CJA
e-NEWSLETTER
SEPTEMBER 2023
Monthly Newsletter of
Chandigarh Judicial Academy of Punjab & Haryana High Court
For circulation among the stakeholders in Judicial Education

VOLUME : 08
ISSUE : 09

In this Issue:

UNRAVELING THE COMPLEX JOURNEY OF THE WOMEN'S RESERVATION BILL

Even before India's independence, there were concerns about boosting women's political engagement. This topic gained traction in the 1970s. The concept of women's reservation is to ensure that women have a fair chance to participate in crucial decision-making processes. This entails designating particular seats in venues such as Parliament and state legislatures for women alone.

In response to a United Nations request, India established the Committee on the Status of Women in 1971 to investigate the country's gender situation. In 1993, the 73rd and 74th Amendments to the Constitution, which established panchayats and municipalities, reserve one-third of the seats in these organizations for women. The Constitution further specifies that seats in the Lok Sabha and state legislative assemblies be reserved for Scheduled Castes (SCs) and Scheduled Tribes (STs) in proportion to their population. Women were not guaranteed seats in the Lok Sabha or state legislative assemblies under the Constitution. Some members of the Constituent Assembly opposed to reserving legislative seats for women.

15% of the total members of the 17th Lok Sabha are women while in state legislative assemblies; women on average constitute 9% of the total members. The Report on the

Status of Women in India 2015 observed that women's participation in state assemblies and Parliament remains low. It was observed that women had a minimal participation in decision-making positions in political parties. It advocated for at least 50% of seats to be reserved for women in local governments, state legislative assemblies, Parliament, ministerial levels, and other government decision-making bodies. Reservation will be addressed in higher legislative bodies, according to the National Policy for the Empowerment of Women (2001).

First introduced in 1996 in the Lok Sabha by the H.D. Deve Gowda-led United Front government, the Bill to reserve seats for women in Parliament and state legislative assemblies did not get the approval of the House. Later again in the years 1998, 1999, and 2008, bills modifying the Constitution to reserve seats for women in Parliament and state legislative assemblies were proposed. The first three Bills expired when the respective Lok Sabhas were dissolved. The Rajya Sabha introduced and passed the 2008 Bill, however it too expired with the dissolution of the 14th Lok Sabha. A Joint Committee of Parliament investigated the 1996 Bill, while the Standing Committee on Personnel, Public Grievances, Law, and Justice studied the 2008 Bill. The proposal to reserve seats for women was approved by both Committees. Some of the recommendations given by the Committees were

(i) considering reservation for women belonging to other backward classes at an appropriate time,

(ii) providing reservation for a period of 15 years and reviewing it thereafter, and

(iii) working out the modalities to reserve seats for women in Rajya Sabha and state legislative councils.

The Constitution (One Hundred and Twenty-Eighth Amendment) Bill, 2023 was introduced in Lok Sabha on September 19, 2023. The bill was passed in Rajya Sabha unanimously on September 21, a day after it received near-unanimous approval in the Lok Sabha. The Bill seeks to reserve one-third of the total number of seats in Lok Sabha and state legislative assemblies for women.

According to the 106th Act, 2023, every third seat in the Lok Sabha and State Assemblies are planned to be reserved for women. The change to the Constitution, however, comes with the condition that it may be implemented only when a delimitation exercise, slated for 2026, is completed, utilising data from the most recent Census done after the act's passing. This essentially puts the first year of implementation until the 2029 general election.

After implementation, there should be at least 181 (approximately 33.3% of seats) women members in the Lower House. At present there are 82 women in the Lok Sabha which amounts to 15% of its members. The share of women parliamentarians has never exceeded the 15% mark in over 70 years of India's electoral history. When considered as a share of total candidates who participated in the 2019 general election, their share is even lower at 9%. The share of women candidates has never exceeded the 9% mark ever.

This Act is seen as a "revering woman power" and another welfare scheme rather than a historic law allowing women to participate in the shaping of state policy. It is important to guard against the idea that the mere presence of women in electoral politics will translate into women's equality and freedom. Given the current scenario any new law is not an achievement but a challenge. The long waiting period before it takes effect should be a time for re-examining our ideas and beliefs about how the electoral presence of women might translate into a more egalitarian and less hate-filled ethos.

Ajay Kumar Sharda
Director (Administration)

LATEST CASES: CIVIL

"Unless the contents of the document in question and evidence in relation thereto are so clear to infer a prohibition against assignment or transfer, the right of repurchase has to be held to be assignable or transferable and cannot be treated as personal to the contracting parties. On a very unsubstantial ground that the document in question makes a mention only of "parties" and their "heirs" and not "assignees" or "transferees", it cannot be held that the right of repurchase was not assignable."

— Rajesh Bindal, J. in Indira Devi v. Veena Gupta, (2023) 8 SCC 124, para 18

CODE OF CIVIL PROCEDURE, 1908

KRISHNA SHENOY v. GANGA DEVI G. & ORS: Petition(s) for Special Leave to Appeal (C) No(s). 8080/2019 decided on 11.9.2023-HELD-

While adjudicating an issue pertaining to the application of Section 10 of the Code of Civil Procedure in a partition suit where preliminary decree was sought when the trial in a similar case was already pending, It was observed by Hon'ble Apex Court that with a suit for partition, in which every interested party is deemed to be a plaintiff. Law does not bar passing of numerous preliminary decrees.

CONSTITUTION OF INDIA

People's Union for Civil Liberties & Anr. v. The State of Maharashtra & Ors.: Neutral Citation: 2023 INSC 833-HELD-

Hon'ble Apex Court has given the Union Ministry of Home Affairs the directive to draught exhaustive guidelines for media briefings by the police, and it has also given the Directors General of Police the directive to provide their suggestions within a month in consultation with various stakeholders, such as media organizations and the National Human Rights Commission.

NHPC LTD. V. State of Himachal Pradesh Secretary and others: Neutral Citation: 2023 INSC 810-HELD-

While considering the vires of the Himachal Pradesh Passengers and Goods Taxation Act, 1955, as amended by the Amendment and Validation Act of 1997, it was observed by Hon'ble Apex Court that if a constitutional court finds a flaw in previous legislation and brings it to the attention of the legislature in the course of exercising its power of judicial review, the legislature is allowed to rectify the issue at hand. The court stated that the flaw can be fixed in the future as well as in the past through a legislative process, and that this allows for the validation of activities that have already been taken.

Central Bureau of Investigation v. Dr RR Kishore: Neutral Citation: 2023 INSC 817-HELD-

It was observed by Hon'ble Supreme Court that once a law is declared unconstitutional on grounds of it infringing any of the fundamental rights guaranteed under Part III of the Constitution, it would be held to be unenforceable right from the date of enactment. The observations were made on the pivotal issue, i.e., whether its 2014 judgment in Subramanian Swamy v. Union of India AIR 2014 SCW 4339 striking down Section 6A(1) of the Delhi Police Special Establishment Act, 1946, which mandated central government sanction for investigations involving certain government officials, would retrospectively apply to pending cases or not.

COPYRIGHT ACT, 1957

Brihan Karan Sugar Syndicate Private Limited vs Yashwantrao Mohite Krushna Sahakari Sakhar Karkhana: Neutral Citation: 2023 INSC 831-HELD-

It was held by Hon'ble Supreme Court that in order to fulfillment of the condition of passing off the action against the defendnat, it was incombant upon the plaintiff to actually prove the figures of sale and expenditure incurred on the advertising and promotion of the product which he failed as such the plaintiff could not prove its reputation or good will in connection with goods in question.

INDIAN EVIDENCE ACT, 1872

Appaiya v. Andimuthu @ Thangapandi & Ors: Neutral Citation: 2023 INSC 835-HELD-

While dealing with the Civil appeal filed against the judgment passed by Hon'ble Madras High Court, Madurai Bench whereby it reversed the concurrent judgments of the courts below decreeing the suit with regard to the title and possession of the entire suit property and confined the plaitiff's entitlement to title and possession to 96 cents purchased under Ext. A5 Sale Deed, it was observed by Hon'ble Apex Court that certified copy of an original sale deed is admissible in evidence in a trial in view of Sections 65, 74, 77 read with Section 79 of the Indian Evidence Act 1872 and Section 57(5) of the Registration Act.

HINDU MARRIAGE ACT, 1956

XXX v. YYY: Neutral Citation: 2023 INSC 814-HELD- As granting a petition for divorce that had been submitted by a wife who had been estranged from her husband, the Honourable Supreme Court made the observation that the word "cruelty" in Section 13(1)(ia) of the Hindu Marriage Act allows courts broad authority "to apply it liberally and contextually. While interpreting the meaning of cruelty, the Court observed hat what is cruelty for a person, may not be cruelty for another and that the meaning has to be ascertained in its context. "It has to be applied from person to person while taking note of the attending circumstances."

HINDU SUCCESSION ACT, 1956

Derha v Vishal & Anr.: Neutral Citation: 2023 INSC 785-HELD-

The Civil Appeal before Hon'ble Supreme Court stemmed out of the judgment passed by Hon'ble Chattisgarh High Court wherein the Court partially allowed the appeal of the plaintiff with regard to the partition in the Mitakshara Coparcenary property. In the said cae, the trial Court dismissed the suit that was filed by one of the deceased's children. The plaintiff wanted a portion and partition after their father died, but her brother refused. After the Trial Court granted her 1/3rd of the property, the High Court modified it to 1/6th during an appeal. While deciding the appeal, Hon'ble Supreme Court noted that under Explanation 1 of Section 6, an heir is entitled to not only the share they received or would have received in a hypothetical partition but also their proportionate share in the actual interest that the deceased had in the coparcenary property at the time of their death. The Court observed that the heir inherits their defined share in the notional partition as well as their portion of the deceased's actual interest in the property when they passed away. The Court observed that Section 8 of the HSA pertains to intestate succession in the case of males. It outlines the sequence in which

property will be passed down to heirs. The Court asserted that Class I heirs have the highest priority, followed by Class II heirs, agnates, and lastly the cognates.
Accordingly, the appeal was dismissed by Hon'ble Apex Court while upholding the judgment of the High Court.

Revanasiddappa vs. Mallikarjun: Neutral Citation: 2023 INSC 783-HELD-
In a reference made by the 2 Judges Bench, Hon'ble Supreme Court adjudicated upon the issue with regard to the interpretation of Section 16 of the Hindu Marriage Act 1955, which confers legitimacy to children who are born out of invalid marriages. Section 16(3) states such children are entitled to inherit only their parents' property and will have no right over the other coparcenary shares. After a notional partition of the Hindu coparcenary property, the Court held that children born of void or voidable marriages are entitled to receive a portion of their parents' estate. However, other than their parents, such children have no claim on the property of any coparcener. The Court clarified that this ruling is applicable only to Hindu joint family properties governed by Hindu Mitakshara law.

SERVICE JURISPRUDENCE

L R Patil v. Gulbarga University: Neutral Citation: 2023 INSC 796-HELD-
While interpreting Rule 20 Note4 Karnataka Civil Services Rules, it was observed by Hon'ble Apex Court that 'Lien' of a government servant only ceases to exist when he/she is appointed on another post 'substantively'/confirmed or absorbed permanently. Otherwise, his/her lien would continue on the previous post.

SPECIAL RELIEF ACT, 1963

A. Valliammai v. K.P Murali And Others: Neutral Citation: 2023 INSC 823-HELD-
It was against the Judgment passed by Hon'ble Madras High Court, Madurai Bench with regard to the intial suit filed for specific performance of Contract, Hon'ble Apex Court while allowing the appeal, when there is no specified time for the performance of a contract, the statute of limitations begins to run from the day on which the plaintiff was put on notice of the dispute.

TRANSFER OF PROPERTY ACT, 1882

Prakash (Dead) By LR. v. G. Aradhya & Ors.: Neutral Citation: 2023 INSC 743-HELD-
On the core issue whether the transaction between the parties was an absolute sale of the property or it was a mortgage, Hon'ble Supreme Court examined section 58 (c) Transfer of Property Act to differentiate between mortgage by conditional sale and sale with a condition of repurchase. The Apex Court emphasized that the condition must be embodied in the document that effects or purports to affect the sale.Hence, it was held that transaction in question constituted an absolute sale followed by an option to repurchase, rather than a mortgage.

Harshali Chowdhary
Additional District & Sessions Judge
-cum-Faculty Member, CJA

LATEST CASES: CRIMINAL

"Differentia which is the basis of classification must be sound and must have reasonable relation to the object of the legislation. If the object itself is discriminatory, then explanation that classification is reasonable having rational relation to the object sought to be achieved is immaterial."

— L. Nageswara Rao, J. in Pattali Makkal Katchi v. A. Mayilerumperumal, (2023) 7 SCC 481, para 97

Rupesh Manger (Thapa) Vs. State of Sikkim: 2023 SCC OnLine SC 1157 : 2023 INSC 826-Legal insanity under section 84 IPC?-HELD-Hearing a Criminal Appeal against judgment of conviction and order of sentence, reversing the order of acquittal, and convicting for the offence punishable under Section 302 of the Indian Penal Code, 1860, the Hon'ble Supreme Court, referring to ***Dahyabhai Chhaganbhai Thakker vs. State of Gujarat, (1964) 7 SCR 361***, reiterated in ***Devidas Loka Rathod vs. State of Maharashtra (2018) 7 SCC 718***, has held that it is settled that the standard of proof to prove the lunacy or insanity is only 'reasonable doubt'.

The Hon'ble Supreme Court has further noted that in ***Surendra Mishra vs. State of Jharkhand (2011) 11 SCC 495, Hari Singh Gond vs. State of M.P . (2008) 16 SCC 109*** and ***Bapu vs. State of Rajasthan (2007) 8 SCC 66*** it has been held that an accused who seeks exoneration from liability of an act under Section 84 of IPC has to prove legal insanity and not medical insanity. Since the term insanity or unsoundness of mind has not been defined in the Penal Code, it carries different meaning in different contexts and describes varying degrees of mental disorder. A distinction is to be made between legal insanity and medical insanity. The court is concerned with legal insanity and not with medical insanity.

People's Union for Civil Liberties & Anr. Vs. State of Maharashtra & Ors. 2023 SCC OnLine SC 1166: 2023 INSC 833-The propriety and procedure of media briefings by police personnel?-HELD-Hearing a batch of cases on the issue as to the modalities to be followed by the police in conducting media briefings where a criminal investigation for an alleged offence is in progress, the Hon'ble Supreme Court issued directions for the preparation of appropriate guidelines while noting suggestions on the basis of which appropriate guidelines can be formulated for conducting media briefings.

Javed Shaukat Ali Qureshi Vs. State of Gujarat: 2023 SCC OnLine SC 1155: 2023 INSC 829-Principle of parity in Trials?-HELD-Hearing a Criminal Appeal against judgment upholding conviction under Section 396 read with Section 149, Section 395 read with Section 149, Section 307 read with Section 149, Section 435 read with Section 149 and Section 201 read with Section 149 of the Indian Penal Code, 1860, the Hon'ble Supreme Court has held that when there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the Court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the Criminal Court should decide like cases alike, and in such cases, the Court cannot make a distinction between the two accused, which will amount to discrimination.

Central Bureau of Investigation (CBI) Vs. R.R. Kishore: 2023 SCC OnLine SC 1146 : 2023 INSC 817-Effect of declaring a law to be unconstitutional?-HELD-A Constitution Bench of the Hon'ble Supreme Court considered whether the declaration made by a Constitution Bench, in the case of ***Subramanian Swamy vs. Director, Central Bureau of Investigation and another (2014) 8 SCC 682*** that Section 6A of the Delhi

Special Police Establishment Act, 1942 being unconstitutional, can be applied retrospectively in context with Article 20 of the Constitution and held that once a law is declared to be unconstitutional, being violative of Part-III of the Constitution, then it would be held to be void ab initio, still born, unenforceable and non est in view of Article 13(2) of the Constitution and its interpretation by authoritative pronouncements. Thus, the declaration made by the Constitution Bench in the case of ***Subramanian Swamy (supra)*** will have retrospective operation. Section 6A of the DSPE Act is held to be not in force from the date of its insertion i.e. 11.09.2003.

N. Ramkumar Vs. The State represented by Inspector of Police, 2023 SCC OnLine SC 1129 : 2023 INSC 812-True test to be adopted to find out the intention or knowledge of the accused?-HELD-Hearing a Criminal Appeal against judgment upholding conviction under Sections 450 and 302 of the Indian Penal Code, 1860, the Hon'ble Supreme Court has noted a recent judgement in the case of ***Anbazhagan vs. The State represented by the Inspector of Police 2023 SCC OnLine SC 857*** which has defined the context of the true test to be adopted to find out the intention

(1) When the court is confronted with the question, what offence the accused could be said to have committed, the true test is to find out the intention or knowledge of the accused in doing the act. If the intention or knowledge was such as is described in Clauses (1) to (4) of Section 300 of the IPC, the act will be murder even though only a single injury was caused.

To illustrate: 'A' is bound hand and foot. 'B' comes and placing his revolver against the head of 'A', shoots 'A' in his head killing him instantaneously. Here, there will be no difficulty in holding that the intention of 'B' in shooting 'A' was to kill him, though only single injury was caused. The case would, therefore, be of murder falling within Clause (1) of Section 300 of the IPC. Taking another instance, 'B' sneaks into the bed room of his enemy 'A' while the latter is asleep on his bed.

Taking aim at the left chest of 'A', 'B' forcibly plunges a sword in the left chest of 'A' and runs away. 'A' dies shortly thereafter. The injury to 'A' was found to be sufficient in ordinary course of nature to cause death. There may be no difficulty in holding that 'B' intentionally inflicted the particular injury found to be caused and that the said injury was objectively sufficient in the ordinary course of nature to cause death. This would bring the act of 'B' within Clause (3) of Section 300 of the IPC and render him guilty of the offence of murder although only single injury was caused.

(2) Even when the intention or knowledge of the accused may fall within Clauses (1) to (4) of Section 300 of the IPC, the act of the accused which would otherwise be murder, will be taken out of the purview of murder, if the accused's case attracts any one of the five exceptions enumerated in that section. In the event of the case falling within any of those exceptions, the offence would be culpable homicide not amounting to murder, falling within Part 1 of Section 304 of the IPC, if the case of the accused is such as to fall within Clauses (1) to (3) of Section 300 of the IPC.

It would be offence under Part II of Section 304 if the case is such as to fall within Clause (4) of Section 300 of the IPC. Again, the intention or knowledge of the accused may be such that only 2nd or 3rd part of Section 299 of the IPC, may be attracted but not any of the clauses of Section 300 of the IPC. In that situation also, the offence would be culpable homicide not amounting to murder under Section 304 of the IPC. It would be an offence under Part I of that section, if the case fall within 2nd part of Section 299, while it would be an offence under Part II of Section 304 if the case fall within 3rd part of Section 299 of the IPC.

(3) To put it in other words, if the act of an accused person falls within the first two clauses of cases of culpable homicide as described in Section 299 of the IPC it is punishable under the first part of Section 304. If, however, it falls within the third clause, it is punishable under the second part of Section 304. In effect, therefore, the first part of this section would apply when there is 'guilty intention,' whereas the second part would apply when there is no such intention, but there is 'guilty knowledge'.

(4) Even if single injury is inflicted, if that particular injury was intended, and objectively

that injury was sufficient in the ordinary course of nature to cause death, the requirements of Clause 3rdly to Section 300 of the IPC, are fulfilled and the offence would be murder.

(5) Section 304 of the IPC will apply to the following classes of cases : (i) when the case falls under one or the other of the clauses of Section 300, but it is covered by one of the exceptions to that Section, (ii) when the injury caused is not of the higher degree of likelihood which is covered by the expression 'sufficient in the ordinary course of nature to cause death' but is of a lower degree of likelihood which is generally spoken of as an injury 'likely to cause death' and the case does not fall under Clause (2) of Section 300 of the IPC, (iii) when the act is done with the knowledge that death is likely to ensue but without intention to cause death or an injury likely to cause death.

To put it more succinctly, the difference between the two parts of Section 304 of the IPC is that under the first part, the crime of murder is first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all. Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC.

(6) The word 'likely' means probably and it is distinguished from more 'possibly'. When chances of happening are even or greater than its not happening, we may say that the thing will 'probably happen'. In reaching the conclusion, the court has to place itself in the situation of the accused and then judge whether the accused had the knowledge that by the act he was likely to cause death.

(7) The distinction between culpable homicide (Section 299 of the IPC) and murder (Section 300 of the IPC) has always to be carefully borne in mind while dealing with a charge under Section 302 of the IPC. Under the category of unlawful homicides, both, the cases of culpable homicide amounting to murder and those not amounting to murder would fall. Culpable homicide is not murder when the case is brought within the five exceptions to Section 300 of the IPC.

But, even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses of Section 300 of the IPC to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300 of the IPC, namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under Section 299 of the IPC.

(8) The court must address itself to the question of mens rea. If Clause thirdly of Section 300 is to be applied, the assailant must intend the particular injury inflicted on the deceased. This ingredient could rarely be proved by direct evidence. Inevitably, it is a matter of inference to be drawn from the proved circumstances of the case. The court must necessarily have regard to the nature of the weapon used, part of the body injured, extent of the injury, degree of force used in causing the injury, the manner of attack, the circumstances preceding and attendant on the attack.

(9) Intention to kill is not the only intention that makes a culpable homicide a murder. The intention to cause injury or injuries sufficient in the ordinary cause of nature to cause death also makes a culpable homicide a murder if death has actually been caused and intention to cause such injury or injuries is to be inferred from the act or acts resulting in the injury or injuries.

(10) When single injury inflicted by the accused results in the death of the victim, no inference, as a general principle, can be drawn that the accused did not have the intention to cause the death or that particular injury which resulted in the death of the victim. Whether an accused had the required guilty intention or not, is a question of fact which has to be determined on the facts of each case.

(11) Where the prosecution proves that the accused had the intention to cause death of any person or to cause bodily injury to him and the intended injury is sufficient in the ordinary course of nature to cause death, then, even if he inflicts a single injury which results in the death of the victim, the offence

squarely falls under Clause thirdly of Section 300 of the IPC unless one of the exceptions applies.

(12) In determining the question, whether an accused had guilty intention or guilty knowledge in a case where only a single injury is inflicted by him and that injury is sufficient in the ordinary course of nature to cause death, the fact that the act is done without premeditation in a sudden fight or quarrel, or that the circumstances justify that the injury was accidental or unintentional, or that he only intended a simple injury, would lead to the inference of guilty knowledge, and the offence would be one under Section 304 Part II of the IPC.

Munna Pandey Vs. State of Bihar: 2023 SCC OnLine SC 1103 : 2023 INSC 793-Court to take active interest and elicit all relevant information?-HELD-Hearing a Criminal Appeal against judgment upholding conviction under Sections 302 and 376 of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offences Act, 2012, the Hon'ble Supreme Court has held that if the Courts are to impart justice in a free, fair and effective manner, then the presiding judge cannot afford to remain a mute spectator totally oblivious to the various happenings taking place around him, more particularly, concerning a particular case being tried by him. The fair trial is possible only when the court takes active interest and elicit all relevant information and material necessary so as to find out the truth for achieving the ultimate goal of dispensing justice with all fairness and impartiality to both the parties.

State of Haryana Vs. Dharamraj: 2023 SCC OnLine SC 1085 : 2023 INSC 784-Anticipatory bail to proclaimed offender?-HELD- Hearing a Criminal Appeal seeking cancellation of Anticipatory Bail granted in the case under Sections 147, 148, 149, 186, 323, 325, 341, 342, 353, 364 and 427 of the Indian Penal Code, 1860, the Hon'ble Supreme Court, citing ***Lavesh v State (NCT of Delhi), (2012) 8 SCC 730, Madhya Pradesh v Pradeep Sharma, (2014) 2 SCC 171, Prem Shankar Prasad v State of Bihar, 2021 SCC OnLine SC 955*** and ***Abhishek v State of Maharashtra, (2022) 8 SCC 282***, has held that a proclaimed offender would not be entitled to anticipatory bail.

Zunaid Vs. State of Uttar Pradesh & Ors.: 2023 SCC OnLine SC 1082 : 2023 INSC 778-Power of Magistrate to take cognizance after the discharge of accused?-HELD- Hearing Criminal Appeals challenging the order granting permission to amend the application filed under Section 482 Cr.P.C. and challenging the order setting aside the orders passed by the Chief Judicial Magistrate and directing the concerned Magistrate to pass a fresh order on the Protest Petition in a case under Sections 147, 148, 149, 307, 323, 324, 504 IPC, the Hon'ble Supreme Court has held that on the receipt of the police report under Section 173 Cr.P.C., the Magistrate can exercise three options. Firstly, he may decide that there is no sufficient ground for proceeding further and drop action. Secondly, he may take cognizance of the offence under Section 190(1)(b) on the basis of the police report and issue process; and thirdly, he may take cognizance of the offence under Section 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200.

The Hon'ble Supreme Court, citing ***Gopal Vijay Verma Vs. Bhuneshwar Prasad Sinha and Others (1982) 3 SCC 510*** and ***B. Chandrika Vs. Santhosh and Another (2014) 13 SCC 699,*** has further noted that even in a case where the final report of the police under Section 173 is accepted and the accused persons are discharged, the Magistrate has the power to take cognizance of the offence on a complaint or a Protest Petition on the same or similar allegations even after the acceptance of the final report.

Central Bureau of Investigation Vs. Narottam Dhakad & Anr.: 2023 SCC OnLine SC 1069 : 2023 INSC 770-Providing translated version of the charge sheet?-HELD- Hearing a Criminal Appeal against the judgment directing to supply a Hindi translation of the charge sheet filed for various offences under Sections 419, 420, 468, 467 and 471 of IPC and under Sections 3 and 4 of the Madhya Pradesh Examinations Act, 1937, the Hon'ble Supreme Court has

held that when a copy of the report and the documents are supplied to the accused under Section 207 and/or Section 208, an opportunity is available for the accused to contend that he does not understand the language in which the final report or the statements or documents are written.

But he must raise this objection at the earliest. In such a case, if the accused is appearing in person and wants to defend himself without opting for legal aid, perhaps there may be a requirement of supplying a translated version of the charge sheet and documents or the relevant part thereof concerning the said accused to him. It is, however, subject to the accused satisfying the Court that he is unable to understand the language in which the charge sheet is submitted.

When the accused is represented by an advocate who fully understands the language of the final report or charge sheet, there will not be any requirement of furnishing translations to the accused as the advocate can explain the contents of the charge sheet to the accused. If both the accused and his advocate are not conversant with the language in which the charge sheet has been filed, then the question of providing translation may arise.

The reason is that the accused must get a fair opportunity to defend himself. He must know and understand the material against him in the charge sheet. That is the essence of Article 21 of the Constitution of India. With the availability of various software and Artificial Intelligence tools for making translations, providing translations will not be that difficult now.

In the cases mentioned aforesaid, the Courts can always direct the prosecution to provide a translated version of the charge sheet. But we must hasten to add that a charge sheet filed within the period provided either under Section 167 of CrPC or any other relevant statute in a language other than the language of the Court or the language which the accused does not understand, is not illegal and no one can claim a default bail on that ground.

Mukesh Singh Vs. State (NCT of Delhi): 2023 SCC OnLine SC 1061 : 2023 INSC 765-Accused cannot resist subjecting himself to the TIP?-HELD-Hearing a Criminal Appeal against judgment upholding conviction under Sections 302, 392, 394 and 397 read with Section 34 of the Indian Penal Code, the Hon'ble Supreme Court has held that after the introduction of Section 54A in the CrPC, an accused is under an obligation to stand for identification parade. An accused cannot resist subjecting himself to the TIP on the ground that he cannot be forced or coerced for the same. If the coercion is sought to be imposed in getting from an accused evidence which cannot be procured save through positive volitional act on his part, the constitutional guarantee as enshrined under Article 20(3) of the Constitution will step in to protect him.

However, if that evidence can be procured without any positive volitional evidentiary act on the part of the accused, Article 20(3) of the Constitution will have no application. The accused while subjecting himself to the TIP does not produce any evidence or perform any evidentiary act. It may be a positive act and even a volitional act, but only to a limited extent, when the accused is brought to the place where the TIP is to be held. It is certainly not his evidentiary act.

The accused concerned may have a legitimate ground to resist facing the TIP saying that the witnesses had a chance to see him either at the police station or in the Court, as the case may be, however, on such ground alone he cannot refuse to face the TIP. It is always open for the accused to raise any legal ground available to him relating to the legitimacy of the TIP or the evidentiary value of the same in the course of the trial. However, the accused cannot decline or refuse to join the TIP.

Irfan @ Naka Vs. State of Uttar Pradesh: 2023 SCC OnLine SC 1060 : 2023 INSC 758-Factors for determining when a dying declaration should be accepted?-HELD-Hearing a Criminal Appeal against judgment upholding conviction under Sections 302, 436 and 326-A of the Indian Penal Code, the Hon'ble Supreme Court has held that there is no hard and fast rule for determining when a dying declaration should be accepted; the duty of the Court is to decide this question in the facts and surrounding circumstances of the case and be fully convinced of the

truthfulness of the same. Certain factors below reproduced can be considered to determine the same, however, they will only affect the weight of the dying declaration and not its admissibility: -

(i) Whether the person making the statement was in expectation of death?

(ii) Whether the dying declaration was made at the earliest opportunity? "Rule of First Opportunity"

(iii) Whether there is any reasonable suspicion to believe the dying declaration was put in the mouth of the dying person?

(iv) Whether the dying declaration was a product of prompting, tutoring or leading at the instance of police or any interested party?

(v) Whether the statement was not recorded properly?

(vi) Whether, the dying declarant had opportunity to clearly observe the incident?

(vii) Whether, the dying declaration has been consistent throughout?

(viii) Whether, the dying declaration in itself is a manifestation / fiction of the dying person's imagination of what he thinks transpired?

(ix) Whether, the dying declaration was itself voluntary?

(x) In case of multiple dying declarations, whether, the first one inspires truth and consistent with the other dying declaration?

(xi) Whether, as per the injuries, it would have been impossible for the deceased to make a dying declaration? 63. It is the duty of the prosecution to establish the charge against the accused beyond the reasonable doubt. The benefit of doubt must always go in favour of the accused.

The Hon'ble Supreme Court has further held that it is true that dying declaration is a substantive piece of evidence to be relied on provided it is proved that the same was voluntary and truthful and the victim was in a fit state of mind. It is just not enough for the court to say that the dying declaration is reliable as the accused is named in the dying declaration as the assailant.

Bhagwan Singh Vs. Dilip Kumar @ Deepu @ Depak and Anr.: and Bhagwan Singh Vs. Netram and Anr.: 2023 SCC OnLine SC 1059 : 2023 INSC 761-Parameters for considering the grant of bail?-HELD- Hearing Criminal Appeals against the order allowing the applications filed under Section 439 of the Code of Criminal Procedure, 1973 granting bail in a case for offences punishable under Section 376D, 384, 506 of the Indian Penal Code, Section 326 of POCSO Act and Section 3(2)(v) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 66 of the Information Technology Act, 2000, the Hon'ble Supreme Court has held that the grant of bail is a discretionary relief which necessarily means that such discretion would have to be exercised in a judicious manner and not as a matter of course. The grant of bail is dependant upon contextual facts of the matter being dealt with by the Court and may vary from case to case. There cannot be any exhaustive parameters set out for considering the application for grant of bail. However, it can be noted that;

(a) While granting bail the court has to keep in mind factors such as the nature of accusations, severity of the punishment, if the accusations entails a conviction and the nature of evidence in support of the accusations;

(b) reasonable apprehensions of the witnesses being tempered with or the apprehension of there being a threat for the complainant should also weight with the Court in the matter of grant of bail.

(c) While it is not accepted to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought to be always a prima facie satisfaction of the Court in support of the charge.

(d) Frivility of prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to have an order of bail.

Amrinder Singh Shergill
Additional District & Sessions Judge
-cum-Faculty Member, CJA

LATEST CASES: POLICE CUSTODY

"While we have laid down some broad guidelines, individual Judges can indeed have different ways of writing judgments and continue to have variations in their styles of expression. The expression of a Judge is an unfolding of the recesses of the mind. However, while recesses of the mind may be inscrutable, the reasoning in judgment cannot be. While Judges may have their own style of judgment writing, they must ensure lucidity in writing across these styles."
— Dr D.Y. Chandrachud, J. in SBI v. Ajay Kumar Sood, (2023) 7 SCC 282, para 28

Rajesh & Anr. Versus The State of Madhya Pradesh: 2023 SCC OnLine SC 1202 - S. 27 Evidence Act-Discovery Can't Be Proved Against Person If He Wasn't Accused Of Any Offence & Wasn't In Custody Of Police At The Time Of Confession-HELD- The Supreme Court has held that for a confession made to the police to be admissible under Section 27 of the Evidence Act, two essential conditions must be met: the individual must be 'accused of any offence,' and they must be in 'police custody' at the time the confession is made.

The Court firmly held that *"being in 'the custody of a police officer and being 'accused of an offense' are indispensable pre-requisites to render a confession made to the police admissible to a limited extent, by bringing into play the exception postulated under Section 27 of the Evidence Act."*

Moreover, Section 27 of the same act, which acts as an exception to Section 26, states that "*when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."*

n the case on hand, though Rajesh Yadav was taken to the police station, be it on 29.03.2013 or even earlier, he could not be said to be in 'police custody' till he was arrested at 18:30 hours on 29.03.2013, as he did not figure as an 'accused' in the FIR and was not 'accused of any offence' till his arrest.

Therefore, it was his arrest which resulted in actual 'police custody', and the confession made by him, before such arrest and prior to his being 'accused of any offence', would be directly hit by Section 26 of the Evidence Act and there is no possibility of applying the exception under Section 27 to any information given by him in the course of such confession, even if it may have led to the discovery of any fact.

The Court applied these principles to conclude that *"the purported discovery of the dead body, the murder weapon, and the other material objects, even if it was at the behest of Rajesh Yadav, cannot be proved against him, as he was not 'accused of any offence' and was not in 'police custody' at the point of time he allegedly. Needless to state, this lapse on the part of the police is fatal to the prosecution's case, as it essentially turned upon the 'recoveries' made at the behest of the appellants, purportedly under Section 27 of the Evidence Act."*

Boby Versus State Of Kerala: 2023 SCC OnLine SC 50: Section 27 Evidence Act - Recovery Cannot Be Relied Upon When Statement Of Accused Is Not Recorded - HELD- in this case the Court referred to the decision of the Privy Council in *Pulukuri Kotayya v. King Emperor* (AIR 1947 Privy Council 67) and emphasized the crucial conditions of being "accused of any offense" and being in "police custody" to invoke Section 27 of the Evidence Act.

It had opined that *"the condition necessary to bring Section 27 into operation is that the discovery of a fact in consequence of information received from a person 'accused*

of any offense' in the 'custody of a police officer' must be deposed to, and thereupon so much of the information, as relates distinctly to the fact thereby discovered, may be proved. It was observed that normally, Section 27 is brought into operation when a person in 'police custody' produces from some place of concealment some object, such as a dead body, a weapon or ornaments, said to be connected with the crime, of which the informant is accused."

CBI v. Vikas Mishra @ Vikash Mishra: 2023 SCC OnLine SC 451: **View That There Cannot Be Police Custody Beyond 15 Days From Date Of Arrest Should Be Reconsidered–HELD-** The court referred to the case of *Central Bureau of Investigation v. Anupam J. Kulkarni*, 1992) 3 SCC 141and bserved that there cannot be any police custody beyond 15 days from the date of arrest. In our opinion, the view taken by this Court in the case of Anupam J. Kulkarni (supra) requires re-consideration. Furthermore, No accused can be permitted to play with the investigation and/or the court's process. No accused can be permitted to frustrate the judicial process by his conduct. It cannot be disputed that the right of custodial interrogation/ investigation is also a very important right in favour of the investigating agency to unearth the truth, which the accused has purposely and successfully tried to frustrate. Therefore, by not permitting the CBI to have the police custody interrogation for the remainder period of seven days, it will be giving a premium to an accused who has been successful in frustrating the judicial process.

V. Senthil Balaji Vs The State Represented By Deputy Director And Ors.: 2023 SCC OnLine SC 934 - 15 Days Police Custody Meant To Be Applied To Entire Period Of Investigation As A Whole –HELD- The conclusions in the judgment are as follows :

i *When an arrestee is forwarded to the jurisdictional Magistrate under Section 19(3) of the PMLA, 2002 no writ of Habeus Corpus would lie. Any plea of illegal arrest is to be made before such Magistrate since custody becomes judicial.*

ii. *Any non-compliance of the mandate of Section 19 of the PMLA, 2002 would enure to the benefit of the person arrested. For such noncompliance, the Competent Court shall have the power to initiate action under Section 62 of the PMLA, 2002.*

Also Read - Violation Of Section 19 PMLA Will Vitiate Arrest; Magistrate Should Ensure That ED Followed Arrest Procedure: Supreme Court

iii. *An order of remand has to be challenged only before a higher forum as provided under the CrPC, 1973 when it depicts a due application of mind both on merit and compliance of Section 167(2) of the CrPC, 1973 read with Section 19 of the PMLA 2002.*

iv. *Section 41A of the CrPC, 1973 has got no application to an arrest made under the PMLA 2002.*

v. *The maximum period of 15 days of police custody is meant to be applied to the entire period of investigation – 60 or 90 days, as a whole.*

vi. *The words "such custody" occurring in Section 167(2) of the CrPC, 1973 would include not only a police custody but also that of other investigating agencies.*

vii. *The word "custody" under Section 167(2) of the CrPC, 1973 shall mean actual custody.*

viii. *Curtailment of 15 days of police custody by any extraneous circumstances, act of God, an order of Court not being the handy work of investigating agency would not act as a restriction.*

ix. *Section 167 of the CrPC, 1973 is a bridge between liberty and investigation performing a fine balancing act.*

x. *The decision of this Court in Anupam J. Kulkarni (supra), as followed subsequently requires reconsideration by a reference to a larger Bench.*

Mahima Tuli
Research Fellow

NOTIFICATION

1. Mediation Bill 2023 receives President's assent :On 15-9-2023, the Ministry of Law and Justice notified the Mediation Act, 2023 to especially promote institutional mediation for resolution of disputes, On 15-9-2023, the Ministry of Law and Justice notified the Mediation Act, 2023 to especially promote institutional mediation for resolution of disputes, enforce mediated settlement agreements, provide for a body for registration of mediators, to encourage community mediation and to make online mediation as acceptable and cost-effective process.

Key Points:

1. Object:
    - Need to further promote Alternative Dispute Resolution (ADR), inter alia, by institutional mediation.
    - Bring a comprehensive mediation law and
    - Provide online mediation to serve the interests of all the stakeholders as an effective alternative mechanism for resolving disputes.
2. Applicability:
    - This Act will be applicable where mediation is conducted in India; and
    - Where all/ both parties habitually reside in/ incorporated in/ have place of business in India; or
    - If provided in mediation agreement that any dispute will be resolved in accordance with this Act; or
    - In international mediation; or
    - wherein one of the parties to the dispute is the Central Government or a State Government or agencies, public bodies, corporations and local bodies, including entities controlled or owned by such Government and where the matter pertains to a commercial dispute; or
    - to any other kind of dispute if deemed appropriate.
3. Mediation Agreement/ Clause:
    - Should be in writing, i.e., document is signed by parties, there is an exchange of communications, any pleading in which existence of mediation agreement is alleged by one party and not denied by the other
    - can be in a form of Mediation clause
    - Any reference in any agreement containing a mediation clause will constitute a mediation agreement if the agreement is in writing and the reference is such as to make the mediation clause as part of the agreement.

- The parties, before filing any suit or proceedings of civil or commercial nature should voluntarily and with mutual consent take steps to settle the dispute by pre-litigation mediation.
- No mediation will be conducted for the disputes arising out of matters contained in First Schedule of this Act.
- In case the parties do not reach the settlement agreement, a non-settlement report prepared by the mediator will be forwarded to the Claims Tribunal, which has referred the matter for mediation, for adjudication.

4. Mediators:
    - A person of any nationality can be appointed as mediator.
    - Parties will be free to choose their mediator and procedure for their appointment.
    - The person appointed by the parties will have to communicate his willingness within 7 days.
    - During the mediation, the mediator will have to disclose to the parties in writing any conflict of interest that has newly arisen or has come to his knowledge.
    - The Mediator should not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject matter of the mediation proceedings;
5. Time Limit for completion of mediation- 120 days from the date of first appearance before the mediator. The maximum extension granted over the time limit is 60 days.
6. Termination of Mediation: the proceedings will be deemed to have been terminated-
    - on the date of signing and authentication of the mediated settlement agreement
    - on the date of the written declaration of the mediator, after consultation with the parties or otherwise, to the effect that further efforts at mediation are no longer justified
    - on the date of the communication by a party or parties in writing, addressed to the mediator and the other parties to the effect that the party wishes to opt out of mediation
    - On the expiry of time limit, 120 days.
7. Grounds on which mediated settlement agreement can be challenged:
    - Fraud;
    - Corruption;
    - Impersonation;
    - where the mediation was conducted in disputes or matters not fit for mediation.[1]

[1] https://taxguru.in/corporate-law/mediation-act-2023-mandatory-pre-litigation-mediation-india.html

EVENT OF THE MONTH

- One day Refresher-cum-Orientation Course for Additional District & Sessions Judges from the States of Punjab, Haryana and UT Chandigarh was held on September 23, 2023. The topics were Expeditious Disposal of Application U/s 148 NI Act and related matters by Sh.B.M.Lal, Faculty Member, CJA, Fire Arms and Wound Ballistics by Sh.B.P.Singh, Assistant Director, Ballistics, CFSL, Chandigarh, Medico Legal Aspects and Forensic Medicine by Dr. J.S.Dalal, Former DRME, Punjab and presently Director, Chintpurni Medical College, Pathankot and Salutary Provisions of Section 313 Cr.P.C. and their applicability by Sh. H.S.Bhangoo, Faculty Member, CJA. Sh.Pradeep Mehta, Faculty Member, CJA was the Course Coordinator.

PICTORIAL GLIMPSES

Refresher-cum-Orientation Course for Additional District & Sessions Judges from the States of Punjab, Haryana and UT Chandigarh.