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

I N D E X

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Criminal Procedure Code

1. ***Sec. 4***

OMA alias Omprakash and Anr. V. State of Tamil Nadu. AIR 2013 SC 825

K.S. RADHAKRISHNAN AND DIPAK MISHRA, JJ.

Issue

Opinion expressed by Judges on private forum – Not to influence trial.

K.S. RADHAKRISHNAN, J.

Criminal Court while deciding criminal cases shall not be guided of influenced by the views or opinions by Judges or a private platform. The views of opinions expressed by the Judges, jurists, academicians, law teachers may be food for thought. Even the discussions or deliberations made on the State judicial Academies or national Judicial Academy only update or open new vistas of knowledge of judicial officers. Criminal Courts have to decide the cases before them examining the relevant facts and evidence placed before them, applying binding precedents. Judges or academicians opinions, predilection,

fondness, inclination, proclivity on any subject however eminent they are, shall not influence a decision making process, especially when Judges are called upon to decide a criminal case which rests only on the evidence adduced by the prosecution as well as by the defence and guided by settled judicial precedents.(Para 21)

DIPAK MISHRA, J.

A judge trying a criminal case has a sacred duty to appreciate the evidence in a seemly manner and is not to be governed by any kind of individual philosophy, abstract concepts, conjectures and surmises and should never be influenced by some observations or speeches made in certain quarters of the society but not in binding judicial precedents. He should entirely ostracise prejudice and bias. The bias need not be personal but may be an opinionated bias. It is his obligation to understand and appreciate the case of the prosecution and the plea of the defence in proper perspective, address to the points involved for determination and consider the material and evidence brought on record to substantiate the allegations and record to substantiate the allegations and record his reasons with sobriety sans emotion.

It is his obligation to understand and appreciate the case of the prosecution and the plea of the defence in proper perspective, address to the points involved for determination and consider the material and evidence brought on record to substantiate the allegations and record his reasons with sobriety sans emotion. He must constantly keep in mind that every citizen of this country is entitled to a fair trial and further if a conviction is recorded it has to be based on the guided parameters of law. And, more importantly, when sentence is imposed, it has to be based on sound legal principles, regard being had to the command of the statue, nature of the offence, collective cry and anguish of the victims and, above all, the "collective conscience" and doctrine of proportionality. Neither his vanity nor his pride of learning in other fields should influence his decision or imposition of sentence. He must practise the conscience of intellectual honesty and deal with the matter with all the experience and humility at his command. He should remind himself that some learning does not educate a man and definitely not a Judge. The learning has to be applied with conviction which is based on proper rationale and without forgetting that human nature has imperfect expression when founded bereft of legal principle. He should not usher in his individual satisfaction but adjudge on objective parameters failing which the whole exercise is likely to be named monstrous legalism". In this context , I may profitably reproduce the profound saying of Sir P. Sidney :-

"in forming a judgement, lay your hearts void of fore taken opinions; else, whatsoever is done or said will be measured by a wrong rule; like them who have the jaundice, to whom everything appeareth yellow."

Sec. 354

Issue

Penology – Sentencing – Judges should not get swayed by personal notions or by ideas of eminent jurist – Binding judgements should be the Bible – Established principles should be guiding factor – Death sentence – Award of – of – Reliance placed on criminal jurisprudence in other jurisdictions, opinion expressed by Judges in his lecture – And fact that accused came from far of State, for imposing death sentence – Most unwarranted.

When sentence is imposed, it has to be based on sound legal principles, regard being had to the command of the statue, nature of the offence, collective cry and anguish of the victims and, above all, the "collective conscience" and doctrine of proportionality. Neither his vanity of Judge nor his pride of learning in other fields should influence his decision or imposition of sentence. He must practice the conscience of intellectual honesty and deal with the matter with all the experience and humility at his command. He should remained himself that some learning does not educate a man and definitely not a Judge. The learning has to be applied with conviction which is based on proper rational and without forgetting that

human nature has imperfect expression when founded bereft of legal principle. Judge, while imposition sentence, should not be swayed away with any kind of sensational aspect and individual predilections. If it is done, the same would tantamount to entering into an area of emotional labyrinth or arena of mercurial syllogism. Speeches or deliberations in any academic sphere are not to be taken recourse to unless they are in consonance with binding precedents. A speech sometimes may reflect a personal expression, a desire and, where a view may not be appositely governed by words, is likely to confuse the hearers. It can be stated with certitude that in a criminal trial, while recording the sentence, Judge should have been guided and governed by established principles and not by personal notions or even ideas of eminent personalities Binding judgements should be the Bible of a Judge and there should not be any deviation.

Death sentence awarded to appellant convicted of dacoity and murder by placing reliance on criminal jurisprudence of other countries, opinion expressed by a Judge in his lecture, by taking view that death sentence is only weapon in hands of judiciary to eliminate crime and by taking parochial view that appellant has come from far away State, is based on strange reasoning and is most unwarranted.

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2. *Sec. 154*

Surajit Sarkar v. State of West Bengal. AIR 2013 SC 807

SWATANTER KUMAR AND MADAN B. LOKUR, JJ.

Issue

F.I.R.- Cryptic telephonic information – Is not F.I.R.

A cryptic telephonic information cannot be treated as an FIR . though oral information given to an officer in-charge of a police station can be treated as an FIR, yet some procedural formalities are required to be completed. They include reducing the information in writing and reading it over to the informant and obtaining his or her signature on the transcribed information. In the case of a telephonic conversation received from an unknown person, the question of reading over that information to the anonymous informant does not arise nor does the appending of a signature to the information, as recorded, arise.

A bare reading of this section makes it clear that even though oral information given to an officer-in-charge of a police station can be treated as an FIR, yet some procedural formalities are required to be completed. They include reducing the information in writing and reading it over to the informant and obtaining his or her signature on the transcribed information.

In the case of a telephonic conversation received from an unknown person, the question of reading over that information to the anonymous informant does not arise nor does the appending of a signature to the information, as recorded, arise.

However, we are not going into any technicalities on the subject, keeping in mind technological advances made in communication systems. All we need say is that it is now well settled by a series of decisions rendered by this Court that a cryptic telephonic information cannot be treated as an FIR. In this case, the telephonic information is rather cryptic and was recorded in the General Diary as follows.

"Today in the marginally noted time I received an information over Telephone from an unknown person Gobindapur, P. S. Santipur, Nadia that today.

Accordingly I noted the fact in G.D., and informed the matter to O.C. Santipur P.S.(N).

Sd/-

K.P. Majumdar, S.I."

Sec. 162

Issue

Examination of witnesses

Delay- By itself not fatal to prosecution – But taken together with other facts which demand explanation – Would have impact on prosecution case – Eye-witness- Conduct unnatural – Examined after one and half month – Other eye-witness at place of occurrence becomes doubtful.

Finally, reference was made by learned counsel for the State to Shyamal Ghosh v. State of W.B., (2012) 7 SCC 646: (AIR 2012 SC 3539 : 2012 AIR SCW 4162) to contend that the delayed examination of a witness will not vitiate the prosecution case. We agree that dealy as per se may not be a clinching factor but when there is a whole range of facts that need to be explained but cannot, then the cumulative effect of all the facts could have an impact on the case of the prosecution.

If the evidence on record is looked at in perspective, namely, that PW – 7 Sanatan Sarkar an eye-witness to the incident did not bother to inform anybody in the family of Gour Chandra Sarkar about the assault on his neighbour; that this eye-witness was examined by the investigating officer more than a month and a half after the occurrence; that the presence of this witness was not mentioned by PW-8 Achintya Sarkar also an eye-witness to the incident, leads us to have some doubt about the presence of PW – 7 Sanatan Sarkar at the place of occurrence.

It is clear from the record that the investigation has left unanswered several questions regarding PW-7 Sanatan Sarkar . Under the circumstances, it is difficult to accept that PW – 7 Sanatan Sarkar was present at the place and at the time when Gour Chandra Sarkar was attacked..

Sec. 156

Issue

Impact on prosecution case – Depends on nature defect – in case investigation leaves glaring loopholes – it will lead to acquittal.

It cannot be stated as a broad proposition of law that in no case can defective or shoddy investigations lead to an acquittal. It would eventually depend on the defects pointed out. If the investigation results in the real culprit of an offence not being identified, then acquittal of the accused must follow. It would not be permissible to ignore the defects in any investigation and hold an innocent person guilty of an offence which he has not committed. The investigation must be precise and focused and must lead to the inevitable conclusion that the accused has committed the crime. If the investigating officer leaves glaring loop-holes in the investigation, the defence would be fully entitled to exploit the lacunae. In such a situation, it would not be correct for the prosecution to argue that the Court should gloss over the gaps and find the accused person guilty.

Sec. 154

Issue

FIR- Delay in forwarding it to Magistrate – No foundation laid for such plea – Plea neither raised at trial nor before High Courts – Cannot be raised in appeal before Supreme Court. Constitution of India Act. 134

We may mention that learned counsel for Surajit Sarkar submitted that there was a delay in forwarding the FIR to the concerned Magistrate. Since no foundation has been laid for this contention nor was this contention urged either before the Trial Court or before the High Court we see no reason to entertain it at this stage.

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3. Sec. 154 & 190

Anju Chaudhary v. State of U.P. & Anr. (2013) 54 OCR (SC) – 649

SWATANTER KUMAR AND MADAN B. LOKUR, JJ.

Issue

FIR – Filing of more than one FIR in relation to the same incident or different incidents arising from the same occurrence – Permissibility-

Sec.156(3)

Distinction between two FIRs relating to the same incident and two FIRs relating to different incidents or occurrences of the same incident etc.

Sec. 190

Power of Magistrate to take cognizance

(Entitlement of an accused to hearing pre-registration of an FIR.)

Facts : Respondent 2, claiming himself to be a social activist field an application under Session 156(3), Cr. P.C. alleging that one Mahant 'AY', Member of Parliament and leader of an unregistered organization had been spreading hatred amongst Hindus and Muslims for a number of years, demolishing properties of Muslims and carrying out other acts of Harassment – Complaint application was filed by respondent 2 nearly 10 months after the date of occurrence, a condolence meeting attended by a large number of persons – It was rejected by the Magistrate as a criminal case had already been registered regarding that incident and that there was no need to conduct fresh investigation merely by lodging fresh FIR – Revision petition – High Court set aside order of Magistrate and directed the Magistrate to pass a fresh order on application of respondent 2- Magistrate allowed application of respondent 2-First FIR, lodged by one 'H', related to burning of a shop prior to holding of meeting – Whether it is permissible to register two different FIRs in law about an occurrence- Held, No- Whether, in the instant case, two FIRs lodged were relatable to different occurrences- Held, Yes- Whether High Court was justified in setting aside order of Magistrate rejecting application field under Section 156(3), Cr.P.C- Held, Yes- Whether an accused is entitled to hearing pre-registration of an FIR-Held, No.

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4. Sec. 164

R. Shaji V. State of Kerala,2013 (1) Crimes 217(SC)

Dr.B.S. Chauhan and V.Gopal Gowda , JJ.

Issue

Magistrate should ask the witness explanatory questions and obtain all possible information in relation to the case – Statement can be used for corroboration or contradiction.

The statement of witnesses recorded under Section 164 is concerned, the object is two fold; in the first place, to deter the witness from changing his stand by denying the contents of his previously recorded statement, and secondly, to tide over immunity from prosecution by the witness under Section 164. A proposition to the effect that if a statement of a witness is recorded under Section 164, his evidence in Court should be discarded is not at all warranted. (Vide: Jogendra Nahak & Ors. v. State of Orissa & Ors., AIR 1999 SC 2565; and Assistant Collector of Central Excise, Rajamundry v. Duncan Agro Industries Ltd. & Ors., AIR 2000 SC 2901).

Section 157 of the Evidence Act makes it clear that a statement recorded under Section 164 Cr.P.C., can be relied upon for the purpose of corroborating statements made by witnesses in the Committal Court or even to contradict the same. As the defence had no opportunity to cross-examine the witnesses whose statements are recorded under Section 164 Cr.P.C., such statements cannot be treated as substantive evidence. During the investigation, the Police Officer may sometimes feel that it is expedient to record the statement of a witness under Section 164 Cr.P.C. This usually happens when the witnesses to a crime are clearly connected to the accused, or where the accused is very influential, owing to which the witnesses may be influenced. (Vide: Mamand v. Emperor, AIR 1946 PC 45; Bhuboni Sahu v. King, AIR 1949 PC 257; Ram Charan & Ors. v. The State of U.P., AIR 1968 SC 1270; and Dhanabal & Anr. v. State of Tamil Nadu, AIR 1980 SC 628).

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5. *Sec. 202*

National Bank of Oman v. Barakara Abdul Aziz & Anr. (2013) 54 OCR (SC) – 861

K.S. RADHAKRISHNAN AND DIPAK MISHAR, JJ.

Issue

Duty of Magistrate receiving a complaint when accused residing beyond his jurisdiction – Obligation upon the Magistrate to enquiry into the case of direct investigation before summoning that accused.

Facts : Complainant-Bank lodged a private complaint against respondent alleging that he had cheated the Bank- Respondent, who was alleged to have duped the Bank, had escaped to India – Complainant-Bank neither having any branch or activity in India nor carrying any business in India, decided to appoint power to attorney holder for the purpose of filing complaint – Power of attorney being a resident of Ahmednagar, the Bank filed the complaint at Ahmednager – Respondent was a resident of District Dakshin Kannada – Chief Judicial Magistrate, Ahmednager passed an order issuing process against respondent for offences under Section 418 and 420, IPC – On challenge, High Court set aside the order issuing the process as the CJM did not follow the procedure laid down under Section 202, Cr. P.C. before issuance of process – Whether the Magistrate was required to enquire before proceeding against respondent- Held, Yes- Matter remitted to the Magistrate for passing fresh orders.

Petition disposed of.

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6. Sec. 354(2)

Sandesh Alias Sainath Kailash Abhang v. State Of Maharashtra.(2013) 54 OCR (SC)612

SWATANTER KUMAR AND MADAN LOKUR, JJ.

Issue

Death sentence commuted to that of rigorous imprisonment – Possibility of accused being reformed, he being young and having no criminal involvement in similar crimes.

Facts : Accused aged 23 years came to flat of PW. 2 and deceased at about 2.00 to 2.15 p.m. – Door as opened by deceased, mother-in-law of PW.1 and accused said that he was a mechanic and was sent by husband of PW. 2 to repair the car on which Pw. 2 told him that their car was not out of order and asked the young boy to go back- When PW.2 tried to contact her husband on mobile phone, the said young boy snatched away the mobile from her, he closed the door of the flat from inside and then started assaulting both, PW.2 and her mother-in-law, deceased with a sickle like weapon- Accused inflicted blows on hands of deceased by the weapon after which she fell down but accused assaulted the deceased a number of times while she was on the ground and the accused demanded the ornaments on person of the deceased- He also snatched the Mangalsutra from PW.2 and her gold chain but did not stop the assault – PW.2 was in her 5th month of pregnancy and, therefore, tried her best to avoid any injury on her stomach and, in fact, suffered all the injuries on her back- Accused further demanded jewellery and cash that was lying in the house- PW.2 threw the purse containing gold ornaments in front of him- He collected them but when the deceased made some movement on the floor, he gave another fatal blow on her neck which ultimately resulted in her death- When the demanded more cash and jewellery, PW.2 even offered him to search the entire house and take away what he wanted and requested him to spare them but upon this, accused became more aggressive and asked PW.2 to remove her cloths and committed rape on her under the threat of further assault- Even thereafter, he kept inflicting blows on PW. 2 – He then went to the bathroom, cleaned himself and fled from the flat and bolted the door from outside –Pw. 2 crawled to the bedroom and there she screamed for her mami (PW.1), the complainant who was living in the same building in another nearby flat – Hearing the sound, complainant rushed to the flat of PW. 2, opened the door from outside and PW. 2 was seen naked and there was blood all over her body- PW. 2 was shifted to a hospital where she was operated upon immediately – Trial Court held appellant guilty for offence under Section 302, 307, 394, 397 and 376(e), IPC while relying on the extra-judicial confession made by accused top his friend (PW. 13) at great length- Trial Court imposed death sentence- On appeal, High Court confirmed the conviction and death

sentence imposed by the Trial Court – Whether the presented case is one that of rarest of rare cases- Held, No – Death sentence commuted to that of rigorous imprisonment for life.

	Referred :	**Para**
i.	*(1980) 2 SSC 684 : Bachan v. State*	*9*
ii.	*(2001) 2SSC 28: Mohd. Chaman v. State*	*13*
iii.	*(2010) 1SSC 58 : Sebastian v. State*	*13*
iv.	*(2011) 2SSC 764 : Rmeshbhai v. State*	*13*
v.	*(2011) 13 SSC 706: Rajesh v. State through*	*13*
vi.	*(2012) 4SSC 107 : Amit v. State*	*13*
vii.	*(2012) 4 SSC 37 : Rajendera v. State*	*14*
viii.	*(1973) 1 SSC 20: Jagmohan v. State*	*15*
ix.	*2012(11) SCALE 140 : Sangeet v. State*	*15*

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7. Sec. 378

Mookkiah & Anr.v.state, Rep. by the Inspector of Police, Tamil Nadu (2013) 54 OCR (SC)- 800

P. SATHASIVAM AND RANJAN GOGOI, JJ.

Issue

Acquittal by Trial Court reversed by the High Court on appeal – Sustainability – Motive for murdering the deceased FIR lodged by father-in-law of deceased- Hostile witness.

Facts: Accused, A-1 and A-2, and deceased were all the residents of the same hamlet and the residents of that hamlet had a nearby place as open air latrine which was situated near a water body- Prosecution case that 25 days prior to the incident, deceased solicited wife of A-2 to have illicit intercourse with him and A-2, after coming to know of such fact, harboured enmity in his heart against the deceased – On 12.5.1992, at about 5.30 a.m., when the deceased went to the said open air latrine to attend to the calls of the nature, A-1 and A-2 allegedly dealt blows on him using aruval (billhooks), thereby killing him on the spot itself and fled away from the scene- Prosecution case that on the very same day, at about 5.30 hours, PW. 1 (father-in-law of deceased), Pw.4 and PW.5 were returning after pouring water into their field, they heard cries of deceased and as they immediately rushed to the spot, they saw two accused attacking the deceased – Trial Court acquitted both the accused, after giving them benefit of doubt – On appeal, High Court revised judgement of acquittal and found A-1 and A-2 guilty of offence under Section 302/34, IPC- Where the High Court exceeded its jurisdiction in upsetting order of acquittal into conviction- Held, No- Whether Trial Court was justified in rejected evidence of PW. 1 because of his relationship – Held, No.

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8. Sec. 401(2), 203& 204

Manharibhai Muljibhai Kakadia & Anr. v. shaileshbhai Mohanbhai Patel & Ors. CLT (2013) Supp.Crl.327 (SC)

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

Issue

Whether 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 – It is in this view of the matter that 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 whom 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 complaint 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. It is in this view of the matter that 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.

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9. Sec. 439

Kanwar Singh Meena v. State of Rajasthan & Anr. CLT (2013) Supp.Crl.438 (SC)

AFTAB ALAM AND RANJANA PRAKASH DESAI, JJ.

Issue

Cancellation of bail- Murder case- if the Court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail – Held, bail granted to accused was liable to be cancelled.

Taking an overall view of the matter, we are of the opinion that in the interest of justice, the impugned order granting bail to the accused deserves to be quashed and a direction needs to be given to the police to take the accused in custody. We enquired with Learned Counsel for Respondent 1- State of Rajasthan as to what is the stage of the case. We were shocked to know that till date, even the charges are not framed. We feel that the matter brooks no further delay. A direction needs to be given to the trial Court to frame the charges and conclude the trial at the earliest . in the circumstances, the impugned Order Dated 19/8/2012 granting bail to accused – Khushi Ram Meena is quashed. The police are directed to accused – Khushi Ram Meena is custody. The Trial Court is directed to frame charges within a period of one month from the date of receipt of this order. The Trial Court is further directed to proceed with the case and conclude it at the earliest independently and in accordance with law without being influenced by any observations made by us which may touch merits of the case as they are merely prima facie observations.

The appeal is disposed of in the aforestated terms.

Appeal allowed

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10. Sec. 464

Darbar Singh v. State of Punjab. AIR 2013 SC 840

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

Issue

Defect in framing of charge – Whether caused failure of justice – Determination – Factors to be kept in mind that "failure of Justice" is extremely pliable expression capable to fit in any situation.

In determining whether any error, omission or irregularity in framing the relevant charges, had led to a failure of justice, the Court must have regard to whether an objection could have been raised at an earlier stage, during the proceedings or not. While judging the question of prejudice or guilty, the Court must bear in mind that every accused has a right to a fair trial, where he is aware of what he is being tried for and where the facts sought to be established against him, are explained to him fairly and clearly, and further, where he is given a full and fair chance to defend himself against the said charge.

The defect in framing of the charges must be so serious that it cannot be covered under Sections 464/465, Cr.P.C., which provide that, an order of sentence or conviction shall not be deemed to be invalid only on the ground that no charges was framed, or that there was some irregularity or omission or misjoinder of charges, unless of charges, unless the court comes to the conclusion that of there was also, as a consequence, a failure of justice. In determining whether any error, omission or irregularity in framing the relevant charges, has led to a failure of justice, the court must have regard to whether an objection could have been raised at an earlier stage, during the proceedings or not. While judging the question of prejudice or guilty, the court must bear in mind that every accused has a right to a fair trial, where he is aware of what he is being tried for and where the facts sought to be established against him, are explained to him fairly and clearly, and further, where he is given a full and fair chance to defend himself against the said charges.

The 'failure of justice' is an extremely pliable or fit into any situation in any case. The court must endeavour to find the truth. There would be 'failure of justice' ; not only by unjust conviction, but also by acquittal of the guilty, as a result of unjust failure to produce requisite evidence. Of course the rights of the accused have to be kept in mind and also safeguarded, but they should not be over emphasised to the extent of forgetting that the victims also have rights. It has to be shown that the accused has suffered some disability or detriment in respect of the protections available to him under Indian Criminal Jurisprudence. 'Prejudice', is incapable of being interpreted in its generic sense and applied to criminal jurisprudence. The plea of prejudice has to be in relation to investigation or trial, and not with respect to matters falling outside their scope. Once the accused is able to show that there has been serious prejudice caused to him, with respect to either of these aspects, and that the same has defeated the rights available to him under jurisprudence, then the accused can seek benefit under the orders of the Court. (Vide: Rafiq Ahmed alias Rafi v. State of U.P., AIR 2011 SC 3114 : (2011 AIR SCW 4732); Rattiram & Ors. V. State of M.P. through Inspector of Police, AIR 2012 SC 1485 : (2012 AIR SCW 1772); and Criminal Appeal No.46 of 2005 (Bhimanna v. State of Karnataka) decided on 4th September, 2012 : (reported in AIR 2012 SC 3026)).

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11. Sec. 482

State of Rajasthan v. Dr. Rajkumar Agarwal and Anr. AIR 2013 SC 847

AFTAB ALAM AND Mrs. RANJANA PRAKASH DESAI, JJ.

Issue

Quashing of FIR Complaint of demand of bribe by accused Govt. doctor for performing operation – Fact that complainant has admitted patient to hospital and has dealt with accused doctor supported by statement of patient and her husband – Tape recorded conversation between complainant and accused corroborating FIR – Accused refusing to give voice sample – Trap laid by police successful – Complainant not shown to have grudge against accused – FIR cannot be said to

be disclosing no offence – Affidavit filed by witnesses exculpating accused – Cannot be relied upon to quash FIR.

We find no substance in Mr. Shishodia's submissions. It is true that the complainant is not related to Smt. Sita Devi but nothing has been brought on record to even prima facie establish that the complainant holds any grudge against respondent 1 because respondent 1 had knowledge about the alleged irregularities in respect of his Chemist shop. Since Mr Shishodia has referred to statements of Smt. Sita Devi and Navrang Lal recorded under Section 161 of the Code, we have perused them. In these statements, Smt. Sita Devi and Navrang Lal have stated that the complainant was treating Smt. Sita Devi as his aunt and he had admitted her to the hospital. Navrang Lal has stated that because of his work he had to leave Suratgarh and therefore, the complainant admitted Smt. Sita Devi in the hospital. So far as the alleged demand for money made by respondent 1 is concerned, they have stated that respondent 1 did not demand any money from them and they were not aware whether respondent 1 demanded any money from the complainant. Thus, these statements support the complainant's case that he was treating Smt. Sita Devi as his aunt; that he had admitted her to the hospital and that he had dealt with respondent 1. Respondent 1 is relying on three affidavits. Affidavits have been filed by Smt. Sita Devi, Navrang Lal and another patient by name Devcharan Bhagat. Surprisingly, in these affidavits, Smt. Sita Devi and Navrang Lal have given a totally contrary version. They have gone on to say that the complainant has lodged a false complaint against respondent 1. In his affidavit Devharan Bhagat, another patient of respondent 1, has given a certificate to respondent 1 that he is an expert doctor and he had never taken any money from him for treatment. At this stage, we do not want to give any final opinion on these affidavits but we find it difficult to quash the complaint on the basis of these affidavits. As we have already noted, Smt. Sita Devi and her husband have in their statements recorded under Section 161 of the Code partly supported the complainant. Apart from these statements there is another prima facie clinching circumstance against the appellant. The police claim that they have taped the conversation between respondent 1 and the complainant. We have read the transcript of this tape recorded conversation. It is not possible for us to agree with the High Court that the transcription does not corroborate the FIR. Prima facie, we feel that if it is read against the background of the other facts, it is apparent that it relates to the operation of Smt. Sita Devi and the demand pertains to the said operation. Besides, according to the prosecution, the trap was successful. Money smeared with phenolphthalein powder was found with respondent 1. The notes recovered from the respondent 1 tallied with the notes given by the complainant to the police for the purpose of trap and respondent 1's hand wash turned pink. It is also pertinent to note that when the complaint was lodged, Smt. Sita Devi was still in hospital, probably because after the money was handed over, she was to be discharged, and in fact, her discharge card was found on the table of respondent 1. It is also the case of the appellant that respondent 1 refused to give his voice sample for the purpose of investigation. How far the evidence collected by the investigating agency is credible can be decided only when the evidence is tested by cross examination during the trial. But, in our opinion, in view of the contents of the FIR and nature of evidence collected by the investigating agency, this is certainly not a case where the FIR can be quashed. If we examine the instant FIR in light of the principles laid down by this Court in Bhajan Lal it is not possible to concur with the High Court that the allegations made in the FIR and the evidence collected in support of the same do not disclose the commission of any offence.

There is yet another and a very sound reason why we are unable to quash the instant FIR. It is risky to encourage the practice of filing affidavits by the witnesses at the stage of investigation or during the court proceedings in serious offences such as offences under the PC Act. If such practice is sanctioned by this Court, it would be easy for any influential accused to procure affidavits of witnesses during investigation or during court proceedings and get the FIR and the proceedings quashed. Such a practice would lead to frustrating prosecution of serious cases. We are therefore, wary of relying on such affidavits. So far as the judgment cited by Mr. Shishodia in V.P. Shrivastava is concerned, it is purely on facts and can have no application to this case. Shiji @ Pappu also does not help respondent 1. That case involved a civil dispute. Parties had settled their civil dispute and therefore, the complainant was not ready to proceed

with the proceedings. It is against this background that in Shiji @ Pappu, this Court held that exercise of power under Section 482 of the Code was justifiable. However, this court added that the plenitude of the power under Section 482 of the Code by itself makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. We feel that in the instant case, the High Court failed to appreciate that the wholesome power vested in it under Section 482 of the Code has to be exercised with circumspection and very sparingly. It is not possible for us, on the facts of this case, to come to a conclusion that no offence is made out at all against respondent 1 and continuance of proceedings would be abuse of the process of court.

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12. Sec. 482

Paramjeet Batra v. State of Uttarkhand & Ors. (2013) 54 OCR(SC) – 690

AFTAB ALAM AND RANJANA PRAKASH DESAI, JJ.

Issue

Quashing of prosecution- Dispute of civil nature given a cloak of criminal offence – Civil suit pending – High Court should not hesitate to quash criminal proceedings to prevent abuse of process of Court.

Respondent 2 complainant alleged that he had let out two shops and after the tenant vacated the shops he wanted to run chicken corner in said shops, therefore, the appointed appellant as Manager and invested Rs. 10,000 for purchasing raw materials- Allegations that appellant conspired with others to grab the shop and he filed civil suit claiming tenancy- Appellant allegedly prepared false documents and field them in the Court –Respondent 2's further case was that the accused had grabbed two year's income and materials worth Rs. 50,000/ - Magistrate took cognizance against appellant ,respondents 3 and 4 and one 'R' –A civil suit had been filed by appellant making similar grievance and it is pending –Statement made on behalf of appellant before the High Court that the appellant had vacated the shop in question and handed over possession to respondent 2 - Respondent 2 did not appear before the High Court to refute case of appellant –Whether the pending criminal proceedings need to be quashed –Held, Yes.

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13. Sec. 482

Vinay Kanodia v. J.P.Singh & Ors.,2013 (1) Crimes 300(SC)

H.L. Dattu, Ranjan Gogoi, JJ.

Issue

Magistrate taking Cognizance after considering medical report about torture of the complainant - High Court quashing entire proceeding – Not proper.

Application for impleadment is allowed.

1*. Leave granted.*

2. *These appeals are directed against the judgment and order passed by the High Court of Delhi in Criminal Miscellaneous Case No.4308 of 2009 & Criminal Miscellaneous Case No.4232 of 2009, dated 01.03.2011. By the impugned judgment and order, the High Court has quashed the entire prosecution proceedings for the offence under Section 323/348/365/368/506 read with 34 and 120-B of the Indian Penal Code, 1860 (" the IPC" for short).*

3. *The facts in brief as stated in the complaint are: the proceedings under the Excise Act for evasion of excise duty were instituted by the officers of the Directorate General of Central Excise Intelligence ("DGCEI"*

for short) wherein search was conducted and summons were served in the name of the appellant i.e. Director of M/s. Vinay Wires. After the service of summons were unattended for quite some time, the appellant was forcibly held by the officers of DGCEI from Balaji Delux Hotel, Paharganj, where the appellant along with the other directors had lodged, and wrongly confined them from 12.00 midnight of 10th November, 2009 till 1.30pm of 11th November, 2009 and thereafter the arrest of the appellant was brought on record. Subsequent to the arrest, the appellant filed a complaint through his father- Hanuman Prasad Kanodia, before the Ld. Magistrate. The appellant before the Ld. Magistrate had brought to the notice that the respondents herein, who are the officers of the Central Excise Department, had illegally detained and further brutally assaulted him. This allegation of the Complainant was denied by the respondent- officers. However, the learned Magistrate thought it fit to refer the complainant to be examined by a competent doctor on the same date.

4. *The doctor, after examining the Complainant and after going through the number of injuries on the body of the Complainant, has observed that the Complainant has suffered multiple injuries on his body. Therefore, the learned Magistrate after examining the injuries reflected on the Medico legal Case Report ("MLC Report" for short) was of the opinion that the appellant was tortured and beaten mercilessly while in custody, and therefore has taken cognizance under Sections 323, 348, 365, 368, 506 read with 34 and 120-B of the IPC.*

5. *Aggrieved by the order so passed by the learned Magistrate with respect to the issue of cognizance of the complaint filed by the complainant, the respondents- herein had filed a petition under Section 482 of the Criminal Procedure Code, 1973 before the High Court, inter alia, requesting the High Court to quash the entire proceedings initiated by the Complainant.*

6. *The High Court, in our opinion, though has noticed the number of injuries sustained by the Complainant, but on a very technical ground, has allowed the petition and set aside the entire proceedings.*

7. *We have carefully perused the order passed by the learned Magistrate in taking cognizance of the complaint and also the order passed by the High Court while setting aside the proceedings initiated by the Complainant before the learned Magistrate. In our opinion, the learned Judge of the High Court was not justified in passing the impugned judgment and order. Therefore, while allowing these appeals, we set aside the impugned judgment and order passed by the High Court. Now, we direct the learned Magistrate to complete the criminal proceedings as early as possible, at any rate, within six months from the date of receipt of a copy of this Court's order. Any observation made by us in the course of this order is only for the purpose of disposal of this appeal. We clarify further, that, we have not expressed any opinion on the merits or demerits of the stand taken by both the parties.*

All the legal pleas are kept open.

Ordered accordingly.

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14. Sec.482

Arun Bhandari vs State Of U.P.& Ors., 2013 (1) Crimes 113(SC)

K.S.Radhakrishnan and Dipak Misra, JJ.

Issue

powers possessed by the High Court under Section 482- powers possessed by the High Court under Section 482 of the Cr.P.C are very wide are very wide and the very plenitude of the power requires great caution in its exercise- The court must be careful to see that its decision in exercise of this power is based on sound principles and such inherent powers should not be exercised to stifle a legitimate prosecution- It is not proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be

quashed - It would be erroneous to assess the material before it and conclude that the complaint could not be proceeded with.

We have referred to the aforesaid decisions in the field to highlight about the role of the Court while dealing with such issues. In our considered opinion the present case falls in the category which cannot be stated at this stage to be purely civil in nature on the basis of the admitted documents or the allegations made in the FIR or what has come out in the investigation or for that matter what has been stated in the protest petition. We are disposed to think that prima facie there is allegation that there was a guilty intention to induce the complainant to part with money. We may hasten to clarify that it is not a case where a promise initially made could not lived up to subsequently. It is not a case where it could be said that even if the allegations in entirety are accepted, no case is made out. Needless to emphasise, the High Court, while exercising power under Article 226 of the Constitution or Section 482 of the CrPC, has to adopt a very cautious approach. In Central Bureau of Investigation v. Ravi Shankar Srivastava, IAS and another, the Court, after referring to Janata Dal v. H.S. Chowdhary and Raghubir Saran (Dr.) v. State of Bihar, has observed that the powers possessed by the High Court under Section 482 of the IPC are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles and such inherent powers should not be exercised to stifle a legitimate prosecution. This Court has further stated that it is not proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It has been further pronounced that it would be erroneous to assess the material before it and conclude that the complaint could not be proceeded with. The Bench has opined that the meticulous analysis of the case is not necessary and the complaint has to be read as a whole and if it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court.

Applying the aforesaid parameters we have no hesitation in coming to hold that neither the FIR nor the protest petition was mala fide, frivolous or vexatious. It is also not a case where there is no substance in the complaint. The manner in which the investigation was conducted by the officer who eventually filed the final report and the transfer of the investigation earlier to another officer who had almost completed the investigation and the entire case diary which has been adverted to in detail in the protest petition prima facie makes out a case against the husband and the wife regarding collusion and the intention to cheat from the very beginning, inducing him to hand over a huge sum of money to both of them. Their conduct of not stating so many aspects, namely, the Power of Attorney executed by the original owner, the will and also the sale effected by the wife in the name of Monika Singh on 28.7.2008 cannot be brushed aside at this stage. Therefore, we are disposed to think that the High Court, while exercising the extraordinary jurisdiction, had not proceeded on the sound principles of law for quashment of order taking cognizance. The High Court and has been guided by the non-existence of privity of contract and without appreciating the factual scenario has observed that the wife was merely present. Be it noted, if the wife had nothing to do with any of the transactions with the original owner and was not aware of the things, possibly the view of the High Court could have gained acceptation, but when the wife had the Power of Attorney in her favour and was aware of execution of the will, had accepted the money along with her husband from the complainant, it is extremely difficulty to say that an innocent person is dragged to face a vexatious litigation or humiliation. The entire conduct of the respondent Nos. 2 and 3 would show that a prima facie case is made out and allegations are there on record in this regard that they had the intention to cheat from the stage of negotiation. That being the position, the decision in Hridya Rajan Pd. Verma & others (supra) which is commended to us by Mr. Sharma, learned senior counsel, to which we have

adverted to earlier, does not really assist the respondents and we say so after making the factual analysis in detail.

In view of our aforesaid analysis we allow the appeal, set aside the order passed by the High Court and direct the Magistrate to proceed in accordance with law. However, we may clarify that we may not be understood to have expressed any opinion on the merits of the case one way or the other and our observations must be construed as limited to the order taking cognizance and nothing more than that. The learned Magistrate shall decide the case on its own merit without being influenced by any of our observations as the same have been made only for the purpose of holding that the order of cognizance is prima facie valid and did not warrant interference by the High Court.

Important points

1. **To hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at the time of making the promise and such a dishonest intention cannot be inferred from a mere fact that he could not subsequently fulfil the promise.**
2. **Sometimes a case may apparently look to be of civil nature or many involve a commercial transaction but such civil disputes or commercial disputes in certain circumstances may also certain ingredients of criminal offences and such disputes have to be entertained notwithstanding they are also civil disputes.**
3. **High Court, while exercising power under Article 226 of the Constitution or Section 482 of the Cr.P.C., has to adopt a very cautious approach**.

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15. Appreciation of evidence

Radhakrishana Nagesh v. State of Andhra Pradseh, 2013 (1) Crimes 325 (SC)

Swatanter Kumar and Gyan Sudha Misra, JJ.

Issue

In order to establish a conflict between ocular evidence and medical evidence ,there has to be specific and material contradictions -Merely because , some fact was not recorded or stated by Doctor at a given point of time and subsequently such fact was established by expert report ,FSL Report , would not by itself substantiate –Plea of contradiction or variation , conflict or contradiction between ocular and medical evidence has to be direct and material and only then same can be pleaded.

It is a settled principle of law that a conflict or contradiction between the ocular and the medical evidence has to be direct and material and only then the same can be pleaded. Even where it is so, the Court has to examine as to which of the two is more reliable, corroborated by other prosecution evidence and gives the most balanced happening of events as per the case of the prosecution.

In order to establish a conflict between the ocular evidence and the medical evidence, there has to be specific and material contradictions. Merely because, some fact was not recorded or stated by the doctor at a given point of time and subsequently such fact was established by the expert report, the FSL Report, would not by itself substantiate the plea of contradiction or
variation. Absence of injuries on the body of the prosecutrix, as already explained, would not be of any advantage to the accused.

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

I N D E X

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