Prosecution Replenish

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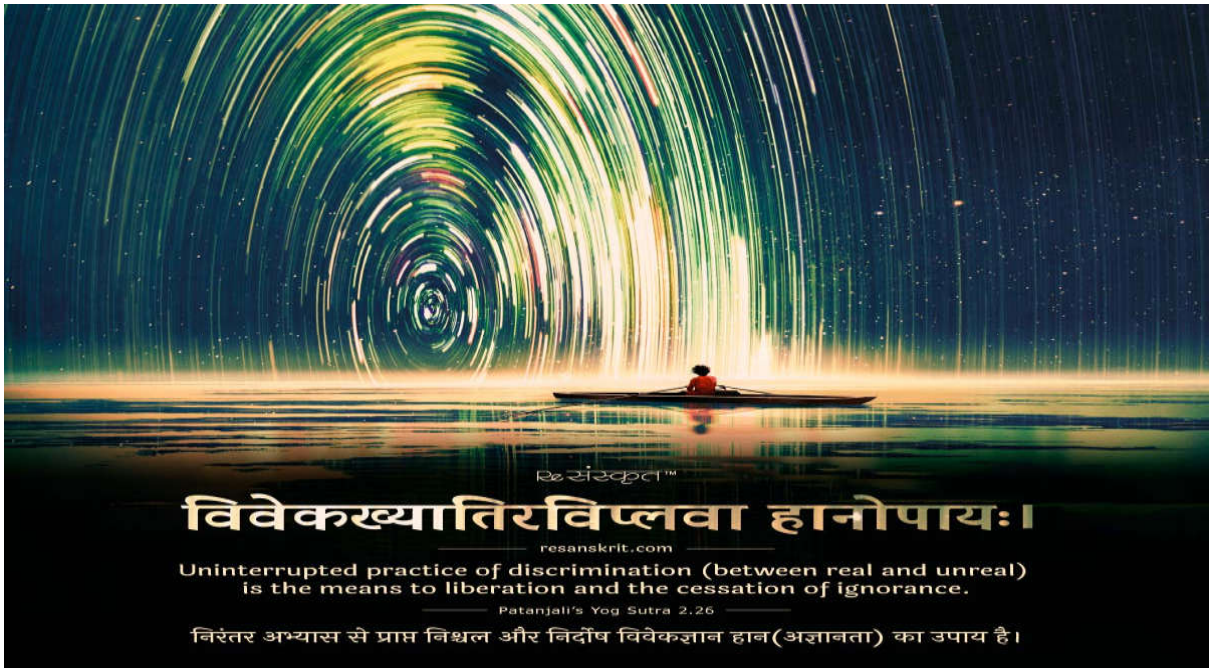
Aano Bhadr Kratvo Yantu Viswatah
(Let Noble Thoughts Come To Me from All Directions)



Vicarious Liability as mentioned in Sec 149 IPC

https://indiankanoon.org/doc/21002946/; Perla Yellaiah, Visakhapatnam vs The State Of AP, on 27 June, 2024; CRLA 609/2017 & Batch

Generally there is no vicarious liability under criminal law except in few instances, one of which is, when a member of unlawful assembly commits an offence in prosecution of common object of that assembly or if the members of such assembly knew it to be likely to be committed, every person who was a member of the said assembly at the time of commission of the offence will be guilty of that offence though he himself has not perpetrated that offence. This is precisely one of the instances of fastening criminal liability on one person vicariously for the offence committed by another person. Chapter VIII of the IPC under the heading of offences against the public tranquillity deals with the nuances of unlawful assembly.

(a) Section 141 defines unlawful assembly thus:

"141. An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is -

First.- To overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislative of any State, or any public servant in the exercise of the lawful power of such public servant; or Second.- To resist the execution of any law, or of any legal process; or Third.- To commit any mischief or criminal trespass, or other offence; or Fourth.- By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or Fifth.- By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.- An assembly, which was not unlawful when it assembled, may subsequently become an unlawful assembly."

The ingredients of unlawful assembly are

(i) there is an assembly of five persons

(ii) the assembly had a common object and

(iii) the common object is to do one or more of the illegal acts specified in section.
(iv) the explanation: An assembly which at its beginning was not an unlawful assembly, may subsequently become an unlawful assembly.
(a) Thus an assembly of five or more persons having its common object any of the five objects enumerated under section 141 IPC is deemed to be an unlawful assembly. Membership of an unlawful assembly is itself an offence punishable under section 143 of IPC for a term which may extent to six months or with fine or with both. The other species of the said offence are dealt with under sections 143 to 145.
(b) We have seen that mere membership in unlawful assembly itself is an independent offence. Then the question is when the members of unlawful assembly commits an act in furtherance of the common object, what is the sentence provided there-for. Section 146 to 148 of IPC deal with the offence of rioting. Section 146 lays down that whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of common object of such assembly, every member of such assembly is guilty of the offence of rioting and punishable for a term which may extend to two years or with fine or with both under section 147. Then the aggravated form of rioting is using arms or deadly weapons for committing rioting. Section 148 lays down that whoever is guilty of rioting being armed with deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with a term extended upto three years.
5. Then the constructive liability among the members of unlawful assembly is more vividly pronounced under Section 149 of IPC. This section reads thus:
"149. If an offence is committed by any member of an unlawful assembly in prosecution of the common object or that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence."
The section has the following ingredients:
1. There must be an unlawful assembly.
2. Commission of an offence by any member of an unlawful assembly.
3. Such offence must have been committed in prosecution of the common object of the assembly; or must be such as the members of the assembly knew to be likely to be committed.
(a) Thus section 149 is a specific, distinct and substantive offence. When a person falls within the groove of unlawful assembly and any other member of unlawful assembly commits an offence, then former cannot putforth a defence that he himself, did not commit the offence with his own hands. The constructive culpability is thus explained in this section. The principle of vicarious liability in criminal law has been more vividly extrapolated in different cases by Hon'ble Apex Court.
(i) In Masalti v. State of U.P.4 the Apex Court observed that section 149 is in a sense vicarious and does not always proceed on the basis that the offence has been actually committed by every member of the unlawful assembly.
(ii) Expressing similar view, in Lalji and Ors v. State of U.P.5 the Apex Court held that it is not necessary for each member of an unlawful assembly to do an overt act to fasten him with criminal liability. It was observed thus:
"9. Section 149 makes every member of an unlawful assembly at the time of committing of the offence guilty of that offence. Thus this section created a specific and distinct offence. In other words, it created a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. However, the vicarious liability

of the members of the unlawful assembly extends only to the acts done in pursuance of the common object of the unlawful assembly, or to such offences as the members of the unlawful assembly knew to be likely to be committed in prosecution of that object. Once the case of a person falls within the ingredients of the section the question that he did nothing with his own hands would be immaterial. He cannot put forward the defence that he did not with his own hands commit the offence committed in prosecution of the common object of the unlawful AIR 1965 SC 202 AIR 1989 SC 754 assembly or such as the members of the assembly knew to be likely to be committed in prosecution of that object. Everyone must be taken to have intended the probable and natural results of the combination of the acts in which he joined, It is not necessary that all the persons forming an unlawful assembly must do some overt act. When the accused persons assembled together, armed with lathis, and were parties to the assault on the complainant party, the prosecution is not obliged to prove which specific overt act was done by which of the accused. This section makes a member of the unlawful assembly responsible as a principal for the acts of each, and all, merely because he is a member of an unlawful assembly. While overt act and active participation may indicate common intention of the person perpetrating the crime, the mere presence in the unlawful assembly may fasten vicariously criminal liability under Section
149. It must be noted that the basis of the constructive guilt under Section 149 is mere membership of the unlawful assembly, with the requisite common object or knowledge."
(iii) In Bhudeo Mandal and Ors v. State of Bihar 6 the Apex Court observed that common object is the sine qua non to punish a person with the aid of section 149. It was observed thus:
"1.xxx We should like to point out that whenever the High court convicts any person or persons of an offence with the aid of Section 149 a clear finding regarding the common object of the assembly must be given and the evidence discussed must show not only the nature of the common object but also that the object was unlawful. Before recording a conviction under Section 149 of the Indian Penal Code, the essential ingredient of Section 141 of the Indian Penal Code must be established. Section 149 creates a specific offence and deals with the punishment of that offence. There is an assembly of five or more persons having a common object and the doing of acts by members is in prosecution of that object. The emphasis is on common object.xxxx"
(iv) In Musakhan and Ors v. State of Maharashtra7 the Apex Court held that mere presence in the mob will not make a person a member of an unlawful assembly. It observed thus:
"5. xxxx It is well settled that a mere innocent presence in an assembly of persons, as for example a bystander, does not make the accused a member of an unlawful assembly, unless it is shown by direct or circumstantial evidence that the accused AIR 1981 SC 1219 AIR 1976 SC 2566 shared the common object of the assembly. Thus a court is not entitled to presume that any and every person who is proved to have been present near riotous mob at any time or to have joined or left it at any stage during its activities is in law guilty of every act committed by it from the beginning to the end, or that each member of such a crowd must from the beginning have anticipated and contemplated the nature of the illegal activities in which the assembly would subsequently indulge. In other words, it must be proved in each case that the person concerned was not only a member of the unlawful assembly at some stage, but at all the crucial stages and shared the common object of the assembly at all these stages. xxxx"

(v) Above similar view is expressed in Bishambher Bhagat and Ors. v. State of Bihar8. The Supreme Court observed that mere presence of a person at the place where members of an unlawful assembly have gathered for carrying out their illegal common object, does not incriminate him. But the question is one of the fact in each case as to whether a person happens to be innocently present at the place of the occurrence or was actually a member of the unlawful assembly.
(vi) In Bhagwan Singh and Ors v. State of Madhya Pradesh9 the Apex Court held thus:
"9. Common object, as contemplated by Section 149 of the Indian Penal Code, does not require prior concert or meeting of minds before the attack. Generally no direct evidence is available regarding the existence of common object which, in each case, has to be ascertained from the attending facts and circumstances. When a concerted attack is made on the victim by a large number of persons armed with deadly weapons, it is often difficult to determine the actual part played by each offender and easy to hold that such persons attacked the victim had the common object for an offence which was known to be likely to be committed in prosecution of such an object. It is true that a mere innocent person, in an assembly of persons or being a by-stander does not make such person a member of an unlawful assembly but where the persons forming the assembly are shown to be having identical interest in pursuance of which some of them come armed, others though not armed would, under the normal AIR 1971 SC 2381 (2002) 4 SCC 85 circumstances, be deemed to be the members of the unlawful assembly.
In this case the accused persons have been proved to be on inimical terms with the complainant-party. The enmity between the parties had been aggravated on account of litigation with respect to the dispute over the mango trees. Accused persons who came on the spot are shown to have come armed with deadly weapons. The facts and circumstances of the case unequivocally prove the existence of the common object of such persons forming the unlawful assembly who had come on the spot and attacked the complainant party in consequence of which three precious lives were lost. The High Court was, therefore, justified in holding that the accused persons, involved in the occurrence, had shared the common object."
6. Thus the jurimetrical jurisprudence on constructive liability envisaged in section 149 IPC tells us that a person can be vicariously held liable for the criminal act of an another person provided the former is proved to be a member of unlawful assembly sharing the common object to commit an offence. However, mere presence of a person will not automatically make him a member of unlawful assembly. Whether a person is member of such unlawful assembly is a question of fact. With this knowledge the case on hand has to be scrutinized.

CITATIONS

https://indiankanoon.org/doc/35260071/; M/S. Hindustan Unilever Ltd vs The State Of Telangana on 3 June, 2024; CRLP 5596/2023

In view of my observations above and also the judgments cited supra, once the offence has been compounded, the question of proceeding against this petitioner does not arise. The complaint cannot selectively make an application before a Court stating that he intends to compound the offence against one accused and continue prosecution against another. It is apparent from Section 320 Cr.P.C. that compounding would be of the offence and not against a particular offender.

https://indiankanoon.org/doc/87646765/; Divyanshu Jain vs The State Of Telangana, on 3 June, 2024; CRLP 8529/2023

Further, a perusal of the record reveals that the investigation is not yet concluded and without investigation, this Court cannot conclude that it is a false case and the cause of death has to be investigated by the Police. Therefore, at this stage, proceedings cannot be quashed against the petitioners.

https://indiankanoon.org/doc/26499818/; P.V.Parameshwar Rao vs The State Of Telangana on 3 June, 2024; CRLP 5600/2024

it is made clear that the counsel for the petitioner shall furnish the correct address and contact particulars of the petitioner to the Additional Public Prosecutor appearing in this petition, for communication in turn to the concerned Police for service of notice under Section 41-A of Cr.P.C., and for further proceedings.

https://indiankanoon.org/doc/69941186/; Pailla Anjaneyullu vs The State Of Telangana on 3 June, 2024;CRLA 509/2021

In the case before this Court, the bonafide certificate (Ex.P4) issued by the Government High School is available which shows the age of the victim to be around 14 years, while the in the age certificate (Ex.P10) given by the Assistant Dental Surgeon/P.W.12 on the basis of oral examination, it is mentioned as 15 years. The medical certificate (Ex.P11) given by the medical officer/P.W.13 is apparently not on the basis of any test conducted by him. In view of the same, it is clear that the certificate given by the Head Master, Government High School, Atmakur is corroborated and supported by the evidence of the age certificate given by P.W.12. Therefore, this Court is also satisfied that the victim girl was under the age of 18 years at the time of commission of the offence and therefore, the presumptions to be drawn are against the accused both under IPC as well as POCSO Act.

The trial Court also observed that P.W.3 is the only witness for the alleged incident of sexual assault by the accused and also the argument of the learned counsel for the accused is that P.W.3 victim girl was a consenting party to all the alleged acts committed by the accused. The trial Court, however, observed that since the victim girl was a minor, i.e., under 18 years of age, the question of giving her consent is immaterial to come to a just conclusion both under Section 375 of IPC and also under Sections 29 and 30 of POCSO Act. Thus, the trial Court held the accused guilty for the offences under Section 5(l) of POCSO Act and punishable under Section 6 of the POCSO Act and also under Section 376(2)(i) and (n) of IPC.

As regards Point No.(4) for the offence under Section 420 of IPC, the trial Court observed that the testimonies of P.Ws.1 to 3 and 6 clearly show that the accused, by making false promise to marry P.W.3, made her to participate in sexual intercourse with the accused and later on, refused to marry her and therefore, has committed the offence under Section 420 of IPC.

https://indiankanoon.org/doc/119923615/; M.A. Qavi Abbasi vs The State Of Telangana on 3 June, 2024; WP 28000/2023

As per the decision of this Court 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. As seen from the above discussion, there are only two criminal cases pending against the petitioner, hence, the continuance of rowdy sheet against the petitioner is unsustainable.

The writ petition is allowed and the respondents are directed to forthwith close the rowdy sheet opened against the petitioner. This order, however, shall not preclude the respondents from opening rowdy sheet against the petitioner, in accordance with law, if he is involved in more than two criminal cases and if the conditions stipulated under Police Standing Order 601 of the Telangana Police Manual are attracted.

https://indiankanoon.org/doc/53538914/; Mallavarapu Veera Reddy vs The State Of Telangana on 3 June, 2024; CRLP 2822/2024

A plain reading of the above would abundantly make it clear that Section 6 of the Act does not attract the customers who approach a brothel house or a woman in prostitution.

It is pertinent to note that as per prosecution, the petitioners/accused Nos.3 and 4 are found at the scene of offence in the capacity of customer. Therefore, in view of the above discussion and provision of law, this Court is of the considered opinion that continuation of proceedings against the petitioners/accused Nos.3 and 4, under Section 6 of the Act, are undesirable and the same are liable to be quashed.

(The earlier judgment in case between S.Naveen Kumar Vs State of Telangana, stated that Section 370A IPC was attracted for Customers. It appears that the said judgment was not brought to the notice of the Hon'ble Court)

https://indiankanoon.org/doc/180851389/; Satturi Shekar Goud vs The State Of Telangana on 6 June, 2024; CRLP 5730/2024

Learned Assistant Public Prosecutor submitted that the Police filed alteration memo and the Sections were altered from 324 of IPC to Section 326 read with 34 of IPC and further Section 307 of IPC and Section 3(2)(v) of the Act were added. He further submitted that more than 10 cases are pending against petitioner No.1/accused No.1 and he is habitual offender of illegal transportation of cows.

Without going into the merits of the case, the punishment prescribed for the offence alleged against the petitioners is less than seven (07) years. However, there are allegations against petitioner No.1/accused No.1 and there are no allegations against petitioner Nos.2 to 5/accused Nos.2 to 5, this Court deems it appropriate to direct petitioner Nos.2 to 5/accused Nos.2 to 5 to appear before the Investigating Officer on or before 14.06.2024 between 11:00 a.m. and 05:00 p.m. and inturn the Investigating Officer is directed to follow the procedure laid down under Section 41-A Cr.P.C. and also the guidelines formulated by the Hon'ble Supreme Court in Arnesh Kumar v. State of Bihar scrupulously.

(41A CRPC notice directed to be served in case under Section 307 IPC)

https://indiankanoon.org/doc/55797721/; **Akkala Anjaneyulu vs The State Of Telangana on 5 June, 2024; CRLP 4591/2023**

Having regard to the rival submissions, and material on record though there are allegations as per the statement and victim and complaint given to the police, and police also filed charge sheet stating the same whereas the statement given to the Magistrate under Section 164 Cr.PC, she clearly stated that no such offence took place on the date of incident, and she went to her friend's home and when she did not return her mother dialed 100 and police unnecessarily registered the case under these Sections. No such offence took place with her. The statements of witnesses under Section 164 Cr.PC shows that there is no offence against the petitioner, and except Section 161 Cr.P.C statement, there is no allegation against the petitioner.

In view of the same, as the allegations against the petitioner are vague in nature the petition is allowed quashing the proceedings against the petitioner/accused in S.C.No.983 of 2019 on the file of Fast Track Special Judge for trial and Disposal of Rape and POCSO Act Cases, at LB Nagar.

https://indiankanoon.org/doc/87658857/; Mohammed Gibran vs The State Of Telangana on 5 June, 2024; CRLP 3592/2023
when the offences are allegedly committed outside India by a citizen of India, then previous sanction of the Central Government is required for the trial to commence.

https://indiankanoon.org/doc/120477320/; Mir Barkath Ali Khan Alias Azmath Khan vs The State Of Telangana on 6 June, 2024; CRLP 5880/2024
the petitioner shall submit his defense and co-operate with the Investigating Officer as and when required by furnishing information and produce all relevant documents/material required for the purpose of the investigation and the Investigating Officer shall consider the same before filing appropriate report before the learned Magistrate concerned.

https://indiankanoon.org/doc/109523042/; Endrila Venkatesh vs The State Of Telangana on 5 June, 2024; WP 12340/2024
Learned counsel for the petitioners submitted that the petitioners have so far not responded to the Section 41-A notice and the statement made in the acknowledgement that the petitioner No.2 appeared on 23.05.2024 is incorrect.
As the order of this Court dated 02.05.2024 has been complied with and notice under Section 41-A Cr.P.C has been issued, no further orders are required to be passed. The writ petition is accordingly closed. However, the petitioners are given liberty to respond to the notice under Section 41-A Cr.P.C, if necessary, by taking assistance of an advocate. On the petitioners submitting reply/response to the notice under Section 41-A Cr.P.C., proper acknowledgment shall be given by the Investigation Officer.

https://indiankanoon.org/doc/91353530/; Boya Shaik Shavali vs The State Of Telangana on 3 June, 2024
Learned Assistant Government Pleader submitted that a notice under Section 41-A Cr.P.C was issued to the petitioner through Registered Post as the petitioner was not co- operating in the investigation and not coming forward to receive the notice.
In the above facts and circumstances and taking into consideration that notice under Section 41-A Cr.P.C has been issued, respondent No.3 is directed to follow the due process of law while conducting investigation in Crime No.264 of 2023 and also not to insist the petitioner for his presence in the Police Station, unless necessary for the purpose of investigation. The petitioner is directed to cooperate with the investigation and respond to Section 41-A Cr.P.C. notice.

(41A CrPC notice served through Registered Post)

https://indiankanoon.org/doc/98871829/; Tharun vs The State Of Telangana, on 10 June, 2024; CRLP 4412/2024
As seen from the above said provisions, it is clear that for Section 188 of the IPC, the Court is prohibited from taking cognizance, except on a complaint made by the authorities under the above said provisions. Admittedly, it is for the Police to file a complaint for the said offence, but not the charge sheet.

Further, it is also clear that for Section 290 of IPC, no Police Officer shall investigate the non cognizable case without the order of a Magistrate having power to try such case or commit the case for trial. In the present case, the Police has not taken permission from the Magistrate under Section 155 (2) of Cr.P.C., to investigate into such alleged offence. Admittedly, there is no compliance of Section 155 (2) of Cr.P.C.

https://indiankanoon.org/doc/171572164/; Mogili Santhosh vs The State Of Telangana on 10 June, 2024; CRLP 7719/2023; and Manupathi Thirupathi vs The State Of Telangana; CRLP 7711/2013

In spite of the stringent provisions available, illegal mining activities increased. Section 21 (4A) of the Act, 1957 shows that the duty is cast upon the Investigating Officer or officers concerned who seized the vehicle to initiate the confiscation proceedings before the trial Court. If the confiscation proceedings are initiated, the petition under Section 451 Cr.P.C to seek interim custody is not maintainable. From the view law laid down in the case of State of Madhya Pradesh v. Uday Singh 2020 12 SCC 733, it is clear that in the absence of initiation of the confiscation proceedings, the petition under Section 451 Cr.P.C, to seek interim custody of the vehicle is maintainable.

https://indiankanoon.org/doc/167612435/; Canara Bank, vs The State Of Andhra Pradesh, on 18 June, 2024; WP No. 21029/2017

the SARFAESI Act has overriding affect over the Andhra Pradesh Protection of Depositors of Financial Establishments Act 1999 (Act 17/1999)

https://indiankanoon.org/doc/27642169/;N Nirupa Latha, vs The State Of Andhra Pradesh, on 19 June, 2024; CRLP No. 9597/2023

In instances where serious accusations of criminal breach of trust regarding the educational society are made, the ongoing proceedings before the civil Court should not obstruct the investigation officer from carrying out the necessary investigations.

https://indiankanoon.org/doc/161794482/; M.A. Hadi Shaheri vs The State Of Telangana on 19 June, 2024; CRLP No. 4686/2024

The veracity of the depositions made by the witnesses is a question of trial need not be determined at the time of framing of charges. When a petition is filed under Section 216 of Cr.P.C., the Court has the power to alter/modify/add for framing the charges at any stage, even after completion of the trial or even after reserving the judgment. Further, framing of charges itself does not cause any prejudice to the accused and they can agitate and cross examine the witnesses on that aspect. Therefore, there are no merits in the criminal petition and the same is liable to be dismissed.

https://indiankanoon.org/doc/101193258/; Atul Kumar Gundawar vs The State Of Telangana on 19 June, 2024;CRLP 6428/2024

Learned counsel for the petitioner submitted that though recalling of PW.1 for further examination, is crucial to prove his case, the trial Court did not recall the PW.1 for further examination. Hence, he prayed the Court to allow the Criminal Petition by setting aside the impugned order dated 28.05.2024.

Hence, considering the submission of the learned counsel for the petitioner, to give one more opportunity to the petitioner, this Court is inclined to allow the Criminal Petition.

https://indiankanoon.org/doc/124078283/; K. Yoga Narasimha Reddy Bujji, Nellore vs State Of A.P., on 19 June, 2024; CRLA 137/2015

Since perfection in this imperfect world is seldom to be found, and the evidence of a witness, more so of an interested witness, is generally fringed with embellishment and exaggerations, however true in the main, the court may look for some assurance, the nature and extent of which will vary according to the circumstances of the particular case, from independent evidence, circumstantial or direct, before finding the accused guilty on the basis of his interested testimony. We may again emphasise that these are only broad guidelines which may often be useful in assessing interested testimony, and are not iron-cased rules uniformly applicable in all situations.

https://indiankanoon.org/doc/92124439/; T.Bhaskar vs State Of AP on 19 June, 2024; CRLP No.457/2019

Since prosecution case mainly depends on the evidence of these two witnesses and as they turned hostile, it is germane for us to discuss the evidentiary value of a hostile witness. Law is no more res integra on this ::11::

station and informed the said fact. Police recorded his statement and conducted investigation. According to this witness, due to the disputes occurred between his son and accused, the accused killed his son. PWs.2 to 4 also deposed in similar lines regarding the incident proper and other associate facts. Needless to emphasize, PWs.1 to 4 depended on the information provided by PW.5 on the incident proper.

Then we carefully scrutinized the evidence of PW.5. His admissions are to the effect that he knows A1 & A2 and they are his friends. On 26.03.2016 at about 06:00 pm while he was returning from gym, he saw galata at the Banyan tree in Talpagiri colony and he went and informed to PW.1 & 2 about the said galata. He of course stated that he could not identify the persons involved in the galata. Be that as it may, PWs.1 to 4 in one voice stated that this witness went to their house and informed that the accused have beaten their son Bhoominathan and forcibly taken him in their auto. Whereas, PW.5 says that he only informed about the galata but he did not mention the persons who were involved in the said galata. This part of his evidence is undoubtedly a false statement, because unless this witness went and informed about the galata and persons involved in the said galata, PW.1 to 4 had no occasion to know the particulars of the persons involved in the galata. In our view, there was no necessity for PW.1 to 4 to falsely depose that on the information of PW.5 they came to know that Bhoominathan was beaten and kidnapped by the accused. Most importantly, PW.1 and his family members immediately rushed to the spot on the information of PW.5 and having not found their son but only his auto, they searched for him and gave Ex.P1-report on that night. In the said report they specifically mentioned about A1, A2 and the alias names of the A3 & A4. The FIR was lodged without any delay and in the FIR the name of the accused was also specifically mentioned. All these events would unerringly show that it was the PW.5 alone informed to PW.1 about accused beating and kidnapping Bhoominathan. Therefore, his version that he only informed about the galata but not about the persons involved is a fabrication. Since, A1 & A2 are his friends, PW.5 gave false evidence to save them. So, from the admissible portion of the evidence of PW.5 coupled with the unimpeachable evidence of PW.1 to 4, it is clear that the accused party have kidnapped the deceased. So far as the accused are concerned, A1 & A2 are mentioned in the FIR and there is no identity problem for PW.5 as they are his friends.

164 Cr.P.C statement is not a substantial piece of evidence so that a Court can place implicit reliance on it. Learned counsel relied on State of Karnataka v. P.Ravi Kumar Alias Ravi1 (2018) 9 SCC 614
He admitted that his statement under 164 Cr.P.C. was recorded by the Magistrate. However, according to him, police asked him to give statement as if Bhoominathan was in altercation with some persons. He was afraid of police when he gave the statement. However, he was able to give evidence without any fear in the Court.

https://indiankanoon.org/doc/95198293/;Mohammed Raheel Aamir vs The State Of Telangana on 18 June, 2024; CRLP No. 6252/2024
As per the prosecution the involvement of the petitioner came to light on his statement before the police in another crime. The further investigation has led to the direct witness and his statement has been recorded. Additionally the WhatsApp Chat is also pointing to the involvement of the petitioner. Having regard to the prima facie case and the prosecution's plea as to requirement of custodial interrogation and the depth of allegations, this Court is of the considered view that the prayer of the petitioner for grant of anticipatory bail is not acceptable.

https://indiankanoon.org/doc/127250122/; Bollineni Krishnaveni vs The State Of Telangana on 24 June, 2024; CRLP 616/2024 & WP 1875/2024
It is not in dispute that complaint is not an Encyclopaedia. It is only First Information Report. There is no need to the de-facto complainant to mention all the aspects in the complaint itself. Setting the criminal law into motion is enough. It is for the Investigating Officer to conduct investigation strictly in accordance with law. He shall record the statements of relevant witnesses and also collect documentary evidence. On consideration of the said statements and evidence, he will file a report under Section 173 Cr.P.C.
It is also not in dispute that during the course of investigation, the Investigating Officer is having power to add or delete any offences or alter Section of law. He is also having power to close the said complaint on the grounds of lack of evidence, civil in nature and mistake of fact.

https://indiankanoon.org/doc/27242129/; Tarala Vijaya Babu, vs The State Of Andhra Pradesh, on 25 June, 2024; CRLA 1299/2008
In N.P.Lotlikar V. C.B.I's case (1993 CRI.L.J.2051) cited by the appellant itself indicates that a sanctioning authority considering a draft sanction order produced by the prosecuting agency is always in accordance with law. In Prakash Dharu V. State of Rajasthan's case (Civil Writ Petition No.3055/2013 decided on 14.06.2016.), the Hon'ble Rajasthan High Court held that it is common knowledge that the sanction orders are drawn up after an active discussion is held between the sponsoring and the sanctioning authority. In its opinion, the draft sanction if prepared would virtually be an expression of the sanctioning authority. Even if it is accepted for arguments sake, that the draft sanction and the order according sanction are identical, then too, it hardly affects the merits of the order granting sanction because the narration of facts mentioned therein would not have been deviated in the slightest. In State V. S.N.Mehra's case (1953CRILJ1310). It held that if the sanctioning authority perused the papers placed before it, it must be deemed to have exercised its mind about it and therefore such a sanction order cannot be called defective. In Superintendent of Police (CBI) V. Deepak Chowdary's case (1995 SCC (6) 225, AIR 1996 SUPREME COURT 186), their Lordships of the Hon'ble Supreme Court of India held "the grant of

sanction is only an administrative function.....What is material at that time is that the necessary facts collected during investigation constituting the offence have to be placed before the sanctioning authority and it has to consider the material. Prima facie, the authority is required to reach the satisfaction that the relevant facts would constitute the offence and then either grant or refuse to grant sanction. The grant of sanction, therefore, being administrative act, the need to provide an opportunity of hearing to the accused before according sanction does not arise. In K.Srinivasulu V. The Government of A.P's case (2010 SCC Online AP 151), it was held that an order of sanction could not be considered in a pedantic manner. The order of granting sanction must be demonstrative of the fact that there had been proper application of mind on part of the sanctioning authority. It need not contain detailed reasons. It must clearly indicate the specific provision of a section for which sanction for prosecution is granted.

https://indiankanoon.org/doc/56940525/; Jangidi Sushila vs The State Of Telangana on 26 June, 2024; CRLP 6779/2024

the said vehicle is involved in mining and transporting the sand illegally. Registering the Criminal Case will make little impact. The alternative scheme of confiscation proceedings has been provided to over come the adverse consequences resulting in delay for disposal of the criminal prosecutions involving confiscation. The confiscation of the said vehicle is one of the effective tool for protecting the illegal mining and preserving the environment and under Section 3 of the Act, the Court taking cognizance of the offence can confiscate. The Criminal prosecution and confiscation proceedings are parallel proceedings and having distinct purpose and object. The same 4 SKS,J was dealt with by the Hon'ble Apex Court in the case of Divisional Forest Officer v. G.V.Sudhakar Rao1. The relevant portion of the said judgment is as follows:-

"Criminal prosecution is distinct from confiscation proceedings. The two proceedings are different and parallel, each having a distinct purpose. The object of confiscation proceeding is to enable speedy and effective adjudication with regard to confiscation of the produce and the means used for committing the offence while the object of the prosecution is to punish the offender. The scheme of the Adhiniyam prescribes an independent procedure for confiscation. The intention of prescribing separate proceedings is to provide a deterrent mechanism and to stop further misuse of the vehicle."

FIR-ENCYCLOPEDIA

In a case of State of Uttar Pradesh versus Krishna Master and others, wherein it was held that: As far as this aspect is concerned, this Court notices that the FIR need not be an encyclopedia of all the facts and circumstances on which the prosecution relies. The main purpose of the FIR is to enable a police officer to satisfy himself as to whether commission of cognizable offences is indicated so that further investigation can be undertaken by him. The purpose of the FIR is to set the criminal law in motion and it is not customary to mention every minute detail of the prosecution case in the FIR. FIR is never treated as a substantive piece of evidence and has a limited use, i.e., it can be used for the corroborating or contradicting the maker of it. Law requires FIR to contain basic prosecution case and not minute details. The law developed on the subject is that even if an accused is not named in the FIR he can be held

guilty if prosecution leads reliable and satisfactory evidence which proves his participation in crime. Similarly, the witnesses whose names are not mentioned in the FIR but examined during the course of trial can be relied upon for the purpose of basing conviction against the accused. Non-mentioning of motive in the FIR cannot be regarded as omission to state important and material fact. As a principle, it has been ruled by this Court that omission to give details in the FIR as to manner in which weapon was used by accused is not material omission amounting to contradiction. Further, this is a case wherein FIR was filed by a rustic man and, therefore, non-mentioning of motive in the FIR cannot be attached much importance.

It is settled law that the FIR need not contain an exhaustive account of the incident. This Court in Om Prakash v. State of Uttaranchal, (2003) 1 SCC 648, observed as follows:

"10. …It is axiomatic that the FIR need not contain an exhaustive account of the incident. It is to be noted that the report was given to the police within one-and-a-half hours after the incident. PW 8, a known person, had drafted the report that she dictated. She had given all essential and relevant details of the incident naming the accused as culprit. We cannot expect a person injured and overtaken by grief to give better particulars. The possibility of PW 1 inventing a story at that juncture trying to implicate the accused is absolutely ruled out. The contents of the FIR, broadly and in material particulars, conform to the version given by PW 1 in her deposition..." A FIR is not an encyclopaedia of the case. This Court in Surjit Singh v. State of Punjab, 1993 Supp (1) SCC 208, observed as follows:

"8. …In this situation the aforesaid misdescriptions/omissions in the FIR about the number of shots fired and the absence of Taljit Singh's injuries or the appellant being not described as a military man become of lesser importance. First Information Report is not an encyclopaedia of the entire case and is even not a substantive piece of evidence. It has value, no doubt, but only for the purpose of corroborating or contradicting the maker. Here the maker was a young woman who had lost her husband before her very eyes. The omission or misdescription of these details in the FIR which was recorded most promptly, within three hours of the occurrence, would not tell on the prosecution case or the statements of the eyewitnesses with regard to the participation of the appellant in the crime. He had taken a leading and prominent part in spearheading and committing it. For these reasons, we are of the view that the High Court was right in convicting the appellant on giving cogent reasons to demolish the reasoning of the Trial Judge and adding thereto reasons of its own." (emphasis supplied) A witness' testimony need not be disbelieved only because it did not find mention in the FIR. In State of M.P. v. Dhirendra Kumar, (1997) 1 SCC 93, this Court discussed and applied the principle as follows:

"11. It was very emphatically contended by Shri Gambhir that as in the first information report (FIR) there is no mention about the dying declaration, we should discard the evidence of PW 1 and PW 2 regarding dying declaration, because of what has been pointed out by this Court in Ram Kumar Pandey v. State of M.P. [(1975) 3 SCC 815 : 1975 SCC (Cri) 225 : AIR 1975 SC 1026] We do not, however, agree with Shri Gambhir, for the reason that what was observed in Ram Kumar case [(1975) 3 SCC 815 : 1975 SCC (Cri) 225 : AIR 1975 SC 1026] after noting the broad facts, was that material omission in the FIR would cast doubt on the veracity of the prosecution case, despite the general law being that statements made in the FIR can be used to corroborate or contradict its maker. This view owes its origin to the thinking that if there be material departure in the prosecution case as unfolded in the FIR, which would be so if material facts not mentioned in the FIR are deposed to by prosecution witnesses in the court, the same would cause dent to the edifice on which the prosecution case is built, as the

substratum of the prosecution case then gets altered. It is apparent that prosecution cannot project two entirely different versions of a case. This is entirely different from thinking that some omission in the FIR would require disbelieving of the witnesses who depose about the fact not mentioned in the FIR. Evidence of witnesses has to be tested on its own strength or weakness. While doing so, if the fact deposed be a material part of prosecution case, about which, however, no mention was made in the FIR, the same would be borne in mind while deciding about the credibility of the evidence given by the witness in question." (emphasis supplied) Recently, in Mukesh v. State (NCT of Delhi), (2017) 6 SCC 1, this Court observed as follows:

"57. As far as the argument that the FIR does not contain the names of all the accused persons is concerned, it has to be kept in mind that it is settled law that FIR is not an encyclopaedia of facts and it is not expected from a victim to give details of the incident either in the FIR or in the brief history given to the doctors. FIR is not an encyclopaedia which is expected to contain all the details of the prosecution case; it may be sufficient if the broad facts of the prosecution case alone appear. If any overt act is attributed to a particular accused among the assailants, it must be given greater assurance. In this context, reference to certain authorities would be fruitful."

SECONDARY EVIDENCE- WHEN NOT ADMISSIBLE

Secondary evidence, as a general rule is admissible only in the absence of primary evidence. **If the original itself is found to be inadmissible through failure of the party, who files it to prove it to be valid, the same party is not entitled to introduce secondary evidence of its contents.**

Essentially, secondary evidence is an evidence which may be given in the absence of that better evidence which law requires to be given first, when a proper explanation of its absence is given. The definition in Section 63 is exhaustive as the Section declares that secondary evidence "means and includes" and then follow the five kinds of secondary evidence.

The rule which is the most universal, namely that the best evidence the nature of the case will admit shall be produced, decides this objection that rule only means that, so long as the higher or superior evidence is within your possession or may be reached by you, you shall give no inferior proof in relation to it. Section 65 deals with the proof of the contents of the documents tendered in evidence. **In order to enable a party to produce secondary evidence it is necessary for the party to prove existence and execution of the original document.** Under Section 64, documents are to be provided by primary evidence. Section 65, however permits secondary evidence to be given of the existence, condition or contents of documents under the circumstances mentioned. The conditions laid down in the said Section must be fulfilled before secondary evidence can be admitted. **Secondary evidence of the contents of a document cannot be admitted without non-production of the original being first accounted for in such a manner as to bring it within one or other of the cases**

Evidence Act, 1872--Sections 63 and 65 (a)--Secondary evidence--Admissible only in absence of primary evidence--If original itself found to be inadmissible through failure of party--Same party not entitled to introduce secondary evidence of its contents--In order to enable party to produce secondary evidence--It is necessary for party to prove existence and execution of original document--Conditions laid down in Section 65 must be fulfilled before secondary evidence can be admitted.

Smt. J. Yashoda vs Smt. K. Shobha Rani on 19 April, 2007; AIR 2007 SC 1721,

SIGNATURE OF ACCUSED ON CONFESSION OR SEIZURE MEMO

The Supreme Court of India's decision, in the case of, *Dr. Sunil Clifford Daniel v. the State of Punjab* (2012) concerned about the inter-relation existing between Section 162 (1) of the Code of Criminal Procedure, 1973 and Section 27 of the Indian Evidence Act, 1872. Section 162(1) reads as, *"a statement made by any person to a police officer in the course of an investigation done, if reduced to writing, be not signed by the person making it",* which by its very language makes it clear that law requires a statement that has been made before the investigating officer to not be signed by the witness giving it. To simplify, the witness will not be bound by his statements made before the concerned authority. But it is noteworthy to mention that the provision of Section 162(1) of C.r.P.c will not be applicable to the statements under Section 27 of the Evidence Act. While observing this, the Apex Court noted that there lies no obligation on the part of the investigating officer to obtain the initials of an accused in the statements that have been attributed to him while preparing seizure memo under Section 27 of the Act of 1872. But if such initials have been obtained then the same will not be considered unlawful.

CONTRADICTING MEDICAL CERTIFICATES

Where the opinion of one medical witness is contradicted by another and both experts are equally competent to form an opinion, the court will accept the opinion of that expert which supports the direct evidence in the case. [Piara Singh v. State of Punjab AIR 1977 SC 2274]

EXPERT OPINION NOT OBTAINED – NOT FATAL

State of Punjab v. Jugraj Singh, (2002) 3 SCC 234 "18. In the instant case the investigating officer has categorically stated that guns seized were not in a working condition and he, in his discretion, found that no purpose would be served by sending the same to the ballistic expert for his opinion. No further question was put to the investigating officer in cross-examination to find out whether despite the guns being defective the fire pin was in order or not. In the presence of convincing evidence of two eyewitnesses and other attending circumstances we do not find that the non-examination of the expert in this case has, in any way, affected the creditworthiness of the version put forth by the eyewitnesses." [Gulab v. State of Uttar Pradesh, 2021 SCC OnLine SC 1211, decided on 09.12.2021].

CATEGORIZATION OF INTERESTED WITNESSES

In Raju and Ors v. State of Tamil Nadu10 the Apex Court observed thus:

"33. For the time being, we are concerned with four categories of witnesses - a third party disinterested and unrelated witness (such as a bystander or passer-by); a third party interested witness (such as a trap witness); a related and therefore an interested witness (such as the wife of the victim) having an interest in seeing that the accused is punished; a related and therefore an interested witness (such as the wife or brother of the victim) having an interest in seeing the accused punished and also having some enmity with the accused. But, more than the categorization of a witness, the issue really is one of appreciation of the evidence of a witness. A court should examine the evidence of a related and interested witness having an interest in seeing the accused punished and also having some enmity with the accused with greater care and caution than the evidence of a third party disinterested and unrelated witness. This is all that is expected and required.

xxxx

38. The sum and substance is that the evidence of a related or interested witness should be meticulously and carefully examined. In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised and the evidence of the witness would have to be examined by applying a standard of discerning scrutiny. However, this is only a (2012) 12 SCC 701 rule of prudence and not one of law, as held in Dalip Singh and pithily reiterated in Sarwan Singh in the following words:
The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinized with a little care. Once that approach is made and the court is satisfied that the evidence of interested witnesses have a ring of truth such evidence could be relied upon even without corroboration."

NEWS

- Final Rpwd (Amendment) Rules, 2023 Incorporating Accessibility Standards And Guidelines For Mha Specific Built Infrastructures And Associated Services For Police Stations, Prisons And Disaster Mitigation Centers
- Declaring Under Section 37 Of Bharatiya Nagarik Suraksha Sanhita, 2023 Police Control Rooms. [G.O.Ms.No.79, Law (L And La & J - Home - Courts-B), 28th June, 2024.]
- Conferring Powers On All Police Officers And Police Men As Per Sub-Section (3) Of Section 218 Of Bharatiya Nagarik Suraksha Sanhita, 2023. [G.O.Ms.No.77, Law (L And La & J - Home - Courts-B), 28th June, 2024.]
- Notifying All The Police Officers And Police Men Of The Rank Of Head Constables And Above To Be Officers Specially Empowered Subsection (1) Of Section 194 Of Bharatiya Nagarik Suraksha Sanhita, 2023. [G.O.Ms.No.76, Law (L And La & J - Home - Courts-B), 28th June, 2024.]
- Directions To The Officer In Charge Of Every Police Station To Implement Provisions Of Sub-Section (3) Of Section 176 Of Bharatiya Nagarik Suraksha Sanhita, 2023. [G.O.Ms.No.75, Law (L And La & J - Home - Courts-B), 28th June, 2024.]
- Conferring Powers On All Police Officers And Police Men As Per Sub-Section (2) Of Section 42 Of Bharatiya Nagarik Suraksha Sanhita , 2023. [G.O.Ms.No.74, Law (L And La & J - Home - Courts-B), 28th June, 2024.]
- Appointment Of Special Executive Magistrates In Police Commissionerate Areas Under Sections 126, 127 , 128 , 129 & 163 Of Bharatiya Nagarik Suraksha Sanhita, 2023. [G.O.Ms.No.73, Law (L And La & J - Home - Courts-B), 28th June, 2024.]
- Appointment Of Special Executive Magistrates Under Section 15 Of Bharatiya Nagarik Suraksha Sanhita, 2023. [G.O.Ms.No.72, Law (L And La & J - Home - Courts-B), 28th June, 2024.]
- High Court For The State Of Andhra Pradesh Roc.No.155/E1/2024. Date: 21-06-2024. Notifications Issued By The Hon'ble High Court In Consonance With The Bharatiya Nagarik Suraksha Sanhita, 2023, Regarding Redesignation And Notification Of The Courts Presently Existing In The Metropolitan Areas Of Visakhapatnam And Vijayawada In All Cadres.

- Declaring Under Section 37 Of Bharatiya Nagarik Suraksha Sanhita, 2023 Police Control Rooms. [G.O.Ms.No.79, Law (L And La & J - Home - Courts-B), 28th June, 2024.]
- Notifying Video Conferencing Rooms At District And Mandal / Tehsil Levels For Examination Of Witnesses Under Sub-Section (3) Of Section 265 Of Bharatiya Nagarik Suraksha Sanhita, 2023. [G.O.Ms.No.78, Law (L And La & J - Home - Courts-B), 28th June, 2024.]
- TG DGP Notification dated 25.06.2024, regarding applicability of New Criminal Laws basing on the date of commission and reporting the same at P.S.
- AP DGP Notification dated 28.06.2024 regarding applicability of New Criminal Laws basing on the date of commission and reporting the same at P.S.

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ON A LIGHTER VEIN

A mother travelled 2000 miles across the World to be with her only son on the day he received his Air Force Wings (licence to fly), and also got married the same evening.

"Thanks for coming", he said later, "It meant so much to me".

_"I wouldn't have missed it", she said. "After all, it's not every day a mother can watch, her son get Wings in the morning and have them Clipped in the evening!"

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