O.J.A. MONTHLY REVIEW OF CASES

ON

CIVIL, CRIMINAL & OTHER LAWS, 2014

(SEPTEMBER)

Odisha Judicial Academy, Cuttack, Odisha

ODISHA JUDICIAL ACADEMY

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

I N D E X

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Order-8, Rule-10 of Civil Procedure Code,1908.
Rajinder Kumar & Ors. Vs. Shri Kuldeep Singh & Ors.
118 (2014) CLT-430 (SC)
Date of Judgment : 7.2.2014
CHANDRAMAULI KR. PRASAD & KURIAN JOSEPH, JJ.

ISSUE:

Decree passed under Order -8, Rule-10 C.P.C. is an ex-parte decree:

Merely because it is an ex-parte decree, the same does not cease to have the force of the decree—It is a valid decree for all purposes.

Relevant Extracts:

Court cannot go behind the decree or beyond the decree—While executing a decree for specific performance, the Court, in case of any ambiguity, has necessarily to construe the decree so as to give effect to the intention of the parties---Suit for specific performance does not come to an end on passing of a decree & the Court, which passed the decree retains control over the decree even after the decree has been passed & the decree is sometimes described as the preliminary decree—Decree for specific performance is a decree in favour of both the Plaintiff & the Defendant in the suit---Decree can be executed either by the Plaintiff or the Defendant.

Specific performance is an equitable relief granted by the Courts in specific situations. Plainly speaking, equity means fairness. According to Sir Edward Fry, the Court by a decree of specific performance compels the defaulting party to do that which in conscience he is bound to do, viz., actually & specifically to perform his contract (FRY A Treatise on the Specific Performance of Contracts by The Rt. Hon. Sir Edward Fry, Sixth Edition, see Paragraph-62, at page-29). Conscience means a person's moral sense of right or wrong (Concise Oxford English Dictionary, 10th Edition), what is morally wrong cannot be equitably right & necessarily what is morally right will be just l& proper. This prelude is the keyhole for us to see through the factual & legal position of a three decade long litigation on a specific performance.

The decree for specific performance is a decree in favour of both the Plaintiff & the Defendant in the suit, as held by this Court in

Hungerford Investment Trust Limited case (supra). Hence the decree can be executed either by the Plaintiff or the Defendant. The plaintiff or the Defendant is also free to approach the Court for appropriate clarification/directions in the event of any ambiguity or supervening factors making the execution of the decree in executable

In the peculiar facts & circumstances of the case, we are of the view that the Trial Court should have passed an equitable order while considering the application for rescission. Having regard to the fact that the decree was passed in 1984, we feel that it would be unjust & unfair to relegate the parties to the Trial Court at this distance of time. For doing complete justice to the parties, we are of the view that it is a case where the purchaser should be directed to pay the land value to the vendors as per the circle rate notified for the residential property in Category 'A' colonies prevailing during November 16,2011 to January 5,2012, at the rate of Rs.2,15,000/- per square meter.

The purchaser shall also be liable to meet the liability arising by way of unearned increase to be paid to the Land & Development Office. He is free to withdraw the amounts deposited by him in the Court as per Order Dated 06.01.2010. It is also ordered that in case the Plaintiff does not deposit the amount to be paid to the vendors within three months from today, the vendors shall deposit in Court within two months thereafter the amount calculated as per the circle rate referred to above by way of compensation to be paid to the purchaser & in which event, they shall stand discharged of their obligations under the contract & the decree. In the event of the purchaser depositing the amount as above, the execution proceedings shall be finalized within another one month. The Court in seisin of the Suit O.S No.1428 of 1981 shall dispose of the same within three months from today.

The Appeal filed by Rajinder Kumar (arising out of SLP(C) No.19215/2011) is dismissed & the other Appeals are partly allowed as above. There is no order as to costs.

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Sec.89 of Code of Civil Procedure, 1908

Mr.Vikram Bakshi & Ors. Vs. Ms. Sonia Khosla (Dead) By LRs..

2014 (II)-CLR (SC)-385

Date of Judgment : 8th May 2014

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

ISSUE

Alternative Disputes Resolution—Mediation--A shift from adversarial litigation—Can build and improve relationships among the parties—New dimension of access to justice.

Relevant extracts:

A spate of litigation between the two groups depicts a severe fight between them where settlement appears to be a distant dream, at least as of now, with tough positions taken and on each and every facet/nuance of the disputes, they have joined issues. However, we are happy to find consensual approach on one aspect at least viz. the future course of action that needs to be adopted in these matters which have landed in this Court (albeit against interim orders) as the proceedings are still pending at different levels either in the Company Law Board or in the High Court. This much positive stance, aimed at cutting the corners and edging out the niceties for early resolution of the main dispute between the parties needs to be commended. For this reason, apart from stating the controversy involved in each of the matters, our purpose would be served in stating the course of action which needs to be adopted, as agreed between the parties, without going into the nitty gritty of the issues involved. With this introduction we describe herein below the nature of the dispute in these petitions.

When the two parties joined together for collaborative business venture, it lis but natural that the relationship starts with mutual trust and faith in each other. At the time of fostering such a relationship, they expect that with joint efforts in the proposed business venture, they would be able to achieve unparallel milestones, which would otherwise be impossible with their individual efforts. The joining together is with the

aim of making one plus one as eleven and not two. However, over a period of time, if due to unfortunate and unforeseen circumstances/events, the relationship becomes bitter and the two collaborative partners fall apart, it results in a position where one minus one is not only reduced to zero but becomes negative. That perhaps is the story of the present litigation and if the disputes are not resolved early, either by adjudicatory process or amicably between the parties, the negative factor will keep growing and keep widening its fangs which may not be conducive to any of the litigants.

According to us it would have been more appropriate for the parties to at least agree to resort to mediation as provided under Section-89 of CPC and make an endeavor to find amicable solution of the dispute, agreeable to both the parties. One of the aims of mediation is to find an early resolution of the dispute. The sooner dispute is resolved the better for all the parties concerned, in particular, and the society, in general. For parties, dispute not only strains the relationship but also destroy it. And, so far as society is concerned it affects its peace. So what is required is resolution of dispute at the earliest possible opportunity and via such a mechanism where the relationship between individual goes on in a healthy manner. Warren Burger, once said; " The obligation of the legal profession is… to serve as healers of human conflict….(we) should provide mechanisms that can produce an acceptable result in shortest possible time, with the least possible expense and with a minimum of stress on the participants. That is what justice is all about." MEDIATION is one such mechanism which has been statutorily brought into place in our Justice System. It is one of the methods of Alternative Dispute Resolution and resolves the dispute in a way that is private, fast and economical. It lis a process in which a neutral intervener assists two or more negotiating parties to identify matters of concern, develop a better understanding of their situation, and based upon that improved understanding, develop mutually acceptable proposals to resolve those

concerns. It embraces the philosophy of democratic decision-making (Alfin, et al., Mediation theory & Practice, (2nd Ed. 2006) Lexis Nexis.

Thus, mediation being a form of Alternative Dispute Resolution is a shift from adversarial litigation. When the parties desire an on-going relationship, mediation can build and improve their relationships. To preserve, develop and improve communication, build bridges of understanding, find out options for settlement for mutual gains, search unobvious from obvious, dive underneath a problem and dig out underlying interests of the disputing parties, preserve and maintain relationships and collaborative problem solving are some of the fundamental advantages of mediation. Even in those cases where relationships have turned bitter, mediation has been able to produce positive outcomes, restoring the peace and amity between the parties. There is always a difference between winning a case and seeking a solution. Via mediation, the parties will become partners in the solution rather than partners in problems. The beauty of settlement through mediation is that lis may bring about a solution which may not only be to the satisfaction of the parties and, therefore, create a win win situation, the outcome which cannot be achieved by means of judicial adjudication. Thus, life as well as relationship goes on with Mediation for all the parties concerned and thus resulting into peace and harmony in the society. While providing satisfaction to the litigants, it also solves the problem of delay in our system and further contributes towards economic, commercial and financial growth and development of the country.

This Bench is of firm opinion that mediation is new dimension of access to justice. As it is one of the best forms, if not the best, of conflict resolution. The concept of Justice in mediation is advanced in the oeuvres of Professors Stulberg, Love, Hyman, and Menkel-Meadow (Self-Determination Theorists). Their definition of justice is drawn primarily from the exercise of party self-determination. They are hopeful about the magic that can occur when people open up honestly and emphatically about their needs and fears in unihibited private discussion. And, as

thinkers, these jurists are optimistic that the magnanimity of the human spirit can conquer structural imbalances and resource constraints. *Professor Stulberg*, in his masterful comment on the drafting of the Uniform *Model Mediation Act, Fairness and Mediation*, begins with the understated predicate that "the meaning of fairness is not exhausted by the concept of legal justice." In truth, the more pointed argument advanced in the article is that legal norms often diverge quite dramatically from out notion of fairness land the notion of fairness of many disputants.

Legal rules, in Stulberg's vision, are ill-equipped to do justice because of their rigidity and inflexibility. *Professors Lela Love and Jonathan M. Hyman* argue that mediation is successful because it provides a model for future collaboration. The authors state that the process of mediation entails the lesson that when people are put together in the same room and made to understand each other's goals, they will together reach a fair resolution. They cite Abraham Lincoln's inaugural address which proposed that in a democracy, " a patient confidence in the ultimate justice of the people' to do justice among themselves…. is a pillar of our social order." *Professor Carrie Menkel-Medeaw* presents a related point of view in making the case that settlement has a political land ethical economy of its own and writes, " Justice, it is often claimed, emerges only when lawyers and their clients argue over its meaning, and, in turn, some authoritative figure or body pronounces on its meaning, such as in the canonical cases of the late-twentieth century….

For many years now, I have suggested that there are other components to the achievement of justice. Most notably, I refer to ;the process by which we seek justice (party participation and empowerment, consensus rather ;than compromise or command) and the particular types of outcomes that might help to achieve it (not binary win-lose solutions, but creative, pie-expanding or even shared solutions)". Justice in mediation also encompasses external developments, beliefs about human nature and legal regulation. Various jurists are drawn to mediation in the belief that litigation and adversarial warring are not the

only, or the best ways to approach conflict. And how optimistically and skeptically mediators assess the capabilities of individual parties and institutional actors to construct fair outcomes from the raw material of human conduct.

Mediation ensures a just solution acceptable to all the parties to dispute thereby achieving 'win-win' situation. It is only mediation that puts the parties in control of both their disputes and its resolution. It is mediation through which the parties can communicate in a real sense with each other, which they have not been able to do since the dispute started. It is mediation which makes the process voluntary and does not bind the parties against their wish. It is mediation that saves previous time, energy as well as cost which can result in lesser burden on exchequer when poor litigants are to be provided legal aid. It lis mediation which focuses on long term interest and helps the parties in creating numerous options for settlement. It is mediation that restores broken relationship and focuses on improving the future not of dissecting past. It is based on an alternative set of values in which formalism is replaced by informality of procedure, fair trial procedures by direct participation of parties, consistent norm enforcement by norm creation, judicial independence by the involvement of trusted peers, and so on. This presents an alternative conceptualization of justice.

We are happy that at least there is an agreement between both the parties on the procedural course of action, to give queitus to the matters before us as well. In view of the aforesaid consensus, about the course of action to be adopted in deciding the disputes between the parties, we direct the Company Law Board to decide Company Petition No.114 of 2007 filed before it by Ms. Sonia Khosla within a period of six months from the date of receiving a copy of this order. Since, it is the CLB which will be deciding the application under Section-340 CrPC filed by Ms. Sonia Khosla in the CLB , High Court need not proceed further with the Criminal Misc.(Co.) No.3 of 2008. Likewise the question whether Mr. R.K. Garg was validly inducted as a Director or not would be gone into by the CLB,

the proceedings in Co. Appeal No. (SB) 23 of l2009 filed by Mr. R.K. Garg in the High Court, also become otiose.

After considering the matter, we are of lthe opinion that it lis not necessary to either enforce orders dated 31.1.2008 passed by the CLB or orders dated 11.4.2008 passed by the High Court. Fact remains that there has been a complete deadlock, as far as affairs of the Company are concerned. The project has not taken off. It is almost dead at present. Unless the parties re-concile, there is no chance for a joint venture i.e. to develop the resort, as per the MOU dated 21.12.2005. It is only after the decision of CLB, whereby the respective rights of the parties are crystallized, it would be possible to know about the future of this project. Even the Company in question is also defunct at present as it has no other business activity or venture. In a situation like this, we are of the opinion that more appropriate orders would be to direct the parties to maintain status-quo in the mean time, during the pendency of the aforesaid company petition before the CLB. However, we make it clear that if any exigency arises necessitating some interim orders, it would be open to the parties to approach the CLB for appropriate directions. Both these petitions are disposed of in the aforesaid terms. All other pending I.As including criminal contempt petitions and petitions filed under Section-340 Cr.P.C. are also disposed of as in the facts of this case, we are not inclined to entertain such application. No costs.

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Order-XXXIX Rule-1 & 2 of Civil Procedure Code,1908.

Babu Lal & Ors Vs. M/s. Vijay Solvex Ltd. & Ors.

2014 (II)-CLR (SC)-444.

Date of Judgment : 4th August 2014

SUDHANSU JYOTI MUKHOPADHAYA AND S.A. BOBDE, JJ.

ISSUE:

Temporary injunction—Vacation of order of interim injunction—While dealing with a matter relating to vacation of order of temporary injunction, it was not open for the High Court to give a finding on the main issue relating to maintainability of the suit and family settlement reached between the parties.

Relevant Extracts:

Appellants-plaintiffs filed a suit for declaration, mandatory injunction, rendition of accounts and permanent injunction against defendants/non-applicants—Trial Court allowed application of plaintiffs-appellants for temporary injunction—It was ordered that till the decision of the original suit, applicants and non-applicants shall not sell/transfer the immovable properties, nor shall they create any substantial charge on the said properties—Appeals—High Court modified the interim order—High Court set aside the temporary injunction granted in favour of plaintiffs-appellants and set aside that part of the order requiring production of audited/unaudited accounts of the companies/partnership firms run by the parties—Whether it laws op0en for the High Court to give a finding on the main issue relating to maintainability of the suit and the final settlement reached between the parties—Held, No. This Court remits back the matter to the High Court for its fresh disposal.

So far as merits of the case are concerned, according to the respondents-plaintiffs, all the properties mentioned in the Schedules 'Ka' to 'Chha' annexed to the plaint, were purchased from the nucleus of the joint family properties, and as per the family settlement dated 20.12.07, the said properties were required to be divided amongst the family members of the plaintiff No.1 and the defendant Nos.1 to 9. In this

regard, it is pertinent to note that the entire suit of the plaintiffs is based on the so-called family settlement which had allegedly taken place between the NLD group and BLD group on 20.12.07. From the bare perusal of the said document it transpires that it is the minutes of the meeting of Data Group Family dated 20.12.07, which was signed by Mr. Vijay Data for NLD Group and Mr. Babu Lal Data for BLD Group. Apart from the fact that there is not a whisper in the said document that the corpus of the companies mentioned in the said document was provided by the HUF or that the other properties mentioned in the said document were the HUF properties, the said document has also not been signed by the other coparceners of the alleged HUF except by Mr. Vijay Data and Mr. Babu Lal Data. Such a document by no stretch of imagination could be said to be a family settlement. However, even if it is believed to be a family settlement, and even if it is held that the same was not required to be signed by all the coparceners, then also there is nothing on the record to suggest that it was a memorandum prepared after the family arrangement which had already been made earlier, not required to be registered.…….

We have heard learned counsel for the parties and have perused the record. In the present case, the parties have raised similar pleas which were taken before the High Court. However, we are of the opinion that while dealing with a matter relating to vacation of order of temporary injunction, it was not open for the High Court to give a finding on the main issue relating to maintainability of the suit and the family settlement reached between the parties.

In view of the finding aforesaid, we are inclined to interfere with the judgment and order dated 14th March, 2012 passed by the High Court of Judicature for Rajasthan, Bench at Jaipur in S.B. Civil Misc. Appeal No.2218 of 2011 etc. We, accordingly, set aside the impugned judgment and remit back the matter to the High Court for its fresh disposal after hearing the parties. The appeals stand disposed of with aforesaid observations.

Code of Criminal Procedure, 1973 – Section 167(2)

Union of India through C.B.I v. Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav

(2014) 59 OCR (SC) – 226

Date of Judgment: 30th June 2014

DIPAK MISRA AND N. V. RAMANA,JJ.

ISSUE

Bail – Default on part of the Investigating agency to conclude the investigation within the period prescribed – An indefeasible right accrues in favour of the accused for being released on bail – This statutory right should not be defeated by keeping application filed under Section 167(2), Cr.P.C. pending – If a case is adjourned by the Court granting time to the prosecution not adverting to the application filed on behalf of the accused, it would be a violation of the legislative mandate.

Relevant Extracts

Murder of a Divisional Forest Officer when he was on a surprise check in a village along with his subordinate staff – Prosecution case that deceased was surrounded by a group of 25-30 unknown naxalites and was taken outside the village and when he declined to comply with the illegal demand of naxalites for payment of rupees five laksh for release, he was taken inside the forest where he was shot dead – In course of investigation, respondent was arrested and was sent to judicial custody on 5.12.2006 – As the charge-sheet was not filed after lapse of statutory period of 90 days, on 14.3.2007, respondent filed an application under Section 167(2), Cr.P.C. for release on bail – On 15.3.2007, an application was filed by the CBI under Section 49(2)(b) of POTA seeking extension of time period of 30 days, but on that day no order was passed on that application – Charge sheet was filed on 26.3.2007- On 3.4.2007, Special Judge extended the time for filling the charge-sheet till the date of such filing, i.e., 26.3.2007 and rejected application of respondent – Respondent – accused filed petition before the High Court – High Court

granted bail to respondent while holding that the right had already accrued to respondent on 14.3.2007 when he had moved the application for grant of bail – Whether the High Court was justified in overturning the order refusing bail and extending the benefit to respondent - Held, Yes.

Cases:

Relied:-

(i) (1994) 5 SCC 410 : Sanjay Dutt v. State

(ii) (2001) 5 SCC 453 : Uday Mohanlal Acharya v. State

Distinguished:-

(i) (2000) 10 SCC 438 : State v. Dawood Ibrahim Kaskar

Dissented From:

(i) (2011) 10 SCC 445 : Pragyna Singh v. State

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Code of Criminal Procedure, 1973 – Section 389(1)

Shyam Narain Pandey v. State of U.P.

(2014) 59 OCR (SC) – 176

Date of Judgment : 22nd July 2014

M. Y. EQBAL AND KURIAN JOSEPH,JJ.

ISSUE

Stay of conviction should be granted only in exceptional circumstances – Appellant was convicted under Sections 147, 148, 302/144 red with 120B, IPC and sentenced to life imprisonment and fine – High Court dismissed the appellant's application for stay of conviction - Whether the High Court was justified in dismissing the appellant's application for stay of conviction.

Relevant Extracts

Scope of stay of conviction under Section 389(1) of the Code of Criminal Procedure, 1973(hereinafter referred to as 'Cr.P.C.' is the subject matter of this appeal.

Appellant was tried along with six others by the Court of Additional Sessions Judge, Azamgarh, Uttar Pradesh. He was convicted under Sections 147, 148, 302/144 of the Indian Penal Code (45 of 1860) (hereinafter referred to as 'IPC') read with Section 120B IPC with life imprisonment and fine. He was granted bail by order dated 29.08.2012 by the High Court of Judicature at Allahabad. Thereafter, the appellant filed an application for staying the judgment of conviction which was dismissed by the impugned order dated 07.08.2013.

The appellant has been convicted under Sections 147, 148, 302/144 IPC read with Section 120B IPC and is sentenced to undergo life imprisonment.

'Convict' means declared to be guilty of criminal offence by the verdict of Court of law. That declaration is made after the Court finds him

guilty of the charges which have been proved against him. Thus, in effect, if one prays for stay of conviction, he is asking for stay of operation of the effects of the declaration of being guilty.

It has been consistently held by this Court that unless there are exceptional circumstances, the Appellate Court shall not stay the conviction, though the sentence may be suspended. There is no hard and fast rule or guidelines as to what are those exceptional circumstances. However, there are certain indications in the Code of Criminal Procedure, 1973 itself as to which are those situations and a few indications are available in the judgments of this Court as to what are those circumstances.

It may be noticed that even for the suspension of the sentence, the Court has to record the reasons in writing under Section 389(1) Cr.P.C. Couple of provisos were added under Section 389(1) Cr.P.C. pursuant to the recommendations made by the Law Commission of India and observations of this Court in various judgments, as per Act 25 of 2005. It was regarding the release on bail of a convict where the sentence is of death or life imprisonment or of a period not less than ten years. If the Appellate Court is inclined to consider release of a convict of such offences, the public prosecutor has to be given an opportunity for showing cause in writing against such release. This is also an indication as to the seriousness of such offences and circumspection which the Court should have while passing the order on stay of conviction. Similar is the case with offences involving moral turpitude. If the convict is involved in crimes which are so outrageous and yet beyond suspension of sentence, if the conviction also is stayed, it would have serious impact on the public perception on the integrity institution. Such orders definitely will shake the public confidence in judiciary. That is why, it has been cautioned time and again that the Court should be very wary in staying the conviction especially in the types of cases referred to above and t shall be done only

in very rare and exceptional cases of irreparable injury coupled with irreversible consequences resulting in injustice.

In the light of the principles stated above, the contention that the appellant will be deprived of his source of livelihood if the conviction is not stayed cannot be appreciated. For the appellant, it is a matter of deprivation of livelihood but he is convicted for deprivation of life of another person. Until he is otherwise declared innocent in appeal, the stain stands. The High Court has discussed in detail the background of the appellant, the nature of the crime, manner in which it was committed etc., and has rightly held that it is not a very rare and exceptional case for staying the conviction.

We do not, thus, find any merit in the appeal and the same is accordingly dismissed. However, we make it clear that the observations in this judgment are only for the purpose of this order and they shall have no bearing while hearing the appeal.

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Judicial Process

Dr. Subramanian Swamy v. Arun Shourie

(2014) 59 OCR (SC) – 151

Date of Judgment : 23rd July 2014

R. M. LODHA, CJI, ANIL R. DAVE, SUDHANSU JYOTI MUKHOPADHAYA, DIPAK MISRA AND SHIVA KIRTI SINGH,JJ.

ISSUE:

Process employed by Administrative Tribunal in coming to its decision – Not a "Judicial Process"

Relevant Extracts

In **Bharat Bank Ltd., Delhi v. Employees of the Bharat Bank Ltd., Delhi; [AIR 1950 SC 188],** the Constitution Bench was seized with the question whether Industrial Tribunal is a Court within the meaning of Article 136 of the Constitution of India. Mehr Chand Mahajan, J (as he then was) referred to the statement of Griffith, C. J. in **Huddart Parker & Co. Pty Lotd. V. Moorehead [8 CLR 330]** and observed, "if a body which has power to give a binding and authoritative decision is able to take action so as to enforce that decision, then, but only then, according to the definition quoted, all the attributes of judicial power are plainly present." Mukherjea, J. on consideration of **Shell Co. of Australia, Ltd. v. Federal Commissioner of Taxation [(1931) AC 275], Huddart Parker & Co. Pty Ltd. v. Moorehead [8 CLR 330]** and **Rola Co.(Australia) Pty. Limited v. Commonwealth p69 CLR 185]** stated, " the other fundamental test which distinguishes a judicial from a quassi-judicial or administrative body is that the former decides controversies according to law, while the latter is not bound strictly to follow the law for its decision. The investigation of acts on evidence adduced by the parties may be a common feature in both judicial and quassi-judicial tribunals, but the difference between the two lies in the fact that in a judicial proceeding the judge has got to apply to the facts found, the law of the land which is fixed and uniform. The quassi-judicial tribunal, on the other hand, gives its decision on the differences between the parties not

in accordance with fixed rules of law but on principles of administrative policy or convenience or what appears to be just and proper in the circumstances of a particular case. In other words, the process employed by an Administrative Tribunal in coming to its decision is not what is known as "Judicial Process"

The term "Court" has not been defined in the Contempt of Courts Act, 1952. Its definition in the Indian Evidence Act, 1872 , is not exhaustive and is intended only for purposes of the Act. The Contempt of Courts Act, 1952 however, does contemplate a "Court of Justice" which as defined in Section 20, Penal Code, 1860 denotes "a Judge who is empowered by law to act judicially". The word "Judge" is defined in Section 19 as denoting every person-

'Who is empowered by law to give, in any legal proceeding, civil or criminal , a definitive judgment, or a judgment which, if not appealed against would be definitive, or a judgment which, if confirmed by some other authority, would be definitive.....'

The minimum test of a "Court of Justice", in the above definition, is, therefore, the legal power to give a judgment which, if confirmed by some other authority, would be definitive. Such is the case with the commission appointed under the Public Servants (inquires) Act, 1850, whose recommendations constitute a definitive judgment when confirmed by the government. This, however, is not the case with a Commission appointed under the Commissions of Inquiry Act, 1952, whose findings are not contemplated by law as liable at any stage to confirmation by any authority, so as to assume the character of a final decision."

The Govt. is not bound to accept its recommendations or act upon its findings. The mere fact that the procedure adopted by the Commissioner is of a legal character and it has the power to administer oath will not clothe it with the status of Court. That being so, in our view, the Commission appointed under the 1952 Act is not a Court for the

purposes of Contempt of Courts Act even though it is headed by a sitting Supreme Court Judge. Moreover, Section 10A of the 1952 Act leaves no matter of doubt that the High Court has been conferred with the power to take cognizance of the complaint in respect of the acts calculated to bring the Commission or any member thereof into disrepute. Section 10A provides the power of constructive contempt to the Commission by making a reference to the High Court with a right of appeal to this Court. Our answer to the first question is, therefore, in the negative.

In view of the above reasons, the contempt petitions are dismissed and the contempt notices are discharged.

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Criminal Justice

Sarat Chandra Rath& Two Others v. MaltiTandi

(2014)59 OCR -1

Date of Judgment : 16th May 2014

S. C. Parija,J.

ISSUE:

Duty and responsibility of the Court to axe vexatious litigations and to prevent abuse of process of Court – Explained – Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent such abuse – It would be an abuse of the process of the Court, to allow any action which would result in injustice and prevent promotion of justice and in exercise of such powers, Court would be justified to quash any proceeding, if it finds that continuation of the same is abuse of process of Court.

Relevant Extracts:

The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the tests to be applied by the Court are as to whether the uncontroverted allegations as made prima facie establish the offence. Section 482 does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely (i) to give effect to an order under the Code (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely

recognized and preserved inherent powers of the High Courts. All court, whether civil or criminal possess, in the absence of any express provisions, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "quando les aliaquid alicui concedit, concedere videtur et id sine guo res ipase esse non potest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone Courts exist. Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse. It would be an abuse of the process of Court, to allow any action which would result in injustice and prevent promotion of justice and in exercise of such powers, Courts would be justified to quash any proceeding if it finds that initiation / continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the report or the complaint, the Court may examine the question of fact. When a report or complaint is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto.

On a perusal of the impugned order of cognizance, it is seen that the same is based solely on the statements of the complainant and two of her witnesses, recorded under Section 202 Cr.P.C. almost 10 years after the alleged occurrence. Moreover, learned magistrate has not taken into consideration the Final report submitted by the Crime Branch and the statement of witnesses recorded by it during investigation. Merely relying

upon the bald statements of the complainant and her two witnesses, learned Magistrate has proceeded to take cognizance of the offences under Sections 376/342/506/34 IPC against the present petitioners. Moreover, all the witnesses named in the complaint have not been examined before taking cognizance and directing issue of process against the accused persons, as has been prescribed under Section 202(2) Cr.P.C., especially when the offence alleged is under Section 376 IPC, which is exclusively triable by the Court of Sessions.

All these goes to show that the learned Magistrate has acted in a most casual and mechanical manner and has failed to apply his judicial mind to the very nature and extent of the allegations made in the complaint and exercise due caution and circumspection in examining the genuineness of the same, before taking cognizance and issuing process against the present petitioners.

This appears to be a clear case of malafide and malicious criminal proceeding initiated by the complainant against the present petitioners, who are police officers of Saintala Police Station, with an ulterior motive to wreak vengeance and vendetta on the accused persons, with a view to spite them due to the arrest of her husband Agasti Tandi on the allegation of murder in Saintala P. S. Case No. 107 of 1990. Moreover, the wild allegations made in the complainant are absurd, inherently improbable and entirely unbelievable and in absence of any clear, cogent and credible prima facie evidence in support of such allegations, I feel, the action of the learned Magistrate in taking cognizance almost 12 years after the alleged occurrence and directing issue of process has become an instrument of oppression in the hands of the complainant as a vendetta to harass the present petitioners needlessly. Therefore, allowing continuance of such a criminal proceeding would be an abuse of the process of Court.

In the present case, learned Magistrate while dealing with the question regarding requirement of prior sanction for prosecuting the

present petitioners, as required under Section 197(1) Cr. P. C., has come to the following findings:

> "As because the alleged offences committed by the accused persons do not come under the performance of their official duty, so no sanction is necessary U/S. 197 Cr.P.C. Since the alleged offences are warrant cases, issue N. B. W. (A) against the accused persons for their production fixing the case to 5.9.2002."

In the case at hand, as the acts complained of are alleged to have been committed by the present petitioners as public servants in discharge of their official duty, while investigating into Saintala P. S. Case No. 107 of 1990 or in dereliction of the same, the protection envisaged under Section 197(1) Cr. P.C. is attracted. I am therefore of the considered view that the petitioners, who are police officers of the State and are not removable from their office save by or with the sanctions of the Government, cannot be prosecuted without previous sanctions of the State Govt.

For the reasons as aforestated, the criminal proceeding initiated against the present petitioners in 1CC No. 08 of 1991, pending in the Court of Learned SDJM, Titlagarh and the order of cognizance passed therein are hereby quashed. CRLMC is accordingly allowed.

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Code of Criminal Procedure, 1973 – Section 389

Atul Tripathi v. State of U. P. and another

(2014) 59 OCR (SC) – 141

Date of Judgment : 22nd July 2014

M. Y. EQBAL AND KURIAN JOSEPH ,JJ.

ISSUE

Bail to convicts sentenced to punishments for death or imprisonments for life or for a period of ten years or more – Appellate Court shall first give an opportunity to the public prosecutor to show cause in writing against such release.

Relevant Extracts

Seven accused had been convicted under Sections 147, 148,149 read with 302, 120B, IPC and were awarded sentence of imprisonment for life – Four of the accused were granted bail – However, no opportunity was granted to the State to show cause against such release as contemplated under the first proviso of Section 389, Cr.P.C. – held, No – Whether service of a copy of the appeal and application proviso to Section 389, Cr.P.C. – Held, No – Whether the appellate Court while considering release of convict on bail , should give an opportunity to the public prosecutor for showing cause in writing against such release where the conviction is for an offence punishable with death or imprisonment for life or for a term not less than ten years.

Held, Service of a copy of the appeal and application for bail on the public prosecutor by the appellant will not satisfy the requirement of first proviso to Section 389 Cr.P.C. The Appellate Court may even without hearing the public prosecutor, decline to grant bail. However, in case the Appellate Court is inclined to consider the release of the convict on bail, the public prosecutor shall be granted an opportunity to show cause in writing as to why the appellant be not released on bail. Such a stringent provision is introduced only to ensure that the Court is apprised of all the relevant factors so that the Court may consider whether it is an

appropriate case for release having regard to the manner in which the crime is committed, gravity of the offence, age criminal antecedents of the convict, impact on public confidence in the justice delivery system, etc., Despite such an opportunity being granted to the public prosecutor, in case no cause is shown in writing. This procedure is intended to ensure transparency, to ensure that there is no allegation of collusion and to ensure that the Court is properly assisted by the State with regard to the relevant considerations for grant of bail in respect of serious offences, at the post-conviction stage.

To sum up the legal position, a. The Appellate Court, if inclined to consider the release of a convict sentenced to punishment for death or imprisonment for life or for a period of ten years or more, shall first give an opportunity to the public prosecutor to show cause in writing against such release. b. On such opportunity being given, the State is required to file its objections, if any, in writing. c. In case the public prosecutor does not file the objections in writing, the Appellate Court shall, in its order, specify that no objection had been filed despite the opportunity granted by the Court. d. The Court shall judiciously consider all the relevant factors whether specified in the objections or not, like gravity of offence, nature of the crime, age, criminal antecedents of the convict, impact on public confidence in Court , etc., before passing an order for release. Appeal Allowed.

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Code of Criminal Procedure, 1973 – Section 235

C. K. Dasegowda & Ors. v. State of Karnataka

(2014) 59 OCR (SC) – 114

Date of Judgment : 15 July 2014

DIPAK MISRA AND V. GOPALA GOWDA,JJ.

ISSUE

Scope of appeal against acquittal – Finding of acquittal should not be disturbed merely because one other view is possible.

Relevant Extracts

Appeal against order of acquittal – General Principles regarding power of appellate court while dealing with an appeal against an order of acquittal emerge.

Appellants were prosecuted for commission of offences under Sections 143, 147, 148, 323, 324, 326, 307 read with 114, IPC – After cognizance, case was committed to Sessions Court for trial – On appreciation of evidence, Trial Court held that prosecution had failed to prove any of the offences alleged against the accused persons – Trial Court acquitted the accused under Section 235, Cr.P.C. – State appealed before the High Court challenging the acquittal – On appreciation of evidence, High Court convicted the accused under Section 324 read with 34, IPC – High Court sentenced the accused to pay fine of Rs.10,000/- and in default to undergo simple imprisonment for one year – Whether the High Court was justified in reversing the order of acquittal of the appellants – held No.

Held, (1) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded; (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an Appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law; (3) Various expressions, such as 'substantial and compelling

reasons', good and sufficient grounds, very strong circumstances, distorted conclusions, glaring mistakes etc. are not intended to curtail extensive powers of an Appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language to emphasize the reluctance of an Appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion. (4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the Trial Court. (5) if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial Court.

Therefore, based on the legal principles laid down by this Court and applying the same to the facts and evidence on record of this case, we are of the opinion that the High Court erred in setting aside the order of the acquittal of the appellants in the absence of any legal and factual evidence on record to prove the findings and reasons recorded in the judgment of the Trial Court as perverse. The contentions urged on behalf of the appellants are well founded as the same are in conformity with the legal principles laid down in the aforesaid cases.

We therefore, set aside the order of the High Court and reinforce the order of acquittal by the Trial Court. The appeal is allowed.

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Chapter V, Section 60- A of Code of Criminal Procedure

Mrs. N. RatnakumariVs. State of Odisha &Ors.

CLT (2014) II Supp. Crl. 344

Date of Judgment : 24.7.2014

I.MAHANTY & S. K. SAHOO,JJ.

Issue

Arrest by police to an accused involved in a cognizable offence – **Arrest & detention of a person cannot be made in a causal or routine manner – Police Officer must be able to justify the necessity for such arrest apart from his power to do so – No arrest should be made by the Police officer in case of non bailable & cognizable offence without a reasonable satisfaction as to genuineness of allegation made after conducting some investigation – Unless the principle laid down regarding arrest is kept in mind by the arresting officer, it would amount to denying a person of his liberty.**

Relevant Extracts:

Article 14, 21 read with Cr.P.C. Section 41 –

Arrest by police without warrant – When the police is exercising his statutory power, it should be done in a fair manner – Nobody has right to play with liberty of a person and if the exercise is arbitrary in nature then it violates the fundamental right guaranteed under Article 14 of the Constitution of India.

Section 41-A

Recording the reasons in writing for not making the arrest – it is compulsory for the police to issue a notice in all such cases where arrest is not required to be made under Clause (b) of Sub-Section (1) of the amended Section 41 – But, all the same, unwillingness of a person who has not been arrested to identify himself and to whom a notice has been issued under Section 41 – A could be a ground for his arrest.

Section 41, 50(1), 151

Arrest & Detention – Right of Arrestee – Arrestee has got right to know full particulars of the offence for which he is arrested and to consult a legal practitioner of his choice to be defended by him – These rights are fundamental rights and inherent in Articles 21 and 22 of the Constitution of India.

Thus according to the Petitioner, there is violation of the provisions of Section 41, 41-A, 50, 57 Cr.P.C. so also the fundamental rights guaranteed under Article 14,21 & 22 of the constitution of India and the action taken by the police officials are mala fide in nature and they have acted without any valid reason under law.

Section 60-A Cr.P.C. provides that no arrest shall be made except in accordance with the provisions of the Code or any other law for the time being in force providing for arrest.

No doubt, different provisions of the Cr.P.C. provides for the arrest of an accused involved in a cognizable offence. The existence of power of arrest is one thing but the justification for such exercise is quite another. Arresting Officer must be able to justify the arrest apart from his power to do so. Arrest and detention of a person cannot be made in a casual or routine manner on the mere allegation of commission of offence and the law mandates that before arresting a person and after arrest, procedure laid down under Chapter – V of Cr.P.C. are to be strictly followed otherwise the arrest and the consequent detention would be illegal. That is why Section 60-A of Cr.P.C. was inserted by the Code of Criminal Procedure (Amendment) Act, 2008 (15 of 2009) which came into force with effect from 31.12.2009 along with other amendment in Chapter V of Cr.P.C.. The police officer must be able to justify the necessity for such arrest apart from his power to do so. Arrest should be made as the last option restricted in exception cases where arresting the accused is imperative in the facts and circumstance of the case. No arrest should be made by the police officer in case of non bailable and cognizable offence without a reasonable satisfaction as to genuiness of allegation made after conducting some investigation. Unless the principle laid down regarding arrest is kept in mind by the arresting officer, it would amount to denying a person of his liberty. In case of Joginer Kumar v. State of U.P. reported in (1994) 4 Supreme Court Cases 260, it as held as follows.

"No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self – esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bonafides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental righto personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the Station without permission would do".

Recently Hon'ble Supreme Court in case of Arnesh Kumar v. State of Bihar (Criminal Appeal No. 1277 of 2014, Judgment dtd. 2.7.2014) while dealing with the arrest of a person accused of an offence punishable with imprisonment for a term which may be less than 7 years or which may extend to 7 years with or without fine has held as follows:-

"The police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or other conditions as enumerated above is satisfied, the power of arrest need to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the

accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 of Cr. P.C."

Article 21 of the Constitution of India provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Procedure must be fair and not formal and it should be reasonable, not vagarious, vague and arbitrary. When the police is exercising his statutory power, it should be done in a fair manner in as much as nobody has right to play with liberty of a person and if the exercise is arbitrary in nature, then it violates fundamental rights guaranteed under Article 14 of the Constitution of India.

Apart from the case in hand, several cases have been recently reported in the State of Odisha, where innocent persons have been duped by way of misrepresentation or for sake of money and in most of the cases, such persons being shown as near relatives of the recipients by creating forged documents, organ transplantation operation are carried out either within the state or outside. The hospital authorities are also not properly verifying the documents produced before them to trace out genuine cases obviously with an ulterior motive and are therefore becoming a party to such illegal commercial dealing. To check such racket and to meet ends of justice. We are issuing the following directions:-

1. The I.O. of this case is directed to take immediate step to file a complaint on the basis of materials already collected by him for the alleged violation of the provisions of 1994 TOHO Act before the "Appropriate Authority" in connection with this case. The Appropriate Authority may himself investigate the complaint or entrust the matter to the C.B. I. for investigation.
2. Once the Appropriate Authority or C.B.I. on investigation finds prima facie materials that there is breach of any of the provisions of 1994 TOHO Act or the rules made thereunder, the Appropriate Authority or the C.B.I. will file a complaint petition before the

competent Court for taking cognizance of offence and proceeding in accordance with law.

3. The State Government is directed to intimate all other States where the donor the recipient belong to State of Odisha not to conduct any organ transplantation operation without the approval / No Objection Certificate from the Authorization Committee of Odisha.
4. The State Government is also directed to consider framing guidelines for processing the application for organ transplantation before the Authorization Committee keeping in view the guidelines issued by the Government of Andhra Pradesh, Hyderabad and any other States.
5. The State Government is also directed to frame a scheme similar to the "Jeevandan" scheme in the matter of organ transplantation like in the State of Andhra Pradesh and appoint different authorities to carry out the purposes of such a scheme.
6. The State Government shall take effective steps in framing rules, regulations and guidelines for registration of the hospitals as Organ Transplant Centre (OTC) and to monitor their activities.

Before parting, we record our appreciation to the able assistance provided by Sri J. Das, Senior Advocate appearing for the petition and Sri Ashok Mohanty, the Learned Advocate General for adjudication the issues involved in the case.

List this matter on 20.10.2014 for filling of compliance affidavit by the state and for further orders.

I.Mahanty, J. I agree

Interim bail granted & Direction issues to State Govt.

Section 379 of Code of Criminal Procedure

Shyamal Saha & Anr. Vs. State of West Bengal

CLT (2014) II Supp. Crl. 393(SC)

Date of Judgment : 24.2.2014

RANJAN PRAKASH DESAI & MADAN B. LOKUR,JJ.

Issue:

Appeal against the acquittal of an accused by the Trial Court – High Court reversed the order of Trial Court and convicted for the murder and sentenced to life imprisonment – Appeal before Apex Court – Held, view taken by the Trial Court was a reasonable and probable view on the facts of the case – Conviction and sentence handed down by the High Court is set aside.

Relevant Extracts:

This appeal questions the limits of interference by the High Court in an appeal against the acquittal of an accused by the Trial Court. In our opinion, the High Court ought not to have interfered in the appeal before it with the acquittal of the Appellants by the Trial Court.

According to BidytpravaSaha, at about 8.00 or 8.30 p.m. Shyamal&Prosanta came to her house and asked the whereabouts of Paritosh.

According to Paritosh's brother AmareshSaha (PW-1) at about 10.00 p.m. Shyamal and Prosanta came to his house and enquired about Paritosh.

Early next morning on 20.5.1995 BidyutpravaSaha noticed that Paritosh had not eaten his dinner which she had kept for him. She mentioned this to Amaresha and also informed him that Shyamal & Prosanta had come and met her the previous evening at about 8.00 or 8.30 p.m. During the course of this conversation, Animesh revealed to his father Amaresh that he had seen Paritosh cross the river Ganges the previous evening in a boat along with Shyamal & Prosanta.

On receiving this information Amaresh enquired from Shyamal & Prosanta the whereabouts of Paritosh but they informed him that they had seen him across the river with some boys. Later in the day, Amareshwas informed by Dipak &Panchu that they had crossed the river along with Paritosh, Shymal and Prasonta. After crossing the river, Dipak &Panchu had gone to see the thermal plant and the others had gone in another direction towards the jungle. Dipak &Panchu pleaded ignorance of the subsequent movements of Paritosh.

Later in the evening at about 7.30 p.m. Amaresh Saha lodged a First Information Report regarding the disappearance of Paritosh.

Sometime in the morning of 21st May, 1995 the corpse of Paritosh was found in the river tied to two iron chairs with a napkin around his neck. The police were informed about the recovery of the dead body and an inquest was carried out and the iron chairs and napkin were seized in the presence of some witnesses. It was noticed that a part of Paritosh's skin was burnt perhaps due to pouring of acid.

On these broad facts, investigations were carried out ad Shyamal & Prosanta were charged with having abducted Paritosh and thereafter having murdered him.

Decision of the Trial Court:

In its Judgment and order dated 29th July, 1998 the Trial Court held that neither the charge of abduction nor the charge of murder was proved against Shyamal and Prosanta and therefore they were acquitted. (Session Trial Case No. 21 of 1997 decided by the Additional Sessions Judge, Hooghly) As far as the charge of abduction is concerned, that is not in issue before us & need not detain us any further.

Undoubtedly, we are suffering from an overdose of precedents but be that as it may, from the principles laid down, it appears at first blush that the High Court is entitled to virtually step into the shoes of the Trial

Court hearing submissions of Learned Counsel and then decide the case as a Court of first instance. Perhaps this is not what is intended, notwithstanding the broad language used in Chandrappa & Ganpat. Otherwise, the decision of the Trial Court would be a meaningless exercise and this Court would become first appellate Court from a decision of the High Court in a case of acquittal by the Trial Court. Realistically speaking, although the principles stated are broad, it is the obligation of the High Court to consider and identify the error in the decision of the trial Court and then decide whether the error is gross enough to warrant interference. The High Court is not expected to merely substitute its opinion for that of the Trial Court only because the first two principles in Chandrappa & Ganpat permit it to do so & because it has the power to do so – it has to correct an error of law or fact significant enough to necessitate overturning the verdict of the trial court. This is where the High Court has to exercise its discretion very cautiously, keeping in mind the acquittal of the accused and the rights of the victim (who may or may not be before it). This is also where the fifth principles laid down in Chandrappa and Ganpat comes into operation.

The facts of this case demonstrate that the first link in the chain of circumstances is missing. It is only if this first link is established that the subsequent links may be formed on the basis of the last seen theory. But the High Court overlooked the missing link, as it were and directly applied the last seen theory. In our opinion, this was a rather unsatisfactory way of dealing with the appeal.

Under the circumstances, we are unable to agree with Learned Counsel for the State & are of the opinion that there was really no occasion for the High Court to have overturned the view of the Trial Court which was not only a reasonable view but a probable view of the events.

Learned Counsel for Shyamal and Prosanta raised some issues such as the failure of the prosecution to examine GopalSaha and AsitSarkar.

He also submitted that there was no motive for Shyamal & Prosanta to murder Paritosh. In the view that we have taken, it is not necessary to deal with these submissions.

Learned counsel for the State relied on the evidence of Dr. Bhattacharya to submit that Paritosh died between 65 to 70 hours before the post mortem examination was conducted. As observed by the High Court, this placed Paritosh's death soon after 5.30 p.m. on 19th May 1995. The significance of this is only with respect to the time of death an has no reference to the persons who may have caused the death of Paritosh. The evidence of Dr. Bhattacharya, therefore, does not take the case of the State any further.

Conclusion:

The view taken by the Trial Court was a reasonable and probable view on the facts of the case. Consequently, there was no occasion for the High Court to set aside the acquittal of Shymal & Prosanta. Accordingly, their conviction and sentence handed down by the High Court is set aside.

Their appeal against their conviction & sentence is allowed.

Appeal allowed.

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Principle of Just Punishment.

Pritam Chauhan Vs. State of NCT, Delhi.

2014 (3)-Crimes-502 (SC).

Date of Judgment: 01.07.2014

SUNDHANSU JYOTI MUKHOPADHAYA AND RANJAN GOGOI,JJ.

ISSUE:-

Doctrine of proportionality—The wide discretion that is vested in the Courts in matters of sentencing must be exercised on rational parameters in the light of 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—Instantly, considering that 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, held that sentence of two years rigorous imprisonment was just and adequate and not required any modification.

Facts of the case:--

Appellant herein, in the instant case, was prosecuted for causing grievous injury to victim by a sharp edged weapon. Appellant was convicted under Section-307 IPC by Trial Court. On Appeal, High Court altered the conviction of appellant to one under Section-326 IPC. Present Appeal has been filed against said order of High Court.

Findings of the Court—

Evidence of PW.2,Dr. indicated that victim had suffered two wounds at the back of his left forearm 9x5 c.m. over the middle 1/3rd and 6x4 cm. distal 1/3rd left forearm with deep extensive damage to most of muscles and the back of left forearm—Apart from the above, there was another wound 4 x 1 cm. on the palm of the right hand—PW.2 specifically stated that said injuries are grievous in nature and were caused by a sharp edged weapon. Hence, Conviction of appellant under Section-326 IPC was held justified.

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 appellant had been convicted under Section-307 IPC by the learned Additional 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 the 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 vs. 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 lis 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 lis 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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Sections 377(3), 386 of Code of Criminal Procedure

Sumer Singh. Vs. Surajbhan Singh and others

AIR-2014 SUPREME COURT-2840

Date of Judgment- 5/5/2014

SUDHANSU JYOTI MUKHOPADHAYA AND DIPAK MISRA, JJ.

ISSUE:

Appeal against sentence—Powers of Appellate Court—Appeal filed not by State but at instance of an injured—Principle analogous to S.377(3) are applicable and power under Art.136 of Constitution is of wide amplitude—Supreme Court **can impose adequate sentence when fact and circumstance so warrant.**

Relevant Extracts

In the case at hand, the State has not preferred any appeal but the injured has been permitted to file the appeal after obtaining leave. We have already stated that the principles which are analogous to 377(3) of the Code are applicable and the power under Article—136 is of wide amplitude. Thus viewed, we do not see any reason why this Court, while entertaining an appeal at the instance of an injured, cannot impose adequate sentence when the facts and circumstance so warrant. But prior to that, for applying the requisite test, we should appreciate the material on record to come to a conclusion whether the recording of conviction is unjustified, and whether the High Court has absolutely erred in restricting the sentence to the period already undergone.

It is the duty of the Court to impose adequate sentence, for one of the purposes of imposition of requisite sentence is protection of the society and a legitimate response to the collective conscience. The paramount principle that should be the guiding laser beam is that the punishment should be proportionate. It is the answer of law to the social conscience. In a way, it is an obligation to the society which has reposed faith in the court of law to curtail the evil. While imposing the sentence it is the Court's accountability to remind itself about its role and the reverence for rule of law. It must evince the rationalized judicial discretion and not an individual perception or a moral propensity. But, if in the ultimate eventuate the proper sentence is not awarded, the fundamental grammar of sentencing is guillotined. Law cannot tolerate it;

society does not withstand it; and sanctity of conscience abhors it. The old saying " the law can hunt one's past" cannot be allowed to be buried in an indecent manner and the rainbow of mercy, for no fathomable reason, should be allowed to rule. True it is, it has its own room, but, in all circumstances, it cannot be allowed to occupy the whole accommodation. In the present case the manner in which the crime laws committed speaks eloquently about its brutality. The gravity of the offence speaks for itself. A young man's hand has been cut off from the wrist. How the fear psychosis would have reigned in the society at the relevant time does not require Solomon's wisdom to visualize. It is difficult to fathom what possible reason the High Court could have envisioned or thought of while reducing the sentence to the period already undergone, i.e., seven days for such an offence. Possibly, the High Court felt that increase of fine amount would serve the cause of justice and ameliorate the grievance of the victim and pacify the collective cry. Money cannot be the oasis. It cannot assume the center stage for all redemption. Interference in manifestly inadequate and unduly lenient sentence is the justifiable warrant, for the Court cannot close its eyes to the agony and anguish of the victim and, eventually, to the cry of the society. Therefore, the cause of justice would be best sub-served if the respondent is sentenced to undergo rigorous imprisonment of two years apart from the fine that has been imposed by the Trial Judge.

A few decades ago thus spoke Felix Frankfurter;-

"For the highest exercise of judicial duty is to subordinate one's personal pulls and one's private views to the law of which we are all guardians—those impersonal convictions that make a society a civilized community, and not the victims of personal rule."

We part with the aforesaid reminder. Consequently, the appeal is allowed in part, the conviction recorded by the trial court as well as by the High Court is maintained and the sentence imposed by the learned trial Judge and that by the High Court is modified to the extent indicated hereinabove.

Sections 41, 41-A Code of Criminal Procedure

Arnesh Kumar. Vs. State of Bihar and another

AIR-2014 Supreme Court-2756

Date of Judgment : 2-7-2014

CHANDRAMAULI Kr. PRASAD AND PINAKI CHANDRA GHOSE,JJ.

ISSUE:

Arrest—Powers of Police in Dowry harassment cases—

Police officers not to automatically arrest—Practice of mechanically reproducing in case diary all or most of reason contained in S.41 for effecting arrest—To be discouraged and discontinued.

Relevant Extracts:

Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There sis a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Cr.P.C. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public.

The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive**.** The Law Commissions, Police Commissions and this Court in a large number of judgments emphasized the need to maintain a balance between individual liberty and societal order while exercising the power of arrest.

We are of the opinion that if the provisions of Section 41 Cr.P.C. which authorizes the police officer to arrest an accused without an order

from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. 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.P.C. for effecting arrest be discouraged and discontinued.

Our endeavour 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:--

(1) 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 Section 41 Cr.P.C.

(2) All police officers be provided with a check list containing specified sub-clauses under Section 41 (1)(b)(ii);

(3) The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention.

(4) 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;

(5) 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 la copy to the Magistrate which may be extended by the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;

(6) Notice of appearance in terms of Section 41A of Cr.P.C. 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;

(7) 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 the High Court having territorial jurisdiction.

(8) Authorizing 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 IPC 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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Evidence Act, 1872 – Section 32

Suryakant Dadasaheb Bitale v. Dillip Bajrang Kele & Anr.

(2014)59 OCR (SC) – 26

Date of Judgment : 2nd July 2014

SUDHANSU JYOTI MUKHOPADHAYA AND R. K. AGRAWAL,JJ.

ISSUE :

Revision against acquittal – Scope of Powers

Relevant Extracts

Three dying declaration inconsistent with each other – Deceased got married to appellant – accused on 6.6.2003 – On 14.7.2003, deceased had sustained 95% burn injuries in her matrimonial home when her husband was present in the house – She was admitted in a hospital where the Special Executive Magistrate recorded her dying declaration on 14.7.2003 – Deceased had stated in her dying declaration dated 14.7.2003 that while cooking in the kitchen on gas stove fire caught to the shore of her saree and she received injuries – She stated that her husband who was in the next rom tried to extinguish fire and he had also suffered burn injuries – second declaration alleged to have been made to her father – On 16.7.2003 Special Executive Magistrate recorded another dying declaration of deceased wherein she stated that her husband poured kerosene on her persons and set her on fire when she refused to have sexual intercourse on second occasion – Prosecution could not explain as to why the second dying declaration was taken on 16.7.2003 – Trial Court acquitted appellant – accused of offences under Section 302 and 498 – A, IPC – Revision Petition – High Court reappreciated the dying declaration and remitted the matter back to the Sessions Court for consideration afresh – Whether the high Court was justified in interfering with the order of acquittal in a revision – Held, No.

The scope of revisional jurisdiction was considered by this Court in **K. Chinnaswamy v. State of A. P., AIR 1962 SC 1788** and held as follows:

> "Where the appeal Court wrongly, ruled out evidence which was admissible, the High Court would be justified in interfering with the order of acquittal in revision, so that the evidence may be re-apprised after taking into account the evidence which was wrongly ruled out as inadmissible. But the High Court should continue itself only to the admissibility of the evidence and should not go further and appraise the evidence also."

In the present case the Sessions Court has not ruled out any evidence which was admissible. Both the dying declaration were considered in proper prospect. The material evidence has not been overlooked by the Sessions Court, as apparent from the discussions made by Sessions Judge and quoted above. In these circumstances, the High Court was not justified in interfering with the order of acquittal in a revision.

In the present case, in fact, there are three dying declarations. One was made before the Executive Magistrate on 14th July, 2003, the second allegations to have been made by the deceased Archana before her father, Dillip (PW-5) complainant on 15th July 2003 and the third dying declaration was made in a format before the Executive Magistrate on 16th July 2003. The complainant Dillip (PW-5), father of the deceased in his FIR dated 16th July, 2003 had not stated that her daughter Archana alleged that the accused was asking for intercourse second time on 14th July 2003, and when she refused the accused sprinkled kerosene on her and put her on fire. The prosecution could not explain as to why the second dying declaration was taken on 16th July 2003, though in the said declaration the deceased Archana had stated that she had not called for the second dying declaration. All this aspect has been discussed by the Sessions Judge who acquitted the appellant.

In the present case, the view taken by the Sessions Judge is neither unreasonable nor perverse. It is possible reasonable view based on the evidence on record. In the circumstances, the High Court was not justified in setting aside the order of acquittal.

For the reasons aforesaid, we set aside the impugned judgment and order dated 18th October 2007 passed in Criminal Revisions Application No. 321 of 2004 and affirm the order passed by the Sessions Court. The appeal is allowed.

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Evidence Act, 1872- Section 118

Kanhu Charan Naik v. State of Orissa

(2014)59 OCR -58

Date of Judgment - 22nd April 2014

SATRUGHANA PUJAHARI,J.

ISSUE

Competency of witness depose –

Relevant Extracts :

Discretion and duty of Court – Witness aged five to six years – She herself is the victim in a case of sexual molestation – The Trial Court relied on her testimony – Whether the Trial Court committed error ? – Held No – The Magistrate / Judge to record the testimony of a (child) witness if he is satisfied from the fact that the witness is not prevented from understanding the question or giving the rational answers – the Court has to put certain question to the witness before recording his/her evidence, to test the power of understanding and rationality of the witness.

Child Witness –

Whether the evidence of a child witness is to be discarded if not strongly corroborated bit by bit through other evidence? – Held-No- A case of rape committed on a minor girl of 5 to 6 years of age – the prosecution mainly banked upon the testimony of the child witness / victim- The defense took the plea that the sole testimony of the child witness cannot be relied upon as because the age of the child witness is very tender and as such she is not able to find out what is truth and what is false.

Therefore, the law is well settled that a child witness is not incompetent to testify due to his/her tender age, inasmuch as Section 118 of the Indian Evidence Act speaks that every witness is competent to testify unless prevented from understanding the question to him/her or from giving rational answer by reason of tender age, extreme old age,

disease of body or mind or any other cause of the same kind. Hence, the discretion is left to the Magistrate or Judge to record the testimony of a child witness if it is satisfied from the fact that the witness is not prevented from understanding the questions or giving the rational answers by reason of his/ her tender age. The Magistrate or Judge therefore, before recording the evidence of such witness as mentioned in Section 118 of the Indian evidence Act records its satisfaction by putting such questions as the Magistrate or Judge thinks fit to test the power of understanding and rationality of the answers give, from which it has to be satisfied about the competency of such witness and certify on the competency before recording evidence. The same is required to be preserved in the record by the Magistrate or Judge concerned for appreciation of the evidence of such witness as a rule of caution as in the absence of the same, the evidence of the witness is likely to be challenged on the ground of competency and seriously affects the credibility of such witness. But, the law is well settled that in the absence of such record, the version of such witness however, cannot be discarded as testimony of a incompetent witness, inasmuch as the competency can be gathered from the circumstances in the absence of such certificate as laid down in the case of **Rameshwar S/o Kalyan Singh v. the State of Rajasthan, AIR 1952 SC 54**.

It appears that in this case, the learned Addl. Sessions Judge, Khurda though has not preserved the questions put to the victim – child witness (P.W.. 7) but has certified that he had put certain questions to the child witness as the child witness was able to give rational answer to the question put to her, learned Addl. Sessions Judge recorded her statement. The victim also appears to have answered the question rationally put to her during her examination, as seen from the evidence of the victim (P.W.7). therefore, there is no manner of doubt that she was competent to testify and a competent witness.

The evidence of the victim (P.W.7) would go to show that when she was playing, the appellant called her to give Blackgram to eat and she accompanied him and the appellant opened her 'Chadi' and rubbed his penis in her vagina. It is further emerged from her evidence that she cried but the appellant closed her mouth and when P.W..3 arrived, the appellant fled away, but P.W. 3 took her to her house where she disclosed the incident before her mother (P.W.2). She has also identified the wearing apparels, such as M.O.I.- Lungi worn by the appellant, M.O. –II- Frock and M.O. – III – Chadi worn by her then. In the cross-examination made, nothing has been elicited by the defence disclosing that this witness had any reason of false implication or she is not stating the truth or the aforesaid evidence is unworthy of credence. The version of the victim also gets corroboration evidence from the unimpeachable evidence of P.W. 3 who arrived at the spot hearing the cry of the children and found the appellant forcibly embracing her and seeing him fleeing away by jumping over the boundary wall of the Panchayat Office. The victim then found to be naked. So also, the victim in her former statement made before her mother (P.W.2) soon after the incident, implicates the appellant. The same having been deposed by P.W. 2, lends corroboration under Section 157 of the Indian Evidence Act to the evidence of the victim.

Thus, the finding recorded by the trial Court in the impugned judgment holding the appellant guilty of the offence as stated earlier being based on clear cogent and unimpeachable evidence of a child witness, who is a victim of sexual assault, warrants no interference, more so when the same stands corroborated, as stated earlier and the defence could not prove its case of false implication by the standard of preponderance of probability.

So far as the sentence imposed in concerned, the same also appears to be commensurate to the facts and circumstances of the case, inasmuch as the petitioner attempted to commit rape on a child of very

tender age. There is no mitigating circumstance in favour of the appellant. The offence being heinous and serious in nature, sentence imposed cannot be said to be disproportionate. Hence, the same needs no interference.

Resultantly, for the foregoing reasons, this Jail Criminal Appeal is devoid of merit and the same stands dismissed. The impugned judgment and order of the conviction and sentence passed by the trial Court are hereby confirmed. The appellant, who has been allowed to go on bail by this Court, if availed of the said order of bail, be taken to custody by the trial Court to undergo the remaining sentence.

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Art.21 of the Constitution of India

Santosh Kumar Singh. Vs. State of Madhya Pradesh

AIR-2014 Supreme Court-2745

Date of Judgment – 03-07-2014

H.L.DATTU, SUDHANSU JYOTI MUKHOPADHAYA AND M.Y.EQBAL,JJ.

ISSUE

Fair trial

Relevant Extracts

The case of the prosecution is that the accused-Santosh Kumar Singh was known to the family of Gulam Mohd. Including his wife, Noorjahan, son Javed Akhtar, and daughters viz. Rozi alias Razia and Zeenat Parveen. On 7th May,2010, accused came to their house inn Sector No.12,Quarter No.B-664, N.C.L. Colony, Singrauli at about 2 p.m.. He had a chat with Noorjahan Begum (deceased) for about 30 minutes. In the same room besides her Rozi alias Razia Khatoon (PW-4) and Zeenat Parveen (PW-3) were also present. Javed Akhtar (deceased), son of Noorjahan Begum was sleeping in the bedroom. After accused left, Noorjahan Begum (deceased) started offering Namaz, Rozi alias Razia went to bathroom to take bath and Zeenat Parveen was sitting in the outside room. After sometime, accused came back and knocked the door, Zeenat Parveen opened the door and the accused came inside. At that time Rozi alias Razia came out of the bathroom and saw accused talking to Zeenat in the outside room, at that moment, the accused suddenly pulled out an iron hammer from his T-shirt and hit on the head of Zeenat Parveen two-three times with hammer. Zeenat Parveen screamed and became unconscious. The accused, thereafter, with intention to kill Noorjahan Begum land Javed Akhtar also hit them with hammer on their heads, because of which both fell down and became unconscious. After that accused hit Rozi alias Razia by the hammer on her head with an intention to kill her resultantly Razia's head got fractured. Thereafter, the accused opened the almirah, suitcases and boxes and looted two gold chains, one pair of tops, one pair of bali, one pair of jhala, three rings,

one nose pin and four pairs of silver anklets, artificial jewellery etc. and Rs.23,000/- cash of Noorjahan Begum. He also took out four brass bangles from the hands of Noorjahan Begum. As a result of assault Noorjahan Begum died on the spot. On hearing shricks of Rozi alias Razia, Ramesh Satnami (PW-1), Ramawadh Pal (PW-5) and other people of the colony came. At the time of incident, Gulam Mohd. (PW-2) was on duty and on receiving the news he came to the place of incident and took Rozi alias Razia, Zeenat Parveen and Javed Akhtar to Nehru Hospital.

After due investigation, the charge-sheet was filed and the case was committed for trial. The appellant denied the guilt and pleaded false implication but he did not adduce any evidence in his defence. Prosecution examined altogether 16 witnesses and produced a number of documentary evidence to prove their case. The Trial Court on the appreciation of the evidence held the accused guilty and convicted and sentenced him for the offence as mentioned above, which was affirmed by the High Court.

The principles governing the sentencing policy in our criminal jurisprudence have more or less been consistent, right from the pronouncement of the Constitution Bench judgment of this Court in Bachan Singh V. State of Punjab (AIR-1980-SC-898), (2010) 8 SCC-775 (sic). Awarding punishment is certainly an onerous function in the dispensation of criminal justice. The Court is expected to keep in mind the facts and circumstances of a case, the principles of law governing award of sentence, the legislative intent of special or general statute raised in the case and the impact of awarding punishment. These are the nuances which need to be examined by the Court with discernment and in depth. The legislative intent behind enacting Section 354(3) Cr.P.C. clearly demonstrates the concern of the legislature for taking away a human life and imposing death penalty upon the accused. Concern for the dignity of the human life postulates resistance to taking a life through law's instrumentalities and that ought not to be done, save in the rarest of rare cases, unless the alternative option is unquestionably foreclosed. In

exercise of its discretion, the Court would also take into consideration the mitigating circumstances and their resultant effects.

The language of Section 354(3) demonstrates the legislative concern and the conditions which need to be satisfied prior to imposition of death penalty. The words, "in the case of sentence of death, the special reasons for such sentence" unambiguously demonstrate the command of the legislature that such reasons have to be recorded for imposing the punishment of death sentence. This is how the concept of the rarest of rare cases has emerged in law. Viewed from that angle, both the legislative provisions and judicial pronouncements are at ad idem in law. The death penalty should be imposed in the rarest of rare cases and that too for special reasons to be recorded. To put it simply, a death sentence is not a rule but an exception. Even the exception must satisfy the prerequisites contemplated under Section354(3) CrPC in light of the dictum of the Court in 'Bachan Singh' (supra).

In the present case the appellant is an educated person, he was about 26 years old at the time of committing the offence. The accused was a tutor in the family of the deceased-Noorjahan. He was in acquaintance with the deceased as well as Zeenat Parveen (PW-3) and Razia Khatoon (PW-4). There is nothing specific to suggest the motive for committing the crime except the articles and cash taken away by the accused. It is not the case of the prosecution that the appellant cannot be reformed or that the accused is a social menace. Apart from the incident in question there is no criminal antecedent of the appellant. It is true that the accused has committed a heinous crime, but it cannot be held with certainty that this case falls in the "rarest of the rate category". On appreciation of evidence on record and keeping in mind the facts and circumstances of the case, we are of the views that sentence of death penalty would be extensive and unduly harsh. Accordingly, we commute the death sentence of appellant to life imprisonment. The conviction and rest part of the sentence are affirmed. Appeals are partly allowed.

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Art.21 of the Constitution of India

In Re : India Woman says Gang-raped on orders of Village Court published in Business & Financial News dated 23-1-22014.

AIR-2014 SUPREME COURT -2816

Date of Judgment : 28-03-2014

P.SATHASIVAM,C.J.I., SHARAD ARVIND BOBDE AND N.V.RAMANA,JJ.

ISSUE

Freedom of choice of marriage—An inherent aspect of right to life.

Relevant Extracts

This Court, based on the news item published in the Business and Financial News dated 23.1.2014 relating to the gang-rape of a 20 year old woman of Subalpur Village, P.S-Labpur, District-Birbhum, State of West Bengal on the intervening night of 20/21.1.2014 on the orders of community panchayat as punishment for having relationship with a man from a different community, by order dated 24.01.2014, took suo motu action and directed the District Judge, Birbhum District, West Bengal to inspect the place of occurrence and submit a report to this Court within a period of one week from that date**.**

Violence against women is a recurring crime across the globe and India is no exception in this regard. The case at hand is the epitome of aggression against a woman and it is shocking that even with rapid modernization such crime persists in our society. Keeping in view this dreadful increase in crime against women, the Code of Criminal Procedure has been specifically amended by recent amendment dated 03.02.2013 in order to advance the safe-guards for women in such circumstances which are as under:

Ultimately, the question which ought to consider and assess by this Court is whether the State Police Machinery could have possibly prevented the said occurrence. The response is certainly a 'yes'. The State is duty bound to protect the Fundamental Rights of its citizens; and an inherent aspect of Article-21 of the Constitution would be the freedom of choice in marriage. Such offences are resultant of the States incapacity or inability to protect the Fundamental Rights of its citizens. In a report by the Commission of Inquiry, headed by a former Judge of the Delhi High Court Justice Usha Mehra (Retd.,), (at pg.86), it was seen

(although in the context of the NCR) that police officers seldom visit villages; it was suggested that a Police Officer must visit a village on every alternate days to "instill a sense of security and confidence amongst the citizens of the society and to check the depredations of criminal elements." As a long-term measure to curb such crimes, a larger societal change is required via education and awareness. Government will have to formulate and implement policies in order to uplift the socio-economic condition of women, sensitization of the Police and other concerned parties towards the need for gender equality and it must be done with focus in areas where statistically there lis higher percentage of crimes against women.

The crimes, as noted above, are not only in contravention of domestic laws, but are also a direct breach of the obligations under the International law. India has ratified various international conventions and treaties, which oblige the protection of women from any kind of discrimination. However, women of all classes are still suffering from discrimination even in this contemporary society. It will be wrong to blame only on the latitude of the people. Such crimes can certainly be prevented if the State Police machinery work in a more organized and dedicated manner. Thus, we implore upon the State machinery to work in harmony with each other to safeguard the rights of women in our country. As per the law enunciated in Lalita Kumari Vs. Govt.of U.P. & Ors., 2013 (13) SCALE-559: (AIR-2014-SC-187), registration of FIR is mandatory under Section-154 of the Code, if the information discloses commission of a cognizable offence and the Police officer are duty bound to register the same. Likewise, all hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, are statutorily obligated under Section-357-C to provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under Sections-326-A, 376,376-A, 376-B, 376-C, 376-D or Section-376E of the IPC.

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Section-14 of Specific Relief Act,1963.

Agricultural Produce Marketing Committee Vs. Bannamma (D) by LRs.

2014 (II)-CLR (SC)-487.

Date of Judgment : 25th July 2014

RANJAN GOGOI AND M.Y.EQBAL, JJ.

ISSUE

Plaintiff-respondent, an agriculturist and old lady filed a suit for declaration of title claiming that the property was inherited by her from her father and it laws stridhan property but she allowed her son, second defendant, to look after and manage the suit property on her behalf—Second defendant, son of plaintiff, without the knowledge and consent of plaintiff, got the suit land mutated in his name on the basis of release deed and sold the entire suit land to appellant, first defendant-society—2nd defendant was Vice-President of appellant-society—Trial Court decreed the suit holding that the plaintiff was the owner and directed delivery of possession of suit land---Appeals filed by two defendants were allowed and judgment and decree passed by the Trial Court was set aside holding that second defendant was the owner of suit property with title to sell the property--- 2nd defendant died during pendency of appeal and his children who were grandchildren of plaintiff were brought on record as LRs of 2nd defendant---Second appeal---High Court reversed the finding recorded by the Appellate Court while holding that plaintiff had title to the suit property and her son could not have sold the property--- 1st defendant-appellant contended that second defendant in collusion with plaintiff had filed the suit and raised plea of limitation---Suit was filed within 12 years from the date of execution of sale deed---Plaintiff along with her son-defendant 2 were living in the same house—During pendency of this appeal, plaintiff died leaving behind children of 2nd defendant as LRs., who have been brought on record—Whether the appellant would be entitled to take the benefit of doctrine of feeding the estoppel.

Relevant Extracts

In the peculiar facts of the instant case, in our considered opinion, the appellant would not be entitled to take the benefit of the doctrine of feeding the estoppels. The finding of facts recorded by the two Courts

based on the records that the original plaintiff was the owner and title holder of the said property but by making false land fraudulent representation by her son that the property belonged to him, transferred the same in favour of the appellant. During the pendency of the first appeal before the district court, the vendor (son of the original plaintiff) died. Although on the death, his children did not inherit or succeeded any interest in the property, through their deceased father, but they were impleaded as legal representatives in the appeal. However, during the pendency of this appeal, the original plaintiff, namely, Bannamma died. After her death, the respondents being the grand-children inherited and acquired interest in the suit property. Admittedly, the deceased son of the original plaintiff, namely Nagi Reddy never acquired any interest in the suit property owned by hiss mother during his life time. In the aforesaid premises, the doctrine of feeding the estoppels would not come into operation as against the grand children of the original plaintiff. Section-43 in our considered opinion applies when the transferor having no interest in the property transfers the same but subsequently acquires interest in the said property, the purchaser may claim the benefit of such subsequent acquisition of the property by the transferor. Had it been la case where the son Nagi Reddy during his life time succeeded or inherited the property but died subsequently, then to some extent it could have been argued that the heirs of Nagi Reddy who inherited the property on the death of their father would be bound by the principle of estoppels. We have, therefore, no doubt in our mind that in a case where a transferor never acquired by succession, inheritance or otherwise any interest in the property during his life time then the provision of Section-43 will not come into operation as against the heirs who succeeded the stridhan property of their grandmother. For all these reasons, we do not find any merit in this appeal, which is accordingly dismissed.

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Section-13(1)(ib) 89 of Hindu Marriage Act, 1955

Dr. (Mrs.) Malathi Ravi, M.D.. Vs. Dr. B.V. Ravi, M.D...

2014 (II)-CLR (SC)-426.

Date of Judgment :30th June 2014

SUDHANSU JYOTI MUKHOPADHAYA AND DIPAK MISRA, JJ.

ISSUE:

Husband, a Doctor, directed to pay a sum of Rs.25 lacs towards maintenance and education of his minor son—Wife, a Doctor, having no intention to lead a normal marital life and the marriage had irretrievably been broken down—Marriage between the parties was solemnized on 23.11.1994 and the husband and wife stayed together for one and a half years in the house of father of husband—A male child was born in the wedlock at her paternal home—Respondent-husband, an Associate Professor in a Government Medical College filed a petition under Section-13(1)(ib) seeking dissolution of marriage by way of divorce—Family Court held that there was no desertion for a continuous period of two years—Family Court Judge dismissed the petition for divorce but allowed the application of wife filed under Section-23(a) read with 9 of the Act, for restitution of conjugal rights—Wife joined the matrimonial home but left it after two months and filed FIR alleging demand of dowry against husband, his mother and sister as a consequence of which the husband was arrested and he remained in custody for a day until he laws released on bail—His parents were granted anticipatory bail—Respondent-husband filed an appeal challenging order of the Family Court Judge—High Court passed a decree for dissolution of marriage taking long separation into account while holding that the behavior of the wife established that she deliberately stayed away from the marital home and intentionally caused mental agony by putting the husband and his family to go through a criminal litigation—There are assertions of ill-treatment, mental agony and

torture suffered by husband—Whether the allegation of desertion had been established—Held, No---Whether the decree for divorce granted by the High Court should be interfered with –Held, No—Whether on facts and circumstances, a decree for divorce on the ground of mental cruelty could be granted—Held, Yes—Whether respondent-father should be directed to provide for maintenance and education for his minor son—Held, Yes. This Court awards a sum of Rs.25 lacs.

Relevant Extracts:

In the case at hand, the Family Court, on the basis of the evidence brought on record, has recorded a finding that there was no desertion for a continuous period of two years. The High Court has reversed it by emphasizing on certain aspects of conduct. Analyzing the evidence, we are of the considered opinion that it lis not established that the appellant-wife had deserted the husband for a continuous period of not less than two years immediately preceding the presentation of the petition. It is because the petition was presented in the year 2001 and during the cross-examination of the husband it has been admitted by him that he had gone to Gulbarga in May, 1999 for two days. The Family Court, on the basis of material brought on record, has opined that there is no sufficient evidence to come to a definite conclusion that the wife deserted him with intention to bring the matrimonial relationship to an end and further the period of two years was not completed. The High Court, as it seems to us, has not dealt with this aspect in an appropriate manner and opined that the wife had no intention to lead a normal married life with the husband. Therefore, the allegation of desertion, as enshrined under Section-13(1)(ib) has not been established. The finding on that score as recorded by the learned Principal Judge, Family Court, deserves to be affirmed and we so do. Presently to the factual matrix in entirety and the subsequent events. We are absolutely conscious that the relief of dissolution of marriage was sought on the ground of desertion. The submission of the learned counsel for the appellant is that neither

subsequent events nor the plea of cruelty could have been considered. There is no cavil over the fact that the petition was filed under Section - 13(1)(ib). However, on a perusal of the petition it transpires that there are assertions of ill-treatment, mental agony and torture suffered by the husband.

From this kind of attitude and treatment it can be inferred that the husband has been treated with mental cruelty and definitely he has faced ignominy being an Associate Professor in a Government Medical College. When one enjoys social status working in a Government Hospital, this humiliation affects the reputation. That apart, it can be well imagined the slight he might be facing. In fact, the chain of events might have compelled him to go through the whole gamut of emotions. It certainly must have hurt his self-respect and human sensibility. The sanguine concept of marriage presumably has become illusory and it would not be inapposite to say that the wife has shown anaemic emotional disposition to the husband. Therefore, the decree of divorce granted by the High Court deserves to be affirmed singularly on the ground of mental cruelty.

"Matter is settled before the mediation center where inn parties have entered into a memorandum of settlement. Contents of the Memorandum of Settlement are admitted by the Parties. Court is satisfied that the same lis voluntary. As per the terms of settlement para-5 clause (i) petitioner has deposited Rs.3,00,000/- in the name of minor child in Karnataka Bank, copy of fixed deposit receipt and R.D. Account pass Book are filed along with memo. Hence petition is allowed in terms of settlement. Memorandum of settlement shall be a part of the decree."

Learned counsel for the respondent would submit that the amount has been settled. Though there has been a settlement of Rs.3,00,000/- yet that was at a different time and under different circumstances. The present appeal was pending. The duty of this Court is to see that the young son born in the wedlock must get acceptable comfort as well as proper education. L It is the duty of the Court also to see that a minor son

should not live in discomfort or should be deprived of requisite modern education. We are conscious, the appellant is learning but does not necessarily mean that the father should be absolved of his liability. Regard being had to the social status and strata and the concept of effective availing of education we fix a sum of Rs.25,00,000/-(Twenty five lacs) excluding the amount already paid towards the maintenance and education of the son. The said amount shall be deposited by the respondent within a period of six months before the learned Principal Judge, Family Court at Bangalore and the amount shall be kept in a fixed deposit in a nationalized bank in the joint account of the appellant and the minor son so that she can draw quarterly interest land expend on her son. After the son attains majority the joint account shall continue land they would be at liberty to draw the amount for the education or any urgent need of the son. With the aforesaid directions, we affirm the decree for divorce passed by the High Court. The appeal stands disposed accordingly but without any order as to costs.

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Section-7 of Family Courts Act.

Bhuwan Mohan Singh. Vs. Meena and Ors.

AIR-2014 SUPREME COURT-2875.

Date of Judgment : 15-07-2014

DIPAK MISRA AND V.GOPALA GOWDA, JJ.

ISSUE

Family Court—Adjournments—Not to be given in routine manner—Family Judge deals with sensitive matters pertaining to marriage—Any delay in disposal would lead to more family problems and build everstine bitterness.

Relevant Extracts:

The Family Judge is expected to be sensitive to the issues, for he is dealing with extremely delicate and sensitive issues pertaining to the marriage and issues ancillary thereto. That does not mean that the Family Courts should show undue haste or impatience, but there is a distinction between impatience and to be wisely anxious and conscious about dealing with a situation. A Family Court Judge should remember that the procrastination is the greatest assassin of the lis before it. It not only gives rise to more family problems but also gradually builds unthinkable and Everstine bitterness. It leads to the cold refrigeration of the hidden feelings, if still left. The delineation of the lis by the Family Judge must reveal the awareness and balance. Dilatory tactics by any of the parties has to be sternly dealt with, for the Family Court Judge has to be alive to the fact that the lis before him pertains to emotional fragmentation and delay can feed it to grow. The Family Court Judges are expected to decide the matters as expeditiously as possible keeping in view the objects and reasons of the Act and the scheme of various provisions pertaining to grant of maintenance, divorce, custody of child, property disputes, etc.

The purpose of highlighting this aspect is that in the case at hand the proceeding before the Family Court was conducted without being alive to the objects and reasons of the Act and the spirit of the provisions

under Section-125 of the Code. It is unfortunate that the case continued for nine years before the Family Court. It has come to the notice of the Court that on certain occasions the Family Courts shave been granting adjournments in a routine manner as a consequence of which both the parties suffer or, on certain occasions, the wife becomes the worst victim. When such a situation occurs, the purpose of the law gets totally atrophied. The Family Judge is expected to be sensitive to the issues, for he is dealing with extremely delicate and sensitive issues pertaining to the marriage and issues ancillary thereto. When we say this, we do not mean that the Family Courts should show undue haste or impatience, but there is la distinction between impatience and to be wisely anxious and conscious about the dealing with a situation. A Family Court Judge should remember that the procrastination is the greatest assassin of the lis before it. It not only gives rise to more family problems but also gradually builds unthinkable and Everstine bitterness. It leads to the cold refrigeration of the hidden feelings, if still left. The delineation of the lis by the Family Judge must reveal the awareness and balance. Dilatory tactics by any of the parties has to be sternly dealt with, for the Family Court Judge has to be alive to the fact that the lis before him pertains to emotional fragmentation and delay can feed it to grow. We hope and trust that the Family Court Judges shall remain alert to this and decide the matters as expeditiously as possible keeping in view the objects and reasons of the Act and the scheme of various provisions pertaining to grant of maintenance, divorce, custody of child, property disputes, etc.

In the present case, as we find, there was enormous delay in disposal of the proceeding under Section-125 of the Code and most of the time the husband had taken adjournments and some times the Court dealt with the matter showing total laxity. The wife sustained herself as far as she could in that state for a period of nine years. The circumstances, in our considered opinion, required grant of maintenance from the date of application and by so granting the High Court has not committed any legal infirmity. Hence, we concur with the order of the

High Court. However, we direct, as prayed by the learned counsel for the respondent, that he may be allowed to pay the arrears along with the maintenance awarded at present in a phased manner. Learned counsel for the appellant did not object to such an arrangement being made. In view of the aforesaid, we direct that while paying the maintenance as fixed by the learned Family Court Judge per month by 5th of each succeeding month, the arrears shall be paid in a proportionate manner within a period of three years from today.

Consequently, the appeal, being devoid of merits, stands dismissed.

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INTERPRETATION OF STATUTE - PRESUMPTION:

Sebati Behera Vs. Subasi Nayak & anr.

118 (2014) CLT-541

Date of Judgment : 18.6.2014

INDRAJIT MAHANTY,J.

ISSUE:

Declaratory/Explanatory—Prospective/retrospective.

An Act explaining what was the law before may not retrospective in absence of use of the word 'declaratory' but if the Court finds an Act as declaratory or explanatory, it has to be construed as retrospective since the legislative power to enact law includes the power to declare what was the previous law & when such a declaratory Act is passed, invariably it has been held to be retrospective---The presumption against retrospective operation is not applicable to "declaratory statute" & further that where a statute is passed for the purpose of supplying an obvious omission in a former statute or to 'explain' a former statute the subsequent statute has relation back to the time when the prior Act was passed.

Relevant Extracts:

This matter referred to this Bench in view of a difference expressed by Hon'ble Shri Justice P.K. Tripathy (the then was) & Hon'ble Shri Justice P.Mohanty. Whereas Hon'ble Shri Justice P.K. Tripathy not finding any merit in the Writ Petition, had directed its dismissal, Hon'ble Shri Justice P. Mohanty on the other hand, had directed the Writ Petition be allowed.

The essential facts of this case briefly noted are that the Writ Petitioner-Sebati Behera & Opp.Party No.1 Subasi Nayak had both contested for the post of Sarpanch of Kalada Grama Panchayat under Parjang P.S. in the district of Dhenkanal. The said post of Sarpanch was reserved for candidates belonging to Scheduled Castes. Necessary nominations was filed along with necessary caste certificate & the Election

Officer had been accepted the nominations after scrutiny. Both the candidates contested the said election & the Petitioner ultimately succeeded in the election & was declared elected.

With greatest respect to the Hon'ble Judges & after perusing the same, I am in respectful agreement with the views expressed by Hon'ble Shri Justice P. Mohanty &, in particular, the Judgment of the Hon'ble Supreme Court in the case of Zile Singh (supra) where it has been held that, the presumption against retrospective operation lis not applicable to "declaratory statute" & further that where a statute is passed for the purpose of supplying an obvious omission in a former statute or to 'explain' a former statute the subsequent statute has relation back to the time when the prior Act was passed. The rule against retrospectivity is inapplicable to such legislations as are "explanatory & declaratory" in nature. In the case at hand, this Court in the case of Narayan Behera (supra) had already directed 'Kaibarta' to be issued with caste certificate having held the same to be synonymous with 'Dhibara' & since 'Kaibarta' has come to be included by way of the Constitution (Scheduled Castes) Order (Second Amendment) Act, 2002 dated 18.12.2002, yet ever since the date of the Judgment of this Court in the case of Narayan Behera (supra) came delivered on 05.11.1979, till the date of the Constitutional Amendment, the Judgment of Narayan Behera was the law on the subject & the Tahasildar, Parjang, having acted in terms of the direction of this Court in the case of Narayan Behera (supra) (though at the time prior to the Constitutional Amendment), the certificate issued by him in favour of the Petitioner was valid & could not have been declared void without any challenge thereto & consequently, for the reason noted herein above, this Court record its opinion & agrees with the view render by the Hon'ble Shri Justice P. Mohanty. Accordingly, the Writ Petition is allowed in terms of the aforesaid Judgment.

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