Prosecution Replenish

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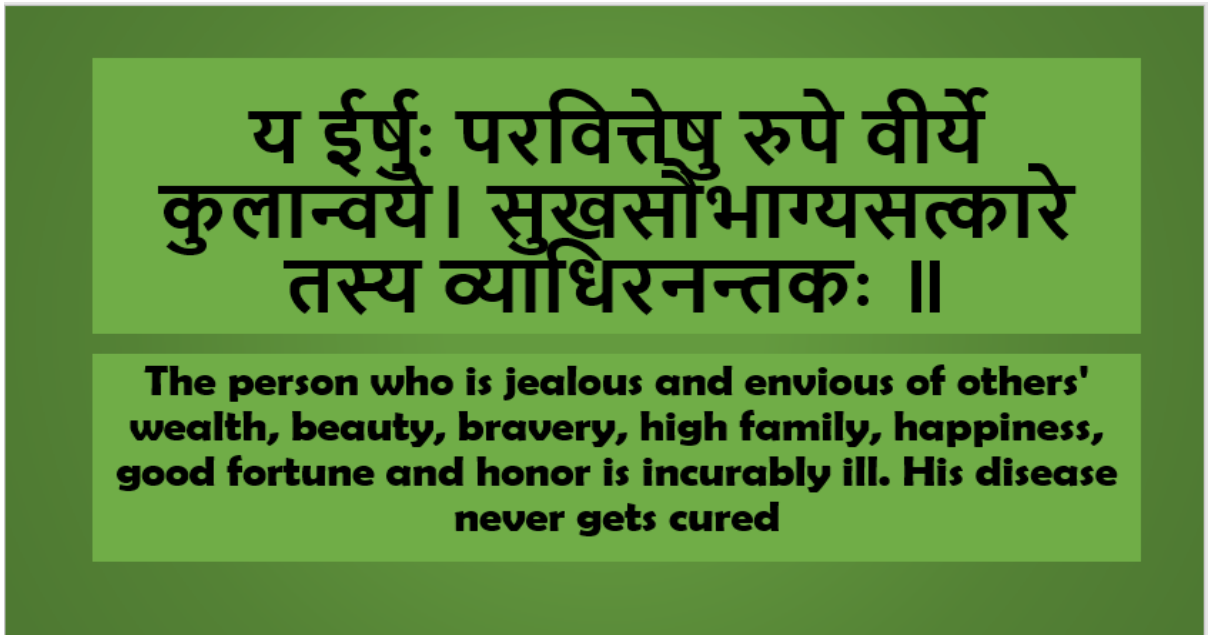
Aano Bhadr Kratvo Yantu Viswatah
(Let Noble Thoughts Come To Me from All Directions)



CITATIONS

2024 0 INSC 655; 2024 0 Supreme(SC) 727; Nitya Nand Vs. State of U.P. & Anr.; Criminal Appeal No. 1348 of 2014; Decided On : 04-09-2024

The factum of causing injury or not causing injury would not be relevant when an accused is roped in with the aid of Section 149 IPC. The question which is relevant and which is required to be answered by the court is whether the accused was a member of an unlawful assembly and not whether he actually took part in the crime or not.

It is true that there are certain lacunae in the prosecution. The scribe Kuldeep was not examined. Similarly, the younger brother Laxmi Narain was not examined though it has come on record that Laxmi Narain was killed in the year 1993 and in that case one of the accused is the appellant himself. It is also true that neither any country-made pistol was recovered nor any cartridge, empty or otherwise, recovered. However, the appellant has been roped in with the aid of Section 149 IPC. Therefore, as held by this Court in Yunis alias Kariya Vs. State of M.P., (2003) 1 SCC 425 no overt act is required to be imputed to a particular person when the charge is under Section 149 IPC; the presence of the accused as part of the unlawful assembly is sufficient for conviction. It is clear from the evidence of PW-1 and PW-2 that the appellant was part of the unlawful assembly which committed the murder. Though they were extensively cross-examined, their testimony in this regard could not be shaken.

2024 0 Supreme(SC) 728; Vijay Nair vs Directorate of Enforcement; SPECIAL LEAVE PETITION (CRIMINAL) Diary No(s). 22137 of 2024 (Arising out of impugned judgment and order dated 03-07-2023 in BA No. 1178/2023 passed by the High Court of Delhi at New Delhi) Decided On : 02-09-2024

he accused is lodged in jail for a considerable period and there is little possibility of trial reaching finality in the near future. The liberty guaranteed under Article 21 of the Constitution does not get abrogated even for special statutes where the threshold twin bar is provided and such statutes, in our opinion, cannot carve out an exception to the principle of bail being the rule and jail being the exception. The cardinal principle of

bail being the rule and jail being the exception will be entirely defeated if the petitioner is kept in custody as an under-trial for such a long duration. This is particularly glaring since in the event of conviction, the maximum sentence prescribed is only 7 years for the offence of money laundering.

2024 0 Supreme(SC) 745; Rup Bahadur Magar @ Sanki @ Rabin Vs. The State of West Bengal; Petition for Special Leave to Appeal (Crl.) No. 11589 of 2024; Decided On : 02-09-2024

In the case of High Court Bar Association, Allahabad vs. State of U.P. and Others, (2024) 6 SCC 267 a Constitution Bench of this Court has taken a view that as a matter of rule, the Constitutional Courts should not fix a time-bound schedule for conduct of cases before the Trial and other Courts and the said approach can be adopted only in very exceptional cases. Notwithstanding the pronouncement of law by the Constitution Bench of this Court, we have noticed that several High Courts while rejecting the bail applications, are fixing time-bound schedule for the conduct of trials. It cannot be that the bail is denied on the ground that the trial will be disposed of in a time-bound schedule.

2024 0 Supreme(SC) 746; Neha Begum and Others Vs. The State of Assam and Another; Petition for Special Leave to Appeal (Crl.) No. 3910 of 2024; 02-09-2024

On a perusal of the subject application filed by the petitioners in the trial Court by invoking the provisions under Section 231(2) read with Section 311 CrPC, we find that other than a vague aspersion that the erstwhile lawyer engaged by the petitioners did not conduct proper cross-examination of the witnesses, no such specific ground was alluded on behalf of the accused petitioners which could be considered to be a valid ground for the trial Court to invoke the power under Section 311 CrPC.

2024 0 Supreme(SC) 747; George Vs. State of Kerala; Criminal Appeal No. 3712 of 2024 (Arising Out of SLP (Criminal) No. 11041 of 2024); 03-09-2024

For conviction under Section 304(A) and Section 338 of the IPC, there is no minimum sentence prescribed but the term of sentence may extend to 2 years. The sentence can also be limited to fine without any term of imprisonment. For the offence under Sections 279 and 337 of the IPC, the maximum punishment prescribed is 6 months and punishment can also be fine only.

2024 0 INSC 666; 2024 0 Supreme(SC) 756; Mandakini Diwan And Anr. Vs. The High Court Of Chhattisgarh & Ors.; Criminal Appeal No. 3738 of 2024 (Arising Out of SLP(Crl.) No. 12649 of 2023); Decided On : 06-09-2024

The post-mortem report further indicated that the deceased had six ante-mortem injuries on her body. The information of suicide was given to the Dantewada Police Station, a Merg was registered under section 174 of Code of Criminal Procedure, 1973. the Police filed the closure report treating it to be a case of suicide. The appellants repeatedly continued to represent to the authorities for a fair investigation after registering First Information Report. All the complaints made by the appellants to the authorities did not result in the registering of FIR against respondent no.7. All the complaints though were inquired into but were ultimately closed as a result of the influence exerted by the respondent no.7. Till date, neither FIR has been registered on the several complaints made by the appellants nor a fair investigation has been carried out in order to find out the truth.

High court dismissed petition on ground that appellants have 156(3) CrPC at their disposal.
CBI directed to register and investigate the case.

2024 0 INSC 669; 2024 0 Supreme(SC) 759; Dhanraj Aswani Vs. Amar S. Mulchandani & Anr.; Criminal Appeal No. 2501 Of 2024 (arising out of SLP (Crl.) No. 6942 of 2024); Decided On : 09-09-2024

a police officer can formally arrest a person in relation to an offence while he is already in custody in a different offence. However, such formal arrest doesn't bring the accused in the custody of the police officer as the accused continues to remain in the custody of the Magistrate who remanded him to judicial custody in the first offence. Once such formal arrest has been made, the police officer has to make an application under Section 267 of the CrPC before the Jurisdictional Magistrate for the issuance of a P.T. Warrant without delay. If, based on the requirements prescribed under Section 267 of the CrPC, a P.T. Warrant is issued by the jurisdictional Magistrate, then the accused has to be produced before such Magistrate on the date and time mentioned in the warrant, subject to Sections 268 and 269 respectively of the CrPC. Upon production before the jurisdictional Magistrate, the accused can be remanded to police or judicial custody or be enlarged on bail, if applied for and allowed. The only reason why we have delineated the procedure followed in cases where a person already in custody is required to be arrested in relation to a different offence is to negate the reasoning of the Rajasthan, Delhi and Allahabad High Courts that once in custody, it is not possible to re-arrest a person in relation to a different offence. When a person in custody is confronted with a P.T. Warrant obtained in relation to a different offence, such a person has no choice but to submit to the custody of the police officer who has obtained the P.T. Warrant. Thus, in such a scenario, although there is no confinement to custody by touch, yet there is submission to the custody by the accused based on the action of the police officer in showing the P.T. Warrant to the accused. Thereafter, on production of the accused before the jurisdictional Magistrate, like in the case of arrest of a free person who is not in custody, the accused can either be remanded to police or judicial custody, or he may be enlarged on bail and sent back to the custody in the first offence. A number of decisions have held that although Section 267 of the CrPC cannot be invoked to enable production of the accused before the investigating agency, yet it can undoubtedly be invoked to require production of the accused before the jurisdictional Magistrate, who can thereafter remand him to the custody of the investigating agency. Such an interpretation of the provision would give true effect to the words "other proceedings" as they appear in the text of Section 267 of the CrPC, which cannot be construed to exclude proceedings at the stage of investigation.
Thus, contrary to the view taken by the Rajasthan, Allahabad and Delhi High Courts, a person, while in custody in relation to an offence, can be arrested in relation to a different offence, either after getting released from custody in the first offence, or even while remaining in custody in the first offence.
The option of applying for anticipatory bail in relation to an offence, while being in custody in relation to a different offence, will only be available to the accused till he is arrested by the police officer on the strength of the P.T. Warrant obtained by him from the court concerned. We must clarify that mere formal arrest (on-paper arrest) would not extinguish the right of the accused to apply for anticipatory bail. We say so because a formal arrest would not result in the submission of the accused, who is already in custody, to the custody of the police officer effecting a formal arrest in the subsequent case. However, if after effecting a formal arrest, the police officer on the strength of

the same procures a P.T. Warrant from the jurisdictional Magistrate, the accused would have no other choice but to submit to that compulsion and the right of the accused to apply for anticipatory bail would thereafter get extinguished.
If an accused is granted anticipatory bail in relation to an offence, while being in custody in a different offence, then it shall no longer be open to the police officer in the first case to apply under Section 267 of the CrPC for the production of the accused before the jurisdictional Magistrate for the purpose of remanding him to police or judicial custody. However, it shall be open to the jurisdictional Magistrate to require the production of accused under Section 267(1) for any other purpose mentioned under the said section except for the purpose of remanding him to police or judicial custody.
we have decided the issue of maintainability of an anticipatory bail application filed at the instance of an accused who is already in judicial custody in a different offence and have reached the conclusion that such an application is maintainable under the scheme of the CrPC. However, it is clarified that each of such applications will have to be decided by the competent courts on their own merits.

2024 0 INSC 679; 2024 0 Supreme(SC) 771; Devendra Kumar Pal Vs. State Of U.P. And Another; Criminal Appeal No. of 2024 (Arising out of SLP(Crl.) No. 6960 of 2021); Decided on : 06-09-2024
The Constitution Bench has clearly held that if such a summoning order(319 CrPC) is passed, either after the order of acquittal or imposing of sentence in the conviction, the same may not be sustainable.

2024 0 INSC 681; 2024 0 Supreme(SC) 772; Raghuveer Sharan Vs. District Sahakari Krishi Gramin Vikas Bank & Anr.; Criminal Appeal No(s). 2764 of 2024 (Arising out of Special Leave Petition (Crl.) No. 3419 OF 2024) WITH Contempt Petition (C) No. 508 Of 2024 In Criminal Appeal No(S). 2764 Of 2024 @ Special Leave Petition (Crl.) No. 3419 OF 2024.; Decided On : 10-09-2024
There cannot be an absolute embargo on the Trial Court to initiate process under Section 319 Cr.P.C., merely because a person, who though appears to be complicit has deposed as a witness. The finding to invoke Section 319 Cr.P.C., must be based on the evidence that has come up during the course of Trial. There must be additional, cogent material before the Trial Court apart from the statement of the witness.
An order for initiation of process under Section 319 Cr.P.C against a witness, who has deposed in the trial and has tendered evidence incriminating himself, would be tested on the anvil that whether only such incriminating statement has formed the basis of the order under Section 319 Cr.P.C. At the same time, mere reference to such statement would not vitiate the order. The test would be as to whether, even if the statement of witness is removed from consideration, whether on the basis of other incriminating material, the Court could have proceeded under Section 319 Cr.P.C.
The proviso to Section 132 offers statutory immunity against self-incrimination providing that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution or be proved against him in any criminal proceedings except a prosecution for giving false evidence by such answer. Thus, the only protection available is, a witness cannot be subjected to prosecution on the basis of his own statement. It nowhere provides that there is complete and unfettered immunity to a person even if there is other substantial evidence or material against him proving his prima facie involvement. If this complete immunity is read under the proviso to Section 132 of the Act, an influential person with the help of a dishonest

Investigating Officer will provide a legal shield to him by examining him as a witness even though his complicity in the offence is writ large on the basis of the material available in the case.

https://indiankanoon.org/doc/5041804/; Vijay Kumar Kanoria. vs The State Of Telangana on 2 September, 2024; CRLP 147/2024

it is also imperative to mention that the provisions of Section 305 Cr.P.C., provides for a situation where the company may refuse to name any person as its SKS, J representative and in such circumstances, Section 305(4) Cr.P.C., provides that the trial Court may take up trial of the matter without having to insist upon any person representing the company and all the requirements that are set out in the Cr.P.C., for doing certain acts in the presence of accused would stand waived.

https://indiankanoon.org/doc/35402908/;Vemu Rama Rao Kothanna Prasad, vs State Of A.P., on 10 September, 2024; IA no. 1/2024 in CRLRC No 456/2007

This Court specifically observed that P.Ws.1 and 3 did not secure independent mediators at relevant point of time i.e., on 02.12.1999 and that no explanation is forthcoming for not securing any independent mediators and that prosecution did not explain why they could not secure independent mediators to comply the provisions of Section 100(4) Cr.P.C., when so called arrest and seizure explosive substance from the petitioner/accused on the very brought day light that too at 12 noon and the testimony of P.Ws.1 and 3 clinchingly established that there was possibility of securing independent mediators at the place of alleged apprehension and without securing independent mediators, preparing police proceedings creates any amount of doubt over the prosecution version. It is settled that, if there is infirmity or doubt in the investigation done by P.W.3, this Court can come to the conclusion that the prosecution failed to prove the guilt of the accused beyond all reasonable doubts.

https://indiankanoon.org/doc/12347930/; Patlolla Amarendar Reddy vs The State Of Telangana on 11 September, 2024; CRLP 10630/2024

Reverting to the facts of the case on hand, a perusal of Section 186 of IPC makes clear that to take cognizance there should be a written complaint and such complaint should be filed either by the officer issuing such promulgation order or the officer above his rank. Further, Section 2 (d) of Cr.P.C., defines complaint as allegations made orally or in writing to the Magistrate with a view to the Magistrate taking action on such complaint, the Magistrate can take cognizance under Section 190 (1)(a) of Cr.P.C.. Thereafter, the procedure SKS,J prescribed under Section 200 of Cr.P.C has to be followed. Therefore, the first information report, charge sheet and the order taking cognizance on such charge sheet are without jurisdiction.

11. Further, it is significant to note the Judgment of the Honourable Supreme Court in State of Karnataka v. Hermareddy AIR 1981 SC 1417, wherein in paragraph No.8, it is held as under:

"8. We agree with the view expressed by the learned Judge and hold that in cases where in the course of the same transaction an offence for which no complaint by a Court is necessary under Section 196 (1)(b) of the Code of Criminal Procedure and an offence for which a complaint of a Court is necessary under that sub-section, are committed, it is not possible to split up and hold that the prosecution of the accused for the offences not mentioned in Section 196 (1)(b) of the Code of Criminal Procedure should be upheld"

(Emphasis supplied)

12. In the instant case, a perusal of the charge sheet discloses that the petitioners are sought to be prosecuted for the offence punishable under Section 186 of IPC including other provisions i.e., 214 of the Act. As per the Judgment of the Hon'ble Supreme Court in Hermareddy (supra) it is clear that if the offences formed part of the same transaction of the offences contemplated under Section 191 of Cr.P.C., it is not possible to split up and hold the prosecution of accused for the other offences. In view of the above, the FIR culminating in taking cognizance of the aforesaid offences stands vitiated. Hence, continuation of criminal proceedings against the petitioners is nothing but abuse of process of law.

https://indiankanoon.org/doc/80361097/; Kole Raju vs The State Of Telangana on 3 September, 2024; CRLP 5349/2024

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.

https://indiankanoon.org/doc/155274192/; J. Rajeshwar Rao, vs The State Of Andhra Pradesh, on 6 September, 2024; CRLA 1142/2006

he consequence of the complaint made by the appellant is that the law was set into motion and the ACB has taken steps to investigate the public servant. Though, at the time of lodging the complaint and while being examined in pre-trap and post-trap proceedings and also in 164 Cr.P.C. statement made before the Magistrate, the statement of the appellant/defacto complainant was consistent regarding the demand made by the public servant. (2013) 15 Supreme Court Cases 539 However, in the course of his examination before Special Court, the appellant stated that the bribe amount was thrust into the pocket of the public servant. There is a major shift from his earlier version made during the investigation and the statement before the Court. The appellant being a public servant himself has to explain under what circumstances he lodged a serious complaint of demand of bribe by a public servant. The investigating agency investigated the case and filed charge sheet. However, before the Special Court, appellant herein completely resiled from earlier statement and stated that he himself has thrust the amount into the pocket of the public servant. If the appellant had thrust the amount into the pocket of the public servant involving him in a serious case of bribery, the contradictory statements made by the appellant at different stages i.e. complaint and 164 Cr.P.C. statement need to be tried by the Magistrate Court on the basis of the complaint made by the learned Special Judge.

In the present circumstances, it is expedient in the interest of justice to prosecute the appellant since there is a prima facie case of giving false evidence intentionally, during trial contrary to what was stated in the complaint and in 164 Cr.P.C. statement made before the Magistrate during the course of investigation.

https://indiankanoon.org/doc/10714718/; Mohammed Waseem Ahmed vs The State Of Telangana on 9 September, 2024; CRLP 6071/2024

188 CrPC- there are catena of judgments of the Hon'ble Supreme Court and various High Courts, wherein it is clearly observed that only the offence which is committed in India by an Indian Citizen can be tried in India and no sanction of the Central Government for the same is required, but 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/44585695/; K. Rajvardhan Reddy vs The State Of Telangana on 11 September, 2024; WP 25142/2024

Learned counsel for the petitioner submitted that First Information Report (FIR) No.108 of 2024 of Wanaparthy Rural Police Station dated 28.06.2024 was registered against the petitioner for the offences punishable under Sections 420, 406 and 409 of the Indian Penal Code and Section 7 of the Essential Commodities Act, 1955. It is submitted that the Bharatiya Nyaya Suraksha Sanhita, 2023 (BNSS) came into force with effect from 01st July, 2024 and the provisions of the Code of Criminal Procedure, 1973 (Cr.P.C.) are applicable to FIR No.108 of 2024 which was registered on 28.06.2024 as per the Section 531(2) of BNSS. Despite the same, respondent No.5 - the Station House Officer, Wanaparthy Rural Police Station, has issued notice under Section 35(3) of BNSS.

3. The impugned notice is contrary to Section 531(2) of BNSS. The provisions of Cr.P.C. are applicable to FIR No.108 of 2024 which was registered on 28.06.2024 and BNSS came into force on 01st July, 2024.

4. It is borne out from the record the petitioner filed Crl.P. No.7732 of 2024 seeking quashment of FIR No.108 of 2024 of Wanaparthy Rural Police Station. This Court disposed the said petition by the order dated 23.07.2024 observing that Section 409 of IPC is not applicable and Investigating Officer was directed to serve notice under Section 41A of Cr.P.C to the petitioner.

5. In the circumstances, this writ petition is disposed of, directing respondent No.5 - the Station House Officer, Wanaparthy Rural Police Station, to issue notice under Section 41A of Cr.P.C to the petitioner and proceed with the investigation in FIR No.108 of 2024 of Wanaparthy Rural Police Station in accordance with the provisions of Cr.P.C. There shall be no order as to costs.

{Section 41A CrPC is exact replica of Section 35(3 to 6) BNSS, still the provision to be mentioned in notices prior to implementation of BNSS, should be under CRPC alone; BNSS provisions cannot be mentioned}

https://indiankanoon.org/doc/137732448/; Madipally Venkanna, Nalgonda District vs The State Of A.P. Sho Munagala on 4.9.2024; CRLRC No. 2338/2010

The said order passed under 451 of Cr.P.C is an interlocutory order, as such, this Court is prohibited from entertaining the revision application against interlocutory order under Section 397(2) of Cr.P.C. Accordingly, the revision petition is not maintainable.

2024 0 INSC 701; 2024 0 Supreme(SC) 798; Ramesh and Another Vs. State of Karnataka; Criminal Appeal No. 1467 of 2012; Decided On : 18-09-2024

once the Trial Court found no evidence to convict the accused, the burden was upon the High Court, while reversing the said judgment, to record clear findings in relation to each of the charges and, more particularly, the charge of criminal conspiracy under Section 120B IPC. However, no such exercise was undertaken by the High Court.

2024 0 INSC 708; 2024 0 Supreme(SC) 806; Bhagwan Singh Vs. State of U.P. & Ors.; Criminal Appeal Nos. 3883-3884 of 2024 (@ SLP(Crl.) Nos. 13052-13053 of 2024 @ Diary No. 18885 of 2024); Decided On : 20-09-2024

The matter assumes serious concern when the Advocates who are the officers of the Court are involved and when they actively participate in the ill-motivated litigations of

the unscrupulous litigants, and assist them in misusing and abusing the process of law to achieve their ulterior purposes.

People repose immense faith in Judiciary, and the Bar being an integral part of the Justice delivery system, has been assigned a very crucial role for preserving the independence of justice and the very democratic set up of the country. The legal profession is perceived to be essentially a service oriented, noble profession and the lawyers are perceived to be very responsible officers of the court and an important adjunct of the administration of justice. In the process of overall depletion and erosion of ethical values and degradation of the professional ethics, the instances of professional misconduct are also on rise. There is a great sanctity attached to the proceedings conducted in the court. Every Advocate putting his signatures on the Vakalatnamas and on the documents to be filed in the Courts, and every Advocate appearing for a party in the courts, particularly in the Supreme Court, the highest court of the country is presumed to have filed the proceedings and put his/her appearance with all sense of responsibility and seriousness. No professional much less legal professional, is immuned from being prosecuted for his/her criminal misdeeds.

2024 0 INSC 713; 2024 0 Supreme(SC) 807; Shoor Singh & Anr. Vs. State of Uttarakhand; Criminal Appeal No. 249 of 2013; Decided On: 20-09-2024

To constitute a ‘dowry death’, punishable under Section 304- B[Section 304-B. Dowry Death. – (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called ‘dowry death’, and such husband or relative shall be deemed to have caused her death.

Explanation. -- For the purpose of this sub-section, ‘dowry’ shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 [28 of 1961].

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life] IPC, following ingredients must be satisfied:

i. death of a woman must have been caused by any burns or bodily injury or it must have occurred otherwise than under normal circumstances;

ii. such death must have occurred within seven years of her marriage;

iii. soon before such death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and

iv. such cruelty or harassment must be in connection with any demand for dowry.

The phrase ‘otherwise than under normal circumstances’ is wide enough to encompass a suicidal death.

13. When all the above ingredients of ‘dowry death’ are proved, the presumption under Section 113-B[Section 113-B. Presumption as to dowry death. When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

Explanation.- For the purposes of this section, dowry death shall have the same meaning as in section 304 capital B of the Indian Penal Code [45 of 1860]] of the Evidence Act is to be raised against the accused that he has committed the offence of ‘dowry death’. What is important is that the presumption under Section 113-B is not in respect of commission of an act of cruelty, or harassment, in connection with any

demand for dowry, which is one of the essential ingredients of the offence of ‘dowry death’. The presumption, however, is in respect of commission of the offence of ‘dowry death’ by the accused when all the essential ingredients of ‘dowry death’ are proved beyond reasonable doubt by ordinary rule of evidence, which means that to prove the essential ingredients of an offence of ‘dowry death’ the burden is on the prosecution.

2024 0 INSC 716; 2024 0 Supreme(SC) 808; Just Rights For Children Alliance & Anr. Vs. S. Harish & ors.; Criminal Appeal Nos. 2161-2162 OF 2024 (Arising Out Of Special Leave Petition (Crl) Nos. 3665-3666 OF 2024); Decided on : 23-09-2024

We summarize our final conclusion as under:

(I) Section 15 of the POCSO provides for three distinct offences that penalize either the storage or the possession of any child pornographic material when done with any particular intention specified under sub- section(s) (1), (2) or (3) respectively. It is in the nature and form of an inchoate offence which penalizes the mere storage or possession of any pornographic material involving a child when done with a specific intent prescribed thereunder, without requiring any actual transmission, dissemination etc.

(II) Sub-section (1) of Section 15 penalizes the failure to delete, destroy or report any child pornographic material that has been found to be stored or in possession of any person with an intention to share or transmit the same. The mens-rea or the intention required under this provision is to be gathered from the actus reus itself i.e., it must be determined from the manner in which such material is stored or possessed and the circumstances in which the same was not deleted, destroyed or reported. To constitute an offence under this provision the circumstances must sufficiently indicate the intention on the part of the accused to share or transmit such material.

(III) Section 15 sub-section (2) penalizes both the actual transmission, propagation, display or distribution of any child pornography as-well as the facilitation of any of the abovementioned acts. To constitute an offence under Section 15 sub-section (2) apart from the storage or possession of such pornographic material, there must be something more to show i.e., either (I) the actual transmission, propagation, display or distribution of such material OR (II) the facilitation of any transmission, propagation, display or distribution of such material, such as any form of preparation or setup done that would enable that person to transmit it or to display it. The mens rea is to be gathered from the manner in which the pornographic material was found to be stored or in possession and any other material apart from such possession or storage that is indicative of any facilitation or actual transmission, propagation, display or distribution of such material.

(IV) Section 15 sub-section (3) penalizes the storage or possession of any child pornographic material when done for any commercial purpose. To establish an offence under Section 15 sub-section (3), besides the storage or possession of the pornographic material involving a child, there must be some additional material or attending circumstances that may sufficiently indicate that the said storage or possession was done with the intent to derive any gain or benefit. To constitute an offence under sub-section (3) there is no requirement to establish that such gain or benefit had been actually realized.

(V) Sub-section(s) (1), (2) and (3) respectively of Section 15 constitute independent and distinct offences. The three offences cannot coexist simultaneously in the same set of facts. They are distinct from each other and are not intertwined.

This is because, the underlying distinction between the three sub-sections of Section 15 lies in the varying degree of culpable mens rea that is required under each of the three provisions.

(VI) The police as well as the courts while examining any matter involving the storage or possession of any child pornography, finds that a particular sub-section of Section 15 is not attracted, then it must not jump to the conclusion that no offence at all is made out under Section 15 of the POCSO. If the offence does not fall within one particular sub- section of Section 15, then it must try to ascertain whether the same falls within the other sub-sections or not.

(VII) Any act of viewing, distributing or displaying etc., of any child pornographic material by a person over the internet without any actual or physical possession or storage of such material in any device or in any form or manner would also amount to 'possession' in terms of Section 15 of the POCSO, provided the said person exercised an invariable degree of control over such material, by virtue of the doctrine of constructive possession.

(VIII) Any visual depiction of a sexually explicit act which any ordinary person of a prudent mind would reasonably believe to prima facie depict a child or appear to involve a child, would be deemed as 'child pornography' and the courts are only required to form a prima facie opinion to arrive at the subjective satisfaction that the material appears to depict a child from the perspective of any ordinary prudent person for any offence under the POCSO that relates to child pornographic material, such as Section 15. Such satisfaction may be arrived at from any authoritative opinion like a forensic science laboratory (FSL) report of such material or opinion of any expert on the material in question, or by the assessment of such material by the courts themselves.

(IX) Section 67B of the IT Act is a comprehensive provision designed to address and penalize the various electronic forms of exploitation and abuse of children online. It not only punishes the electronic dissemination of child pornographic material, but also the creation, possession, propagation and consumption of such material as-well as the different types of direct and indirect acts of online sexual denigration and exploitation of the vulnerable age of children. Section(s) 67, 67A and 67B respectively of the IT Act being a complete code, ought to be interpreted in a purposive manner that suppresses the mischief and advances the remedy and ensures that the legislative intent of penalizing the various forms of cyber-offences relating to children and the use of obscene / pornographic material through electronic means is not defeated by a narrow construction of these provisions.

(X) The statutory presumption of culpable mental state on the part of the accused as envisaged under Section 30 of the POCSO can be made applicable provided the prosecution is able to establish the foundational facts necessary to constitute a particular offence under the POCSO that may have been alleged against the accused. Such presumption can be rebutted by the accused either by discrediting the prosecution's case or by leading evidence to prove the contrary, beyond a reasonable doubt.

(XI) The foundational facts necessary for the purpose of invoking the statutory presumption of culpable mental state for an offence under Section 15 of POCSO are as follows:

(a) For the purpose of sub-section (1), the necessary foundational facts that the prosecution may have to first establish is the storage or possession of any child

pornographic material and that the person accused had failed to delete, destroy or report the same.

(b) In order to invoke the statutory presumption of culpable mental state for an offence under sub-section (2) the prosecution would be required to first establish the storage or possession of any child pornographic material, and also any other fact to indicate either the actual transmission, propagation, display or distribution of any such material or any form of an overt act such as preparation or setup done for the facilitation of the transmission, propagation, display or distribution of such material, whereafter it shall be presumed by the court that the said act was done with the intent of transmitting, displaying, propagating or distributing such material and that the said act(s) had not been done for the purpose of either reporting or for use as evidence.

(c) For the purpose of sub-section (3) the prosecution must establish the storage or possession of such material and further prove any fact that might indicate that the same had been done to derive some form of gain or benefit or the expectation of some gain or benefit.

(XII) The statutory presumption of culpable mental under Section 30 of POCSO can be made applicable in a quashing proceeding pertaining to any offence under the POCSO.

In my opinion, the case in hand calls for issuing the following directions to various stakeholders for due compliance:

1. The persons in charge of the schools/educational institutions, special homes, children homes, shelter homes, hostels, remand homes, jails, etc. or wherever children are housed, if they come across instances of sexual abuse or assault on a minor child which they believe to have been committed or come to know that they are being sexually molested or assaulted are directed to report those facts keeping upmost secrecy to the nearest Special Juvenile Police Unit (SJPU) or local police, and they, depending upon the gravity of the complaint and its genuineness, take appropriate follow-up action casting no stigma to the child or to the family members.
2. Media personnel, persons in charge of hotels, lodges, hospitals, clubs, studios and photograph facilities have to duly comply with the provision of Section 20 of Act 32 of 2012 and provide information to the SJPU, or local police. Media has to strictly comply with Section 23 of the Act as well.
3. Children with intellectual disability are more vulnerable to physical, sexual and emotional abuse. Institutions which house them or persons in care and protection, if come across any act of sexual abuse, have a duty to bring to the notice of the Juvenile Justice Board/SJPU or local police and they in turn be in touch with the competent authority and take appropriate action.
4. Further, it is made clear that if the perpetrator of the crime is a family member himself, then utmost care be taken and further action be taken in consultation with the mother or other female members of the family of the child, bearing in mind the fact that best interest of the child is of paramount consideration.
5. If hospitals, whether government or privately-owned or medical institutions where children are being treated come to know that children admitted are subjected to sexual abuse, the same will immediately be reported to the nearest Juvenile Justice Board/SJPU and the Juvenile Justice Board, in consultation with SJPU, should take appropriate steps in accordance with the law safeguarding the interest of the child.

6. The non-reporting of the crime by anybody, after having come to know that a minor child below the age of 18 years was subjected to any sexual assault, is a serious crime and by not reporting they are screening the offenders from legal punishment and hence be held liable under the ordinary criminal law and prompt action be taken against them, in accordance with law.
7. Complaints, if any, received by Ncpcr, Scpcr, Child Welfare Committee (CWC) and Child Helpline, NGOs or women's organisations, etc., they may take further follow-up action in consultation with the nearest Juvenile Justice Board, SJPU or local police in accordance with law.
8. The Central Government and the State Governments are directed to constitute SJPUs in all the districts, if not already constituted and they have to take prompt and effective action in consultation with the Juvenile Justice Board to take care of the child and protect the child and also take appropriate steps against the perpetrator of the crime.
9. The Central Government and every State Government should take all measures as provided under Section 43 of Act 32 of 2012 to give wide publicity to the provisions of the Act through media including television, radio and print media, at regular intervals, to make the general public, children as well as their parents and guardians, aware of the provisions of the Act."

social media intermediaries in addition to reporting the commission or the likely apprehension of commission of any offence under POCSO to the National Centre for Missing & Exploited Children (NCMEC) is also obligated to report the same to authorities specified under Section 19 of POCSO i.e., the Special Juvenile Police Unit (SJPU) or the local police.

We further caution the courts to refrain from showing any form of leniency or leeway in offences under Section 21 of the POCSO, particularly to schools/educational institutions, special homes, children's homes, shelter homes, hostels, remand homes, jails, etc. who failed to discharge their obligation of reporting the commission or the apprehension of commission of any offence or instance of child abuse or exploitation under the POCSO. Section(s) 19, 20 and 21 of the POCSO are mandatory in nature, and there can be no dilution of the salutary object and purport of these provisions. Merely because Section 21 prescribes a lesser threshold of punishment, the same in no way derogates or detracts from the gravity or severity of the offence which has been sought to be punished as held in Maroti (supra). It is a settled position of law that he length of punishment is not the only indicator of the gravity of the offence and it is to be judged by a totality of factors, especially keeping in mind the background in which the offence came to be recognized by the legislature in the specific international context i.e., the United Nations Convention on Rights of Children, particularly Article(s) 3(2) and 34 of the said Convention.

We propose to suggest the following to the Union of India in its Ministry of Women and Child Development:

(i) The Parliament should seriously consider to bring about an amendment to the POCSO for the purpose of substituting the term "child pornography" that with "child sexual exploitative and abuse material" (CSEAM) with a view to reflect more accurately on the reality of such offences. The Union of India, in the meantime may consider to bring about the suggested amendment to the POCSO by way of an ordinance.

(ii) We put the courts to notice that the term "child pornography" shall not be used in any judicial order or judgment, and instead the term "child sexual exploitative and abuse material" (CSEAM) should be endorsed.

(iii) Implementing comprehensive sex education programs that include information about the legal and ethical ramifications of child pornography can help deter potential offenders. These programs should address common misconceptions and provide young people with a clear understanding of consent and the impact of exploitation.

(iv) Providing support services to the victims and rehabilitation programs for the offenders is essential. These services should include psychological counselling, therapeutic interventions, and educational support to address the underlying issues and promote healthy development. For those already involved in viewing or distributing child pornography, CBT has proven effective in addressing the cognitive distortions that fuel such behaviour. Therapy programs should focus on developing empathy, understanding the harm caused to victims, and altering problematic thought patterns.

(v) Raising awareness about the realities of child sexual exploitative material and its consequences through public campaigns can help reduce its prevalence. These campaigns should aim to destigmatize reporting and encourage community vigilance.

(vi) Identifying at-risk individuals early and implementing intervention strategies for youth with problematic sexual behaviours (PSB) involves several steps and requires a coordinated effort among various stakeholders, including educators, healthcare providers, law enforcement, and child welfare services. Educators, healthcare professionals, and law enforcement officers should be imparted training to identify signs of PSB. Awareness programs can help these professionals recognize early warning signs and understand how to respond appropriately.

(vii) Schools can also play a crucial role in early identification and intervention. Implementing school-based programs that educate students about healthy relationships, consent, and appropriate behaviour can help prevent PSB.

(viii) To give meaningful effect to the above suggestions and work out the necessary modalities, the Union of India may consider constituting an Expert Committee tasked with devising a comprehensive program or mechanism for health and sex education, as well as raising awareness about the POCSO among children across the country from an early age, for ensuring a robust and well-informed approach to child protection, education, and sexual well-being.

2024 0 INSC 734; 2024 0 Supreme(SC) 826; Manik & Ors. Vs The State of Maharashtra; Criminal Appeal Nos.1614-1618 of 2012; Decided on : 25-09-2024

In the light of the decision of this Court in Utpal Das & Anr. v. State of West Bengal, (2010) 6 SCC 493 there can be no doubt that a statement recorded under Section 164, Cr.PC., can also be used like a statement under Section 161, Cr.PC, to cross-examine the maker of it and to contradict him.

A perusal of Section 145 of the Evidence Act, 1872 would reveal that a witness could be cross- examined as to previous statement in writing only in respect of a fact relevant to the matter(s) in question, for the purpose of contradicting him in the manner provided therein. Omissions amounting to contradiction that militate against the core of the prosecution case alone is material as in such circumstances it would have a bearing on the credibility of the witness concerned.

Production of a dead body to prove a murder is not necessary in the eye of law. ‘Corpus Delicti’ is a Latin phrase that broadly means – ‘body of the crime’. Generally,

this principle has reference to the requirement of the prosecution proving that the crime has been committed, so as to charge the delinquent and secure a conviction.

2024 0 INSC 735; 2024 0 Supreme(SC) 829; Vijay Singh@Vijay Kr. Sharma Vs. The State of Bihar; Criminal Appeal No. 1031 of 2015 With Criminal Appeal No. 1578 of 2017, Criminal Appeal No. 765 of 2017, Criminal Appeal No. 1579 of 2017; Decided On : 25-09-2024

Ordinarily, there is no rule of law to discard the testimonies of the witnesses merely because they were known to the victim or belonged to her family. For, an offence may be committed in circumstances that only the family members are present at the place of occurrence in natural course.

A post mortem report is generally not considered as conclusive evidence of the facts mentioned in the report regarding the cause of death, time of death etc. It could always be corroborated with other direct evidence on record such as ocular evidence of the eye witnesses. However, when there is no other credible evidence on record to contradict the report, the facts stated in the post mortem report are generally taken as true.

The accused persons and the eyewitnesses belong to the same family and the presence of a property related dispute is evident. In a hypothetical sense, both the sides could benefit from implicating the other. In such circumstances, placing reliance upon motive alone could be a double-edged sword. We say no more.

2024 0 INSC 738; 2024 0 Supreme(SC) 832; Baljinder Singh @ Ladoo And Others Vs. State Of Punjab; Criminal Appeal No. 1389 of 2012; Decided on : 25-09-2024

paragraph 26 of the decision of this Court in Balu Sudam Khalde and Anr. vs. State of Maharashtra, 2023 SCC OnLine SC 355. The relevant passage is reproduced as under:

> "26. When the evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:
>
> (a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.
>
> (b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.
>
> (c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.
>
> (d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.
>
> (e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.
>
> (f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded."(emphasis supplied)

We are of the view that there cannot be a fixed timeframe for formation of common intention. It is not essential for the perpetrators to have had prior meetings to conspire or make preparations for the crime. Common intention to commit murder can arise even moments before the commission of the act. Since common intention is a mental state of the perpetrators, it is inherently challenging to substantiate directly. Instead, it

can be inferred from the conduct of the perpetrators immediately before, during, and after the commission of the act.
It is also settled law that examination of independent witness is not an indispensable requisite if the testimonies of other witnesses are deemed trustworthy and reliable. Non-examination of any independent witness by the prosecution will not go to the root of the matter affecting the decision of the court, unless other witnesses' testimonies and evidences are scant to establish the guilt of the accused.

https://indiankanoon.org/doc/96783196/; T. Ramadevi vs The State Of Telangana on 26 September, 2024; WP No. 21912/2024(DB)
we have no hesitation in reaching to the conclusion that TSPDFE Act has not in any manner ousted the applicability of the provisions of Cr.P.C. so far as the mandatory requirement which includes the fundamental right of any person who stands apprehended or arrested to be produced before the nearest Judicial Magistrate. If the said interpretation is not accepted or followed; the very purpose, object and intention of the law makers at the first instance so far as the fundamental right guaranteed under Article 22(2) of the Constitution of India and secondly under the statute i.e. Section 167(1) and (2) of Cr.P.C. would render the two provisions redundant, which in the opinion of this Court would give rise to far more complications and repercussions and which perhaps is also not the intention of the law makers in the course of enacting the TSPDFE Act.

https://indiankanoon.org/doc/96873105/; Shaik Shadullah vs The State Of Telangana on 23 September, 2024; CRLP 9267/2024
Reverting to the facts of the case on hand, a perusal of Section 186 of IPC makes clear that to take cognizance there should be a written complaint and such complaint should be filed either by the officer issuing such promulgation order or the officer above his rank. Further, Section 2 (d) of Cr.P.C., defines complaint as allegations made orally or in writing to the Magistrate with a view to the Magistrate taking action on such complaint, the Magistrate can take cognizance under Section 190 (1)(a) of Cr.P.C.. Thereafter, the procedure prescribed under Section 200 of Cr.P.C has to be followed. Therefore, the first information report, charge sheet and the order taking cognizance on such charge sheet are without jurisdiction.

https://indiankanoon.org/doc/159783365/; Avinash vs The State Of Andhra Pradesh on 23 September, 2024; CRLP No. 6369/2024
Even after, grant of bail, the very same court which has granted bail may suo motu take up the case and examine whether the conditions imposed on the Petitioners while granting bail to them require relaxation/modification

311 CrPC
judgment of **Rajaram Prasad Yadav vs. State of Bihar and Another, (2013) 4 SCC 461** wherein this Court culled out the principles to be borne in mind while exercising the power under Section 311 CrPC. The relevant extract is reproduced herein-below:

"17. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 CrPC read along with Section

138 of the Evidence Act, we feel the following principles will have to be borne in mind by the courts:

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

17.2. The exercise of the widest discretionary power under Section 311 CrPC should ensure that the judgment should not be rendered on inchoate, inconclusive and speculative presentation of facts, as thereby the ends of justice would be defeated.

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

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

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

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

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

17.8. The object of Section 311 CrPC simultaneously imposes a duty on the court to determine the truth and to render a just decision.

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

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

17.11. The court should be conscious of the position that after all the trial is basically for the prisoners and the court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

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

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

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

319 CrPC

paragraph 33 of the judgment passed by the Constitution Bench of this Court in the case of Sukhpal Singh Khaira vs. State of Punjab, (2023) 1 SCC 289 : 2022 INSC 1252, which reads thus:

"33. For all the reasons stated above, we answer the questions referred as hereunder:-

"I. Whether the trial court has the power under Section 319 of CrPC for summoning additional accused when the trial with respect to other co-accused has ended and the judgment of conviction rendered on the same date before pronouncing the summoning order?

The power under Section 319 of CrPC is to be invoked and exercised before the pronouncement of the order of sentence where there is a judgment of conviction of the accused. In the case of acquittal, the power should be exercised before the order of acquittal is pronounced. Hence, the summoning order has to precede the conclusion of trial by imposition of sentence in the case of conviction. If the order is passed on the same day, it will have to be examined on the facts and circumstances of each case and if such summoning order is passed either after the order of acquittal or imposing sentence in the case of conviction, the same will not be sustainable.

II. Whether the trial court has the power under Section 319 of the CrPC for summoning additional accused when the trial in respect of certain other absconding accused (whose presence is subsequently secured) is ongoing/pending, having been bifurcated from the main trial?

The trial court has the power to summon additional accused when the trial is proceeded in respect of the absconding accused after securing his presence, subject to the evidence recorded in the split up (bifurcated) trial pointing to the involvement of the accused sought to be summoned. But the evidence recorded in the main concluded trial cannot be the basis of the summoning order if such power has not been exercised in the main trial till its conclusion.

III. What are the guidelines that the competent court must follow while exercising power under Section 319 CrPC?"

(i) If the competent court finds evidence or if application under Section 319 of CrPC is filed regarding involvement of any other person in committing the offence based on evidence recorded at any stage in the

trial before passing of the order on acquittal or sentence, it shall pause the trial at that stage.

(ii) The Court shall thereupon first decide the need or otherwise to summon the additional accused and pass orders thereon.

(iii) If the decision of the court is to exercise the power under Section 319 of CrPC and summon the accused, such summoning order shall be passed before proceeding further with the trial in the main case.

(iv) If the summoning order of additional accused is passed, depending on the stage at which it is passed, the Court shall also apply its mind to the fact as to whether such summoned accused is to be tried along with the other accused or separately.

(v) If the decision is for joint trial, the fresh trial shall be commenced only after securing the presence of the summoned accused.

(vi) If the decision is that the summoned accused can be tried separately, on such order being made, there will be no impediment for the Court to continue and conclude the trial against the accused who were being proceeded with.

(vii) If the proceeding paused as in (i) above is in a case where the accused who were tried are to be acquitted and the decision is that the summoned accused can be tried afresh separately, there will be no impediment to pass the judgment of acquittal in the main case.

(viii) If the power is not invoked or exercised in the main trial till its conclusion and if there is a split-up (bifurcated) case, the power under Section 319 of CrPC can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split up (bifurcated) trial.

(ix) If, after arguments are heard and the case is reserved for judgment the occasion arises for the Court to invoke and exercise the power under Section 319 of CrPC, the appropriate course for the court is to set it down for re-hearing.

(x) On setting it down for re-hearing, the above laid down procedure to decide about summoning; holding of joint trial or otherwise shall be decided and proceeded with accordingly.

(xi) Even in such a case, at that stage, if the decision is to summon additional accused and hold a joint trial the trial shall be conducted afresh and de novo proceedings be held.

(xii) If, in that circumstance, the decision is to hold a separate trial in case of the summoned accused as indicated earlier;

(a) The main case may be decided by pronouncing the conviction and sentence and then proceed afresh against summoned accused.

(b) In the case of acquittal the order shall be passed to that effect in the main case and then proceed afresh against summoned accused."

Judgment of Civil Court & Criminal Court not binding on each other

In Avitel Post Studioz Limited and others v. Hsbc Pi Holding (Mauritius) Limited AIRONLINE 2020 SC 691 the Honourable Supreme Court observed that the law on the issue stands crystallized to the effect that the findings of fact recorded by the civil court do not have any bearing so far as the criminal case is concerned and vice versa. Standard of proof is different in civil and

criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject-matter and both the cases have to be decided on the basis of the evidence adduced therein.

Sanction

In State of U.P. v. Paras Nath Singh, (2009) 6 SCC 372, the Court observed as under:

> "8. …As the provision itself mandates that no finding, sanction or order by a court of competent jurisdiction becomes invalid unless it is so that a failure of justice has in fact been occasioned because of any error, omission or irregularity in the charge including in misjoinder of charge, obviously, the burden is on the accused to show that in fact a failure of justice has been occasioned."

Corpus Delicti

In Sevaka Perumal and another vs. State of Tamil Nadu, (1991) 3 SCC 471 this Court observed that it is not an absolute necessity or an essential ingredient to establish the corpus delicti in a trial for murder, as the factum of death must be established like any other fact. To base a conviction for murder, this Court held that there must be reliable and acceptable evidence that the offence of murder was committed and it must be proved, either by direct or circumstantial evidence, even if the dead body is not traceable.

Examination of Independent Witnesses

It is also settled law that examination of independent witness is not an indispensable requisite if the testimonies of other witnesses are deemed trustworthy and reliable. Non-examination of any independent witness by the prosecution will not go to the root of the matter affecting the decision of the court, unless other witnesses' testimonies and evidences are scant to establish the guilt of the accused. Reference is made to paragraph 24 of the decision of this court in Guru Dutt Pathak vs. State of U.P., (2021) 6 SCC 116, where it was ruled as follows:

> "24. One another ground given by the learned trial court while acquitting the accused was that no independent witness has been examined. The High Court has rightly observed that where there is clinching evidence of eyewitnesses, mere non- examination of some of the witnesses/independent witnesses and/or in absence of examination of any independent witnesses would not be fatal to the case of the prosecution.
>
> 24.1. In Manjit Singh vs. State of Punjab, (2019) 8 SCC 529, it is observed and held by this Court that reliable evidence of injured eyewitnesses cannot be discarded merely for reason that no independent witness was examined.
>
> 24.2. In the recent decision in Surinder Kumar vs. State of Punjab, (2020) 2 SCC 563, it is observed and held by this Court that merely because

prosecution did not examine any independent witness, would not necessarily lead to conclusion that the accused was falsely implicated.

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

MAY or SHALL

The Hon'ble Supreme Court in the case of Dinesh Chandra Pandey Vs. High Court of Madhya Pradesh 4 in paragraph No.15has held as under:

"15. The courts have taken a view that where the expression "shall" has been used it would not necessarily mean that it is mandatory. It will always depend upon the facts of a given case, the conjunctive reading of the relevant provisions along with other provisions of the Rules, the purpose sought to be achieved and the object behind implementation of such a provision. This Court in SarlaGoel v. Kishan Chand [(2009) 7 SCC 658], took the view that where the word "may" shall be read as "shall" would depend upon the intention of the legislature and it is not to be taken that once the word "may" is used, it per se would be directory. In other words, it is not merely the use of a particular expression that would render a provision directory or mandatory. It would have to be interpreted in the light of the settled principles, and while ensuring that intent of the Rule is not frustrated."

Likewise, in the case of Mohan Singh Vs. International Airport Authority of India again the Hon'ble Supreme Court held (2010) 11 SCC 500 that the words 'may' and 'shall' in the legal context are synonymous and can be used interchangeably if the context requires such an interpretation. In paragraph No.26 of the said judgment, the Hon'ble Supreme Court held as under:

"26. Thus, this Court, keeping in view the objects of the Act, had considered whether the language in a particular section, clause or sentence is directory or mandatory. The word 'shall', though prima facie gives impression of being of mandatory character, it requires to be considered in the light of the intention of the legislature by carefully attending to the scope of the statute, its nature and design and the consequences that would flow from the construction thereof one way or the other. In that behalf, the court is required to keep in view the impact on the profession, necessity of its compliance; whether the statute, if it is avoided, provides for any contingency for non-compliance; if the word 'shall' is construed as having mandatory character, the mischief that would ensue by such construction; whether the public convenience would be subserved or public inconvenience or the general inconvenience that may ensue if it is held mandatory and all other relevant circumstances are required to be taken into consideration in construing whether the provision would be mandatory or directory. If an object of the enactment is defeated by holding the same directory, it should be construed as mandatory whereas if by holding it mandatory serious general inconvenience will be created to (1997) 9 SCC 132 innocent persons of general public without much furthering the object of enactment, the same should be construed as directory but all the same, it would not mean that the language

used would be ignored altogether. Effect must be given to all the provisions harmoniously to suppress public mischief and to promote public justice."

NEWS

- TSHC- Circular- Observance Of Office Timings By The Judicial Officers In The State
- APHC- Amendments To Criminal Rules Of Practice And Circular Orders, 1990 In Terms Of Order Dated 20.04.2021 Passed By The Hon''ble Supreme Court In S.M.W.P. (Crl.) No.1/2017 (In Re: To Issue Certain Guidelines Regarding Inadequacies And Deficiencies In Criminal Trials).
- Amendments To Criminal Rules Of Practice And Circular Orders, 1990 In Terms Of Order Dated 20.04.2021 Passed By The Hon''ble Supreme Court In S.M.W.P. (Crl.) No.1/2017 (In Re: To Issue Certain Guidelines Regarding Inadequacies And Deficiencies In Criminal Trials).
- High Court Of Andhra Pradesh - White A4 Size Paper - Writ Proceeding Rules, 1977.
- The Telangana Civil Courts (Amendment) Act, 2024
- AP- The Appellate Side Rules Of The High Court - Amendments - Final Notification
- AP- Notification Of All The District Offices Of Prosecutions In (13) Districts As “District Directorate Of Prosecutions”
- AP- The Banning Of Unregulated Deposits Schemes Act, 2019 (Act No.21 Of 2019) - Designation Of All The Courts Of Principal District And Sessions Judges And The Metropolitan Sessions Judges Of Vijayawada And Visakhapatnam In The State Of Andhra Pradesh As Special Courts To Try The Cases Under The Banning Of Unregulated Deposits Schemes Act, 2019 (Act No.21 Of 2019).
- High Court for the State of Telangana - Direction of the Hon'ble Supreme Court in Crl.A.No. 3589 of 2023 dated 29-02-2024 overruling the Directions dated 28-03-2018 in Asian Resurfacing case - Forwarding the Judgment in Crl.A.No. 3589 of 2023 dated 29-02-2024 - Instructing all the Judicial Officers in the State to follow the directions - Reg.

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ON A LIGHTER VEIN

A surgeon, an architect an a lawyer are having a heated pub discussion about which of their professions is actually the oldest.

The surgeon says: “Surgery IS the oldest profession. God took a rib from Adam to create Eve and you can’t go back further than that.”

The architect says: “Hold on! In fact, God was the first architect when he created the world out of chaos in 7 days, and you can’t go back any further than THAT!”

The lawyer smiles and says: “Gentlemen, Gentlemen…who do you think created the CHAOS??!!”

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Notes
