Criminal Procedure Code

1. Sec. 154

Arun Kumar Budhia V. State of Orissa and another. 2013 (2) Crimes 186 (Ori)

V.Gopala Gowda And S.K.Mishra , JJ.

Issue

FIR –Writ of mandamus to State to make provision for supply of copy of FIR to accused / his relative and to direct police to upload FIR in their website –Whether at stage of investigation accused had a right to receive information regarding accusation or allegations against him ? Yes.

Articles 21 and 22 provides that the liberty of a citizen cannot be interfered or curtailed lightly by the authorities. So it is to be determined, whether at the stage of initial investigation, the accused has a right of receiving information regarding the accusation or allegation made against him. In this case, learned counsel for the petitioner has relied upon the case of Its own motion through Mr. Ajay Chaudhury v. State, in W.P.(Crl.) No. 468 of 2010, which has been disposed of by a Division Bench of the Delhi High Court. In the said case, Hon'ble Mr. Justice Dipak Mishra, the Chief Justice, as his Lordship was then, has taken into consideration a large number of cases and rules, and has come to the conclusion that the accused is entitled to receive a copy of the F.I.R. even from the police. In this regard, His Lordship has also held after taking into consideration a number of reported cases that F.I.R. is a public document and, therefore, a person, who is in custody of the same, has the liability to give a copy thereof to the person who has interest in the same or whose interest is adversely affected by the same.

In that view of the matter, having gone through the case of Delhi High Court, we are of the considered opinion that similar order should be passed with regard to supply of copies of the F.I.R. to the accused in the State of Odisha also.

Thus, we allow the writ application and direct that :

(i) The accused is entitled to get a copy of the First Information Report at an earlier stage than as prescribed under Section 207 of the Cr.P.C.

(ii) An accused who has reason to suspect that he has been roped in a criminal case and his name may be finding place in a First Information Report can submit an application through his representative/ agent for grant of a certified copy before the concerned police officer or to the Superintendent of Police on payment of such fee which is payable for obtaining such a copy from the court. On such application being made, the copy shall be supplied within twenty-four hours.

(iii) Once the First Information Report is forwarded by the police station to the concerned Magistrate or any Special Judge, on an application being filed for certified copy on behalf of the accused, the same shall be given by the court

concerned within two working days. The aforesaid direction has nothing to do with the statutory mandate inhered under Section 207 of the Code.

(iv) The copies of the F.I.Rs., unless reasons recorded regard being had to the nature of the offence that the same is sensitive in nature, should be uploaded on the Odisha Police website or by the district police website, as the case may be, within twenty-four hours of lodging of the F.I.R. so that the accused or any person connected with the same can download the F.I.R and the appropriate application before the Court as per law for redressal of his grievances.

(v) The decision not to upload the copy of the F.I.R. on the website of Odisha police/District police office shall not be taken by an officer below the rank of Deputy Superintendent of Police or Assistant Commissioner of Police, as the case may be, and that too by way of a speaking order. A decision so taken by the DSP/ACP shall also be duly communicated to the Magistrate having jurisdiction.

(vi) The word 'sensitive' apart from the other aspects which may be thought of being sensitive by the competent authority as stated hereinbefore would also include concept of privacy regard being had to the nature of the F.I.R.

(vii) In case a copy of the F.I.R. is not provided on the ground of sensitive nature of the case, the person aggrieved by the said action, after disclosing his identity, can submit a representation with the Commissioner of Police/Superintendent of Police of the District, who shall constitute a committee of three high officers and the committee shall deal with the said grievance within three days from the date of receipt of the representation and communicate it to the aggrieved person.

(viii) The Superintendent of Police shall constitute the committee within eight weeks from today.

(ix) In cases wherein decisions have been taken not to give copies of the F.I.Rs. regard being had to the sensitive nature of the case, it will be open to the accused/his authorized representative to file an application for grant of certified copy before the court to which the F.I.R. has been sent and the same shall be provided in quite promptitude by the concerned court not beyond three days of the submission of the application.

(x) The directions for uploading the F.I.R. on the website of Odisha Police shall be given effect from 3Ist January, 2013.

A copy of this order be handed over to the Government Advocate for early consideration. Copies of this order shall be circulated to all the Commissioners of Police, all the Deputy Commissioners of Police and all the Superintendents of Police. Registry of the Court is also directed to supply copies of this order to all the cognizance taking Magistrates and District Judges.

The writ petition is allowed with the above observations.

V.Gopala Gowda, C.J. I agree.

Petition allowed.

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2. Sec 154 & 156(3)

Surender Kaushik and others v. State of Utter Pradesh and others. (2013) 54 OCR (SC) – 1067

K.S. RADHAKRISHNAN AND DIPAK MISHRA, JJ.

Issue

Second FIR – Maintainability – Lodgment of two FIRs is not permissible in respect of one and the same incident – Concept of sameness has been given a restricted meaning – It does not encompass filling of a counter FIR relating to the same of connected cognisable offence.

The Case –

In the case at hand, the appellants lodged the FIR No. 274 of 2012 against four accused persons alleging that they had prepared fake and fraudulent documents. The second FIR came to be registered on the basis of the direction issued by the learned Additional Chief Judicial Magistrate in exercise of power under Section 156(3) of the Code at the instance of another person alleging, inter alia, that he was neither present in the meetings nor had he signed any of the resolutions of the meetings and the accused persons, five in number, including the appellant NO. 1 herein, had fabricated documents and filed the same before the competent authority. FIR No. 442 of 2013 (which gave rise to Crime No. 491 of 2012) was registered because of an order passed by the learned Magistrate. Be it noted, the complaint was filed by another member of the Governing Body of the Society and the allegation was that the accused persons, twelve in number, had entered into a conspiracy and prepared forged documents relating to the meetings held on different dates. There was allegation of fabrication of the signatures of the members and filling of forged documents before the Registrar of Societies with the common intention to grab the property/funds of the Society. If the involvement of the number of accused persons and the nature of the allegations are scrutinized, it becomes crystal clear that every FIR has a different spectrum. The allegations made are distinct and separate. It may be regarded as a counter complaint and cannot be stated that an effort has been made to improve the allegations that find place in the first FIR. It is well-night impossible to say that the principle of sameness gets attracted. We are inclined to think so, for if the said principle is made applicable to the case at hand and the investigation is scuttled by quashing the FIRs, the complainants in the other two FIRs would be deprived of justice. The appellants have lodged the FIR making the allegations against certain persons, but that does not debar the other aggrieved persons to move the Court for direction of registration of an FIR as there have been other accused persons including the complainant in the first FIR involved in the forgery and fabrication of documents and

getting benefits from the statutory authority. In the ultimate eventuate, how the trial would commence and be concluded is up to the concerned Court. The appellants or any of the other complainants of the accused persons may move the appropriate Court for a trial in one Court. That is another aspect altogether. But to say that it is a second FIR relating to the same cause of action and the same incident and there is sameness of occurrence and an attempt has been made to improvise the case is not correct. Hence, we conclude and hold that the submission that the FIR lodged by the fourth respondent is a second FIR and is, therefore, liable to be quashed, does not merit acceptance.

In view of the aforesaid premised reasons, the appeal, being sans substance, stands dismissed.

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3. Secs.154,157,167 & 41

Lalita Kumari V. Government of U.P. & Others. CLT (2013) Supp. Crl. 556(SC)

DALVEER BHANDARI , T.S. THAKUR & DIPAK MISRA , JJ.

Issue

Whether under Section 154 Cr.P.C., a police officer is bound to register an FIR when a cognizable offence is made out or he (police officer) has an option, discretion or latitude of conducting some kind of preliminary option, discretion or latitude of conducting some kind of preliminary enquiry before registering the FIR – Some Counsel also submitted that the CBI Manual also envisages some kind of preliminary enquiry before registering the FIR – The issue which has arisen for consideration in these cases is of great public importance.

The Case -

The petition has been filed before this Court under Article 32 of the Constitution of India in the nature of habeas corpus to produce Lalita Kumari, the minor daughter of Bhola Kamat.

On 5.5.2008, Lalita Kumari, aged about six years, went out of her house at 9 p.m. When she did not return for half an hour and Bhola Kamat was not successful in tracing her, he filed a missing report at the police station Loni, Ghaziabad, U.P.

On 11.5.2008, respondent no.5 met Bhola Kamat and informed him that his daughter has been kidnapped and kept under unlawful confinement by the respondent nos.6 to 13. The respondent-police did not take any action on his complaint. Aggrieved by the inaction of the local police, Bhola Kamat made a representation on 3.6.2008 to the Senior Superintendent of Police, Ghaziabad. On the directions of the Superintendent of Police, Ghaziabad, the police station Loni,

Ghaziabad registered a First Information Report (F.I.R.) No.484 dated 6.6.2008 under Sections 363/366/506/120B IPC against the private respondents. Even after registration of the FIR against the private respondents, the police did not take any action to trace Lalita Kumari. According to the allegation of Bhola Kamat, he was asked to pay money for initiating investigation and to arrest the accused persons. Ultimately, the petitioner filed this petition under Article 32 of the Constitution before this Court. This Court on 14.7.2008 passed a comprehensive order expressing its grave anguish on non-registration of the FIR even in a case of cognizable offence. The Court also issued notices to all Chief Secretaries of the States and Administrators of the Union Territories. In response to the directions of the Court, various States and the Union Territories have filed comprehensive affidavits.

The short, but extremely important issue which arises in this petition is whether under Section 154 of the Code of Criminal Procedure Code, a police officer is bound to register an FIR when a cognizable offence is made out or he has some latitude of conducting some kind of preliminary enquiry before registering the FIR. We have carefully analysed various judgments delivered by this Court in the last several decades. We clearly discern divergent judicial opinions of this Court on the main issue whether under Section 154 Cr.P.C., a police officer is bound to register an FIR when a cognizable offence is made out or he (police officer) has an option, discretion or latitude of conducting some kind of preliminary enquiry before registering the FIR.

Learned counsel appearing for the Union of India and different States have expressed totally divergent views even before this Court. This Court also carved out a special category in the case of medical doctors in the aforementioned cases of Santosh Kumar (supra) and Dr. Suresh Gupta (supra) where preliminary enquiry had been postulated before registering an FIR. Some counsel also submitted that the CBI Manual also envisages some kind of preliminary enquiry before registering the FIR. The issue which has arisen for consideration in these cases is of great public importance. In view of the divergent opinions in a large number of cases decided by this Court, it has become extremely important to have a clear enunciation of law and adjudication by a larger Bench of this Court for the benefit of all concerned – the courts, the investigating agencies and the citizens.Consequently, we request Hon'ble the Chief Justice to refer these matters to a Constitution Bench of at least five Judges of this Court for an authoritative judgment.

4. Sec.193

Rattiram & Ors. V. State of M. P. Through Inspector of Police. CLT (2013) Supp. Crl. 527(SC)
DALVEER BHANDARI , T.S. THAKUR & DIPAK MISRA ,JJ.
Issue

Appellants were charge sheeted under Section 3(1)(x) of the Act but eventually, charges were framed under Section 147, 148 & 302/149, IPC- Trial Court convicted all accused persons for offences under Section 302/149, IPC – Appeal before High Court alleging that entire trial was vitiated as it had commenced & concluded without committal of the case to Court of Session as provided under Section 193, Cr.P.C. – High Court sustained the conviction & affirmed the sentence – No such objection was raised at the time of framing of charge or any other relevant time but only propounded after conviction – Failure to satisfy the Court that there had been failure of justice or prejudice had been caused to him – A direction for retrial is to put the clock back & it would be a travesty of justice to so direct if the trial really has not been unfair & there has been no miscarriage of justice or failure of justice-Held, the conviction is set aside or matter is remanded after setting aside the conviction for fresh trial, does not expound the correct proposition of law &, accordingly, they are hereby, to that extent, overruled.

The Case -

In the case at hand, as is perceivable, no objection was raised at the time of framing of charge or any other relevant time but only propounded after conviction. Under these circumstances, the right of the collective as well as the right of the victim springs to the forefront and then it becomes obligatory on the part of the accused to satisfy the court that there has been failure of justice or prejudice has been caused to him. Unless the same is established, setting aside of conviction as a natural corollary or direction for retrial as the third step of the syllogism solely on the said foundation would be an anathema to justice. Be it noted, one cannot afford to treat the victim as an alien or a total stranger to the criminal trial. The criminal jurisprudence, with the passage of time, has laid emphasis on victimology which fundamentally is a perception of a trial from the view point of the criminal as well as the victim. Both are viewed in the social context. The view of the victim is given due regard and respect in certain countries. In respect of certain offences in our existing criminal jurisprudence, the testimony of the victim is given paramount importance. Sometimes it is perceived that it is the duty of the court to see that the victim's right is protected. A direction for retrial is to put the clock back and it would be a travesty of justice to so direct if the trial really has not been unfair and there has been no miscarriage of justice or failure of justice.

We may state without any fear of contradiction that if the failure of justice is not bestowed its due signification in a case of the present nature, every procedural lapse or interdict would be given a privileged place on the pulpit. It would, with unnecessary interpretative dynamism, have the effect potentiality to cause a dent in the criminal justice delivery system and eventually, justice would become illusory like a mirage. It is to be borne in mind that the Legislature deliberately obliterated certain rights conferred on the accused at the committal stage under the new Code. The intendment of the Legislature in the plainest sense is that every stage is not to be treated as vital and it is to be interpreted to subserve the substantive objects of the criminal trial.

Judged from these spectrums and analysed on the aforesaid premises, we come to the irresistible conclusion that the objection relating to non-compliance of Section 193 of the Code, which eventually has resulted in directly entertaining and taking cognizance by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, does not vitiate the trial and on the said ground alone, the conviction cannot be set aside or there cannot be a direction of retrial and, therefore, the decision rendered in Bhooraji (supra) lays down the correct law inasmuch as there is no failure of justice or no prejudice is caused to the accused. The decisions rendered in Moly (supra) and Vidyadharan (supra) have not noted the decision in Bhooraji (supra), a binding precedent, and hence they are per incuriam and further, the law laid down therein, whereby the conviction is set aside or matter is remanded after setting aside the conviction for fresh trial, does not expound the correct proposition of law and, accordingly, they are hereby, to that extent, overruled.

The appeals be placed before the appropriate Bench for hearing on merits.

Appeals disposed of.

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5. Sec. 203

Gambhirsinh R. Dekare v. Falgunbhai Chimnbhai Patel And Anr. 2013 (2) Crimes 1(SC)

Chandramauli Kr. Prasad and V. Gopala Gowda, JJ.

Issue

Remedy against issue of process – Section 203 or for that matter no provision in the Code provides for recall or review of the order issuing process – The only remedy lies in section 482.

The Case -

A news was published in Vadodara edition of the Sandesh illicit relationship between the Mamlatdar of Vadodara and wife of a doctor. The Mamlatdar filed a complaint and the Chief Judicial Magistrate took cognizance u/s-500,501,502,506,507 and 114, IPC. In which the Editor at Ahmedabad and the Resident Editor at Vadodara were made accused. High Court quashed the cognizance against the Editor.

Finding of the Court –Impugned judgement cannot be sustained.

Thus the impugned judgment of the High Court is indefensible both on facts and law. Any observation made by us in this judgment is for the decision in this case. It does not reflect on the merit of the allegation. Which obviously is a matter of trial.

In the result, the appeal is allowed the impugned judgment of the High Court is set aside and the court in seisin of the case shall now proceed with the trial in accordance with law.

Appeal Allowed.

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6. Sec. 244 to 246

Sunil Mehta & Anr. V. State of Gujarat & Anr. (2013) 54 OCR (SC) – 1116

T.S. THAKUR AND SUDHANSU JYOTI MUKHOPADHAYA, JJ.

ISSUE

Accused appeared pursuant to summons issued by the Court – Instead of adducing evidence in support of the prosecution as mandated by Section 244, Cr.P.C., complainant filed a pursis (memo)stating that he did not wish to lead any additional evidence and that the evidence submitted along with the complaint may be considered as evidence for the purposes of framing of the charge- Magistrate took the pursis on record and fixed the case for arguments on framing of charges.

Facts : Appellants' case that the depositions recorded before the Magistrate under Section 202, Cr.P.C. could not be considered as evidence for the purposes of framing of charges, was not accepted – Magistrate framed charges against appellants under Section 406 and 420 read with 34, IPC – Revision petition filed by appellants allowed by the Sessions Judge-Special criminal application filed by respondent-complainant allowed by the High Court –High Court considered the deposition of the complainant and his witnesses recorded before the appearance of the accused under Section 202, Cr. P.C. to be 'evidence' for purposes of framing of charges against appellants-Whether impugned judgment of the High Court was sustainable-Held, NO.

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7. Sec. 227

Ananda Chandra Behera v. State of Orissa. (2013) 54 OCR – 1100

SANJU PANDA, J.

Issue

Framing of charge- Trial Court held that accused has no right to produce or adduce rebuttal materials at the stage of framing of charge – Trial Court further held, that sufficient materials are available on record against accused to frame charge – Held, Hon'ble Court upheld the order of framing of charge.

This Court has considered the rival submissions of the parties. On perusal of the case diary, it appears that after due investigation, an F.I.R. was lodged on the basis of the materials available on record. The Trial Court at the time of framing charge has considered those materials on record and prima facie satisfied that sufficient materials are available on record and proceeded against the accused by framing charges on the presumption that at the time of framing charge, the accused has no right to produce or adduce rebuttal materials to dislodge the prosecution case. The Apex Court in the case of State of Orissa v. Debendra Nath Padhi (supra) has held that at the time of framing charge or taking cognizance, the accused has no right to produce any material. Therefore, the contention of the petitioner that the Court has not considered those materials while framing charge is not sustainable, as those are subject to trial.

The Apex Court in the case of the State of Karnataka v. L. Muniswamy (supra) while considering Section 227 of the Code of Criminal Procedure held that the Sessions Court has the power to discharge an accused if after perusing the record and hearing the parties he comes to the conclusion, for reasons to be recorded, that there is not sufficient ground for proceeding against the accused. The objection of the provision which requires the Sessions Judge to record his reasons is to enable the superior Court to examine the correctness of the reasons for which the Sessions Judge has held that there is or is not sufficient ground for proceeding against the accused. The High Court, therefore, is entitled to go into the reasons given by the Sessions Judge in support of his order and to determine for itself whether the order is justified by the facts and circumstances of the case.

However, in the said decision, it was also held that for the purpose of determining whether there is sufficient ground for proceeding against an accused, the Court possesses a comparatively wider discretion in the exercise of which it can determine the question whether the material on record, if unrebutted, is such on the basis of which a conviction can be said reasonably to be possible.

In view of the above position of law, this Court is not inclined to interfere with the impugned orders. However, it is open to the petitioner to raise all the above points at the subsequent stage of the trial.

Accordingly, the criminal revision is dismissed.

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8. Sec. 368,302

Iqbal Abdul Samiya Malek V.State Of Gujarat. CLT (2013) Supp. Crl.493(SC)

P.SATHASIVAM &RANJAN GOGOI ,JJ.

Issue

Appeal –High Court without going into all the materials including oral & documentary evidence disposed of their appeal affirming the judgement of the Trial Court –Held, procedure not adopted in accordance with law by the High Court.

The case -

It is the grievance of the appellants/accused that when they filed regular appeal before the High Court challenging the conviction under Section 302 IPC and sentence of life imprisonment, the High Court without going into all the materials including oral and documentary evidence disposed of their appeal affirming the judgment of the Trial Court. In view of the above contention, we have gone through the impugned judgment of the High Court. As rightly pointed out by the learned counsel appearing on behalf of the appellants, after narrating the case of the prosecution and the defence as well as the order of the Sessions Judge convicting the appellants, without adverting to all the materials, the High Court has merely disposed of the appeal. The procedure followed by the High Court in a matter of this nature is not acceptable. Elaborate procedures have been prescribed under Section 386 of Cr.P.C. for disposal of the appeal by the Appellate Court.

It is the duty of an Appellate Court to look into the evidence adduced in the case arrive at an independent conclusion as to whether the said evidence can be relied upon or not and even it can be relied upon then whether the prosecution can be said to have proved beyond reasonable doubt on the said evidence. The credibility of a witness has to be adjudged by Appellate Court in drawing inference from proved and admitted facts. Further appeal cannot be disposed of without examining records/merits (Vide Padam Singh Vs. State of U.P., AIR 2000 SC 361 and Bani Singh & Others Vs. State of U.P. 1996 (4) SCC, 720. The said recourse has not been followed by the High Court. In view of the same, without expressing anything on the merits of the claim of either party, we set aside the impugned judgment of the High Court and remit it to the High Court. We request the High Court to restore the appeal on its file and dispose of the same as early as possible preferably within a period of six months.

Learned counsel for the appellants has brought to our attention to the fact that the appellants are in jail for a period of more than 11 years and seek for an

order of bail from this Court. Since we are now remitting the matters to the High Court, the appellants are free to make such claim before the High Court.

With the above observation, the appeals are disposed of.

Appeals disposed of.

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9. Sec. 320

Jitendra Raghuvanshi & Ors. V. Babita Raghuvanshi & Anr. 2013 (2) Crimes 90 (SC)
P. SATHASIVAM, JAGDISH SINGH KHEHAR AND KURIAN JOSEPH, JJ.

Issue

Proceeding u/s 498A and 406 IPC – Petition for quashing – Rejected on the ground of bar u/s 320 against compounding – Petition was for quashing in view of amicable settlement and not compounding – Petition ought not to have been rejected.

The case-

The ambit and scope of the inherent powers of the High Court under Section 482 of the Code of Criminal Procedure, in quashing of the criminal proceedings in non-compoundable of-fences relating to matrimonial disputes is called in question in this case.

The specific question is whether the High Court has power to quash the criminal proceedings in respect of offences under Section 498A and 406 of IPC since both are non-compoundable.

Finding of the Court:

High Court ought to have quashed the proceedings.

As stated earlier, it is not in dispute that after filing of a complaint in respect of the offences punishable under Section 498A and 406 of IPC, the parties, in the instant case, arrived at a mutual settlement and the complainant also has sworn an affidavit supporting the stand of the appellants. That was the position before the trial Court as well as before the High Court in a petition filed under Section 482 of the Code. A perusal of the impugned order of the High Court shows that because the mutual settlement arrived at between the parties relate to non-compoundable offence, the court proceeded on a wrong premise that it cannot be compounded and dismissed the petition filed under Section 482. A perusal of the petition before the High Court shows that the application filed by the appellants was not for compounding of non-compoundable offences but for the purpose of quashing the criminal proceedings.

Appeal allowed.

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10. Sec 439

Ravindersingh @ Ravi Parvar v. State of Gujarat. 2013 (2) Crimes 7 (SC)

P. SATHASIVAM AND JAGDISH SINGH KHEHAR, JJ.

Issue

Bail Application

The Case -

Appellant here in the instant case was prosecuted on the charge that he as a party of criminal conspiracy, along with other accused, agreed to manufacture and distribute/sell such liquor to suppliers in spite of the knowledge that on consumption of the same, it could cause death or severe physical damage/injury to the consumer. Case related to the hooch tragedy which resulted into death of 147 persons and serious physical injuries to 205 others after consuming spurious country-made liquor consisting poisonous chemical Methyl Alcohol in different parts of the Ahmedabad city, Gujarat, in July, 2009. Case had been registered against several accused persons under vrious Sections of IPC and the Bombay Prevention Act, 1949. Bail application by appellant was rejected while respondent A2 was enlarged on bail.

Dismissed by High Court – Appeal-Case relates to the hooch tragedy which resulted into death of 147 persons and serious physical injuries to 205 others after consuming spurious country-made liquor consisting poisonous chemical Methyl Alcohol in different parts of the Ahmedabad city, Gujarat, in July, 2009 – Case had been registered against several accused persons under various Sections of IPC and the Bombay Prevention Act, 1994 – Prosecution of appellant on the charge that he as a part of criminal conspiracy, along with other accused, agreed to manufacture and distribute/sell such liquor to suppliers in spite of the knowledge that on consumption of the same, it could cause death or severe physical damage/injury to the consumer – Such type of offences, as in the case on hand, are against the society at large and who commit the same do not deserve any leniency, particularly, in the State of Gujarat where complete prohibition is being followed-Merely because accused/appellant had spent three years as an under trial prisoner, taking note of the gravity of the offence, he was held not entitled for bail-High Court rightly denied appellant's application for bail-Appeal dismissed.(Para -13 to 17)

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11. Sec. 457

Sirkant Ranjan Sahoo v. State of Odisha. (2013) 54 OCR – 874

B.K. Nayak, J.

Issue

Tata LPT Truck of the petitioner was seized in connection with Pallahara P.S. Case – Petitioner is the informant in the said case which was registered under Section 407 I.P.C. against the driver and helper of the truck – S.D.J.M., Pallahara

rejected 457 Cr. P.C. petition of the petitioner in spite of production of all connected documents of the vehicle – Matter challenged in the revision – Hon'ble Court considered the ration laid down by the Hon'ble Supreme Court in case of Sunderbhai Ambalal Desia and directed release of the truck in favour of the petitioner with conditions.

Appeal dispose of.

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12. Sec. 457

Balabhadra Nayak v. State of Orissa (2013) 54 OCR – 893

B.K. NAYAK, J.

Issue

The words "Police Officer" must include an Excise Officer reporting such seizure to a Criminal Court in connection with the enquiry or trial of any criminal case.

The Case -

The word "Police Officer" occurring in Sub-Section(1) of Section 457 Cr. P.C. cannot have a restricted meaning since the only provision that gives power to criminal Court to pass order with regard to interim release or custody of the property seizure whereof has been reported to it. It must include any officer authorized under any law to investigation case, to effect seizure and to launch prosecution before the criminal Court. In the case of Abdul Rashid-v-State of Bihar 2001 Crl.L.J. 3290, the Apex Court has held that a confessional statement made by an accused under NDPS Act to an Excise Officer, appointed under the Bihar and Orissa Excise Act is inadmissible being hit by Section 25 of the Evidence Act, Since such Excise Officer is treated to be a Police Officer.

The is no other provisions in the Cr.P.C. except Section 457 Cr.P.C. for passing order for interim release of the vehicle by the criminal Court . In case the words "Police Officer" occurring in Section 457(1) Cr.P.C. is given a restricted meaning so as to excluded officers of other departments like Excise etc. who are invested with power to investigate into the offence, effect seizure and launch prosecution and to report such seizure to the criminal Court, it would cause injustice to the persons claiming to be entitled to custody of the property. Therefore, the words "Police Officer" in Section 457 Cr. P.C. must include in Excise Officer reporting such seizure to a criminal Court in connection with the enquiry or trial of any criminal case.

Section 60(3) of the NDPS Act is no bar for interim release of the vehicle as the said provision is only substantive in nature and speaks of the liability of the vehicle to be confiscated where the owner fails to prove that it was used without his knowledge or connivance or the knowledge and connivance of his agent in charge of the vehicle.

In the light of the discussions made above, I allow the revision and set aside the impugned order and direct the learned Sessions Judge-cum-Special Judge, Ganjam, Berharmpur to release the vehicle in question in favour of the

petitioner after being satisfied about the petitioner's ownership over the vehicle in question subject to the following condition:-

i) That the petitioner shall furnish cash security of Rs. 15,000/- (rupees fifteen thousand) and property security to the tune of Rs. 30,000/- (rupees thirty thousand) with two sureties each for the like amount to the satisfaction of the learned Court below with the condition that the offending motorcycle shall be produced before the Trial Court as and when the Court directs to do so.

ii) The petitioner shall not transfer or dispose of the offending motorcycle to anyone else and shall not make any change in its body, colour or Engine. It is needless to say that make, colour, chassis number and Engine number of the offending motorcycle shall be furnished by the petitioner before the Trial Court with an undertaking that no damage shall be caused or no part of the motorcycle be substituted. He shall keep the motorcycle insured at all times and produce the Insurance Certificate before the Trial Court as and when called upon.

iii) The petitioner shall also file an undertaking before the Trial Court that the offending motorcycle shall not be used for commission of any offence: and

iv) Before giving interim custody of the offending motorcycle to the petitioner, three coloured photographs of cabinet size from different angles clearly indicating registration number and other particulars of the vehicle shall be kept of file. The expenses for the photographs shall be borne by the petitioner.

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13. Sec. 482

Pankaj Garg v. Meenu Garg & Anr. 2013 (2) Crimes 89(SC)

H.L. Dattu and Ranjan Gogoi, JJ.

Issue

High Court setting aside the judgments and orders of the Trial Court and the Revisional Court – High Court's order not a speaking order – liable to be set aside.

The Case -

The wife had filed a complaint u/s 498A and 406 IPC. The additional Civil Judge dismissed the complaint holding that it did not constitute offences as alleged. The District and Sessions Judge dismissed the revision petition. High Court reversed the orders of the Trial Court and the Revisional Court and remanded the matter for fresh disposal.

Finding of the Court:

The impugned order being a non-speaking one, is liable to be set aside.

We have heard learned counsel for the parties to the lis and also carefully perused the judgment and order passed by the High Court. To say the least, the order passed by the High Court is a non-speaking order. It is a settled position of

law that an order which does not contain any reason is no order in the eye of law. Therefore, the impugned judgment and order requires to be set aside and the matter requires to be remanded to the High Court for fresh disposal in accordance with law.

In the result, the appeal is allowed and the judgment and order passed by the High Court is set aside. The matter is remanded to the High Court for fresh disposal in accordance with law, after affording opportunity of hearing to both the parties.

Appeal allowed. Matter remanded to High Court.

Ordered accordingly.

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