REVIEW OF CASE LAW S ON Cr.P.C , 2013 (MARCH)

I N D E X

Criminal Procedure Code

1. S.2(d)

Indra Kumar Patodia & Anr. V. Reliance Industries Ltd. and Ors. AIR 2013 SC 426

P.SATHASIVAM AND RANJAN GOGAI ,JJ.

Issue

Written complaint- Need not be signed by complaint.

According to us, the non obstante clause in Section 142(a) is restricted to exclude two things only from the Code i.e. (a) exclusion of oral complaints and (b) exclusion of cognizance on complaint by anybody other than the payee or the holder in due course. Section 190 of the Code provides that Magistrate can take cognizance on a complaint which constitutes such an offence irrespective of who had made such complaint or on a police report or upon receiving information from any person other then a police officer or upon his own knowledge. Non obstante clause, when it refers to the core, restricts the power of the Magistrate to take cognizance only on a complaint by a payee or the holder in due course and excludes the rest of Section 190 of the Code. In other words, none of the other provisions of the Code are excluded by the said non obstante clause, hence, the Magistrate is therefore required to follow the procedure under Section 200 of the Code once he has taken the complaint of the payee/holder in due course and record statement of the complainant and such other witnesses as present at the said date. Here, the Code specifically provides that the same is required to be signed by the complainant as well as the witnesses making the statement. Section 200 of the Code reads thus:

"200. Examination of complainant.- A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them."

Mere presentation of the complaint is only the first step and no action can be taken unless the process of verification is complete and, thereafter, the Magistrate has to consider the statement on oath, that is, the verification statement under Section 200 and the statement of any witness, and the Magistrate has to decide whether there is sufficient ground to proceed. It is also relevant to note Section 203 of the Code which reads as follows:

"203. Dismissal of complaint.- If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing."

It is also clear that a person could be called upon to answer a charge of false complaint/perjury only on such verification statement and not mere on the presentation of the complaint as the same is not on oath and, therefore, need to obtain the signature of the person. Apart from the above section, the legislative intent becomes clear that "writing" does not presuppose that the same has to be signed. Various sections in the Code when contrasted with Section 2(d) clarify that the legislature was clearly of

the intent that a written complaint need not be signed. For example, Sections 61, 70, 154, 164 and 281 are reproduced below:

"61. Form of summons.

Every summons issued by a court under this Code shall be in writing, in duplicate, signed by the presiding officer of such court or by such other officer as the High Court may, from time to time, by rule direct, and shall bear the seal of the court.

70. Form of warrant of arrest and duration.

(1) Every warrant of arrest issued by a court under this Code shall be in writing, signed by the presiding officer of such court and shall bear the sea] of the court.

(2) Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

154. Information in cognizable cases.

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. ….

164. Recording of confessions and statements.

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(4) Any such confession shall be recorded in the manner provided in section 281 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect-

281. Record of examination of accused.

(1) Whenever the accused is examined by a Metropolitan Magistrate, the Magistrate shall make a memorandum of the substance of the examination of the accused in the language of the court and such memorandum shall be signed by the Magistrate and shall form part of the record….."

A perusal of the above shows that the legislature has made it clear that wherever it required a written document to be signed, it should be mentioned specifically in the section itself, which is missing both from Section 2(d) as well as Section 142.

Non-obstance Clause

Interpretation of statutes

Referring to provisions of Statute generally – Has to be given restricted meaning.

The non obstante clause has to be given restricted meaning and when the section containing the said clause does not refer to any particular provisions which intends to override but refers to the provisions of the statute generally, it is not permissible to hold that it excludes the whole Act and stands all alone by itself. In other words, there requires to be a determination as to which provisions answers the description and which does not. While interpreting the non obstante clause, the Court is required to find out the extent to which the legislature intended to do so and the context in which the non obstante clause is used. We have already referred to the definition of complaint as stated in Section 2(d) of the Code which provides that the same needs to be in oral or in writing. The non obstante clause, when it refers to the Code only excludes the oral part in such definition.

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2. S.432

Sangeet and anr. V. State of Haryana. AIR 2013 SC 447

K.S.RADHAKRISHNAN AND MADAN B. LOKUR, JJ.

(I) Issue

Govt.'s power to remit sentence –Prohibition to exercise it for specified period –Cannot be imposed by Court.

An order giving a sentence in a capital offence of 20 years or 30 years imprisonment without remission, is to effect injunction the appropriate Government from exercising its power of remission for the specified period. In our opinion, this issue needs further and greater discussion, but as at present advised, we are of the opinion that this is not permissible. The appropriate Government cannot be told that it is prohibited from granting remission of a sentence. Similarly, a convict cannot be told that he cannot apply for a remission in his sentence, whatever the reason.

(II) S. 433 (A)

Issue

Govt.'s power to remit sentence

It appears to us that an exercise of power by the appropriate Government under sub-section (1) of Section 432 of the Cr.P.C. cannot be suo moto for the simple reason that this sub-section is only an enabling provision. The appropriate Government is enabled to "override" a judicially pronounced sentence, subject to the fulfillment of certain conditions. Those conditions are found either in the Jail Manual or in statutory rules. Sub-section (1) of Section 432 of the Cr.P.C. cannot be read to enable the appropriate Government to "further override" the judicial pronouncement over and above what is permitted by the Jail Manual or the statutory rules. The process of granting "additional" remission under this Section is set into motion in a case only through an application for remission by the convict or on his behalf. On such an application being made, the appropriate Government is required to approach the presiding judge of the Court before

or by which the conviction was made or confirmed to opine (with reasons) whether the application should be granted or refused. Thereafter, the appropriate Government may take a decision on the remission application and pass orders granting remission subject to some conditions, or refusing remission. Apart from anything else, this statutory procedure seems quite reasonable in as much as there is an application of mind to the issue of grant of remission. It also eliminates "discretionary" or en masse release of convicts on "festive" occasions since each release requires a case-by-case basis scrutiny.

In a sense, therefore, the application of Section 432 of the Cr.P.C. to a convict is limited. A convict serving a definite term of imprisonment is entitled to earn a period of remission or even be awarded a period of remission under a statutory rule framed by the appropriate Government or under the Jail Manual. This period is then offset against the term of punishment given to him. In such an event, if he has undergone the requisite period of incarceration, his release is automatic and Section 432 of the Cr.P.C. will not even come into play. This Section will come into play only if the convict is to be given an "additional" period of remission for his release, that is, a period in addition to what he has earned or has been awarded under the Jail Manual or the statutory rules.

Under the circumstances, it appears to us there is a misconception that a prisoner serving a life sentence has an indefeasible right to release on completion of either fourteen years or twenty years imprisonment. The prisoner has no such right. A convict undergoing life imprisonment is expected to remain in custody till the end of his life, subject to any remission granted by the appropriate Government under Section 432 of the Cr.P.C. which in turn is subject to the procedural checks in that Section and the substantive check in Section 433-A of the Cr.P.C.

In the case of a convict undergoing life imprisonment, he will be in custody for an indeterminate period. Therefore, remissions earned by or awarded to such a life convict are only notional. In his case, to reduce the period of incarceration, a specific order under Section 432 of the Cr.P.C. will have to be passed by the appropriate Government. However, the reduced period cannot be less than 14 years as per Section 433-A of the Cr.P.C.

This re-engineered calculation can be made only after the appropriate Government artificially determines the period of incarceration. The procedure apparently being followed by the appropriate Government is that life imprisonment is artificially considered to be imprisonment for a period of twenty years. It is this arbitrary reckoning that has been prohibited in Ratan Singh. A failure to implement Ratan Singh has led this Court in some cases to carve out a special category in which sentences of twenty years or more are awarded, even after accounting for remissions. If the law is applied as we understand it, meaning thereby that life imprisonment is imprisonment for the life span of the convict, with procedural and substantive checks laid down in the Cr.P.C. for his early release we would reach a legally satisfactory result on the issue of remissions. This makes an order for incarceration for a minimum period of 20 or 25 or 30 years unnecessary.

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3.S.200

Satish Mehera v. State of N.C.T. of Delhi and anr. AIR 2013 SC 506

P.SATHASIVAM AND RANJAN GOGAI ,JJ.

Issue

Framing of Charge -Effect –Substantially impairs liberty of accused.

The view expressed by this Court in Century Spinning's case (supra) and in L. Muniswamy's case (supra) to the effect that the framing of a charge against an accused substantially affects the person's liberty would require a reiteration at this stage. The apparent and close proximity between

the framing of a charge in a criminal proceeding and the paramount rights of a person arrayed as an accused under Article 21 of the Constitution can be ignored only with peril. Any examination of the validity of a criminal charge framed against an accused cannot overlook the fundamental requirement laid down in the decisions rendered in Century Spinning and Muniswamy (supra). It is from the aforesaid perspective that we must proceed in the matter bearing in mind the cardinal principles of law that have developed over the years as fundamental to any examination of the issue as to whether the charges framed are justified or not. So analysed, we find that in the present case neither in the FIR nor in the charge sheet or in any of the materials collected in the course of investigation any positive role of either of the appellants, i.e., G.K. Bhat and R.K. Arora has been disclosed in the matter of renewal and encashment of the fixed deposits. All that appears against the aforesaid two accused is that one was the Chief Manager of the Bank whereas the other accused was at the relevant time working as the Senior Manager. What role, if any, either of the accused had in renewing the two fixed deposits in the sole name of Anita Mehra or the role that any of them may have had in the payment of the amount due against FD No. 21/91 to Anita Mehra or in cancelling the FD No.9/92 renewed in the sole name of Anita Mehra and thereafter making a fresh FD in the joint Anita Mehra and Satish Mehra, is not disclosed either in the FIR filed or materials collected during the course of investigation or in the charge sheet filed before the court. There can be no manner of doubt that some particular individual connected with the Bank must have authorized the aforesaid acts. However, the identity of the said person does not appear from the materials on record. It is certainly not the prosecution case that either of the accused-appellants had authorised or even facilitated any of the aforesaid action. In such a situation to hold either of the accused-appellants to be, even prima facie, liable for any of the alleged wrongful acts would be a matter of conjecture as no such conclusion

can be reasonably and justifiably drawn from the materials available on record. A criminal trial cannot be allowed to assume the character of fishing and roving enquiry. It would not be permissible in law to permit a prosecution to linger, limp and continue on the basis of a mere hope and expectation that in the trial some material may be found to implicate the accused. Such a course of action is not contemplated in the system of criminal jurisprudence that has been evolved by the courts over the years. A criminal trial, on the contrary, is contemplated only on definite allegations, prima facie, establishing the commission of an offence by the accused which fact has to be proved by leading unimpeachable and acceptable evidence in the course of the trial against the accused. We are, therefore, of the view that the criminal proceeding in the present form and on the allegations levelled is clearly not maintainable against either of the accused – appellant G.K. Bhat and R.K. Arora.

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4. S.320

Dimpey Gujral and Ors v. Union Territory Through Administrator , U.T. Chandigarh and Ors. AIR 2013 SC 518

AFTAB ALAM AND Mrs. RANJANA PRAKASH DESAI,JJ.

Issue

Quashing of Criminal Proceedings - Trail for offence of personal nature -Offence neither heinous nor against society –Parties entering into compromise –Continuance of proceedings would in circumstances be abuse of process of Court –Irrespective that one of Offences was non-compoundable ,FIR and consequential proceedings liable to be quashed.

In light of the above observations of this court in Gian Singh, we feel that this is a case where the continuation of criminal proceedings would tantamount to abuse of process of law because the alleged offences are not heinous offences showing extreme depravity nor are they against the society. They are offences of a personal nature and burying them would bring about peace and amity between the two sides. In the circumstances of the case, FIR No.163 dated 26/10/2006 registered under Section 147, 148, 149, 323, 307, 452 and 506 of the IPC at Police Station Sector 3, Chandigarh and all consequential proceedings

arising therefrom including the final report presented under Section 173 of the Code and charges framed by the trial court are hereby quashed.

Before parting, we record our appreciation for the efforts made by learned counsel to accord a quietus to the dispute. We also appreciate the conduct of the parties who have agreed to bury the past and turn a new leaf.

The petition is disposed of in the aforestated terms.

Ordering accordingly.

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5. S. 164

Ajay Kumar Parmar v. State of Rajastan. AIR 2013 SC 633

Dr.B.S. CHAUHAN AND FAKKIR MOHAMED IBRAHIM KALIFULLA,JJ.

Issue

Recording Statement –To be only of person produced by police – Person appearing before Magistrate independently on his own volition -Statement recorded without any attempt to indentify him –Is of no credence.

We have considered the rival submissions made by the learned counsel for the parties and perused the records.

A three Judge bench of this Court in Jogendra Nahak & Ors. v. State of Orissa & Ors., AIR 1999 SC 2565, held that Sub-Section 5 of Section 164, deals with the statement of a person, other than the statement of an accused i.e. a confession. Such a statement can be recorded, only and only when, the person making such statement is produced before the Magistrate by the police. This Court held that, in case such a course of action, wherein such person is allowed to appear before the Magistrate of his own volition, is made permissible, and the doors of court are opened to them to come as they please, and if the Magistrate starts recording all their statements, then too many persons sponsored by culprits might throng before the portals of the Magistrate courts, for the purpose of creating record in advance to aid the said culprits. Such statements would be very helpful to the accused to get bail and discharge orders.

In view of the above, it is evident that this case is squarely covered by the aforesaid judgment of the three Judge bench in Jogendra Nahak & Ors. (Supra), which held that a person should be produced before a Magistrate, by the police for recording his statement under Section 164 Cr.P.C. The Chief Judicial Magistrate, Sirohi, who entertained the application and further directed the Judicial Magistrate, Sheoganj, to record the statement of the prosecutrix, was not known to the prosecutrix in the case and the latter also recorded her statement, without any attempt at identification, by any court officer/lawyer/police or anybody else.

S.190

Issue

Cognizance – Taking of , is judicial function -Magistrate however cannot appreciate evidence at this stage.

The Magistrate, in exercise of its power under Section 190Cr.P.C., can refuse to take cognizance if the material on record warrants so. The Magistrate must, in such a case, be satisfied that the complaint, case diary, statements of the witnesses recorded under Sections 161 and 164 Cr.P.C., if any, do not make out any offence. At this stage, the Magistrate performs a judicial function. However, he cannot appreciate the evidence on record and reach a conclusion as to which evidence is acceptable, or can be relied upon. Thus, at this stage appreciation of evidence is impermissible. The Magistrate is not competent to weigh the evidence and the balance of probability in the case.

S. 209, 207

Issue

Committal Court – Cannot probe into matter to satisfy itself whether prima facie case is made out – His concern is only to see whether offence triable by Sessions Court is mentioned in police report –Committal Court has no power to discharge accused.

Thus, it is evident from the aforesaid judgment that when an offence is cognizable by the Sessions court, the Magistrate cannot probe into the matter and discharge the accused. It is not permissible for him to do so, even

after considering the evidence on record, as he has no jurisdiction to probe or look into the matter at all. His concern should be to see what provisions of the Penal statute have been mentioned and in case an offence triable by the Sessions Court has been mentioned, he must commit the case to the Sessions Court and do nothing else.

Thus, we are of the considered opinion that the Magistrate had no business to discharge the appellant. In fact, Section 207-A in the old Cr.P.C., empowered the Magistrate to exercise such a power. However, in the Cr.P.C. 1973, there is no provision analogous to the said Section 207-A. He was bound under law, to commit the case to the Sessions Court, where such application for discharge would be considered. The order of discharge is therefore, a nullity, being without jurisdiction.

The scheme of the Code, particularly, the provisions of Sections 207 to 209 Cr.P.C., mandate the Magistrate to commit the case to the Court of Sessions, when the charge-sheet is filed. A conjoint reading of these provisions make it crystal clear that the committal of a case exclusively triable by the Court of Sessions, in a case instituted by then police is mandatory.

The scheme of the Code simply provides that the Magistrate can determine, whether the facts stated in the report make out an offence triable exclusively, by the Court of Sessions. Once he reaches the conclusion that the facts alleged in the report, make out an offence triable exclusively by the Court of Sessions, he must commit the case to the Sessions Court.

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6. S.309

Akil @ Javed V. State of NCT of Delhi. (2013) 54 OCR (SC) 366

SWATANTER KUMAR AND FAKKIR MOHAMED IBRAHIM KALIFULLA , JJ.

Issue

Adjournment – Long adjournment of two months for cross-examination of a witness – Need to comply with Section 309, Cr.P.C. in letter and spirit –Court oblivious of specific stipulation contained in Section 309 , Cr.P.C. , which mandate the requirement of sessions trial to be carried on a day to day basis – High Court directed to specifically follow the instructions issued by this Court in the decision reported in Rajdeo Sharma v. State of Bihar.

Prosecution case that at about 6 p.m. three intruders in age group of 20 to 22 years entered the house and that out of three persons two were armed with revolvers and one was possessing a knife –Accused snatched gold ring , locket and cash from deceased and then they demanded keys of almirah and removed sum of Rs. 15,000/- kept in almirah and Rs. 2,50,000/- kept in the locker –After robbing of complainant's cash and jewels and other materials when the appellant attempted to molest the complainant the deceased stated to have raised a protest and the appellant shot him by the revolver – Three accused left the place with robbed items and cash by locking the door of the house from outside – On arrest, recoveries were made from person of appellant – Two accused remained absconding – Trial court convicted appellant and 2nd accused for offences under Section 302 /34 and 392/34, IPC – They were acquitted of offence under Section 354, IPC – On appeal, High Court confirmed conviction of appellant while acquitting 2nd accused for offence under Section 392/34, IPC – PW. 20 was able to identify appellant as the person who attempted to molest complainant and when deceased raised a protest the appellant shot him and thereafter the deceased fell down - However, trial court in the impugned judgment had stated that such a long adjournment provided scope for manoeuvring – In course of cross-examination P.W. 20 made a

different statement as regards the identity of appellant by stating that he was tutored by a police Inspector – Both the Trial Court and the High Court ignored the inconsistency in statement of P.W. 20 as regards the identity of appellant and proceeded to rely upon what was stated by him in the chief-examination while convicting the appellant – Whether conviction of appellant as recorded by Courts below was sustainable – Held, yes.

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7. S.438

Khandakar Kamaruzzaman @Kamal v. State of West Bengal.(2013) 54 OCR (SC) 524

H.L.DATTU AND CHANDRAMAULI KR. PRASAD , JJ.

Issue

Anticipatory Bail

Application for –Rejected by High Court – Appeal on 27th July ,2012, while issuing notice , Apex Court had granted anticipatory bail to the appellant – Having gone through the records held that order dated 27th July, 2012 be made absolute and is made absolute.

This appeal is filed against the impugned judgment and order dated 25.08.2011 passed by the High Court of Calcutta in C.R.M.No.4559 of 2011, whereby the High Court has rejected the application for anticipatory bail filed by the appellant under Section 438 of the Code of Criminal Procedure.

On 27th July, 2012, while issuing notice, we had granted anticipatory bail to the appellant.

Having gone through the records and heard learned counsel for the parties to the lis, we are of the considered opinion that our aforesaid order dated 27th July, 2012 be made absolute and is made absolute. Criminal Appeal is disposed of accordingly.

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8. S.482

Sri Premananda Sahu v. State of Orissa. (2013) 54 OCR (SC) 544

M.M.DAS, J.

Issue

Co- accused persons faced trial and acquitted –No other material will be found against the petitioner who is an absconder –Allowing the prosecution against the petitioner will be a futile exercise wasting the hours of the Court – Case against the petitioner will inevitably end in acquittal –Held to prevent abuse of process of law, the criminal proceeding against the petitioner stands quashed.

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9. S.438

Prasanta Kumar Dash v. State of Orissa (2013) 54 OCR (SC) 558

S.C.PARIJA , J.

Issue

F.I.R registered against the petitioner and other Directors of Seashore Group of Companies under Section 420/120 I.P.C. read with Sections 4,5 and 6 of the prize Chits and Money Circulation Schemes (Banning) Act,1978.- Petitioner appeared before the I.O as per the direction of the Hon'ble Court and furnished written reply to the questionnaire prepared by the I.O.- Petitioner also furnished certain documents to I.O.-No further necessity of custodial interrogation –Case hinges on circumstantial evidence –Distinction between power to arrest and justification of arrest enumerated –Hon'ble Court granted anticipatory bail.

On a perusal of the case diary, it has been seen that pursuant to the direction of this Court, petitioner has appeared before the Investigation Officer and has furnished his written reply to the questionnaire prepared by the investigating Officer and also submitted photocopies of several documents pertaining to the business transaction of the company. As the allegations are with regard to collection of money from the general public, the same can be verified from the records of the company and also the records available with the Registrar of Companies .No material has been produced to justify the necessity

of custodial interrogation of the petitioner, especially when the case hinges on documentary evidence, No arrest should be made because it is lawful for the policy officer to do so. The existence of power to arrest is one thing and the justification for the exercise of it is quite another. The police officer must be able to justify the necessary for such arrest apart from his power to do so.

Considering the materials on record and keeping in the view the nature and gravity of the offences alleged against the petitioner, it is directed that in the event of arrest of the petitioner .In Cuttack CID CB.P.S Case No.39 (EWO) of 2012, corresponding to G.R Case No. 2498 of 2012, pending in the Court of Learned S.D.J.M. , Bhubaneswar, he shall be released on bail by the arresting officer on such terms and conditions as the arresting officer may deem just and proper.

It is made clear that the petitioner shall appear before the Investigating Officer as and when required and co- operate in the investigation.

The BLAPL is accordingly disposed of.

Issue urgent certified copy as per rules.

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10. S. 200,202,203

Manharibhai Muljibhai Kakadia & Anr v. Shaileshbhai Mohanbhai Patel & Ors. 2013 (I) OLR (SC) 258

R.M.LODHA,CHANDRAMAULI KR. PRASAD AND SUDHANSU JYOTI MUKHOPADHAYA,JJ.

Issue

Expression 'taking cognizance' – Taking notice of the complaint or the first information report or the information that offence has been committed on application of judicial mind – it does not necessarily mean issuance of process.

Sec. 397

Issue

Read with Sec. 401, 203 – Whether a suspect is entitled to hearing by the Revisional Court in a revision preferred by the Magistrate under Sec. 203 of the Code, upon challenge to the legality of the said order being laid by the complainant in a revision petition before the High Court or the Sessions Judge, the persons who are arraigned as accused in the complaint have a right to be heard in such revision petition.

Secs. 203,401

Issue

Whether a person accused of crime in the complaint can claim right of hearing in a revision application preferred by the complainant against the order of the dismissal of the complaint ? accused/suspects are not entitled to be heard at any stage of the proceedings until issuance of process under Sec. 204 – Section 401(2) of the code provides that no order in exercise of the power of the revision shall be made by the Sessions Judge or the High Court, as the case may be, to the prejudice of the accused or the other person unless he had an opportunity of being heard either personally or by pleader in his own defence – The accused or other person cannot be deprived of hearing on the face of express provision contained in Section 401(2) of the Code – The stage is not important whether it is pre-process stage or post process stage.

In a case where the complaint has been dismissed by the Magistrate under Section 203 of the Code either at the stage of Section 200 itself or on completion of inquiry by the Magistrate under Section 202 or on receipt of the report from the police or from any person to whom the direction was issued by the Magistrate to investigate into the allegations in the complaint, the effect of such dismissal is termination of complaint proceedings. On a plain reading of sub-section (2) of Section 401, it cannot be said that the person against who the

allegations of having committed offence have been made in the complaint and the complaint has been dismissed by the Magistrate under Section 203, has no right to be heard because no process has been issued. The dismissal of complaint by the Magistrate under Section 203 – although it is at preliminary stage – nevertheless results in termination of proceedings in a complaint against the persons who are alleged to have committed crime. Once a challenge is laid to such order at the instance of the complainant in a revision petition before the High Court or Sessions Judge, by virtue of Section 401(2) of the Code, the suspects get right of hearing before revisional court although such order was passed without their participation. The right given to "accused" or "the other person" under Section 401(2) of being heard before the revisional court to defend an order which operates in his favour should not be confused with the proceedings before a Magistrate under Sections 200, 202, 203 and 204. In the revision petition before the High Court or the Sessions Judge at the instance of complainant challenging the order of dismissal of complaint, one of the things that could happen is reversal of the order of the Magistrate and revival of the complaint.

Sec. 401(2)

Issue

Expressions "Prejudice", "other person", "in his own defence" – what it means, stated.

"Prejudice" is generally defined as meaning "to the injury, to the disadvantage of someone". It also means injury or loss.

The expression "other person" in the context of Section 401(2) means a person other than accused. It includes suspects or the persons alleged in the complaint to have been involved in an offence although they may not be termed as accused at a stage before issuance of process.

The expression "in his own defence" comprehends, inter alia, for the purposes of Section 401(2), in defence of the order which is under challenges in revision before the Sessions Judge or the High Court.

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11. Section 482

Prashant Bharti V. State of NCT of Delhi. 2013(1) Crimes 195 (SC)

D.K.JAIN AND JAGDISH SINGH KHEHAR ,JJ.

Issue

Quashing - statements allegations of prosecutrix established to be false – She not refuting any material relied upon by appellant – in fact she herself praying for quashing of the FIR lodged by her – Prosecution only on basis of her statement u/s 164 of the Code – High Court ought to have quashed the proceeding.

Based on the holistic consideration of the facts and circumstances summarized in the foregoing two paragraphs; we are satisfied, that all the steps delineated by this Court in Rajiv Thapar's case (supra) stand – satisfied. All the steps can only be answered in the affirmative. We therefore have no hesitation whatsoever in concluding, that judicial conscience of the High Court ought to have persuaded it, on the basis of the material available before it, while passing the impugned order, to quash the criminal proceedings initiated against the accused-appellant, in exercise of the inherent powers vested with it under Sections 328, 354 and 376 of the Indian Penal Code against the appellant-accused; and the consequential charge sheet dated 28.6.2007, as also the farming of charges by the Additional Sessions Judge, New Delhi on 1.12.2008, deserves to be quashed. The same are accordingly quashed. Disposed of in the aforesaid terms.

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12. Section482

Ashish Dixit & Ors.V. State of U.P. & Anr. 2013(1) Crimes 216 (SC)

(H.L. Dutta and Chandramauli Kr. Prasad, JJ.)

Issue

Wife arraying not only her husband and parents-in-law in her petition u/s 12 of the Protection of Women for Domestic Violence Act, 2005 but all and sundry including the tenants – Not permissible – Impleadment of respondents 4 to 12 quashed.

In view of the above, while allowing this appeal in part, we quash the proceedings as against appellant nos. 4 to 12 in Case No.204 of 2007. We direct the learned Chief Judicial Magistrate, Agra to proceed with the aforesaid case; only against the husband i.e. Shri Ashish Dixit, S/o. Padmakar Dutt Sharma, S/o. late Pt. Diwakar Dutt Sharma and Smt. Girija Dixit, W/o. Shri Padmakar Dutt Sharma, her mother in law.

We are of the opinion that the direction issued by the High Court, inter-alia, directing the appellant herein to appear before the Trial Court and seek bail is wholly unnecessary.

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13. SECTION:-202

Dhruba Charan Behera v. State of Orissa & another. 2013(I) OLR -234

C. R. Dash, J.

Issue

The scope of enquiry is to find out the truth by application of judicial mind – During the course of the enquiry the Court has to satisfy himself simply on the evidence adduced by the prosecution whether prima face case has been made out so as to put the proposed accused on a regular trial and that no detailed enquiry is called for during the course of such enquiry.

The scope of the enquiry under Section 202, Cr. P. C. is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should be issued or not under Section 204 of the Code or whether the complaint should be dismissed by resorting to Section 203 of the Code on the finding that there is no sufficient

ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any, But the enquiry at the stage does not partake the character of a full dress trial which can only take place after process is issued under Section 204 of the Code calling upon the proposed accused to answer the accusation made against him for absoureding the guilt or otherwise of the said accused person. Further, the question whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of the enquiry contemplated under Section 202 of the Code.

Criminal Procedure Code, 1973- Sec. 203- incumbent upon the Magistrate to give reasons for forming an opinion that the complaint petition is liable to be dismissed- Magistrate must apply his judicial mind to materials on which he has to form a judgment and reflect in the order.

While arriving at his judgment, the Magistrate is not fettered in any way except by judicial consideration. He is not bound to accept what the inquiring officer says, nor is he precluded from accepting a plea; provided always that there are satisfactory and reliable materials on which he can base his judgment as to whether there is sufficient ground for proceeding on the complaint or not. If the Magistrate has not misdirected himself as to the scope of inquiry under Section 202, Cr. P.C. and has applied his mind judicially to the materials on record, it would be erroneous in law to hold that he should not consider or discuss the materials available and the statements recorded. A Magistrate is empowered to hold an inquiry into a complaint as to commission of certain offence in order to ascertain whether there was sufficient foundation for it to issue process against the person or persons complained against and such order under section 203, Cr.P.C. should be a speaking one. In other words, when a magistrate intends to dismiss a complaint petition, he has to give reasons.

Section 203, Cr.P.C. consist of two parts, the first part lay down the materials which the Magistrate must consider, and the second part state that if after considering those materials there is no sufficient ground for proceeding, the Magistrate may dismiss the complaint. While exercising such power under Section 203 of the Code, it is incumbent upon the Magistrate to reflect in his order the basis for arriving at the conclusion that there are no sufficient grounds to proceed with the complaint case.

The scope of enquiry under Section 202, Cr. P.C. is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should be issued or not under Section 204 of the Code or whether the complaint should be dismissed by resorting to Section 203 of the Code on the finding that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. But the enquiry at the stage does not partake the character of a full dress trial which can only take place after process is issued under Section 204 of the Code calling upon the proposed accused to answer the accusation made against him for absoureding the guilt or otherwise of the said accused person. Further the question whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of the enquiry contemplated under Section 202 of the Code. To say in other words, during the course of the enquiry under Section 202 of the code, the Court has to satisfy himself simply on the evidence adduced by the prosecution whether prima facie case has been made out so as to put the proposed accused on a regular trial and that no detailed enquiry is called for during the course of such enquiry.

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