O.J.A. MONTHLY REVIEW OF CASES

ON

CIVIL, CRIMINAL & OTHER LAWS, 2014

(AUGUST)

Odisha Judicial Academy, Cuttack, Odisha

ODISHA JUDICIAL ACADEMY

MONTHLY REVIEW OF CASES ON CIVIL, CRIMINAL & OTHER LAWS, 2014 (AUGUST)

I N D E X

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Civil P.C. (5 of 1908), Ss. 100, 96,2 (2)- Limitation Act(36 of 1963)

Maran Chandra Shil & Ors. V. Smt. Laxmi Rani Chowdhury W/o Bindu Bn. Chowdhury and Anr. *AIR 2014 TRIPURA 36*

U. B. SAHA, J.

Delay in filling appeal – Rejection of condonation application and consequent dismissal of appeal – Order tantamount to 'decree' – Second appeal against such order is maintainable – Petition under Art. 227 cannot be entertained.

Dismissal of an application for condonation of delay and consequent dismissal of appeal is a decree and against such a decree a second appeal lies. When the statute prescribe an appeal against the said decree then petition under Art. 227 of the Constitution is not permissible.

As the High Court under Art. 227 cannot assume unlimited prerogative to correct all species of hardship or wrong decisions, it must be restricted to cause of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice where grave injustice would be done unless the High Court interferes.

More so, the High Court can only interfere with an order of a Court subordinate to it when any order or judgment is passed without jurisdiction or on the face of record such an order is erroneous or a perverse one. In the instant case, the Court of appeal, at the first instance, exercises the jurisdiction vested on it and decided the application for condonation of delay on merit and thereafter dismissed the appeal in exercising its jurisdiction under Order 41, Rule 11. Thus, the petition under Art. 227 is not maintainable.

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Sec.11

State of Tamil Nadu Vs. State of Kerala & anr. & C.R. Neelakandan & Anr. Vs. Union Of India & Ors. AIR 2014 SC 2407

R.M. LODHA, CJI, H.L. DATTU, CHANDRAMAULI KR. PRASAD, MADAN B. LOKUR, M.Y. EQBAL ,JJ.

Issue

Res-judicata – Principles of –Binds parties –Not legislature.

Mr. Harish Salve, learned senior counsel is right in his submission that a legislation can never be challenged on the principles of res judicata and that it binds a party and not the legislature. The question here is not that the 2006 (Amendment) Act is unconstitutional on the ground of res judicata but the question is, when a categorical finding has been recorded by this Court in the earlier judgment that the dam is safe for raising the water level to 142 ft. and permitted the water lever of the dam being raised to 142 ft. and that judgment has become final and binding between the parties, has the Kerala legislature infringed the separation of powers doctrine in enacting such law? In what has already been discussed above, the answer to the question has to be in the affirmative and we hold so.

Where a dispute between two States has already been adjudicated upon by this Court, which it is empowered to deal with, any unilateral law enacted by one of the parties that results in overturning the final judgment is bad not because it is affected by the principles of res judicata but because it infringes the doctrine of separation of powers and rule of law, as by such law, the legislature has clearly usurped the judicial power.

Res-judicata

It is true that 2006 judgment was rendered in exercise of the jurisdiction of this Court under Article 32 of the Constitution and the petitions which were transferred to this Court under Article 139A but to say that such judgment does not bind this Court while deciding the present suit, which confers exclusive jurisdiction upon it, is not correct. The earlier decision of this Court by no stretch of imagination can be

regarded as a judgment rendered without jurisdiction. A finding recorded by this Court in the proceedings under Article 32 is as effective and final as in any other proceedings.

The rule of res judicata is not merely a technical rule but it is based on high public policy. The rule embodies a principle of public policy, which in turn, is an essential part of the rule of law. In Duchess of Kingston[62], the House of Lords (in the opinion of Sir William de Grey) has observed: From the variety of cases relative to judgments being given in evidence in civil suits, these two deductions seem to follow as generally true: first, that the judgment of a court of concurrent jurisdiction, directly upon the point, is as a plea, a bar, or as evidence, conclusive, between the same parties, upon the same matter, directly in question in another court; secondly, that the judgment of a court of exclusive jurisdiction, directly upon the point, is, in like manner, conclusive upon the same matter, between the same parties, coming incidentally in question in another court, for a different purpose.

Corpus Juris explains that res judicata is a rule of universal law pervading every well-regulated system of jurisprudence, and is put upon two grounds, embodied in various maxims of the common law; the one, public policy and necessity, which makes it to the interest of the State that there should be an end to litigation; and the other, the hardship on the individual that he should be vexed twice for the same cause.

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Section 319 of Code of Criminal Procedure

Hardeep Singh & Ors. Vs. State of Punjab CLT(2014) II Supp. Crl. 250(SC)

P. SATHASIVAM, CJI, DR. B. S. CHAUHAN, RANJANA PRAKASH DESAI, RANJAN GOGOI & SA BOBDE,JJ.

Issues - Word "Trial", 'Court' & 'Course' – Meaning of

'Trial' means determination of issues adjudging the guilt or the innocence of a person, the persons has to be aware of what is the case against him & it is only at the stage of framing of the charges that the Court informs him of the same, the 'trial' commences only on charges being framed – In order to invoke the power under Section 319 Cr.P.C., it is only a Court of Sessions or a Court of Magistrate performing the duties as a Court under the Cr.P.C. that can utilize the material before it for the purpose of the said Section – Even the word "Course" occurring in Section 319 Cr.P.C., clearly indicated that the power can be exercised only during the period when the inquiry has been commenced and is going on or the trial which has commenced and is going on – it covers the entire wide range of the process of the pre-trial and the trial stage. The word 'course' therefore, allows the Court to invoke this power to proceed against any person from the initial stage of inquiry upto the stage of the conclusion of the trial – The Court does not become functus officio even if cognizance is taken so far as it is looking into the material qua any other person who is not an accused – The word "course" ordinarily conveys a meaning of a continuous progress from one point to the next in time and conveys the idea of a period of time; duration & not a fixed point of time.

The Court cannot proceed with an assumption that the legislature enacting the statute has committed a mistake and where the language of the statute is plain and unambiguous, the Court cannot go behind the language of the statute so as to add or subtract a word praying the role of a political reformer or of a wise Counsel to the legislature. The Court has to proceed on the footing that the legislature intended what it has said and even if there is some defect in the phraseology etc., it is for others

than the Court to remedy that defect. The statute requires to be interpreted without doing any violence to the language used therein. The Court cannot re-write, recast or reframe the legislation for the reason that it has no power to legislate.

Section 2(q), 173 & 319 of Code of Criminal Procedure:-

Summoning of additional accused – Scope and extent of powers of Courts during course of enquiry or trial as contemplated u/s. 319,, Cr.P.C.

What is the stage at which power under Section319 Cr.P.C. can be exercised?

The stage of inquiry and trial upon cognizance being taken of an offence, has been considered for proper appreciation of the stage of invoking of the powers under Sections 319, Cr.P.C. to understand the meaning that can be attributed to the word 'inquiry' and 'trial' as used under the Section.

Does the word 'evidence' in Section319 Cr.P.C. means as arising in Examination-in-Chief or also together with Cross-Examination?

The second question referred to herein is in relation to the word 'evidence' as used under Section 319 Cr.P.C., which leaves no room for doubt that the evidence as understood under section 3 of the Evidence Act is the statement of the witnesses that are recorded during trial and the documentary evidence in accordance with the Evidence Act, which also includes the document and material evidence in the Evidence Act.

Whether the word "evidence" used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

To answer the questions and to resolve the impediment that is being faced by the Trial Courts in exercising of powers under Section 319

Cr.P.C., the issue has to be investigated by examining the circumstances which give rise to a situation for the Court to invoke such powers.

What is the degree of satisfaction required for invoking the power under Section 319 Cr.P.C.?

Section 319(1) Cr.P.C. empowers the Court to proceed against other persons who appear to be guilty of offence, though not an accused before the Court.

In what situations can the power under this Section be exercised: Not named in FIR; Named in the FIR but not charge-sheeted or has been discharged?

A person not named in the FIR or a person though named in the FIR but has not been charge sheeted or a person who has been discharged can be summoned under Section 319 Cr.P.C. provided from the evidence, it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned the requirement of? Sections 300 & 398 Cr.P.C. has to be complied with before he can be summoned afresh.

Thus, it is evident that power under Section 319 Cr.P.C. can be exercised against a person not subjected to investigation, or a person placed in the Column 2 of the Charge-sheet and against whom cognizance had not been taken, or a person who has been discharged. However, concerning a person who has been discharged, no proceedings can be commenced against him directly under Section 319 Cr.P.C. without taking recourse to provisions of Section 300(5) read with Section 398 Cr.P.C.

We accordingly sum up our conclusions as follows:

Question Nos. 1 & III Q.1 what is the stage at which power under Section 319 Cr.P.C. can be exercised? & Q. III Whether the word "evidence" used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word

"evidence" is limited to the evidence recorded during trial? A. In Dharma Pal's case, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the power after completion of investigation. Such cognizance can be taken under Section 193 Cr.P.C. and the Sessions Judge need not wait till 'evidence' under Section 319 Cr.P.C. becomes available for summoning an additional accused.

Section 319 Cr.P.C., significantly, uses two expressions that have to be taken note of i.e. (1) inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200,201, 02 Cr.P.C. and under Section 319 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the Court after the trial commences, for the exercise of power under Section 319 Cr.P.C. and also to add an accused whose name has been shown in column 2 of the charge sheet.

The matters are placed before the appropriate Bench for final disposal in accordance with law explained hereinabove.

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Code of Criminal Procedure, 1973 – Sections 397 & 401

Bal Manohar Jalan v. Sunil Paswan and another (2014) 58 OCR (SC) - 989

T. S. THAKUR AND C. NAHAPPAN ,JJ.

Issue

Criminal revision – Accused cannot be deprived of hearing.

Facts:

The facts necessary for the disposal of the present appeal are stated as follows: the father of the respondent No. 1 herein filed a complaint on 24.5.2003 against five accused persons alleging therein that they had committed murder of son of the complainant by name Anil Paswan by administration poison. A case was registered in First Information Report No. 96 of 2003 on the file of Chowk, Police Station, Patna City, on 28.5. 2003 against 5 accused persons for the alleged offences under Section 328/302/34 IPC. During investigation, the complainant filed a protestcum-complainant petition on 7.6.2003 which was kept on record. The investigation officer submitted the final report in the case on 31.5.2008 against accused No. 1 Sunita Devi alone under Section 328/302 IPC for the murder of Anil Paswan. The Addl. Chief Judicial Magistrate, Patna City, perused the charge-sheet and the case diary as well as the protest-cum-complainant petition dated 7.6.2003 and took cognizance for the offences under Section 328/302 IPC against accused NO.1 Sunita Devi and discharged accused Nos. 2 to 5 in the First Information Report from the case and rejected the protest-cum-complainant petition filed by the complainant by his order dated 4.3.2009. Aggrieved by the rejection of the protest-cum-complaint in Criminal Revision No. 830 of 2009 on the file of the High Court of Judicature at Patna under Section 397 and 401 of the Code of Criminal Procedure. The High Court after hearing the revision petitioner and the respondent State set aside the order dated 4.3.2009 passed by Addl. Chief Judicial Magistrate, Patna City and remanded the matter to the Court below for proceeding in accordance with law treating the protest-cum-complaint

petition as a complaint. Accused No. 4 mentioned in the First Information Report Bal Manohar Jalan has challenged the said order of the High Court in this appeal.

In the present case challenge is laid to order dated 4.3.2009 at the instance of the complainant in the revision petition before the High Court and by virtue of Section 401(2) of the Code, the accused mentioned in the First Information Report get the right of hearing before the revisional Court although the impugned order therein was passed without their participation. The appellant who is an accused person cannot be deprived of hearing on the face of the express provision contained in Section 401(2) of the Code and on this ground, the impugned order of the High Court is liable to be set aside and the matter has to be remitted.

Though other grounds such as charge-sheet having been filed and the cognizance has been taken against accused No.1, the protest petition cannot be treated as a complaint warranting an independent inquiry, have been raised in this appeal, we do not deem it necessary to consider the same since we are remitting the matter for fresh consideration and it is open to the appellant to raise them before the High Court.

In the result the impugned order of the High Court dated 18.4.2011 is set aside and the matter is remitted and the High Court shall issue notice to all the concerned accused and thereafter hear and dispose of the criminal revision petition in accordance with law. This appeal is allowed accordingly.

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Sec.157

Sudarshan & Anr. V. State of Maharashtra (2014) 58 OCR (SC) - 772

Dr. B. S. CHAUHAN & A. K. SIKRI ,JJ.

Issue

First Information Report – Necessity of recording of FIR and sending copy of FIR to the concerned Magistrate – Plea of defence about ante-timing the FIR.

Facts:

Complainant, two appellants and other accused persons were residents of same place 'C' and the complainant knew both the appellants – Complainant had bought new motorcycle and with a view to celebrate the occasion., he had arranged a party at a forest place 'J' – The party was attended by friends of complainant including the two deceased – Complainant and his friends reached the spot at about 12.00 noon and they started preparing meals – Prosecution case that two deceased started playing cards at some distance from the place where the complainant was preparing riots and while the complainant was busy in his work, suddenly 8 to 10 persons reached the spot – Deceased started running after witnessing them but the said 8 to 10 persons followed the deceased – Two appellants started assaulting deceased "Ch" – There were severe injuries on head of deceased 'V' and his brain material had come out and he was head – Deceased 'Ch' was found at some distance in the same condition – Unnatural conduct of complainant as he along with his friends rushed to house of Advocate 'R' at their place 'C' which was at a distance of 15 kms from the place of incident – On advice of Advocate 'R', matter was reported to police at place 'C' only – Trial Court found two appellants guilty of offence under Section 302/34 only – column 15 of FIR pertaining to 'date and time of dispatch to the Court' was left blank and no date and time of dispatch/delivery of this FIR to the concerned Court was mentioned – No attempt was made to prove as to when and how the copy was sent – Though as per FIR, names of assailants i.e., appellants

were stated to the police official at place 'C' but he did not disclose those names to the Investigating Officer – Whether appellants were entitled to be granted benefit of doubt – Held, Yes.

FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the Courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in dispatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174, Cr.P.C., is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the color of a promptly

lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW-8."

Neither the trial court nor the High Court has appreciated the aforesaid circumstances which go to the root of the matter and raise sufficient doubt about the involvements of the appellants in the present case.

We are, therefore, of the opinion that the appellants are entitled to the benefit of doubt and the case against them is not proved beyond reasonable doubt so as to uphold their conviction into a serious charge of murder under Section 302 of IPC.

The appeal is, accordingly, allowed and the conviction of the appellants under the aforesaid provisions is set aside. The appellants who are in custody shall be released forthwith, if not required in any other case.

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Sec.354

Pritam Chauhan Vs. State (Govt. Of NCT Delhi) . AIR 2014 SC 2553

SUDHANSU JYOTI MUKHOPADHAYA & RANJAN GOGOI ,JJ.

Issue

Sentence–Discretion given to court –To be exercised on rational parameter s in light of facts of case –Doctrine of Proportionality –Invocation –Relevant consideration.

Sec.357

Compensation to victim of offence-Provision operate independently of specific penal provisions of the Code under which court is required to sentence an offender.

The punishment contemplated under Section 326 IPC is imprisonment for life or with imprisonment of either description for a term which may extend to ten years, along with fine. In a recent pronouncement of this Court in Gopal Singh vs. State of Uttarakhand it has been held that the principle of just punishment is the bedrock of sentencing in respect of a criminal offence. The wide discretion that is vested in the Courts in matters of sentencing must be exercised on rational parameters in the light of the totality of the facts of any given case. The doctrine of proportionality has to be invoked in the context of the facts in which the crime had been committed, the antecedents of the accused, the age of the accused and such other relevant factors. In the present case, considering that the accused-appellant had gone to his house to fetch a knife and, thereafter, had given repeated blows to the victim resulting in multiple grievous injuries, we are of the view that the sentence of two years rigorous imprisonment is just and adequate and will not require any modification. The submission of the learned counsel for the appellant that the appellant is willing to pay higher compensation under Section 357 IPC also cannot be accepted inasmuch as the provisions of Section 357 operate independently of the specific penal

provisions of the Code under which the court is required to sentence an offender.

In view of the foregoing discussion, we do not find any merit in this appeal. It is accordingly dismissed. The accused shall serve out the remaining part of the sentence imposed by the High Court and affirmed by the present order.

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Secs.362, 353

Kushalbhai Ratanbhai Rohit & Ors. Vs. State of Gujarat. AIR 2014 SC 2291

Dr. B.S. CHAUHAN, J. CHELAMESWAR & M.Y. EQBAL, JJ.

Issue

Recall or Review of order –Order acquitting petitioner dictated in open court, but had not been signed –Recall of order by High Court is proper in view of Sec.364.

We do not find any forcible submission advanced on behalf of the petitioners that once the order had been dictated in open court, the order to review or recall is not permissible in view of the provisions of Section 362 Cr.P.C. for the simple reason that Section 362 Cr.P.C. puts an embargo to call, recall or review any judgment or order passed in criminal case once it has been pronounced and signed. In the instant case, admittedly, the order was dictated in the court, but had not been signed.

In view of the provisions of Section 362 Cr.P.C. while deciding the case, the Patna High Court relied upon the judgment of Calcutta High Court in Amodini Dasee v. Darsan Ghose, 1911 ILR (Cal) 828 and the judgment of Allahabad High Court in Emperor v. Pragmadho Singh, 1932 ILR (All.) 132. A similar view has been reiterated by the Division Bench of the Bombay High Court in State of Bombay v. Geoffrey Manners & Co., AIR 1951 Bom. 49. The Bombay High Court had taken the view that unless the judgment is signed and sealed, it is not a judgment in strict legal sense and therefore, in exceptional circumstances, the order can be recalled and altered to a certain extent.

This Court has also dealt with the issue in Surendra Singh & Ors. v. State of U.P., AIR 1954 SC 194 observing as under:

"Now up to the moment the judgment is delivered Judges have the right to change their mind. There is a sort of 'locus paenitentiae' and indeed last minute alterations often do occur. Therefore, however much a draft

judgment may have been signed beforehand, it is nothing but a draft till formally delivered as the judgment of the Court. Only then does it crystallise into a full-fledged judgment and become operative.

It follows that the Judge who "delivers" the judgment, or causes it to be delivered by a brother Judge, must be in existence as a member of the Court at the moment of delivery so that he can, if necessary, stop delivery and say that he has changed his mind. There is no need for him to be physically present in court but he must be in existence as a member of the Court and be in a position to stop delivery and effect an alteration should there be any last minute change of mind on his part. If he hands in a draft and signs it and indicates that he intends that to be the final expository of his views it can be assumed that those are still his views at the moment of delivery if he is alive and in a position to change his mind but takes no steps to arrest delivery.

But one cannot assume that he would not have changed his mind if he is no longer in a position to do so. A Judge's responsibility is heavy and when a man's life and liberty hang upon his decision nothing can be left to chance or doubt or conjecture; also, a question of public policy is involved. As we have indicated, it is frequently the practice to send a draft, sometimes a signed draft, to a brother Judge who also heard the case. This may be merely for his information, or for consideration and criticism. The mere signing of the draft does not necessarily indicate a closed mind. We feel it would be against public policy to leave the door open for an investigation whether a draft sent by a Judge was intended to embody his final and unalterable opinion or was only intended to be a tentative draft sent with an unwritten understanding that he is free to change his mind should fresh light drawn upon him before the delivery of judgment."

In view of the above, we are of the considered opinion that no exception can be taken to the procedure adopted by the High Court in the instant case. The petition is devoid of any merit and is accordingly dismissed.

Criminal Procedure Code, 1973-Sections 177, 178 and 179

Dashrath Rupsingh Rathod V. State of Maharashtra & Anr. 2014 (3) Crimes 162 (SC)

T.S. Thakur, Vikramajit Sen and T.S. Thakur,

Territorial jurisdiction of court to entertain complaint-There is difference between commission of offence and its cognizance-Precision and exactitude are necessary especially where location of a litigation is concerned-Law mandates cheque to be presented at bank on which it is drawn if drawer is to be held criminally liable-Place where complainant may present cheque for encashment would not confer or create territorial jurisdiction.

Place of judicial inquiry and trial of offence must logically be restricted to where drawee bank is located-An interpretation should not be imparted to Section 138 which will render it as a device of harassment by sending notices from a place which has no casual connection with transaction itself, and/or by representing cheque (s) at any of banks where payee may have an account.

Place of issuance or delivery of statutory notice or where Complainant chooses to present cheque for encashment by his bank are not relevant for purposes of territorial jurisdiction of Complaints even though noncompliance thereof will inexorably lead to dismissal of complaint-Complainant is statutorily bound to comply with Section 177 of Cr.P.C. and place or situs where Section 138 Complainant is to be filed is not of choosing-Territorial jurisdiction is restricted to Court within whose local jurisdiction offence was committed which is where cheque is dishonoured by bank, which it is drawn-Regardless of whether evidence has been led before Magistrate at pre-summoning stage, either by affidavit or by oral statement , complaint will be maintainable only at place where cheque stands dishonoured.

Precedent-Judicial decorum. It is imperative for Court to diligently distill and then apply ratio of a decision and view of a larger Bench ought not to be disregarded-Once decision of a larger Bench has been delivered it is that decision which mandatorily has to be applied, whereas a Co-ordinate Bench, in the event that it finds itself unable to agree with an existing ratio, is competent to recommend precedent for reconsideration by referring the case to Chief Justice for constitution of a larger Bench.

Territorial jurisdiction is restricted to Court within whose local jurisdiction cheque is dishonoured by bank on which it is drawn. Cause of action as perceived in Civil law are not relevant in criminal prosecution.

Judicial Approach on Jurisdiction

We shall take a short digression in terms of brief discussion of the approach preferred by this Court in the context of Section 20 of the Code of Civil Procedure, 1908(hereinafter referred to as, 'CPC'), which inter alia, enjoins that a suit must be instituted in a court within the local limits of whose jurisdiction the Defendant actually and voluntarily resides, or carries on business, or personally works for gain, or where the cause of action wholly or in part arises. The Explanation to that Section is important; it prescribes that a corporation shall be deemed to carry on business at its sole or principal office, or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place. Since this provision primarily keeps the Defendant in perspective, the corporation spoken of in the Explanation, obviously refers to the Defendant. A plain reading of Section 20 of the CPC arguably allows the Plaintiff a multitude of choices in regard to where it may institute its lis, suit or action. Corporations and partnership firms, and even sole proprietorship concerns, could well be transacting business simultaneously in several cities. If sub-sections (a) and (b) of Section 20 are to be interpreted disjunctively from sub-section (c), as the use of the word 'or' appears to permit the Plaintiff to file the suit at any of the places

where the cause of action may have arisen regardless of whether the Defendant has even a subordinate office at that place. However, if the Defendants' location is to form the fulcrum of jurisdiction, and it has an office also at the place where the cause of action has occurred, it has been held that the Plaintiff is precluded from instituting the suit anywhere else. Obviously, this is also because every other place would constitute a forum non conveniens. This Court has harmonised the various hues of the conundrum of the place of suing in several cases and has gone to the extent of laying down that it should be courts endeavour to locate the place where the cause of action has substantially arisen and reject others where it may have incidentally arisen. ***Patel Roadways Limited, Bombay v. Prasad Trading Company,*** AIR 1992 SC 1514 = (1991) 4 SCC 270 prescribes that if the Defendant-corporation has a subordinate office in the place where the cause of action arises, litigation must be instituted at that place alone, regardless of the amplitude of options postulated in Section 20 of the CPC. We need not dilate on this point beyond making a reference to **ONGC v. Utpal Kumar Basu** (1994) 4 SCC 711 **and South East Asia Shipping Co. Ltd. v. Nav Bharat Enterprises Pvt. Ltd.** (1996) 3 SCC 443.

We are alive to the possible incongruities that are fraught in extrapolating decisions relating to civil law onto criminal law, which includes importing the civil law concept of "cause of action" to criminal law which essentially envisages the place where a crime has been committed empowers the Court at that place with jurisdiction. In **Navinchandra N. Majithia v. State of Maharashtra** (2000) 7 SCC 640 this Court had to consider the powers of High Courts under Article 226(2) of the Constitution of India. Noting the presence of the phrase "cause of action" therein it was clarified that since some events central to the investigation of the alleged crime asseverated in the Complaint had taken place in Mumbai and especially because the fundamental grievance was the falsity of the Complaint filed in Shillong, the writ jurisdiction of the Bombay High Court was unquestionably available. The infusion of the

concept of 'cause of action' into the criminal dispensation has led to subsequent confusion countenanced in High Courts. It seems to us that Bhaskaran allows multiple venues to the Complainant which runs counter to this Court's preference for simplifying the law. Courts are enjoined to interpret the law so as to eradicate ambiguity or nebulousness, and to ensure that legal proceedings are not used as a device for harassment, even of an apparent transgressor of the law. Law's endeavour is to bring the culprit to book and to provide succour for the aggrieved party but not to harass the former through vexatious proceedings. Therefore, precision and exactitude are necessary especially where the location of a litigation is concerned.

The XVIIth fasciculus of the Negotiable Instruments Act containing Sections 138 to 142 was introduced into the statute in 1988. The avowed intendment of the amendment was to enhance the acceptability of cheques. It was based on the Report of the Committee on Banking Laws by Dr. Rajamannar, submitted in 1975, which suggested, inter alia, penalizing the issuance of cheque without sufficient funds. The Minister of Finance had assuaged apprehensions by arguing that safeguards for honest persons had been incorporated in the provisions, viz., (i) the cheque should have been issued in discharge of liability; (ii) the cheque should be presented within its validity period; (iii) a Notice had to be sent by the Payee demanding payment within 15 days of receiving notice of dishonour; (iv) the drawer was allowed to make payment within 15 days from the date of receipt of notice; (v) Complaint was to be made within one month of the cause of action arising; (vi) no Court inferior to that of MM or JMFC was to try the offence. The Finance Minister had also stated that the Court had discretion whether the Drawer would be imprisoned or/and fined. Detractors, however, pointed out that the IPC already envisioned criminal liability for cheque-bouncing where dishonest or fraudulent intention or mens rea on part of the Drawer was evident, namely, cheating, fraud, criminal breach of trust etc. Therefore, there was no justification to make the dishonour of cheques a criminal offence,

ignoring factors like illiteracy, indispensable necessities, honest/innocent mistake, bank frauds, bona fide belief, and/or unexpected attachment or freezing of account in any judicial proceedings as it would bring even honest persons within the ambit of Section 138 NI Act. The possibility of abusing the provision as a tool of harassment could also not be ruled out. Critics also decried the punishment for being harsh; that civil liability can never be converted into criminal liability; that singling out cheques out of all other negotiable instruments would be violative of Article 14 of Constitution of India. Critics contended that there was insufficient empirical enquiry into statutes or legislation in foreign jurisdictions criminalizing the dishonour of cheques and statistics had not been made available bearing out that criminalization would increase the acceptability of cheque. The Minister of Finance was not entirely forthright when he stated in Parliament that the drawer was also allowed sufficient opportunity to say whether the dishonour was by mistake. It must be borne in mind that in the U.K. deception and dishonesty are key elements which require to be proved.

In the USA, some States have their own laws, requiring fraudulent intent or knowledge of insufficient funds to be made good. France has criminalized and subsequently decriminalized the dishonour except in limited circumstances. Instead, it provides for disqualification from issuing cheques, a practice which had been adopted in Italy and Spain also. We have undertaken this succinct study mindful of the fact that Parliamentary debates have a limited part to play in interpretation of statutes, the presumption being that Legislators have the experience, expertise and language skills to draft laws which unambiguously convey their intentions and expectations for the enactments. What is palpably clear is that Parliament was aware that they were converting civil liability into criminal content inter alia by the deeming fiction of culpability in terms of the pandect comprising Section 138 and the succeeding Sections, which severely curtail defences to prosecution. Parliament was also aware that

the offence of cheating etc., already envisaged in the IPC, continued to be available.

CIVIL LAW CONCEPTS NOT STRICTLY APPLICABLE

We have already cautioned against the extrapolation of civil law concepts such as "cause of action" onto criminal law. Section 177 of the CrPC unambiguously states that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. "Offence", by virtue of the definition ascribed to the word by Section 2(n) of the CrPC means any act or omission made punishable by any law. Halsbury states that the venue for the trial of a crime is confined to the place of its occurrence. Blackstone opines that crime is local and jurisdiction over it vests in the Court and Country where the crime is committed. This is obviously the raison d'etre for the CrPC making a departure from the CPC in not making the "cause of action" routinely relevant for the determination of territoriality of criminal courts. The word "action" has traditionally been understood to be synonymous to "suit", or as ordinary proceedings in a Court of justice for enforcement or protection of the rights of the initiator of the proceedings. "Action, generally means a litigation in a civil Court for the recovery of individual right or redress of individual wrong, inclusive, in its proper legal sense, of suits by the Crown".

A learned Single Judge of the High Court of Judicature at Bombay, Nagpur Bench has, pursuant to a threadbare discussion of Bhaskaran concluded that since the concerned cheque was drawn on the Bank of India Bhandara Branch, Maharashtra where it where it was dishonoured, the Judicial Magistrate First Class Digras, District Yavatmal where the Complainant had bank account although he was a resident of district Washim, Maharashtra. The learned Single Judge, in the impugned judgment, had rightly, rejected the argument that the complaint itself should be dismissed; instead he ordered that it be returned to the complainant for filling in the appropriate Court.

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Code of Criminal Procedure, 1873 Section 41- Power to arrest

Arnesh Kumar v. State of Bihar & Anr. 2014 (3) Crimes 206 (SC)

Chandramauli Kr. Prasad, Pinaki Chandra Ghose, JJ.

Power to arrest

Allegation leveled by the wife against the appellant is that demanded of Rupees eight lacs, a maruti car, an air-conditioner , television set etc. was made by her mother-in-law and father-in-law and father-in-law and when this fact was brought to the appellant's notice, he supported his mother and threatened to marry another woman. If has been alleged that she was driven out of the matrimonial home due to non-fulfilment of the demand of dowry. Denying these allegations, the appellant preferred an application for anticipatory bail which was earlier rejected by the learned Sessions Judge and thereafter by the High Court.

Attitude to arrest first and then proceed to investigation is despicable.

Arrest fast, brining humiliation, curtailing freedom and casting scars forever-Power to arrest breeds arrogance and corruption- To arrest first and then proceed to investigate Despicable- No arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so-Provisions Section 41 are to be scrupulously observed-Directions issued-These directions apply not only to cases under Section 498-A of the I.P.C. or Section 4 of the Dowry prohibition Act, but also to such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

We would like to emphasize that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 Cr.PC for effecting arrest be discouraged and discontinued. Our endeavor in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorize detention casually and mechanically.

In order to ensure what we have observed above, we give the following direction. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from 41, Cr.P.C; All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii); The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

The Magistrate while authorizing detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorize detention; The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing; Notice of appearance in terms of Section 41A of Cr.PC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction. Authorising

detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A of the I.P.C. or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine. We direct that a copy of this judgment be forwarded to the Chief Secretaries as also the Director Generals of Police of all the State Governments and the Union Territories and the Registrar General of all the High Courts for onward transmission and ensuring its compliance. By order dated 31st of October, 2013, this Court had granted provisional bail to the appellant on certain conditions. We make this order absolute. In the result, we allow this appeal, making our aforesaid order dated 31st October, 2013 absolute; with the directions aforesaid.

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Code of Criminal Procedure, 1973-Section 362

Kushalbhai Ratanbhai Rohit & Ors Vs. State of Gujarat 2014 (3) Crimes 265 (SC)

B.S. Chauhan, J. Chelameswar , M.Y. Eqbal,

Judgment pronounced and signed-Cannot be called, recalled or reviewed-Instantly, Judgment not signed- No infirmity in recall.

Facts of the case:

This case relates to applicability of Section 197 Cr.P.C.

The Petitioners-member of police escort party taking accused from jail to court-were charged with offence punishable under Sections 328,222, 223, 224, and 114 IPC.

High Court granted bail on the ground of absence of Sanction U/s 197 Cr.P.C. but recalled the order suo motu.

Until a judgment is signed it can be recalled.

"Now up to the moment the judgment is delivered Judges have the right to change their mind. There is a sort of 'locus paenitentiae' and indeed last minute alterations often do occur. Therefore, however much a draft judgment may have been signed beforehand, it is nothing but a draft till formally delivered as the judgment of the Court. Only then does it crystallize into a full-fledged judgment and become operative.

It follows that the Judge who "delivers" the judgment, or causes it to be delivered by a brother Judge, must be in existence as a member of the Court at the moment of delivery so that he can, if necessary, stop delivery and say that he has changed his mind. There is no need for him to be physically present in court but he must be in existence as a member of the Court and be in a position to stop delivery and effect an alteration should there be any last minute change of mind on his part. If he hands in a draft and signs it and indicates that he intends that to be the final expository of his views it can be assumed that those are still his views at the moment of delivery if he is alive and in a position to change his mind but takes no steps to arrest delivery.

But one cannot assume that he would not have changed his mind if he is no longer in a position to do so. A Judge's responsibility is heavy and when a man's life and liberty hang upon his decision nothing can be left to chance or doubt or conjecture; also, a question of public policy is involved. As we have indicated, it is frequently the practice to send a draft, sometimes a signed draft, to a brother Judge who also heard the case. This may be merely for his information, or for consideration and criticism. The mere signing of the draft does not necessarily indicate a closed mind. We feel it would be against public policy to leave the door open for an investigation whether a draft sent by a Judge was intended to embody his final and unalterable opinion or was only intended to be a tentative draft sent with an unwritten understanding that he is free to change his mind should fresh light drawn upon him before the delivery of judgment."

Thus, from the above, it is evident that a Judge's responsibility is very heavy, particularly, in a case where a man's life and liberty hang upon his decision nothing can be left to chance or doubt or conjecture. Therefore, one cannot assume that the Judge would not have changed his mind before the judgment become final.

In Iqbal Ismail Sodawala v. The State of Maharashtra & Ors., 7AIR 1974 SC 1880, the judgment in Surendra Singh (supra) referred to hereinabove was considered in this case. In that case, criminal appeal was heard by the Division Bench of the High Court, the judgment was signed by both of them but it was delivered in court by one of them after the death of the other. It was held that there was no valid judgment and the case should be re-heard. This Court took the view that the judgment is the final decision of the court intimated to the parties and the world at large.

In view of the above, we are of the considered opinion that no exception can be taken to the procedure adopted by the High Court in the instant case.

The petition is devoid of any merit and is accordingly dismissed.

Section 31 (2)-Sections 433 & 433A Cr.P.C.

Duryodhan Rout Vs. State of Orissa 118 (2014) CLT 324 (SC)

Sudhansu Jyoti Mukhopadhaya, J. & Dipak Misra, JJ.

Consecutive sentence

The case of the prosecution is that on 11th September, 2004, at about 3 p.m. accused Duryodhan Rout, on the pretext that the deceased, Subhasini, a minor girl aged about 10 years would talk over phone with his brother, Bamodev Bhoi took her on a bicycle. When the evening set in, the accused alone returned to the village and on enquiry about Subhasini, by Mulia Bhoi (PW-5), father of the deceased, he told that she had gone with a woman of Ranibandha to her house. On the next day, as she did not return Mulia Boi (PW-5) again questioned the accused regarding the where about of the deceased. The accused confessed in presence of Rabi Biswal (PW-3), Dasarathi Bhoi (PW-4) and Subashini Bhoi that he killed the deceased by pressing her neck. With the help of these three witnesses, Mulia Bhoi (PW- 5) took the accused to Thakurgarh P.S. got the FIR scribed by one Laxman Senapti and lodged it before Udit Narayan Pany, Officer-in-charge of the said Police Station. A P.S. Case No.51 dated 12th September, 2004 under Section 302/201 IPC was instituted. The accused was arrested, his statement was recorded under Section 27 of the Indian Evidence Act on the basis of which he went to the spot made recovery of the dead body of the deceased, held inquest over it, seized the Chadi (underwear) of the victim lying near the spot, prepared seizure list in respect thereof and sent the dead body to Adhamalik Hospital for autopsy. He also seized the wearing apparels of the accused, forwarded to the Court on 13th December, 2004 and handed over charge of investigation of the case to the C.I. of Police. After completion of investigation, Investigating Officer (I.O.) submitted charge sheet against the accused under Sections 376/302/201 IPC.

The Appellant was convicted under Section 376, 302 & 201 IPC-Admittedly, there was no eye-witness on the circumstantial evidence, the

Appellant was got capital sentence for the offence under Section 302 IPC-The Session Judge also sentenced him to undergo RI for 10 years & to pay a fine of Rs.5,000/-for the offence punishable under Section 376 (f) IPC & RI for one year & to pay a fine of Rs.1,000/- for the offence punishable under Section 201 IPC & all sentences would run consecutively-High Court, converted the capital sentenced to life imprisonment but ordered that rest of the sentenced remain unaltered-It was contended that Trial Court & the High Court wrongly held that the sentences under Sections 376 (f) /302/201 IPC to run consecutively, which is contrary to the proviso to sub Section (2) of Section 31 of the Code of Criminal Procedure, 1973- The High Court committed a manifest error in sentencing the Appellant for 20 years rigorous imprisonment. The maximum sentence imposable being 14 years & having regard to the fact that the Appellant is in custody for more than 12 years-Trial Court was not justified in imposing the sentence under Section 376 (f)/302/201 IPC to run consecutively.

For the reasons stated above, while we are not inclined to interfere with the order of conviction and the sentence, considering the fact that the accused has been awarded life imprisonment for the offence under Section 302, we direct that all the sentences imposed under Indian Penal Code are to run concurrently. The judgment passed by the Session Judge as affirmed by the High Court stands modified to the extent above. The appeals are allowed in part with the aforesaid observations.

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Sec.326 – Penal Code, 1860

Pritam Chauhan v. State (Govt. of NCT Delhi) (2014) 58 OCR (SC) - 997

SUDHANSU JYOTI MUKHOPADHAYA AND RANJAN GOGOI ,JJ.

Issue

"Principle of just punishment" is the bedrock of sentencing in respect of a criminal offence. The wide discretion that is vested in the Courts in matters of sentencing must be exercised on rational parameters in the light of the totality of the facts of any given case. The doctrine of proportionality has to be invoked in the context of the facts in which the crime had been committed, the antecedents of the accused, the age of the accused and such other relevant factors.

Sec.357 – Code of Criminal Procedure Code, 1973

Principle of Just punishment – discretion vested in Courts in the matters of sentencing must be exercised on rational parameters – Provisions of Section 357, Cr.P.C. operate independently of specific penal provisions of the Code.

The appellant had been convicted under Section 307 IPC by the learned Addl. Sessions Judge, New Delhi in Sessions Case No. 28/2000 and sentenced to undergo rigorous imprisonment for three years along with fine. In appeal, the High Court of Delhi had altered the conviction of the appellant to one under Section 326 IPC with consequential modification of sentence to rigorous imprisonment for a period of two years. The High Court, further directed the appellant to pay a sum of Rs. 50,000/- as compensation to the victim, Sunder Singh, under the provisions of Section 357 of the Code of Criminal Procedure. Aggrieved by the aforesaid conviction and the sentence imposed, the appellant has filed the present appeal.

The punishment contemplated under Section 326 IPC is imprisonment for life or with imprisonment of either description for a term

which may extend to ten years, along with fine. In a recent pronouncement of this Court in Gopal Singh v. State of Uttarakhand (2013) 7 SCC 545, it has been held that the principle of just punishment is the bedrock of sentencing in respect of a criminal offence. The wide discretion that is vested in the Courts in matters of sentencing must be exercised on rational parameters in the light of the totality of the facts of any given case. The doctrine of proportionality has to be invoked context of the facts in which the crime had been committed, the antecedents of the accused, the age of the accused and such other relevant factors. In the present case; considering that the accused –appellant had gone to his house to fetch a knife and, thereafter, had given repeated blows to the victim resulting in multiple grievous injuries, we are of the view that the sentence of two years rigorous imprisonment is just and adequate and will not require any modification. The submission of the learned counsel for the appellant that the appellant is willing to pay higher compensation under Section 357 IPC also cannot be accepted inasmuch as the provisions of Section 357 operate independently of the specific penal provisions of the Code under which the court is required to sentence an offender.

In view of the foregoing discussion, we do not find any merit in this appeal. It is accordingly dismissed. The accused shall serve out the remaining part of the sentence imposed by the High Court and affirmed by the present order.

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Evidence Act (1 of 1872) Sec.3

Ganesh Datt Vs. State of Uttarakhand. AIR 2014 SC 2521

JAGDISH SINGH KHEHAR & C. NAGAPPAN , JJ.

Issue

The eye-witnesses namely PWs 1 to 3 and CW-1 Smt. Raj Kumari, widow of deceased Prabhunath have testified that accused Sudarshan and accused Deep Narain fired shots with pistol and gun respectively at Prabhunath during the occurrence resulting in injuries but as per the medical evidence there was no gun shot injury found on any part of the body of Prabhunath. Thus in short, the deceased Prabhunath is concerned the ocular evidence is totally inconsistent with the medical evidence with respect to assault by accused Sudarshan and Deep Narain. If this matter is false, there is no guarantee that the other assault deposed to by the eye-witnesses was also not false.

As per the ocular testimony the weapons used in the occurrence are country made pistol, gun, axe and lathis. In his testimony PW7 Sub-Inspector Surender Singh has stated that he went to the occurrence place during investigation and seized 10 bullets of 12 bore from the spot out of which 4 were empty and 6 were live, under Exh. A-16 Memo. Initial investigation was done by PW7 Sub-Inspector Surender Singh and thereafter it was continued and concluded by PW5 Inspector Vijender Kumar Bhardwaj. They have not taken any steps to recover the weapons alleged to have been used in the occurrence. No scientific method of investigation was pressed into service. We did not find any explanation in the testimonies of the Investigating Officers in this regard. The lethargic attitude of the officers conducting investigation is deplorable.

The situs of attack is also alleged to be not established by the prosecution. In the First Information Report the complainant PW3 Ram Lakhan has stated that he and his sons were sitting in their flour mill and were chatting at about 6.00 a.m. when the assailants came and attacked them. In the testimony, PW1 Bali Raj has stated that they were sitting in

front of their house when the assault took place. PW2 Moti Lal has testified that the attack did not occur on flour mill but occurred in the verandah of house of Prabhunath. PW3 Ram Lakhan has testified that the place of occurrence is about 50 steps away from the flour mill. Thus there is inconsistency about the place of occurrence in their testimonies and a doubt creeps in. Though bloodstained earth was claimed to have been seized from

the occurrence place by the Investigating Officer PW7 Surender Singh, it was not sent for chemical examination which could have fixed the situs of the

assault. In almost all criminal cases the bloodstained earth found from the place of occurrence is invariably sent to the chemical examination and the report along with the earth is produced in the Court and yet this is one exceptional case where this procedure was departed from for reasons best known to the prosecution.

We are of the considered view that the prosecution has failed to prove the guilt of the appellants beyond reasonable doubt, and therefore, they are entitled to be acquitted.

In the result Criminal Appeal No.1881 of 2011 is allowed and the conviction and sentence imposed on appellant-Ganesh Datt are set aside and he is acquitted of the charges and he is directed to be set at liberty unless wanted in connection with any other case. Criminal Appeal No. 1884 of 2011 in respect of appellant Jagdish stands abated. As far as other appellants namely, Sudarshan Verma, Deep Narain and Rajendra are concerned, the said appeal is allowed and the conviction and sentence imposed on them are set aside and they are acquitted of the charges and they are directed to be set at liberty unless wanted in any other case.

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Evidence Act- Section 3

Bharati Tamang Vs. Union of India and Ors. 2014 (3) Crimes 300 (SC)

Surinder Singh Nijjar and Fakkir Mohamed Ibrahim Kalifulla, JJ.

Evidence obtained as a result of illegal search or seizure-Admissibility of-Barring an express or implied prohibition in the Constitution or other law, evidence obtained as a result of illegal search or seizure is not liable to be shut out-Test of admissibility of evidence lies in relevancy and unless there is an express or necessarily implied prohibition in the constitution or other law, evidence obtained as a result of illegal search or seizure is not liable to be shut out.

At times of need where Apex Court finds that an extraordinary or exceptional circumstances arise and the necessity for reinvestigation would be imperative in such extraordinary cases even denovo investigation can be ordered.

It would thus be seen that in India, as in England, where the test of admissibility of evidence lies in relevancy, unless there is an express or necessarily implied prohibition in the Constitution or other law evidence obtained as a result of illegal search or seizure is not liable to be shut out."

A close reading of the above passage discloses that barring an express or implied prohibition in the Constitution or other law, evidence obtained as a result of illegal search or seizure is not liable to be shut out. In other words, what has been emphasized by the Constitution Bench is that the test of admissibility of evidence lies in relevancy and unless there is an express or necessarily implied prohibition in the constitution or other law, evidence obtained as a result of illegal search or seizure is not liable to be shut out. Apparently and justifiably the said legal position as propounded always have universal application, as in order to dispense justice and ensure that the real culprits are brought to book, the investigating agency should make every endeavour to unearth the truth by scrutinizing and gathering every minute details and materials and

place it before the concerned adjudicative machinery in order to enable the Court examining the guilt or otherwise of an accused to reach a just conclusion.

When we consider the submission of learned senior counsel, we find that neither Section 5 nor Rule 419(A) can have any application at the present juncture. There is also no Constitutional embargo to be considered at this stage where the CBI has taken steps to ascertain the truthfulness or otherwise or the reliability of the intercepted conversation has only been forwarded to the forensic laboratory and the report is awaited.

Having noted the various relevant features, we find force in the submission of learned counsel for the petitioner that the proceeding of the case by the prosecution either by the State Police or by the CID and after it was taken over by CBI was not carried out in a satisfactory manner. The very fact that after the occurrence took place on 21.05.2001 there was serious lapse in apprehending many of the accused and the absconding of the prime accused Nicol Tamang and Dinesh Subba till this date disclose that there was total lack of seriousness by the prosecution agency in carrying out the investigation. The circumstances pointed out on behalf of the petitioner, namely, the absconding of many of the accused between May, 2010 and February, 2013 was a very relevant circumstance which gives room for suspicion in the mind of this Court as to the genuineness with which the case of the prosecution was being carried out. The submission that the murder took place due to political rivalry cannot be a ground for anyone, much less, the investigation agency to display any slackness or lethargic attitude in the process of investigation. Whether it be due to political rivalry or personal vengeance or for that matter for any other motive a murder takes place, it is the responsibility of the police to come up to the expectation of the public at large and display that no stone will remain unturned to book the culprits and bring them for trial for being dealt with under the provisions of the

criminal law of prosecution. Any slackness displayed in that process will not be in the interest of public at large and therefore as has been pointed out by this Court in the various decisions, which we have referred to in the earlier paragraphs, we find that it is our responsibility to ensure that the prosecution agency is reminded of its responsibility and duties in the discharge of its functions effectively and efficiently and ensure that the criminal prosecution is carried on effectively and the perpetrators of crime are duly punished by the appropriate Court of law.

In as much as the petitioner only seeks for handling of the case of murder of her deceased husband by the prosecuting agency, namely, the CBI here with utmost earnestness against all the accused who were involved in the crime, we feel that by issuing appropriate directions in this writ petition and by monitoring the same the grievances expressed by the petitioner can be duly redressed and the interest of the public at large can be duly safeguarded.

This order is, therefore, passed for the present. The writ petition is kept pending for passing necessary orders if and when required in future. A copy of this order shall be forwarded to the Sessions Judge, Darjeeling, the Principal District and Sessions Judge of the Calcutta Civil and Sessions Court and also to the High Court of Calcutta.

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Constitution of India, 1950 – Article 226

Sri Ram Builders v. State of M.P. & Others 2014(II)CLR(SC) -366

SURINDER SINGH NIJJAR AND A. K. SIKRI ,JJ.

Issue

Disputed questions of fact – cannot be decided under Writ jurisdiction – Appellant granted liberty to seek its remedies against MPRTC in a Civil Court.

Facts:

In the ultimate analysis, the whole controversy boils down to a breach of contract by MPRTC entered into with the appellant. The scope of judicial review is very limited in contractual matters even where one of the contracting parties is the State or an instrumentally of the State.

The duty of the Court is to confine itself to the question of legality. Its concern should be

(1) Whether a decision-making authority exceeded its powers?

(2) Committed an error of law

(3) Committed a breach of the rules of natural justice,

(4) Reached a decision which no reasonable tribunal would have reached, or

(5) Abuse its powers.

Therefore, it is not for the Court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality: namely, Wednesbury unreasonableness.

(iii) Procedural Impropriety.

The above are only the broad ground but it does not rule out addition of further grounds in course of time.

In our opinion, the case put forward by the appellant would not be covered by the aforesaid ratio of law laid down by this Court. The High Court, in our opinion, has rightly observed that the appellant can seek the appropriate relief by way of a civil suit. The High Court in exercise of its jurisdiction under Article 226 of the Constitution of India would not normally grant the relief of specific performance of a contract.

In our opinion, these observations are of no assistance to the appellant as in this case, the lease has come to an end by efflux of time. This part, MPRTC is heavily indebted and had sought permission of the state and the Union of India to wind up. Furthermore, there was also a breach of the terms and conditions of the lease on the basis of which it has been terminated in accordance with law.

In any event, these are issues which would involve adjudication of disputed questions of fact which can only be suitably adjudicated in the civil suit as directed by the High Court in the impugned judgment. The appellant shall be at liberty to seek its remedies against MPRTC for breach of contract. Out conclusion that the High Court was right in rejecting the contentions of the appellant herein is also supported by the law laid in Rajasthan Housing Board v. G. S. Investments (supra) which was relied upon by Mr. Cama. We may notice here the following excerpt.

"... the Court should exercise its discretionary power under Article 226 of the Constitution with great care and caution and should exercise it only in furtherance of public interest. The Court should always keep the larger public interest in mind in order to decide whether it should interfere with the decision of the authority."

Also, we are not much impressed by the submission of Mr. Nariman that the order passed by the High Court on 11th December, 2007 has been challenged by the companion SLP(C) No. 36887 of 2012. The aforesaid SLP has been filed merely to get over the earlier lapse of not challenging the order of the High Court at the appropriate time. Having

submitted to the jurisdiction of the Chief Secretary, it would not be open to the appellant to challenge the order dated 11thDecember 2007.

For the aforesaid reasons, we see no merit in the appeals. The Civil appeals, are therefore, dismissed.

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Article 226 & 227

Pabitra Mohan Palei Vs. Registrar of Co-Operative Societies, Orissa, Bhubaneswar & Anr. 118(2014) CLT 254

I. Mohanty, J. & B.N. Mohapatra, JJ.

COMPASSIONATE APPOINTMENT-Matter of compassionate appointment for which specific schemes are there, technicalities cannot have preference over substantive justice-Appointment if an employee dies in harness, appointment may be given to his widow/son/unmarried daughter.

Petitioner's case in a nut-shell is that the father of the petitioner late Gouranga Palei died in harness due to heart attack on 03.07.2010. At the time of his death, petitioner's father was serving under Opposite Party No.2 as a regular employee. After death of his father, the petitioner made representation under Annexure-3 series to opposite party Nos.1 and 2 for his appointment under the Rehabilitation Assistance Scheme. Vide Letter No.5676/12-13 dated 17.01.2013 (Annexure-4), though opposite party No.2-Secretary has required approval of opposite party No.1 for appointment of the petitioner along with others under the Rehabilitation Assistance Scheme, no action has yet been taken by opposite party No.1. Hence, the present writ petition.

SERVICE –Rehabilitation Assistance Scheme

Petitioner's father died in harness while serving in Berhampur Central Co-operative Bank., Ltd, Berhampur- Representation by Petitioner for appointment under the Scheme-Appointment under the Scheme/Staff Service Rules, 2011 is linked to the person & not to the Post-Stand taken by O.P.s that since the post in which father of the Petitioner was working was abolishing after his death for which the case of the Petitioner cannot be considered for appointment is not sustainable in law-Director issued to O.P.2 to consider the case of the Petitioner irrespective of the fact that he

failed the application for appointment after expiry of one year-Held, if the Petitioner is found otherwise suitable to any post in the Bank under the Scheme/Rules he may be given such appointment.

STAFF SERVICE RULES, 2011-Rule 8

Rehabilitation Assistant Scheme-Petition seeking direction for appointment under the scheme an account of death of his father-Whether on account of death of hither of the Petitioner in harness his case can be considered for the purpose of giving appointment to him in Group 'B' or Group 'C' post as per his qualification under the Rules, 2011 even though he has not made application for such appointment within one year from the date of death for such appointment within one year from the date of death of his father its required under Rule 8 of the Rules, 2011 & his father was working in a dying grade post?-A model employer should not take advantage of the ignorance of the legal hires of any deceased employee in the matter of getting any benefit under any Rehabilitation Assistance Scheme. An employer should neither exploit its employees nor take advantage of any helplessness & misery of the employee-Matter of compassionate appointment for which specific schemes are there, technicalities cannot have preference over substantive justice.

In view of the above, we direct Opposite Party No.2-Secretary of the Berhampur Central Cooperative Bank Limited to consider the case of the petitioner for appointment under the Rehabilitation Assistance Scheme/Staff Service Rules, 2011 irrespective of the fact that he filed the application for appointment on account of death of his father in harness after expiry of one year and his deceased father was working in a dying grade post. If the petitioner is found otherwise suitable to any post in the Bank under the Scheme/Rules in vogue, he may be given such appointment. The entire exercise shall be completed within a period of two months from the date of production of certified copy of this judgment

before Opposite Party No.2-Secretary, Berhampur Central Cooperative Bank Limited.

In the result, the writ petition is allowed with aforesaid observations and directions but without any order as to costs.

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