REVIEW OF CASE LAWS ON C.P.C. & Cr.P.C. (AUG)

I N D E X

***

Civil Procedure Code

1. **Sec. 11**

Kamal Jora v. State of Uttarkhand & anr. AIR 2013 SC 2242

A. K. PATTANAIK & GYAN SUDHA MISHRA, JJ.

Issue

Res-judicata – Dissolution of Municipal Council for its up gradation as Municipal Corporation –Notification issued changed –Finding by writ Court that opportunity of hearing has to be given to Council before its dissolution- Parties to petition get bound by finding –Petition challenging second notification dissolving Council –Govt. cannot contend that no opportunity of hearing before dissolution of hearing before dissolution was necessary.

The Case

The relevant facts very briefly are that the appellant was elected as the Chairman of the Municipal Council, Haridwar, in May, 2008. When he was functioning as the Chairman of the Municipal Council, Haridwar a notification was issued on 20.05.2011 by the Government of Uttarakhand notifying that the Governor of Uttarakhand in exercise of powers under Section 3(2) of the Uttar Pradesh Municipal Corporations Act, 1959 (for short 'the Act') as applicable in Uttarakhand read with Article 243(2) of the Constitution and Section 8-AA of the Act has dissolved the Municipal Council, Haridwar, and appointed the District Magistrate, Haridwar, as Administrator for administering the area of the Municipal Corporation, Haridwar. The appellant filed Writ Petition No.1031 of 2011 on 20.05.2011 in the High Court of Uttarakhand, challenging the aforesaid notification mainly on the ground that no opportunity of hearing was given to the Municipal Council, Haridwar before the notification was issued and the learned Single Judge of the High Court who heard the writ petition held in his order dated 09.06.2011 that the dissolution of the Municipal Council, Haridwar was done and the Administrator was appointed to administer the areas of Municipal Corporation, Haridwar under Section 8-AA of the Act without affording any opportunity of hearing or a show cause to the Municipal Council and hence the notification dated 20.05.2011 was in clear violation of the Constitution of India. By the order dated 09.06.2011, the learned Single Judge, therefore, allowed the writ petition and quashed the notification dated 20.05.2011 and directed the District Magistrate, Haridwar to handover the charge forthwith to the elected representatives of the Haridwar Municipality.

We have considered the submissions of learned counsel for the parties and we are of the opinion that the earlier judgment of the Division Bench of the High Court dated 23.06.2011

holding that an opportunity of hearing must be given to persons likely to be affected by dissolution of the Municipal Council, Haridwar though not binding on this Court is binding on the parties in Special Appeal No.104 of 2011 in which the aforesaid judgment was rendered because of the principle of res-judicata. The State Government of Uttarakhand was the appellant in the aforesaid Special Appeal No.104 of 2011 and it cannot therefore now contend that a hearing was not required to be granted to the Municipal Council, Haridwar, before it issued the two notifications dated 21.07.2011 dissolving the Haridwar Municipality and appointing an Administrator.

At the time of hearing of this appeal, we were inclined to consider the other contention of Mr. Hansaria that the State Government must form an opinion that until the due constitution of the Municipal Corporation for an area, "it is expedient" to dissolve the Municipal Council from a specified date and to direct that all powers, functions and duties of the Corporation shall as from the specified date, be vested in and be exercised, performed and discharged by the Administrator appointed by the State Government in view of the language of sub-section (1) of Section 8-AA of the Act. But we find that this ground was not raised in the Writ Petition before the High Court nor raised in the special leave petition before this Court. We further find that pursuant to the two notifications dated 21.07.2011, the elections to the Municipal Corporation have been notified to be held and completed by 30.04.2013. Hence, even if the appellant succeeds on this point, we cannot direct restoration of the Haridwar Municipality after the constitution of the Municipal Corporation, Haridwar. For these reasons, we refrain from considering this question in this appeal and leave this question open to be decided in some other appropriate case.

In the result, we do not find any merit in this appeal and we accordingly dismiss the same, but without costs.

Case Referred

AIR 2003 SC 1659
AIR 1981 SC 136
AIR 1981 SC 818
AIR 1978 SC 851

***

2. Sec. 47

Satyawati v. Rajinder singh and anr. 2013(II) CLR (SC)-238.

G.S.SINGHVI, ANIL R.DAVEAND RANJANA PRAKASH DESAI, JJ.

Issue

Execution of Decree

The Case

There should not be unreasonable delay in execution of a decree-Appellant-plaintiff succeeded in civil appeal in the Court of District delivered in favour of the appellant had become final as it was not challenged before the High Court- Execution petition filed in year 1996- Judgment delivered in favour of the appellant had become final as it was not challenged before the High Court-Execution petition filed in year 1996-By virtue of the decree, appellant-plaintiff was entitled to possession of land admeasuring 80 sq.yard-Executing Court rejected the execution petition by observing that the decree was not executable because of certain contradictory reports-Revision application filed by appellant was rejected by the High Court-High Court confirmed the order passed by the Executing Court while taking into consideration the subsequent demarcation report- Whether the Executing Court was justified in taking into consideration certain other reports for the purpose of rejecting the execution proceedings-Held, No.

In relation to the difficulties faced by a decree holder in execution of the decree, in 1872, the Privy Council had observed that "……. The difficulties of a litigant in India begin when he has obtained a Decree……..".

Even today, in 2013, the position has not been improved and still the decree holder faces the same problem which was being faced in the past. We are concerned with the case of the appellant-plaintiff who had succeeded in Civil Appeal No.89 of 1993 in the Court of District Judge, Faridabad on 19th January, 1996. Decree was drawn in pursuance of the aforestated judgment but till today, the appellant-plaintiff is not in a position to get fruits of his success.

As the decree had already been made in favour of the appellant, we need not go into the facts of the case, however it will be worth noting that by virtue of the decree, the appellant-plaintiff is entitled to possession of land admeasur8ing 80 sq.yard forming part of land of Khasra No.95/24/2 situated within municipal limits of Palwal town, District Faridabad. When the Execution that the decree was not executable because of certain contradictory reports. It is pertinent to note that the judgment in favour of the appellant-plaintiff was delivered by considering a report dated 17th September, 1989 and a sketch of land in question, which were made by the local commissioner and both are forming part of the record. It appears that some

other reports were considered by the Executing Court and after considering all the reports, the Executing Court, by its order dated 16th March, 2009 came to the conclusion that the decree was not executable.

It is really agonizing to learn that the appellant-decree holder is unable to enjoy the fruits of her success even today i.e., in 2013 though the appellant-plaintiff had finally succeeded in January, 1996. As stated hereinabove, the Privy Council in the case of ***The General Manager of the Raj Durbhnga under the Court of Wards vs.Maharajah Coomar Ramaput Sing*** *had observed that the difficulties of a litigant in India when he has obtained a Decree. Even in 1925, while quoting the aforestated judgment of the Privy Council in the case of Kuer Jang Bahadur vs.Bank of Upper India Ltd., Lucknow (AIR 1925 Oudh 448), the Court was constrained to observe that "Courts in India have to be careful to see that process of the Court and law of procedure are not abused by the judgment-debtors in such a way as to make Courts of law instrumental in defrauding creditors, who have obtained decrees in accordance with their rights."*

As stated by us hereinabove, the position has not been improved till today. We strongly feel that there should not be unreasonable delay in execution of a decree because if the decree holder is unable to enjoy the fruits of his success by getting the decree executed, the entire effort of successful litigant would be in vain.

We are sure that the Executing Court will do the needful at an early date so as to see that the long drawn litigation which was decided in favour of the appellant is finally concluded and the appellant-plaintiffs gets effective justice.

The appeal is allowed with no order as to costs.

(i) ***AIR 1925 Oudh 448: Kuer Jang v.Bank of Upper***

(ii) ***(1982) 1 SCC 525: Babu Lal v.M/s.Hazari.***

(iii) ***(1999) 2 SCC 325: Marshall v. Sahi***

(iv) ***(2009) 9 SCC 689: Shub Karan v.Sita***.

****

3. ***O. 1 , R. 10.***

Satsangha kendra at baramunda v.State of Orissa and others. 2013 (II) CLR-277.

B.K.MISHRA J.

Issue

***Impletion of a third party to the suit- No material on recorded to show that 3rd party interveners have direct interest in the suit property-No material on record to show that the Court cannot pass any effective decree if the 3rd party interveners are not impleaded as defendants-Order for their impletion is quashed*.**

The Case

In this writ petition the order passed by the Learned Civil Judge (Jr.Divn.) Bhubaneswar in Civil Suit No.3 of 2003 dated 8.7.2011 in allowing the prayer of the 3rd party intervener petitioners under Orders No.1, Rule 10 of the Civil Procedure Code (Hereinafter referred to as "C.P.C") under Annexure-5, is under challenge.

The 3rd Party interveners filed a petition under Order 1, Rule 10 of the C.P.C. praying therein to be impleaded as defendants claiming that they are the allottes under the Social Housing Scheme at Baramunda and the suit land has been reserved as an open space for future development under the Social Housing Scheme, Beramunda as per the layout plan and thus when they have subsisting interest over the suit land the suit should be tried in their presence.

At the cost of repetition, I may mention here that the plaintiff has filed the suit impleading the Secretary, G.A.Department as defendant No.2 and the Secretary, Forest Department as defendant No.1. There is no materials on record to show as to how the 3rd party interveners have any interest over the suit land which belongs to the Government save and except claiming that they used to perform marriage ceremonies and boy's used to play there. Without delving into the merits of the case suffice is to say that the 3rd Party interveners have no right produced in bolstering their claim. I do not find any material on record to show that the Court cannot pass any effective decree if the 3rd party interveners are not impleaded as defendants. There is no material to show that the 3rd party interveners are necessary parties having direct interest in the suit property. This Court in a decision as reported in 2008(II) OLR 747, ***Panjum Bibi @ Ramjan Bibi and 7 others v.Najma Alim and another*** *while analyzing the provision under Order 1,Rule 10 of the C.P.C observed as follows:-*

"Avoidance of multiplicity of litigation cannot be a sole criterion for deciding the application-Generally a party cannot be impleaded against the wishes of the plaintiff, who is the master of his suit and he is not seeking any relief against such a party."

The Learned trial Court has not at all discussed in the impugned order as to how the impletion of the 3rd Party interveners would help the Court in proper adjudication of the suit. The

impugned order is very cryptic and a non-speaking order. I am constrained to observe that the Learned Court below did not apply its judicial mind and conscience while deciding the matter with regard to impletion of 3rd Party intervener which definitely has caused prejudice to the plaintiff.

Accordingly, from the aforesaid discussion of the material on record and analyzing the position of law, I have no hesitation to quash the impugned order at Annexure-5. Accordingly, the impugned order at Annexure-5 stands set aside and the writ petition stands allowed. The Learned Civil Judge (Jr.Divn.), Bhubaneswar is directed to proceed with the hearing of the suit if pleadings are complete and dispose of the same within a period of six months, if there would be no other impediment.

Writ petition allowed.

(I) ***2008(II) OLR 747: Panjum v. Najma****.*

****

4. O. 39 , R.1

Thomass Press (India)Ltd. V. Nanak Builders and Investors P. Ltd. and Ors. AIR 2013 SC 2389

T.S.THAKUR & M.Y.EQBAL, JJ.

Issue

Made in teeth of injunction prohibiting transfer –Not void - party guilty of breach may however be liable to be punished.

The Case

In Vinod Seth v. Devinder Bajaj (2010) 8 SCC 1 ,where this Court held that Section 52 does not render transfers affected during the pendency of the suit void but only render such transfers subservient to the rights as may be eventually determined by the Court. The following passage in this regard is apposite:

"42. It is well settled that the doctrine of lis pendens does not annul the conveyance by a party to the suit, but only renders it subservient to the rights of the other parties to the litigation. Section 52 will not therefore render a transaction relating to the suit property during the pendency of the suit void but render the transfer inoperative insofar as the other parties to the suit. Transfer of any right, title or interest in the suit property or the consequential acquisition of any right, title or interest, during the pendency of the suit will be subject to the decision in the suit."

We may finally refer to the decision of this Court in Jayaram Mudaliar v. Ayyaswami and Ors. (1972) 2 SCC 200 in which were extracted with approval observations made on the doctrine of lis pendens in "Commentaries of Laws of Scotland, by Bell". This Court said:

"43……..Bell, in his commentaries on the Laws of Scotland said that it was grounded on the maxim: "Pendente lite nibil innovandum". He observed:

It is a general rule which seems to have been recognized in all regular systems of jurisprudence, that during the pendency of an action, of which the object is to vest the property or obtain the possession of real estate, a purchaser shall be held to take that estate as it stands in the person of the seller, and to be bound by the claims which shall ultimately be pronounced."

There is, therefore, little room for any doubt that the transfer of the suit property pendete lite is not void ab initio and that the purchaser of any such property takes the bargain subject to the rights of the plaintiff in the pending suit. Although the above decisions do not deal with a fact situation where the sale deed is executed in breach of an injunction issued by a competent Court, we do not see any reason why the breach of any such injunction should render the transfer whether by way of an absolute sale or otherwise ineffective. The party committing the breach may doubtless incur the liability to be punished for the breach committed by it but the sale by itself may remain valid as between the parties to the transaction subject only to any directions which the competent Court may issue in the suit against the vendor.

To sum up:

1. The appellant is not a bona fide purchaser and is, therefore, not protected against specific performance of the contract between the plaintiffs and the owner defendants in the suit.

2. The transfer in favour of the appellant pendente lite is effective in transferring title to the appellant but such title shall remain subservient to the rights of the plaintiff in the suit and subject to any direction which the Court may eventually pass therein.

3. Since the appellant has purchased the entire estate that forms the subject matter of the suit, the appellant is entitled to be added as a party defendant to the suit.

4. The appellant shall as a result of his addition raise and pursue only such defenses as were available and taken by the original defendants and none other.

With the above additions, I agree with the order proposed by my Esteemed Brother, M.Y. Eqbal, J. That this appeal is allowed and the appellant added as party defendant to the suit in question.

Case Referred

AIR 2005 SC 2209
AIR 1975 SC 2159
AIR 1973 SC 669

****

5. O.39, R.1

Shiba Prasad Das v. Vysa Teli Jatiya Samati , Cuttack. AIR 2013 ORISSA 118

M.M.DAS, J.

Issue

Preliminary issue –Suit for recovery of arrear house rent –Claim of landlord can only succeed if he will prove relationship of landlord and tenant between parties –Claim of tenant with regard to independent title over disputed premises /shop rooms can also be gone into during course of hearing of suit –Court can decide an issue if it is of opinion that case or any part thereof may be disposed of on an issue of law only –Issue which involves a mixed question of facts and law cannot be tried as preliminary issue which is required to be tried along with all other issues framed as contemplated under O.14, R. 2(1) –issue regarding maintainability of suit does not come under any of categories mentioned in O.14,R.2(1) –Issue involving mixed question of facts –Cannot be decided as preliminary issue.

The Case

The plaintiff has alleged that the defendant-petitioner in this writ petition is the tenant in respect of the two shop rooms as described in schedule – B of the plaint. The suit is basically a suit for recovery of arrear house rent along with damages. The petitioner has filed the written statement denying the title of the plaintiff over the said shop rooms, inter alia, claiming his title over the said shop rooms. After framing of issues, the petitioner filed an application to hear the issue with regard to maintainability of the suit as preliminary issue under Order 14, Rule 2 (2), and C.P.C. on the ground that he has categorically stated in the written statement that he is not a tenant under the plaintiff and has claimed independent title over the suit land. It was further averred by him that in a Bebandobasta Case, which is subjudicie before the Tahasildar, Sadar , Cuttack vide Bebandobasta Case No. 39 of 2002, he has filed an objection claiming sthitiban right filed an objection claiming sthitiban right over the said suit property and further, at his instance, W.P. (C) No. 261 of 2009 is subjudice before this Court wherein this court has passed order of status quo. On that basis, the petitioner claimed that the suit as laid is not maintainable.

In the facts of the present case, the issue sought to be decided as a preliminary issue by the petitioner does not come under any of the categories above. As contended by the learned counsel for the opp. Party, the cla9m of the plaintiff can only succeed if the plaintiff will prove the relationship of land-lord and tenant between the parties and the claim of the defendant with regard to independent title over the disputed premises / shop rooms can also be gone into during the course of hearing of the suit and if the defendant succeeds in proving the same, it would negative the plea of the plaintiff that there exists a relationship of landlord and tenant between the parties on the basis of which recovery of house rent has been claimed by the plaintiff along with the damages and in such event, the plaintiff's suit would fail.

Considering the facts involved in the present case, this Court is of the view that the learned trial court was right in holding that the issue with regard to maintainability of the suit would not be decided as a preliminary issue inasmuch as the said issue is not an issue as contemplated under Order 14, Rule 2 (2), C.P.C. and such an issue involves a mixed question of facts and law which also cannot be decided as a preliminary issue. This Court finds that the learned District Judge was right in holding that the Civil Revision was not maintainable in view of the amendment to Section 115 C.P.C.

In the result, this Court fi9nds no merit in the writ peti8tion, which is accordingly dismissed. All pending Misc. Cases also stand disposed of.

The interim order of stay passed earlier stands vacated.

Petition dismissed.

****

Criminal Procedure Code

1. Sec. 100

Safi Mohd. V. State of Rajastan. AIR 2013 SC 2519

CHANDRAMAULI KUMAR PRASAD & V. GOPALA GOWDA , JJ.

Issue

Search without warrant –Accused charged under official secrets act –Search and seizure of army documents from house of accused –Documents seizure pertaining to security of country –search and seizure though made without warrant is not defective –Search and seizure –proof – accused charged under 1923 act –Documents seized sensitive to security of country –Police witnesses only supporting search and seizure –Testimony of police witnesses cannot be disbelieved.

The Case

For the purpose of considering the rival legal contentions urged in this appeal and with a view to find out whether this Court is required to interfere with the impugned judgment of the High Court, the necessary facts are briefly stated hereunder:

On 6th March, 1990, Bhoormal Jain, Superintendent of Police CID Zone, Jodhpur lodged an FIR for the offences punishable under Sections 3, 3/9 of the Act read with Section 120-B IPC with the Special Police Station Rajasthan, Jaipur numbered as FIR No.1/1990 against the accused Mohd. Ishfaq who was found roaming in suspicious circumstances in the Air Force Area and was arrested on 07.03.1990. On interrogation, he stated that the appellant Safi Mohd. used to supply secret information to the Pakistani Intelligence and had handed over Rs.6500/- to him for working for Pak Intelligence Agency. On 08.03.1990, the appellant was arrested from his Railway Quarters by the CID Police and on his house being searched, a blue colored diary of the year 1982 and a trace map Ex.D-3 were alleged to have been recovered. Later on, on further disclosure by the accused No. accused No. 3 - Chotu Khan and accused No. 4 - Chand Khan were arrested. On 12.04.1990, the other accused Mohd. Safi, Accused No.5, was also arrested. The documents recovered from the accused were sent to the Air Force Officers for their opinion, who informed that the said documents were useful to enemy country and affect the security of India. After completion of investigation of the case the charge-sheet was filed before the committal court by the Investigating Officer.

This appeal is filed by the appellant questioning the correctness of the judgment dated 29th May, 2009 passed by the High Court of Rajasthan at Jaipur in S.B. Criminal Appeal No. 314 of 2004 in confirming the judgment dated 9th March, 2004 of the sessions judge, Jaipur City, Jaipur in Sessions Case No. 196 of 1992 wherein this appellant along with the others were convicted under Section 3(1)(c)of the Official Secrets Act, 1923 (hereinafter referred to as 'the Act') and was sentenced to undergo seven years rigorous imprisonment.

Further, the learned sessions judge has rightly accepted the testimony of the witnesses to prove the recovery of documents by assigning reasons and therefore the same cannot be rejected merely on the ground that they are police officials who are members of raiding party and that the matters under the Official Secrets Act are very sensitive which required immediate action. In these circumstances, the investigation does not become defective as contended by the learned counsel for the defence for the reason that the search warrant was not obtained and the

recovery of documents and articles from the appellant's house could not be rejected. The search and seizure of Army documents from the house of the appellant for the offences alleged against the appellant under the provisions of the Act are very sensitive and pertains to the integrity and security of the country. In view of the above fact, neither the search conducted in the presence of the independent witnesses nor the investigation made by the investigating officer becomes defective for want of search warrant to conduct the search in the house of the appellant as urged by the appellant's counsel.

Case Referred

AIR 2010 SC 806

AIR 2009 SC 1911

AIR 2006 SC 514

****

2. Sec. 190 & 319

Moti Lal Songara v. Prem Prakash @Pappu and Anr. (2013)55 OCR (SC)-881.

K.S.RADHAKRISHNAN AND DIPAK MISHRA, JJ.

Issue

Quashing Of Charges on the ground that the order taking cognizance and issuing summons had already been set aside by the Sessions Judge-Suppression of facts – though the respondents was fully aware about the fact that charges had been framed against him by the trial judge, yet he did not bring the same to the notice of the revisional Court hearing the revision against the order taking cognizance.

The Case

Appellant informant lodged FIR- On the basis of investigation, charge-sheet was placed for offence under Section 307,323,324,341 and 379,IPC against one 'SL'- After submission of the charge-sheet, informant filed application before the Chief Judicial Magistrate alleging that another accused, respondent, who had attacked his son with knife, had deliberately not been made an accused-Magistrate summoned respondent for offences punishable under Section 307,323,324 and 379,IPC-Criminal revision-Sessions Judge by an order dated 14.10.2009 set aside the order taking cognizance while holding that when the offences were triable by a Court of Sessions, the Magistrate could not have taken cognizance on the basis of a protest petition-Sessions Judge framed charges against the two accused including respondent, for offences under Section 341/323/34,324/34 307,IPC-Matter was heard at length at the time of framing of charges and arguments were considered seeking discharge-However, it was not brought to the notice of Sessions Judge who allowed the revision holding that the order issuing summons was not justified-

Criminal revision filed against the order of framing of charges-High Court held that when the order dated 14.10.2009 passed by the revisional Court setting aside the order taking cognizance was not challenged, the very basis of continuance of the proceeding had become extinct and, therefore, the order of framing of charges could not be sustained-Whether the order passed by the High Court discharging the accused was justified in law-Held, No.

In the said case, while dealing with the pendency of a reference before a larger Bench and also adverting to the pending reference in relation to the lis, the court observed as follows:-

"...it is not necessary to wait for the outcome of the result of the reference made to a larger Bench in Dharam Pal case. The reference is with regard to the Magistrate's power of enquiry if he disagreed with the final report submitted by the investigating authorities. The facts of this case are different and are covered by the decision of this Court in India Carat(P)Ltd., following the line of cases from Abhinandan Jha v.Dinesh Mishra onwards."

In view of the aforesaid enunciation of law, we are of the considered view that the order taking cognizance cannot be found fault with. We may hasten to clarify that the learned Additional Chief Judicial Magistrate has taken cognizance on the basis of facts brought to his notice by the informant and, therefore, he has, in fact, exercised the power under Section 190(1) (b) of the Code.

Consequently, the appeal is allowed, the order passed by the High Court in Criminal Revision No.327 of 2011 and the order passed by the Learned Additional District and Sessions Judge, No.1 Jodhpur, in Criminal Revision No.7 of 2009 are set aside and it is directed that the trial which is pending before the learned Additional District and Sessions Judge, No.3, Jodhpur, shall proceed in accordance with law.

****

3. Sec. 309

Mohan Lal v. State of Punjab. AIR 2013 SC 2408

DR. B.S. CHAUHAN & FAKKIR MOHAMED IBRAHIM KALIFULLA, JJ

Issue

Adjournment – Case of rape of a student by her teachers – Speedy and expeditious trail and enquiry envisaged under sec.309 –statement of prosecutrix recorded by trail Court on five different dates – Reasonable inference can be drawn that defence had an opportunity to win her mother –Duty of trail Court not to adjourn proceedings for such a long period giving an opportunity to accused to persuade or force, any means , prosecutrix and her mother to turn hostile.

The Case

The facts and circumstances leading to filing of these appeals are that, one Manjit Kaur (PW-1), who was a student of class X had gone along with 15-16 other girls from her school to attend sport meet at Fatehgarh Sahib. All those 15-16 girls had been walking to reach Fatehgarh Sahib. In the meanwhile, Balbir Singh, the Director of Physical Education, asked Manjit Kaur, prosecutrix (hereinafter referred to as 'Prosecutrix') that she should sit on the scooter of Mohan Lal Verma, one of the appellants herein. She was not initially willing to go along with Mohan Lal Verma on his scooter, but she was threatened by Balbir Singh-appellant, and thus under the pressure and force, she sat on the scooter of Mohan Lal Verma. When Mohan Lal Verma reached near petrol pump of Machlian, he stopped the scooter and pretended to repair it. Ranjit Singh, also a teacher in the sameschool and who had also been convicted by the Trial Court and the High Court, and whose SLP has been dismissed vide order dated 18.3.2011,arrived there on cycle and Mohan Lal Verma-appellant forced Manji Kaur to sit on his cycle. As she had no other option, she sat on the cycle of Ranjit Singh who, after reaching Gurdwara Jyoti Sarup told her that he had to give some message to his sister, and that she should accompany him. Manjit Kaur was not willing and resisted to a certain extent but she was persuaded/forced to accompany Ranjit Singh Both went to the house of Jasbir Kaur. By this time, Mohan Lal Verma, Amarjit Singh and Balbir Singh had already reached the place. Manjit Kaur was offered tea by Jasbir Kaur and thereafter, she pushed her into the room where Ranjit Singh committed rape upon her in the presence of other persons as a result of which she became unconscious. Darbara Singh (PW-3), father of the prosecutrix lodged the FIR, though at a later stage, i.e. after one week, in the police station. The matter was investigated, charge sheet was filed against all

these persons and after conclusion of the trial, the trial court convictedall the aforesaid appellants as well as Ranjit Singh and Jasbir Kaur, and awarded sentence referred to hereinabove. The High Court, while hearing their appeals, acquitted only Jasbir Kaur and maintained the conviction and sentences of other persons, hence these appeals.

In view of the above, we are of the considered opinion that it was a fit case where the provisions of Section 114-A of the Evidence Act are attracted and no attempt had ever been made by any of the appellants or other accused to rebut the presumption. In such a case, we do not see any reason to interfere with the finding of fact recorded by the courts below. So far as the conviction is concerned, as it was case of gang rape by teachers of their student, the punishment of 10 years rigorous imprisonment imposed by the trial court is shocking, considering the relationship between the parties. It was a fit case where life imprisonment could have been awarded to all the accused

Persons. Unfortunately, Smt. Jasbir Kaur had been acquitted by the High Court, and State of Punjab did not prefer any appeal s against the same. One of the accused, Ranjit Singh, had approached this court and his special leave petition has been dismissed. Thus, in such circumstances, we are not in a position even to issue notice for enhancement of the punishment to the accused.

In view of the above, appeals do not have any merit and accordingly are dismissed.

Case Referred

AIR 2013 SCW 59
2010 AIR SCW 5510
AIR 2009 SC 1822
AIR 2008 SC 858

***

4. Sec.311

Khairuddin & ors. v. State of West Bengal. AIR 2013 SC 2354

T.S. THAKUR & MRS.GYAN SUDHA MISHRA , JJ.

Issue

Statement of accused under section 311 –Use as evidence against him –Permissible when it supports prosecution case. One of un-named appellants admitting to his participation in incident in his statement recorded under sec.311 Criminal P.C. –His statement corroborated by evidence of injured witnesses –Appellant making statement alone liable to be convicted –Other un-named appellants entitled to benefit of doubt.

The Case

Facts giving rise to the commission of the offence and the registration of the case alleged against the appellants, as also their eventual conviction and sentence have been stated at length by the trial Court in its judgment and recapitulated even by the High Court in the order under appeal before us. We need not, therefore, recount the same over again except to the extent it is absolutely necessary to do so for the disposal of this appeal.

This appeal by special leave arises out a judgment and order dated 24th December, 2008, passed by the High Court of Calcutta, whereby Criminal Appeal No.291 of 1990 filed by the appellants has been dismissed, in the process confirming the conviction and sentence of imprisonment for life awarded to them by the trial Court for offences punishable under Section 302 read with Section 149 of the IPC, and Sections 148 and 323/149 of the IPC. A fine of Rs.2000/- was also imposed on each one of the appellants, in default of payment whereof the appellants were sentenced to undergo further imprisonment for a period of one year. Half of the amount realized towards fine was directed to be paid to the legal heirs of the deceased in equal share.

In the result, we dismiss this appeal qua Appellants No. 1- Khairuddin, No.3-Nazrul Haq, No.4-Nasir Md. Munshi, No.9-Bhoka @ Jarifuddin and No.16-Monglu. The appeal in so far as appellant No.11-Ishwahaque is concerned, shall stand dismissed as abated. The rest of the

appellants are given the benefit of doubt and acquitted of the charges framed against them. The appeal qua them is allowed and the judgments and orders of the Courts below modified to that extent. The appellants No.2- Rahimuddin, No.5- Idrish, No.6-Nurul, No.7-Ibrahim, No.8- Motilal Motin, No.10 Asir @ Asiruddin, No.12-Hafijuddin, No.13-Khoka Md., No.14-Pasir @ Bishu, and No.15-Kanchu shall be released from custody forthwith, unless otherwise required in connection with any other case.

Case Referred

AIR 2012 SC 1552
AIR 2010 SC 2839
2012 CRILJ 1883
2010 CRILJ 4402

****

5. Sec. 320(8)

P.Ramaswamy V. State (U.T.) of Andaman & Nicobar Islands. (2013) 55 OCR (SC)-888.

G.S.SINGHVI AND RANJANA PRAKASH DESAI, JJ.

Issue

Offence under Section 354 IPC-Appellant is now about 67 years of age while the victims is of 18 years-Victim and appellant reside in the same locality-Appellant surrendered to the jail on 7.2.2013 and is continuing in jail till date-Appellant was in jail as undertrial prisoner from 23.3.2004 to 28.5.2004-Whether permission can be granted to compound the offence –Held, Yes.

The Case

It appears from the applications filed by the complainant, the victim and the appellant that all of them reside in the same locality. They have decided to bury the hatchet. They want to live peacefully and, therefore, they have arrived at a compromise. The victim is now about 18 years of age. The appellant is about 67 years of age. As already noted the information received from the Jailor, District, Jail, Prothrapur (Andaman and Nicobar Islands) shows that the appellant has undergone almost the entire sentence imposed on him. He has undergone about five and half months imprisonment. Offence under Section 354 of the IPC is compoundable by the woman assaulted or to whom the criminal force was used. The victim has in her application filed in this Court prayed that permission be granted to compound the offence under Section 354 of the IPC. In the circumstances of the case, we feel that the prayer for compounding deserves sympathetic consideration. In the circumstances, without going into the question whether the High Court was right in refusing to take compromise on file and compound the offence, we deem it appropriate to grant permission to compound the offence. Hence, we permit the appellant, complainant and the

victim to compound the offence under Section 354 of the IPC. The said offence shall stand compounded. As per Section 320(8) of the Criminal Procedure Code the composition of this offence shall have the effect of acquittal of the offence under Section 354 of the IPC. Hence, the appellant is acquitted of the charge under Section 354 of the IPC. In view of this the impugned orders dated 13/7/2012 and 10/12/2012 passed by the Calcutta High Court are set aside. If the appellant is in jail, he is directed to be released forthwith unless otherwise required in any other case.

The appeal is disposed of in the aforestated terms.

Delay condoned. The application for impleadment is allowed.

Leave granted.

****

6. Sec.357

Ankush Shivaji Gaikwad v. State of Maharashtra. AIR 2013 SC 2454

T.S. THAKUR & MRS.GYAN SUDHA MISRA, JJ.

Issue

Compensation to victim of offence –Power conferred on Court is coupled with duty – Courts are bound to consider issue of award of compensation in every case –Ought to record reasons for awarding or refusing compensation –Can hold enquiry as to capacity of accused to pay - Interpretation of Statutes –Provision whether mandatory –Not to be determined on language used.

The Case

The question whether a particular provision of statute is directory or mandatory, can be resolved by ascertaining the intention of the Legislature and not by looking at the language in which the provision is clothed. And for finding out the legislative intent, the Court must examine the scheme of the Act, purpose and object underlying the provision, consequences likely to ensue or inconvenience likely to result if the provision is read one way or the other and many more considerations relevant thereto. Looking at S. 357 in this perspective it appears that the provision confers a power coupled with a duty on the Courts to apply its mind to the question of awarding compensation in every criminal case. The power to award compensation was intended to re-assure the victim that he or she is not forgotten in the criminal justice system. The victim would remain forgotten in the4 criminal justice system if despite legislature having gone so far as to enact

specific provisions relating to victim compensation, Courts choose to ignore the provisions altogether and do not even apply their mind to the que4stion of compensation. It follows that unless S. 357 is read to confer an obligation on Courts to apply their mind to the question of compensation, it w2ould defeat the very object behind the introduction of the provision. If application of mind is not considered mandatory, the entire provision would be rendered a dead letter. As S. 357, Cr.P.C., confers a duty on the Court to apply its mind to the question of compensation in every criminal case, it necessarily follows that Court must disclose that it has applied its mind to this question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding / refusing compensation. It is axiomatic that for any exercise involving application for mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also bey9nd dispute that the o9ccasion to consider the question of award of compensation would logically arise only after the Court records a conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order under S. 357, Cr.P.C. would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the Court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the Court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his / her family.

To sum up:

While the award or refusal of compensation in a particular case may be within the Court's discretion, there exists a mandatory duty on the Court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation. It is axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order under Section 357 Cr.P.C. would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to

take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family.

Coming then to the case at hand, we regret to say that the trial Court and the High Court appear to have remained oblivious to the provisions of Section 357 Cr.P.C. The judgments under appeal betray ignorance of the Courts below about the statutory provisions and the duty cast upon the Courts. Remand at this distant point of time does not appear to be a good option either. This may not be a happy situation but having regard to the facts and the circumstances of the case and the time lag since the offence was committed, we conclude this chapter in the hope that the courts remain careful in future.

In the result, we allow this appeal but only to the extent that instead of Section 302 IPC the appellant shall stand convicted for the offence of culpable homicide not amounting to murder punishable under Section 304 Part II IPC and sentenced to undergo rigorous imprisonment for a period of five years. The fine imposed upon the appellant and the default sentence awarded to him shall remain unaltered. The appeal is disposed of in the above terms in modification of the order passed by the Courts below. A copy of this order be forwarded to the Registrars General of the High Courts in the country for circulation among the Judges handling criminal trials and hearing appeals.

Case Referred

AIR 2013 SC 447
AIR 2012 SC 3802
AIR 2011 SC (SUPP) 417
AIR 2010 SC 1285

****

7. **Sec.374**

Rafique alias Rauf & others v. State of U.P. AIR 2013 SC 2272

DR. B.S. CHAUHAN & FAKKIR MOHAMED IBRAHIM KALIFULLA, JJ.

Issue

Appeal from conviction – Murder case –Finding of trail Court approved by High Court that there was no controversy relating to place of occurrence in order to doubt prosecution case –No interference in appeal.

The case

The prosecution as projected before the Court below was that 7 days prior to the date of occurrence there was some dispute between the children of the parties of the victim and the accused. A goat belonging to the accused persons stated to have gone into the maize field of

the deceased Zahiruddin and when the son of the said deceased objected to that, he was caught by the father of the accused 1 to 6. When the deceased Zahiruddin came to know about the said conduct of Masook, father of the accused 1 to 6, he went and protested by questioning him as to how for the grazing of the maize crop by the goat belonging to Masook, the son of the deceased could be held in captivity. The said protest raised by deceased Zahiruddin was not liked by Masook and both stated to have abused each other. Pursuant to the said incident, on 05.09.1997 at about 3.00 pm, all the appellants-accused armed with country-made gun (Addhi) as well as country-made pistols and the first accused holding his gun, entered the house of the deceased where P.Ws.1 to 3 were conversing with the deceased, Zahiruddin and made indiscriminate firing towards the deceased and the other persons. The deceased, P.Ws.2 and 3 stated to have sustained firearm injuries and they raised alarm pursuant to which others rushed to the spot. The appellants stated to have escaped from the scene of occurrence after giving further threats.

Having considered the various facts noted by the Trial Court and approved by the High Court in dealing with the above submissions, we hold that the said submission does not impress upon us in order to interfere with the judgment impugned in this appeal. The said question is also, therefore, answered against the appellants.

With that when we come to the last of the submissions made on behalf of the appellants, namely, whether there was any scope to hold that the offence would fall under Section 304 Part I or II and not under Section 302 IPC and that no other offence was made out, we can straight away hold that having regard to the extent of the injuries sustained by the deceased, P.Ws.2 and 3 and the aggression with which the offence was committed as against the victims, which resulted in the loss of life of one person considered along with the motive, which was such a petty issue, we are of the firm view that there was absolutely no scope to reduce the gravity of the offence committed by the appellants. We are, therefore, not persuaded to accept the said feeble submission made on behalf of the appellants to modify the conviction and the sentence imposed.

For all the above stated reasons, we do not find any merit in this appeal. The appeal fails and the same is dismissed.

Case Referred

AIR 2013 SC (CRI)387
AIR 2003 SC 1014
2010 AIR SCW 5954
2003 CRILJ 1246

****

8. **Sec.378**
*Majjal v.state of haryana-(2013) 55 ocr (sc)-1092***.**
G.S.SINGHVI, RANJANA PRAKASH DESAI AND SHARAD ARVIND BOBDE, JJ
Issue

Appeal against conviction- High Court's concurrence with trail court's view would be acceptable only if it is supported by reasons-Cryptic nature of High Court's observations on merits of the case held, unsatisfactory.

The Case

Prosecution case that the appellant along with his sons and other persons arrived at house of the complainant with common object to kidnap his daughter 'F'- They tried to take away 'F' on which she raised cries and when the complainant party tried to rescue 'F' appellants fired gun shots and killed deceased while others were injuried- Trial Court convicted appellant under Section 302/149 IPC-Appeal filed by appellant was dismissed by the High Court in a summary way without any proper analysis of the evidence-Whether judgment of the High Court was sustainable-Held, No- This Court remands the appeal for a fresh hearing.

In this case what strikes us is the cryptic nature of the High Court's observations on the merits of the case. The High Court has set out the facts in detail. It has mentioned the names and numbers of the prosecution witnesses. Particulars of all documents produced in the court along with their exhibit numbers have been mentioned. Gist of the trial court's observations and findings are set out in a long paragraph. Then there is a reference to the arguments advanced by the counsel. Thereafter, without any proper analysis of the evidence almost in a summary way the High Court has dismissed the appeal. The High Court's cryptic reasoning is contained in two short paragraphs. We find such disposal of a criminal appeal by the High Court particularly in a case involving charge under Section 302 of the IPC where the accused is sentenced to life imprisonment unsatisfactory. It was necessary for the High Court to consider whether the trial court's assessment of the evidence and its opinion that the appellant must be convicted deserve to be confirmed. This exercise is necessary because the personal liberty of an accused is curtailed because of the conviction. The High Court must state its reasons why it is accepting the evidence on record. The High Court's concurrence with the trial court's view would be acceptable only if it is

supported by reasons. In such appeals it is a court of first appeal. Reasons cannot be cryptic. By this, we do not mean that the High Court is expected to write an unduly long treatise. The judgment may be short but must reflect proper application of mind to vital evidence and important submissions which go to the root of the matter. Since this exercise is not conducted by the High Court, the appeal deserves to be remanded for a fresh hearing after setting aside the impugned order. Hence , we set aside the impugned judgment and order dated 14/2/2012 and remand the appeal to the High Court. We request the High Court to hear the appeal afresh and deliver judgment in light of our above observations as expeditiously as possible as the appellant is in jail and he is stated to be 84 years of age. We make it clear that we have not considered the merits of the case. The appeal shall be disposed of independently and on merits.

The appeal is disposed of in the aforestated terms.

****

9. Sec. 482

Mohit alias Sonu v. State of U.P. and anr. AIR 2013 SC 2248

P.Sathasivam & M.Y.Eqbal, JJ.

Issue

Inherent power – Exercise of – To be limited to situations where no remedy is available under code –Inherent power of the code can be exercised when there is no remedy provided in the Code of Criminal procedure for redressal of the grievance – It is well settled that inherent power of the court can ordinarily be exercised when there is no express provision in the code under which order impugned can be challenged.

The Case

In our considered opinion, the complainant ought to have challenged the order before the High Court in revision under Section 397 of Cr.P.C. and not by invoking inherent jurisdiction of the High Court under Section 482 of Cr.P.C. Maybe, in order to circumvent the provisions contained in sub-section (2) of Section 397 or Section 401, the complainant moved the High Court under Section 482 of Cr.P.C. In the event a criminal revision had been filed against the order of the Sessions Judge passed under Section 319 of Cr.P.C., the High Court before passing the order would have given notice and opportunity of hearing to the appellants.

So far as the inherent power of the High Court as contained in Section 482 of Cr.P.C. is concerned, the law in this regard is set at rest by this Court in a catena of decisions. However, we would like to reiterate that when an order, not interlocutory in nature, can be

assailed in the High Court in revisional jurisdiction, then there should be a bar in invoking the inherent jurisdiction of the High Court. In other words, inherent power of the Court can be exercised when there is no remedy provided in the Code of Criminal Procedure for redressal of the grievance. It is well settled that inherent power of the court can ordinarily be exercised when there is no express provision in the Code under which order impugned can be challenged.

The intention of the Legislature enacting the Code of Criminal Procedure and the Code of Civil Procedure vis-à-vis the law laid down by this Court it can safely be concluded that when there is a specific remedy provided by way of appeal or revision the inherent power under Section 482 Cr.P.C. or Section 151 C.P.C. cannot and should not be resorted to.

The second question that needs consideration is as to whether the High Court exercising its revisional jurisdiction or inherent jurisdiction under Section 482 Cr.P.C., while considering the legality and propriety of the order passed under Section 319 of Cr.P.C. Code is required to give notice and opportunity of hearing to the person in whose favour some right accrued by virtue of order passed by the trial court. In other words, whether it would be justified for the High Court to entertain a petition under Section 482 of Cr.P.C. and pass order to the prejudice of the accused or other person (the appellants herein) without giving notice and opportunity of hearing to them. Indisputably, a valuable right accrued to the appellants by reason of the order passed by the Sessions Court refusing to issue summons on the ground that no prima facie case has been made out on the basis of evidence brought on record. As discussed hereinabove, when the Sessions Court order has been challenged, then it was incumbent upon the revisional court to give notice and opportunity of hearing as contemplated under sub-section (2) of Section 401 of Cr.P.C. In our considered opinion, there is no reason why the same principle should not be applied in a case where such orders are challenged in the High Court under Section 482 of Cr.P.C.

In the instant case also learned Sessions Judge in absence of the petitioner has passed the impugned order whereby he directed the trial Court to implead the petitioner as an accused in the proceeding which in view of the provision as contained in Sections 399/401/401(2) of the Code of Criminal Procedure is illegal. In the result, this application is allowed and the impugned order dated 23.6.2006 s set aside and the case is remanded to the learned Sessions Judge, Bokaro for hearing afresh after giving due notice to the parties so that the same be disposed of in accordance with law." Since the reasoning discussed hereinabove

would be suffice to dispose of the present appeal, we do not wish to go into the merits of the case with regard to the scope of the provisions of Section 319 of Cr.P.C. After giving our anxious consideration in the matter, we conclude by holding that the High Court has committed a grave error in passing the impugned order for the reasons given hereinbefore. We, therefore, allow this appeal, set aside the order of the High Court and remand the matter back to the High Court to consider the matter afresh after giving an opportunity of hearing to the present appellants.

Case Referred

AIR 2013 SC (CRI) 34
2012 12 SCC 321
2011 AIR SCW 5829
AIR 2009 SC 483

*** * ***

10. **Sec. 482.**
Engineering Export Promotion Council V. Usha Anand and another. (2013)55 OCR (SC)-1044.
Dr.B.S.CHAUHAN AND DIPAK MISRA, JJ.
Issue

Scope of power.

The Case

Amount deposited by four accused persons with the Engineering Export Promotion Council (EEPC), a channelizing industry under the Ministry of Commerce, in order to avoid arrest-3 accused persons acquitted after trial-One of the accused died pending the trial and hence, the trial against him abated-The acquitted persons sought refund of the amount deposited with the EEPC Trial Court and High Court granted the refund-Wife of the deceased accused person sought refund on the ground that the amount was deposited in similar circumstances and the offence complained of arose out of the same facts-High Court granted refund in exercise of inherent powers under Section 482 of the Code-Whether in exercise of inherent powers under Section 482,High Court could have granted refund of amount deposited with an agency on one's own, even if to avoid arrest-Held, No-Court grants liberty to move High Court by way of writ petition.

From the aforesaid communications, it is clear that the money was deposited by the husband of the 1st respondent on his own volition with the appellant. The High Court has observed that the other three brothers had deposited the amount under same circumstances and, therefore, after their acquittal the amount was directed to be refunded. The High Court has

referred to its earlier order wherein it had been categorically stated that the money was deposited as a condition of bail. Deposition of any sum as a condition of bail and a deposit with the Agency on one's own even if to avoid arrest would stand on a different footing. The later action has nothing to do with the proceedings in the Court. Thus understood, Section 482 of the Code could not have been exercised as the action taken by the appellant, a channelizing industry under the Ministry of Commerce is absolutely an administrative action and, therefore, we are of the considered opinion that the same can only be challenged by way of a writ petition and not by seeking relief invoking the inherent power under Section 482 of the Code.

Consequently, the appeal is allowed, the order passed by the High Court is set aside and liberty is granted to appellant to approach the High Court by way of writ petition. If a writ petition is filed, the same shall be dealt with on merits. Needless to emphasize, all contentions relating to liability, entitlement for refund and all other aspects are kept open as we have not expressed any opinion on any count except the jurisdictional facet. There shall be no order as to costs.

****