme(SC) 1212; M/S North Eastern Chemicals Industries (P) Ltd. & Anr. Vs. M/S Ashok Paper Mill(Assam) Ltd. & Anr.; Civil Appeal No. 2669 of 2013; Decided On : 11-12-2023

it is clear that when a Court is seized of a situation where no limitation stands provided either by specific applicability of the Limitation Act or the special statute governing the dispute, the Court must undertake a holistic assessment of the facts and circumstances of the case to examine the possibility of delay causing prejudice to a party. When no limitation stands prescribed it would be inappropriate for a Court to supplant the legislature' s wisdom by its own and provide a limitation, more so in accordance with what it believes to be the appropriate period. A court should, in such a situation consider in the facts and circumstances of the case at hand, the conduct of the parties, the nature of the proceeding, the length of delay, the possibility of prejudice being caused, and the scheme of the statute in question. It may be underscored here that when a party to a dispute raises a plea of delay despite no specific period being prescribed in the statute, such a party also bears the burden of demonstrating how the delay in itself would cause the party additional prejudice or loss as opposed to, the claim subject matter of dispute, being raised at an earlier point in time.

When a statute, either general or specific in application, provides for a limitation within which to file an appeal, the parties interested in doing so are put to notice of the requirement to act with expedition. However, opposite thereto, in cases such as the present one where neither statute provides for an explicit limitation, such urgency may be absent. While it is still true that, as held in Ajaib (supra), this does not entitle parties to litigate issues decades later, however shorter delays, in such circumstances, would not attract delay and laches.

2023 0 INSC 1060; 2023 0 Supreme(SC) 1213; Amanat Ali Vs. State of Karnataka and others; Writ Petition (Criminal) No.432 of 2022; Decided on : 11-12-2023

following the principles laid down in Amish Devgan v. Union of India and others (2021) 1 SCC 1 we deem it appropriate to exercise power conferred under Article 142 of the Constitution of India to accede to the relief claimed to the extent of consolidation of the FIRs registered in the State of Madhya Pradesh for being tried together as one trial as far as possible, as we are of the opinion that multiplicity of the proceedings will not be in the larger public interest and State also. It is clarified that all the cases pending in the State of Madhya Pradesh shall be transferred to the District of Devas, Madhya Pradesh where FIR No.324 of 2017 has been filed and registered against the petitioner or in other words, FIR Nos.266 of 2018, 479 of 2018 and 283 of 2020 shall stand transferred to the District of Devas where FIR No.324 of 2017 is pending. The jurisdictional courts shall take immediate steps to transfer the proceedings for being consolidated and adjudicated by one trial to be decided on its own merits. The prayer for transfer of the cases pending in the States of Karnataka and Jharkhand to the State of Madhya Pradesh stands rejected.

2023 0 INSC 1062; 2023 0 Supreme(SC) 1215; Sekaran Vs The State Of Tamil Nadu; Criminal Appeal No. 2294 of 2010; 12-12-2023 (THREE JUDGE BENCH)

It is trite that merely because there is some delay in lodging an FIR, the same by itself and without anything more ought not to weigh in the mind of the courts in all cases as fatal for the prosecution. A realistic and pragmatic approach has to be adopted, keeping in mind the peculiarities of each particular case, to assess whether the unexplained delay in lodging the FIR is an afterthought to give a coloured version of the incident, which is sufficient to corrode the credibility of the prosecution version. In cases where delay occurs, it has to be tested on the anvil of other attending

circumstances. If on an overall consideration of all relevant circumstances it appears to the court that the delay in lodging the FIR has been explained, mere delay cannot be sufficient to disbelieve the prosecution case; however, if the delay is not satisfactorily explained and it appears to the court that cause for the delay had been necessitated to frame anyone as an accused, there is no reason as to why the delay should not be considered as fatal forming part of several factors to vitiate the conviction.

The prosecution has not explained why Ponnaian and Velikutti were not called upon to depose despite they being present at the place of occurrence and despite their statements having been recorded in course of investigation. If indeed they were unavailable to depose, it was incumbent on the prosecution to adduce relevant evidence in that regard. The prosecution having not examined Ponnaian and Velikutti, illustration (g) of section 114 of the Evidence Act is well and truly attracted in the present case.

Mere absconding by the appellant after alleged commission of crime and remaining untraceable for such a long time itself cannot establish his guilt or his guilty conscience. Abscondence, in certain cases, could constitute a relevant piece of evidence, but its evidentiary value depends upon the surrounding circumstances.

2023 0 INSC 1068; 2023 0 Supreme(SC) 1218; Maheshwari Yadav & Anr. Vs. State of Bihar; Criminal Appeal No.1515 of 2011; Decided on : 13-12-2023

Section 34 essentially introduces vicarious liability. In a given case, where the offence is punishable under Section 302 of IPC, when the common intention is proved, but no overt act of assaulting the deceased is attributed to the accused who have been implicated based on Section 34, vicarious liability under Section 34 will be attracted. In this case, the bullet was fired by the accused no.3, as a result of which, the deceased lost his life. Even without the applicability of Section 34, the accused no.3 could have been convicted for the offence punishable under Section 302 of the IPC. To punish him under Section 302, it was not necessary to apply Section 34 of the IPC. Section 34 was applied to the appellants as they were sought to be roped in by alleging that they shared common intention with accused no.3. To bring a case within Section 34, it is not necessary to prove prior conspiracy or premeditation. It is possible to form a common intention just before or during the occurrence.

It is not axiomatic that in every case where the eyewitnesses are withheld from the court, an adverse inference must be drawn against the prosecution. The totality of the circumstances must be considered for concluding whether an adverse inference could be drawn. We have perused the notes of evidence of the material witnesses.

A contradiction is sought to be pointed out by the learned counsel appearing for the appellants by stating that in the FIR, it is stated by the PW4 that he along with his brother and the deceased, were going towards the railway station to catch a train and he did not state in the FIR that they were going towards the bus stand. This inconsistency is not significant, as his version of the main incident has not been shaken at all.

It is true that the eyewitnesses examined before the court were close relatives of the deceased. That itself is no ground to discard their testimony. However, their evidence may require closer scrutiny. After having made closer scrutiny, we find their versions are of a very sterling quality. Moreover, all the persons named by PW1 who were present were not independent witnesses. In a given case, when independent witnesses are available who are not connected with the rival parties and the prosecution omits to examine them by confining its case to examining related witnesses, an adverse inference can undoubtedly be drawn against the prosecution. When the evidence of the eyewitnesses is of sterling quality, an adverse inference need not be drawn. Quality is more important than quantity.

2023 0 INSC 1036; 2023 0 Supreme(SC) 1188; Shashikant Sharma & Ors. Vs. State Of Uttar Pradesh & Anr.; Criminal Appeal No(s) 3663 OF 2023 (Arising out of SLP(Criminal) No(s). 5323 of 2023); Decided On : 01-12-2023

There cannot be any quarrel with the principles laid down in the judgments cited by the State counsel in the written submissions that at the stage of framing of charges, the Court is not required to undertake a meticulous evaluation of evidence and even grave suspicion is sufficient to frame charge. Nevertheless, there is also a long line of precedents that from the admitted evidence of the prosecution as reflected in the documents filed by the Investigating Officer in the report under Section 173 CrPC, if the necessary ingredients of an offence are not made out then the Court is not obligated to frame charge for such offence against the accused.

Be that as it may, as per the highest case of prosecution, the only offence under IPC punishable with imprisonment of 10 years or more being the offence under Section

307 IPC has been applied on the basis of the gun shot allegedly fired by the accused Vinod Upadhyay upon Rinku Thakur, which admittedly did not result into any corresponding injury. After perusal of the entire material on record, we have no hesitation in concluding that from the admitted case set up by the prosecution, there is no such allegation that the offence under IPC punishable with imprisonment of 10 years or more was committed by an accused of upper caste upon a person belonging to the Scheduled Caste community with the knowledge that such person belonged to the said community.

(It is not clear whether the case is registered after amendment of the POA Act in 2015)

2023 0 INSC 1035; 2023 0 Supreme(SC) 1189; Mohit Singhal and Another Vs State of Uttarakhand & ors; Criminal Appeal No. 3578 of 2023; 01-12-2023

The suicide note records that the third respondent had borrowed a sum of Rs. 60,000/-. According to the deceased, he had paid more than half of the amount to Sandeep. The suicide note records that as he could not pay the rest of the money, the first appellant came to his house and started abusing him. He stated that the first appellant had assaulted him, and therefore, he complained to the police. He further noted that the business of giving money on interest was prospering. He stated that the third respondent is not a prudent woman, and due to her habit of intoxication and due to her conduct, she got trapped in this. In the suicide note, it is further stated that the first appellant has made his life a hell.

In the facts of the case, secondly and thirdly in Section 107, will have no application. Hence, the question is whether the appellants instigated the deceased to commit suicide. To attract the first clause, there must be instigation in some form on the part of the accused to cause the deceased to commit suicide. Hence, the accused must have mens rea to instigate the deceased to commit suicide. The act of instigation must be of such intensity that it is intended to push the deceased to such a position under which he or she has no choice but to commit suicide. Such instigation must be in close proximity to the act of committing suicide.

In the present case, taking the complaint of the third respondent and the contents of the suicide note as correct, it is impossible to conclude that the appellants instigated the deceased to commit suicide by demanding the payment of the amount borrowed by the third respondent from her husband by using abusive language and by assaulting him by a belt for that purpose. The said incident allegedly happened more

than two weeks before the date of suicide. There is no allegation that any act was done by the appellants in the close proximity to the date of suicide. By no stretch of the imagination, the alleged acts of the appellants can amount to instigation to commit suicide. The deceased has blamed the third respondent for landing in trouble due to her bad habits.

2023 0 INSC 1037; 2023 0 Supreme(SC) 1190; Ram Naresh Vs. State of U.P.; Criminal Appeal No. 3577 of 2023; Decided On : 01-12-2023

A reading of Section 34 of the IPC reveals that when a criminal act is done by several persons with a common intention each of the person is liable for that act as it has been done by him alone. Therefore, where participation of the accused in a crime is proved and the common intention is also established, Section 34 IPC would come into play. To attract Section 34 IPC, it is not necessary that there must be a prior conspiracy or premeditated mind. The common intention can be formed even in the course of the incident i.e. during the occurrence of the crime.

for applying Section 34 IPC there should be a common intention of all the co-accused persons which means community of purpose and common design. Common intention does not mean that the co-accused persons should have engaged in any discussion or agreement so as to prepare a plan or hatch a conspiracy for committing the offence. Common intention is a psychological fact and it can be formed a minute before the actual happening of the incidence or as stated earlier even during the occurrence of the incidence.

The decision in Jasdeep Singh alias Jassu vs. State of Punjab, (2022) 2 SCC 545 to the effect that a mere common intention per se may not attract Section 34 IPC unless the present accused has done some act in furtherance thereof is of no assistance to the appellant as it is writ large on record as per the evidence that the appellant not only had common intention to kill the deceased Ram Kishore but also actively participated in assaulting and giving blows to the deceased Ram Kishore together with the other accused persons.

2023 0 INSC 1069; 2023 0 Supreme(SC) 1221; Surjit Singh Vs State of Punjab; Criminal Appeal No. 565 of 2012; Decided On : 07-12-2023

there is no reason to discard the testimony of Dr. Manvir Gupta (PW-13), especially about the dying declaration made before him by the deceased that she herself

consumed the tablets containing poison. His version cannot be discarded only on the ground that he did not inform the Police in writing about the disclosure made by the deceased.

even according to Surjit Singh (PW-10), the doctor, who gave certificate at 4:30 p.m. declined to give a certificate that when the statement of the deceased was being recorded, she was fit to give a statement. There is nothing brought on record to show that Dr. Sudhir Sharma examined the deceased before giving certificate of fitness at 4:30 p.m. What is most crucial is that Dr. Sudhir Sharma has not been examined as a prosecution witness. In view of the what is admitted by Surjit Singh (PW-10) in paragraph 2 in his cross-examination, which we have quoted above, an adverse inference will have to be drawn against the prosecution for not examining the said doctor. Therefore, for the aforesaid reasons, the dying declaration allegedly recorded by Surjit Singh (PW-10) will have to be discarded. Then the other dying declaration recorded by an independent doctor, namely Dr. Manvir Gupta (PW-13), holds the field. Now, what remains is the evidence of Kaushalya Devi (PW-7), the mother of the deceased. It is a version of an interested witness. A serious doubt is created in the mind of the Court about the entire prosecution case as Dr. Manvir Gupta (PW-13), who was the prosecution witness, was not declared as hostile and as one of the most crucial witnesses i.e. Dr. Sudhir Sharma was not examined. The dying declaration before Dr. Manvir Gupta (PW-13) is completely contrary to the version of Kaushalya Devi (PW-7). According to Dr. Manvir Gupta (PW-13), when the deceased was shifted to the Civil Hospital, her condition was very serious. The deceased died within one hour of recording the alleged dying declaration by Surjit Singh (PW-10).

2023 0 INSC 1073; 2023 0 Supreme(SC) 1224; Saumya Chaurasia Vs. Directorate of Enforcement; Criminal Appeal No. 3840 of 2023 @Special Leave Petition (Crl.) No. 8847/2023; Decided On : 14-12-2023

it is very much pertinent to note that when the FIR is registered under particular offences which include the offences mentioned in the Schedule to the PMLA, it is the court of competent jurisdiction, which would decide whether the Charge is required to be framed against the accused for the scheduled offence or not. The offences mentioned in the chargesheet by the I.O. could never be said to be the final conclusion as to whether the offences scheduled in PMLA existed or not, more particularly when the same were mentioned in the FIR registered against the accused. As held by the

Three-Judge Bench in Vijay Madanlal (2022 SCC Online SC 929 (SLP(Crl.) No. 4634 of 2014).), it is only in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/ her, there can be no action for money laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence.

2023 0 Supreme(Telangana) 422; Mr.Nirmal Kumar Kotecha Vs. Directorate of Enforcement; Criminal Petition Nos.11332 and 11515 of 2023; 05-12-2023

All the transactions are of the year 2011 and it appears that all the transactions are to the knowledge of the Investigating Agency. The transactions are borne by record and the evidence is circumstantial in nature. Complicity or otherwise of the petitioners can be inferred from the transactions during trial, which is unlikely in the near future. Detention cannot be by way of punishment at the stage of investigation. The apprehension of the learned Assistant Solicitor General that the petitioners are at flight risk can be dealt with by imposing conditions.

2023 0 Supreme(Telangana) 423; xyz Vs. State of Telangana and others; Writ Petition No.32872 of 2023; Decided on : 06-12-2023

Medical Board has not clarified anywhere in the report that the victim is stable/fit to undergo the pregnancy termination procedure. Admittedly the victim is pregnant with 28 to 30 weeks of gestational period. Rule 3A (i) of the Rules prescribes allowing or denying termination of pregnancy beyond Twenty Four Weeks of gestation period and further under Sub-Section 2(b) of the said Rules only after due consideration and ensuring that the procedure would be safe for the woman at that gestation age and whether the foetal malformation has substantial risk of it being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped

as per the report of the Medical Board there is no finding/observation that there is a risk to the life of the victim, if pregnancy is continued. In the report, it is opined that the victim is pregnant 28-30 weeks of gestational period with estimated fetal weight is about 1.37 kg., with salvageable fetus. But the report also suggests that the termination of pregnancy is not advisable at this junction because there will be a

chance of survival of baby with certain abnormalities and in view of such untoward affects on the baby, the termination is not advisable to avoid birth of the disabled baby who will become burden to the single parent and society, which means that if the pregnancy is terminated and if a baby is born with abnormalities, the victim would be compelled to suffer throughout the life.

in the interest of justice and in the interest of the victim and fetus/prospective child, this Court is not inclined to pass any orders against the medical advise/opinion given by the Medical Board and thereby finds no reason to exercise the jurisdiction under Article 226 of the Constitution of India for directing the pregnancy of the victim to be terminated as prayed for by the petitioner which is in an advanced stage at 28-30 weeks of gestational period as per the medical report and the prayer sought for in the writ petition is hereby rejected.

2023 0 Supreme(Telangana) 438; Syed Mohd. Naseeruddin Jilani Vs. State of Telangana Rep. by its Public Prosecutor and another; Criminal Petition No.10883 OF 2017; Decided on : 15-12-2023

If the intention of the Legislature was to include all penal provisions regarding Waqf properties, it would have been specifically mentioned in the Enactment. Nothing in the Waqf Act prohibits application of either the procedure prescribed under Cr.P.C or the penal provisions of IPC except in the specified circumstances in Section 52-A and the procedure prescribed under Section 68, while handing over charge to the successor mutawalli or management committee. Offences against property are Chapter XVII of IPC pertaining to offences against property. Chapter XVIII pertains to offences relating to documents and property marks. As already stated nothing in the Waqf Act prohibits application either Chapters XVII or XVIII of IPC.

2023 0 APHC 47720; 2023 0 Supreme(AP) 1028; Anuboina Krishna S/o Chandra Rao Vs. The State of Andhra Pradesh; Criminal Appeal No. 1316 of 2009; Decided On : 20-12-2023

The learned Special Judge relied upon a decision in Dasari Pullareddy and Another vs. State of Andhra Pradesh, 2008 (1) ALD (Cri.) 213 (AP) for the proposition that when the arrest and seizure were made in a public place, Section 42 of the NDPS Act is not at all attracted and it is covered by Section 43 of the said Act. He also made a finding that the above said decision was referred by the High Court of Andhra Pradesh

by relying the decision in Ravindran vs. Superintendent of Customs, (2007) 6 SCC 410 and extracted the observations of the Hon'ble Supreme Court as follows:

> "When arrest and seizure was made at bus stand and not in any building, conveyance or enclosed place, Section 42 of the Act was not attracted. The case was covered by Section 43, which does not require the information of any person to be taken down in writing or that officer concerned must send a copy thereof to his immediate official superior within 72 hours. It is further held that in case of search of bag carried by the accused, Section 50 is not attracted."

In fact, compliance of Section 50 of the Act would arise only when there is a personal search of the accused.

this Court would like to make it clear that compliance of Section 57 of the Act is directory.

According to Section 35 of the Act, in any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. The explanation of the above shows that "culpable mental state" includes intention, motive knowledge of a fact and belief in, or reason to believe a fact. The Hon'ble Supreme Court in Madan Lal vs. State of H.P. 2004 (1) ALT (Cri.) 30 (SC) held that once possession is established, then the person who claims that it was not a conscious possession has to establish it because how he came to be in possession is within his special knowledge.

According to Section 54 of the N.D.P.S. Act, it contemplates certain presumptions. According to the said section in trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused committed the offence under this Act in respect of any narcotic drug or psychotropic substance or controlled substance for the possession of which he fails to account satisfactorily.

It is no doubt true that the presumption under Section 54 of the N.D.P.S. Act and the presumption under Section 35 would arise after the prosecution discharged its burden to prove the recovery of the contraband from the accused.

2023 0 APHC 47194; 2023 0 Supreme(AP) 963; Kamireddi Sai Kumar Vs. The State of Andhra Pradesh; Criminal Petition No. 9339 of 2023; Decided On : 15-12-2023

The Petitioner contends that deadly weapon was not used for allegedly causing grievous injury to the Victim. In this context, learned counsel for the Defacto Complainant relies on Section 161 of Cr.P.C., statements recorded during the investigation. However, the Petitioner's counsel disputed the correctness of those statements by contending that such a version is not put forth in the First Information Report. It is settled law that an FIR is not an encyclopedia of facts, and a Victim is not expected to give details of the incident in the FIR. FIR is not an encyclopedia expected to contain all the details of the prosecution case; it may be sufficient if the broad facts of the prosecution case alone appear. If any overt act is attributed to a particular accused among the assailants, it must be given greater assurance. The statements of witnesses i.e., LWs.1 to 3 recorded under section 161 of Cr.P.C. during the investigation indicate that the Victim was beaten with a stone on his face.

This Court views that the proposition of law relied on by the Petitioner’s counsel cannot be disputed. The above citations do not show that section 161 of Cr.P.C., statements cannot be relied on while dealing with the bail applications. At this stage, it is pertinent to refer to the decision in Indresh Kumar vs. State of Uttar Pradesh and Another, 2022 Live Law (SC) 610 the Hon’ble Supreme court held that:

> The High Court has ignored the materials on record including incriminating statements of witnesses under section 164/161 of the Code of Criminal Procedure. Statements under Section 161 of Cr.P.C., may not be admissible in evidence, but are relevant in considering the prima facie case against an accused in an application for grant of bail in case of grave offence.

Even otherwise, the contents of the FIR indicate that the stones were employed in the commission of offence. At this stage, it cannot be said that the stones said to be used by the Accused persons are not dangerous weapons.

2023 0 APHC 46829; 2023 0 Supreme(AP) 978; Yogesh Gupta S/o. Late Prem Babu Gupta Vs. The State Of Andhra Pradesh Crime Investigation Department (CID); CRIMINAL PETITION NO: 7601 OF 2023; Decided on : 15-12-2023

Before granting anticipatory bail, the Court has to see the nature and seriousness of the proposed charges and the context of the events likely to lead to the making of

charges. The application seeking anticipatory bail must contain bare essential facts relating to the offence as to why the Petitioner reasonably apprehends arrest, as well as his version. These are essential for the Court, which should consider his application, to evaluate the threat or apprehension and its gravity or seriousness. While considering whether to grant anticipatory bail or refuse it, the Court should be guided by the considerations as to the nature and gravity of the offences, the role attributed to the Petitioner, and the facts of the case.

it is settled law that the apprehension of the applicant, who seeks anticipatory bail should be based on reasonable grounds. The anticipatory bail is not to be granted as a matter of routine, and it has to be granted when the Court is convinced that exceptional circumstances exist to resort to that extraordinary remedy. To consider an anticipatory bail application, the exact role of the Accused must be adequately apprehended. The Petitioner's fears are not rooted in objective facts. No material capable of examination and evaluation by the Court is placed regarding the alleged AP TIDCO scam. The Court cannot grant anticipatory bail without proper material and an understanding of the Petitioner's role. There is no material available before the Court regarding the AP TIDCO scam.

2023 0 APHC 46870; 2023 0 Supreme(AP) 1003; P. Siva Prasad S/o Venkateswarlu Vs Bodipudi Ramanamma W/o Malakondaiah; Criminal Petition No. 3298 of 2019; Decided On : 15-12-2023

Merely a civil dispute in between the petitioners and the defacto complainant, it cannot be said that a complaint was falsely instigated against the petitioners/accused herein, indeed the civil dispute is the causative or conducive for the initiation of criminal proceedings.

2023 0 APHC 46685; 2023 0 Supreme(AP) 925; Rapeti Veera Venkata Satyanarayana, S/o Late Krishna Rao Vs. The State of A.P.; Criminal Appeal No.1601 of 2007; Decided on : 13-12-2023

Turning to the decisions cited by learned counsel for the appellant, undoubtedly, mere recovery of the tainted amount is not sufficient to convict the accused. Those cases were relating to a direct trap when there were allegations under Section 7 of the PC Act and when the tainted amount was recovered from the possession of the accused. Here, as this Court already pointed out, the very act of the accused in obtaining the

consent of PW.1 to deduct a sum of Rs.417/- is nothing but an act of the accused abusing his official position and it is also an act of the accused by corrupt and illegal means by making a demand.

2023 0 APHC 46687; 2023 0 Supreme(AP) 985; The State Of A.P. Vs. Sri Velugula Krishna Samudram; Criminal Appeal No.1068 of 2007; Decided on : 13-12-2023

this Court is of the considered view that when G.O.Ms.No.423 (A), dated 31.07.1998 states categorically that there was no necessity to obtain any permission in respect of the building before construction in an extent of 100 sq. yards or sq. meters, as the case maybe, A.O. had no power whatsoever to make an order for approval of the building plan. When it was not the case of P.W.1 that A.O. demanded bribe amount so as to process, the evidence is lacking to prove the pendency of the official favour. The findings of the learned Special Judge in this regard were thorough appreciation of evidence on record.

He gave Rs.3,500/- to A.O. stating that the amount was towards discharge of debt. A.O. took the same and kept in his left side shirt pocket. Prosecution got declared him as hostile and during cross examination he denied the case of the prosecution. He admitted that his Section 164 of Cr.P.C. statement was recorded and Ex.P.2 was his signature. During cross examination by the learned Special Public Prosecutor, he deposed that he gave Ex.P.1 report with false recitals. He denied the case of the prosecution further.

he learned Special Judge gave appropriate direction to lodge a complaint in Metropolitan Magistrate or Magistrate of First Class against P.W.1 for committing the offences under Sections 193 and 211 of the Indian Penal Code (“I.P.C.” for short) by exercising powers under Section 340 r/w 195(1)(b) of Cr.P.C.

A copy of the judgment be marked to the learned Court where the perjury is pending.

2023 0 APHC 46688; 2023 0 Supreme(AP) 986; State Rep By Spl Pp., Anti-Corruption Bureau, Eluru Range Vs. Sri Ravi Rama Mohan Rao; Criminal Appeal No.1464 of 2007; Decided on : 13-12-2023

The Constitutional Bench of the Hon’ble Supreme Court in Neeraj Dutta v. State (Government of NCT of Delhi, (2022) SCC OnLine SC 1724 categorically held that to have the benefit of presumption under Section 20 of the P.C. Act, the duty of the prosecution is to establish the foundational facts. Here, the prosecution did not prove

the foundational facts. On account of the conduct of P.W.3, he met with consequences of facing perjury. That cannot be a ground to say that A.O. committed the offence. In my considered view, the prosecution had no benefit of the presumption under Section 20 of the P.C. Act, especially, when the evidence of P.W.3 is that he repaid a sum of Rs.1,000/- to A.O. on the date of trap which was due by him.

2023 0 APHC 46116; 2023 0 Supreme(AP) 953; Sankranthi @ Sankuranthri Sankar S/o Late Chinna Bralunaiah Vs. The State of Andhra Pradesh; Writ Petition No. 27747 of 2023; Decided On : 12-12-2023 (DB)

the Detaining Authority having considered that the detenu is involved in drug offending activities in different places and her activities are giving scope of effecting public health adversely as she was found in possession of Ganja, Cannabis (Hemp) and selling to the general public, particularly the youth and students, the most vulnerable section of the society being affected adversely at larger extent and also having considered that though she was arrested and sent to judicial custody, however in every case she was enlarged on bail on taking advantage of legal provisions governing the bail and thus the provisions of NDPS Act, 1985 are deficient to prevent her from indulging in dangerous drug offences which adversely effect the public health at large, has ultimately ordered her detention. In our considered view, the Detaining Authority has punctiliously considered and analyzed the circumstances weighing against her, particularly her unabatedly indulging in drug effecting offences and getting bail and again indulging in the similar activities, ordered her detention. Therefore, the contention of the petitioner that the authority has not scrupulously exercised his discretion to arrive at the subjective satisfaction is incorrect.

2023 0 APHC 46115; 2023 0 Supreme(AP) 954; Palepu Seenaiah S/o Ramanaiah Vs. The State of Andhra Pradesh; Criminal Appeal No. 555 of 2008; 12-12-2023

Firstly, this court would like to make it clear that the fact that the learned Additional Sessions Judge extended an order of acquittal with regard to certain charges against the present appellant as well as charges against other accused does not mean that the case of the prosecution against the present appellant is false.

P.W.1 and P.W.5 were the natural witnesses because they were husband and wife respectively at the time of incident in their house and further as the place of offence was at the house of them.

It is to be noted that P.W.5 is no other than the wife of P.W.1. She was a daughter of A.4 and A.5 and sister of A.1 to A.3. She would not have ventured to support the case of the prosecution falsely had the incident been not true. During cross examination of P.W.5, the defence counsel suggested to her that on account of the pressure meted out to her from P.W.1 and his supporters, she deposed false and she denied the said suggestion.

P.W.6 and P.W.7 who were the immediate neighbours had no reason to depose false against the accused. No circumstances were brought in, in their evidence to disbelieve the case of the prosecution. Though Ex.D.1 to Ex.D.5 were marked, they were not at all material with regard to the incident in question. In spite of probing cross examination nothing could be elicited from the mouth of P.W.1, P.W.4, P.W.5, P.W.6 and P.W.7 to disbelieve the case of the prosecution insofar as the overt acts attributed against A.1 is concerned, as having made attack on the deceased as well as P.W.4.

2023 0 APHC 46114; 2023 0 Supreme(AP) 955; L.V. Gopal Swamy S/o Venkata Reddy Vs. State of Andhra Pradesh; Criminal Appeal No. 1001 of 2007; 11-12-2023

mere recovery of the tainted amount is not sufficient to convict the accused in the absence of demand, as contemplated under Sections 13(1)(d)(i) and (ii) of the PC Act. In view of the legal position, demand is a sine-qua-non even to prove the charge under Section 13(1)(d)(i) and (ii) of the PC Act. In my considered view, having recorded an order of acquittal for the charge under Section 7 of the PC Act on the ground that prosecution failed to prove the demand, the learned Special Judge totally erred in recording a conviction against AO for the offence under Section 13(1)(d) R/w. Section 13(2) of the PC Act.

2023 0 APHC 45324; 2023 0 Supreme(AP) 974; M.Dhana Koteswara Rao s/o Uma Maheshwara Rao and ors. Vs State of AP, through S.H.O. Penamaluru Police Station and ors.; Criminal Petition No: 2291 of 2019; Decided On : 07-12-2023

In Naganagouda Veernagouda Patil vs Maltese H Kulkarni, 1998 CRL.L.J. 1707, a Division Bench of Karnataka High Court held that:

> "The consistent view taken in these cases is that since Section 200, Cr.P.C. prescribes that the Court shall examine the complainant ..... that it is not open to

the complainant's learned Advocate to conduct the examination-in-chief and that if such a procedure is followed, that it is in breach of the mandatory provisions of Section 200, Cr.P.C.

When once the Magistrate resorts to take cognizance of the offence which is triable exclusively by a Court of Sessions, by application of Section 200 Cr.P.C., it is imperative on the part of the Magistrate after taking cognizance of the offence to call upon the complainant to examine him on oath. The failure on the part of the Magistrate to comply with this statutory direction given under Section 200 Cr.P.C. would vitiate the further proceedings taken by the Magistrate, as the Section specifically says when Magistrate takes cognizance, shall examine the complainant on oath.

2023 0 APHC 47110; 2023 0 Supreme(AP) 988;(DB) K Kameswari Vs. The State of Andhra Pradesh, Represented by its Chief Secretary, Secretariat Buildings, Amaravathi at Velagapudi, Guntur District.; WRIT PETITION NO: 25532 OF 2023; Decided On : 07-12-2023

2023 0 APHC 46966; 2023 0 Supreme(AP) 993; Pangi Eswari Vs. The State of Andhra Pradesh, Represented by its Chief Sescretary, Secretariat Buildings, Amaravathi at Velagapudi, Guntur District; WRIT PETITION NO 25524 OF 2023; Decided On : 06-12-2023

it is clear that when a detenu is already under judicial custody in connection with some or all cases, the Detaining Authority has to take note of the factum of his judicial custody and record its satisfaction that there is a likelihood of his being released on bail so as to buttress the preventive detention order.

2023 0 APHC 45109; 2023 0 Supreme(AP) 913; Nunasavath Naga Raju and Ors. Vs. State Of A.P. rep.by SI of Police, Iissannapet Police Station, through Public Prosecutor, High Court of A.P. and Anr.; Criminal Petition No. 556 Of 2020; Decided On : 05-12-2023

The first information report alleges that all the accused have been demanding additional dowry of Rs.2,00,000/- and for not bringing it they were abusing and beating her. Thus, the allegations indicate physical abuse of victim woman on more than one occasion. Charge sheet as well as F.I.R. are silent as to the woman receiving any specific physical injuries. The charge sheet is absolutely silent as to whether the

investigating officer tried to find out what injuries were sustained and whether the victim woman took any medical treatment etc., facts. Such material is necessary because the cruelty contemplated under Section 498-A I.P.C. is of such nature and the acts attributed must either drive the woman to commit suicide or must be such that living with the family would cause grave danger to life or limb. A mere allegation that husband and others beat the woman by itself does not satisfy the essential ingredients of cruelty mandated under Section 498-A I.P.C. by the legislature. All those aspects are absolutely silent in the charge sheet. A reading of the first information report as well as charge sheet would show that on three occasions either before the elders or before the police the matter was settled between the husband and his family members on one side and the victim and her family members on the other side. When once the matters were so settled, they could not once again become facts for taking cognizance. Viewed from that angle the latest of the allegations only show that it was from November, 2018 the accused beat the victim woman and her husband attempted to squeeze her neck and she cried and others came and rescued her and she left her matrimonial home and she was there with her parents and on receiving notices in divorce case filed by her husband she conferred with her family members and others and finally lodged the first information. Thus, there is only one omnibus allegation on some unspecified date in November, 2018 that forms part of the record as a ground for taking cognizance. No specific details are there. Nothing perceptible is seen. Further, initiation of criminal case did not take place soon after the alleged incidents and it started long after receipt of divorce notices from the husband. Looking at the facts through the prism of ratios referred earlier, this Court finds that initiation and continuation of C.C.No.786 of 2019 is against the principles laid down in the Code of Criminal Procedure and is abuse of process of Court. Point is answered in favour of the petitioners.

2023 0 APHC 45382; 2023 0 Supreme(AP) 971; B.Nanda Kishore Vs State Of AP and ors.; Criminal Petition No: 1967 of 2019; Decided On : 04-12-2023

After reading the entire judgment of Hon’ble Supreme Court in Rajiv Modi v. Sanjay Jain and others (2009) 13 SCC 241 and judgements quoted therein the following is summarized on the issue of territorial jurisdiction: that the High court wouldn't justify to quash the complaint on the ground that no cause of action has arisen in respect of the offences under the provisions of IPC, that even if a small fraction of the cause of action

arises within the jurisdiction of the Court, the Court would have territorial jurisdiction to entertain the case and to constitute territorial jurisdiction, the whole or a part of a cause of action must have arisen within the territorial jurisdiction of the court and the same must be decided on the basis of the averments made in the complaint without embarking upon an enquiry as to the correctness or otherwise of the said facts and the High Court has no jurisdiction to examine correctness or otherwise of the allegations and the High Court would have to proceed entirely on the basis of allegations made in the complaint and would restricted to ascertaining whether on the allegations, a cause of action is shown, the jurisdiction does not extend to trial of issues which must fairly be decided on the hearing. If it is prima facie of the opinion that the whole or a part of cause of action has arisen in its jurisdiction, it can certainly take cognizance of the complaint. There is no need to ascertain that the allegations made are true in fact. Great care should be taken by the High Court before embarking to scrutinize the FIR/charge sheet/ complaint, on reading of the complaint or FIR, if the Court does not found any cognizable offence within the Court may embark upon the consideration thereof and exercise the power and it is not the function of the Court to weigh the pros and cons of the prosecution case or to consider the necessity of strict compliance with the provisions which are considered mandatory and its effect of non-compliance.

2023 0 APHC 46429; 2023 0 Supreme(AP) 1000; Naralasetty Meera Bai The State of Andhra Pradesh; I.A.Nos.3 & 2 of 2023 and Crl.P.No.8928 of 2023 and Crl.P.No.8393 of 2023; Decided on : 04-12-2023

When this Court questioned the complainant with regard to compromise, he reiterated the averments in the affidavit filed in support of I.A.Nos.2 of 2023 and 3 of 2023 and categorically stated that he voluntarily and willingly entered into compromise with the petitioner/accused without any force or pressure from any quarter and he has no objection to quash the proceedings against him. Therefore, in view of the aforesaid decision of the Hon’ble Apex Court and as the parties have entered into a compromise, the chances of conviction are bleak and remote. In the circumstances, I.A.Nos.2 & 3 of 2023 is allowed and the petitioner/accused and the 2nd respondent-complainant are permitted to compound the offence and in view of the joint memo, the compromise is recorded. The Joint Memo filed by the parties shall form part of this order.

2023 0 APHC 45064; 2023 0 Supreme(AP) 915; Gazula Venkata Ramana, S/o. G.S. Prakasa Rao Vs. The State Of Andhra Pradesh, Rep. by its Principal Secretary, Home Department and Ors.; Writ Petition No. 29605 Of 2022; Decided On : 01-12-2023

The Supreme Court in the case of Sindhu Janak Nagargoje (2023 Live Law (SC) 639) has followed the decision of the Constitution Bench and has not specifically dealt with the question decided in Sakiri Vasu ((2008) 2 Supreme Court Cases 409) and later decision in M. Subramaniam ((2020) 16 Supreme Court Cases 728), nor were these decisions dealt with.

https://indiankanoon.org/doc/34095107/; Kerkatta Pradeep Kumar A2 Hyd., vs State Of T.S., Rep. Pp. Hyd., on 18 December, 2023; CRIMINAL APPEAL No.461 of 2014 AND CRIMINAL APPEAL No.318 of 2015

the Supreme Court in Ravi @ Ravichandran vs. State represented by Inspector of Police 1, wherein it was 2008 (1) ALT (Crl.) 108 (SC) 22 KL, J & PSS, J Crl.A.Nos.461 of 2014&318 of 2015 held that Test Identification Parade was required to be held as early as possible so as to exclude the possibility of the accused being identified either at the police station or at some other place by the concerned witnesses or with reference to the photographs published in the newspaper.

Recovery of weapon used in the commission of offence basing on the confession of A-1 is concerned, P.W.10- Inspector of Police stated that he recovered M.O.7-Knife at the instance of A-1 at Jodumetla village near Narapally, which is at a distant place, and it is an open place accessible to the public. He admitted in his cross-examination that M.O.7 is available in the open market. As per the evidence 26 KL, J & PSS, J Crl.A.Nos.461 of 2014&318 of 2015 of P.W.4-Doctor, the deceased died due to stab injury on chest. But, M.O.7 was not sent to F.S.L. to know whether the injury caused to the deceased was with the same knife or not. P.W.10 stated that in Ex.P7, A-1 also confessed that with the stolen amount, he purchased M.Os.11 to M.O.13 i.e., one Sansui colour Television, One VCD player along with music system and one Bajaj Chetak scooter. However, P.W.10 stated in his cross-examination that he did not investigate into the ownership particulars of M.O.13 and also as to where M.Os.11 and 12 were purchased. He further stated that he did not mention the size of knife in Ex.P10.

https://indiankanoon.org/doc/88589306/; Neeli Krishnaiah vs State Of Telangana, Hyd., on 13 December, 2023; CRIMINAL APPEAL NO.395 OF 2015

The parents of the victim engaged services of accused auto driver, believed him and sent their girl child in his auto. The victim girl who is aged about 8 years believed the words of accused, she was taken by the accused under the guise of taking her to home, taken her to secluded place and committed rape on her. Though, defense of the accused that false case is filed against him, no cogent reason is elicited in cross-examination to prove the same. Therefore, there is no illegality in convicting the accused for the offence under Section 376 (2) (f) of IPC and Section 4 of the POCSO Act. Further, the accused threatened her not to reveal the incident to anybody and threatened to kill her. As such, the offence under Section 506 of IPC is also proved by the prosecution. Accordingly, the point is answered.

The victim is a minor girl aged about 8 years. Her statement under Section 161 Cr.P.C., and the evidence on record is consistent and there are no contradictions in her statement given to the police and before the judicial officer and there is no ground to disbelieve her evidence.

https://indiankanoon.org/doc/6650035/; Syed Mohd Naseeruddin Jilani vs The State Of Telangana; 15 December, 2023; Criminal Petition No.10883 OF 2017

Section 52-A and Section 68 of the Act confine to the specific contingencies mentioned in the provisions. If the intention of the Legislature was to prohibit application of any other enactments including IPC, there would have been specific mention in the provision or the enactment itself by adding non obstante clause. Non obstante clause refers to a statutory provision intended to give an overriding effect over other provisions or enactments. Any provision cannot be read to include what is not intended by the Legislature nor what is not specified in any provision or enactment.

If the intention of the Legislature was to include all penal provisions regarding Waqf properties, it would have been specifically mentioned in the Enactment. Nothing in the Waqf Act prohibits application of either the procedure prescribed under Cr.P.C or the penal provisions of IPC except in the specified circumstances in Section 52-A and the procedure prescribed under Section 68, while handing over charge to the successor mutawalli or management committee. Offences against property are Chapter- XVII of IPC pertaining to offences against property. Chapter XVIII pertains to offences

relating to documents and property marks. As already stated nothing in the Waqf Act prohibits application either Chapters XVII or XVIII of IPC.

COMMON INTENTION

paragraph 26 of the decision of this Court in Krishnamurthy alias Gunodu and Ors. vs. State of Karnataka, (2022) 7 SCC 521, which is reproduced herein below.

> "26. Section 34 IPC makes a co-perpetrator, who had participated in the offence, equally liable on the principle of joint liability. For Section 34 to apply there should be common intention between the co-perpetrators, which means that there should be community of purpose and common design or prearranged plan. However, this does not mean that co-perpetrators should have engaged in any discussion, agreement or valuation. For Section 34 to apply, it is not necessary that the plan should be prearranged or hatched for a considerable time before the criminal act is performed. Common intention can be formed just a minute before the actual act happens. Common intention is necessarily a psychological fact as it requires prior meeting of minds. In such cases, direct evidence normally will not be available and in most cases, whether or not there exists a common intention has to be determined by drawing inference from the facts proved. This requires an inquiry into the antecedents, conduct of the co-participants or perpetrators at the time and after the occurrence. The manner in which the accused arrived, mounted the attack, nature and type of injuries inflicted, the weapon used, conduct or acts of the co-assailants/ perpetrators, object and purpose behind the occurrence or the attack, etc. are all relevant facts from which inference has to be drawn to arrive at a conclusion whether or not the ingredients of Section 34 IPC are satisfied. We must remember that Section 34 IPC comes into operation against the co-perpetrators because they have not committed the principal or main act, which is undertaken/performed or is attributed to the main culprit or perpetrator. Where an accused is the main or final perpetrator, resort to Section 34 IPC is not necessary as the said perpetrator is himself

individually liable for having caused the injury/offence. A person is liable for his own acts. Section 34 or the principle of common intention is invoked to implicate and fasten joint liability on other co-participants."

BAIL

In the case of P.Chidambaram v. Directorate of Enforcement reported in (2020) 13 SCC 791, the rule of bail was discussed at paragraph 23:

"23. Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not

be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial."

DANGEROUS WEAPONS X DEADLY WEAPON

In Prabhu vs. State of Madhya Pradesh, Crl. Appeal No. 1956 of 2008 and SLP (Crl.) No. 1418 of 2008 the Hon'ble Supreme Court held that:

13……At this juncture, it would be relevant to note that in some provisions e.g. Sections 324 and 326 expression "dangerous weapons" is used. In some other more serious offences the expression used is "deadly weapon" (e.g. Sections 397 and 398). The facts involved in a particular case, depending upon various factors like size, sharpness, would throw light on the question whether the weapon was a dangerous or deadly weapon or not. That would determine whether in the case Section 325 or 326 would be applicable.

CHARGE SHEET OF CASE TRIABLE BY SESSIONS COURT

the Hon'ble Apex Court in Ajay Kumar Parmar v. State of Rajasthan, 2012 (12) SCC 406 in which by following the judgment of Apex court in Sanjay Gandhi's case is held in paragraph nos. 9 and 10.

"In Sanjay Gandhi v. Union of India, AIR 1978 SC 514, this court while dealing with the competence of the Magistrate to discharge an accused, in a case like the instant one at hand, held :

"….it is not open to the committal Court to launch on a process of satisfying itself that a prima facie case has been made out on the merits. The jurisdiction once vested in him under the earlier Code but has been eliminated now under the present Code. Therefore, to hold that he can go into the merits even for a prima facie satisfaction is to frustrate the Parliament's purpose in re-moulding Section 207-A (old Code) into its

present non-discretionary shape. Expedition was intended by this change and this will be defeated successfully if interpretatively we hold that a dress rehearsal of a trial before the Magistrate is in order. In our view, the narrow inspection hole through which the committing Magistrate has to look at the case limits him merely to ascertain whether the case, as disclosed by the police report, appears to the Magistrate to show an offence triable solely by the Court of Session. Assuming the facts to be correct as stated in the police report, ...the Magistrate has simply to commit for trial before the Court of Session. If, by error, a wrong section of the Penal Code is quoted, he may look into that aspect. If made-up facts unsupported by any material are reported by the police and a sessions offence is made to appear, it is perfectly open to the Sessions Court under Section 227 CrPC to discharge the accused. This provision takes care of the alleged grievance of the accused." (Emphasis added)

SANCTION BEFORE PRIVATE COMPLAINT AGAINST PUBLIC SERVANT

State of U.P. vs. Paras Nath Singh [(2009) 6 SCC 372] and Subramanian Swamy vs. Manmohan Singh [(2012) 3 SC 64], it has been held that, the Magistrate cannot order investigation against a public servant while invoking powers u/s 156(3) Cr.P.C. without previous sanction from the competent authority.

- The Advocates (Amendment) Act, 2023 published 8.12.2023.
- The Repealing and Amendment Act, 2023 published 18.12.2023.
- The Bharatiya Nagarik Suraksha Sanhita, 2023 published 25.12.2023
- The Bharatiya Nyaya Sanhita, 2023 published 25.12.2023.
- The Bharatiya Saksya Adhiniyam, 2023 published 25.12.2023.

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ON A LIGHTER VEIN

The local United Way office realized that it had never received a donation from the town's most successful lawyer. The volunteer in charge of contributions called him to persuade him to contribute. "Our research shows that out of a yearly income of more than $600,000 you give not a penny to charity. Wouldn't you like to give back to the community in some way?"

The lawyer mulled this over for a moment and replied, "First, did your research also show that my mother is dying after a long illness, and has medical bills that are several times her annual income?"

Embarrassed, the United Way rep mumbled, "Um... No."

"Second, that my brother, a disabled veteran, is blind and confined to a wheelchair?" The stricken United Way rep began to stammer out an apology but was put off. "Third, that my sister's husband died in a traffic accident," the lawyer's voice rising in indignation, "Leaving her penniless with three children?"

The humiliated United Way rep, completely beaten, said simply, "I had no idea..." On a roll, the lawyer cut him off once again, "...And I don't give any money to them, so why should I give any to you?!"

Anonymous

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