	to commit extortion.				
308(7)	Extortion by threat of accusation of an offence punishable with death, imprisonment for life, or imprisonment for 10 years.	Imprisonment for 10 years and fine.	Cognizable.	Bailable.	Magistrate of the first class.
309(4)	Robbery.	Rigorous imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.
	If robbery committed on highway between sunset and sunrise.	Rigorous imprisonment for 14 years.	Cognizable.	Non- bailable.	Magistrate of the first class.
309(5)	Attempt to commit robbery.	Rigorous imprisonment for 7 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.
309(6)	Causing hurt.	Imprisonment for life, or rigorous imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.
310(2)	Dacoity.	Imprisonment for life, or rigorous imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.

Back to Index

310(3)	Murder in dacoity.	Death, imprisonment for life, or rigorous imprisonment for not less than 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
310(4)	Making preparation to commit dacoity.	Rigorous imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
310(5)	Being one of five or more persons assembled for the purpose of committing dacoity.	Rigorous imprisonment for 7 years and fine.	Cognizable.	Non- bailable.	Court of Session.
310(6)	Belonging to a gang of persons associated for the purpose of habitually committing dacoity.	Imprisonment for life, or rigorous imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
311	Robbery or dacoity, with attempt to cause death or grievous hurt.	Imprisonment for not less than 7 years.	Cognizable.	Non- bailable.	Court of Session.
312	Attempt to commit robbery or dacoity when armed with deadly weapon.	Imprisonment for not less than 7 years.	Cognizable.	Non- bailable.	Court of Session.
313	Belonging to a wandering gang	Rigorous imprisonment	Cognizable.	Non- bailable.	Magistrate of the first class.

Back to Index

	of persons associated for the purpose of habitually committing thefts.	for 7 years and fine.			
314	Dishonest misappropriation of movable property, or converting it to one's own use.	Imprisonment of not less than 6 months but which may extend to 2 years and fine.	Non- cognizable.	Bailable.	Any Magistrate.
315	Dishonest misappropriation of property possessed by deceased person at the time of his death.	Imprisonment for 3 years and fine.	Non- cognizable.	Bailable.	Magistrate of the first class.
	If by clerk or person employed by deceased.	Imprisonment for 7 years.	Non- cognizable.	Bailable.	Magistrate of the first class.
316(2)	Criminal breach of trust.	Imprisonment for 5 years, or fine, or both.	Cognizable.	Non- bailable.	Magistrate of the first class.
316(3)	Criminal breach of trust by a carrier, wharfinger, etc.	Imprisonment for 7 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.
316(4)	Criminal breach of trust by a clerk or servant.	Imprisonment for 7 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.
316(5)	Criminal breach of trust by public servant or by banker, merchant or agent, etc.	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.

Back to Index

317(2)	Dishonestly receiving stolen property knowing it to be stolen.	Imprisonment for 3 years, or fine, or both.	Cognizable.	Non- bailable.	Any Magistrate.
317(3)	Dishonestly receiving stolen property, knowing that it was obtained by dacoity.	Imprisonment for life, or rigorous imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
317(4)	Habitually dealing in stolen property.	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
317(5)	Assisting in concealment or disposal of stolen property, knowing it to be stolen.	Imprisonment for 3 years, or fine, or both.	Cognizable.	Non- bailable.	Any Magistrate.
318(2)	Cheating.	Imprisonment for 3 years, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
318(3)	Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	Imprisonment for 5 years, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
318(4)	Cheating and dishonestly inducing delivery of property.	Imprisonment for 7 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.
319(2)	Cheating by personation.	Imprisonment for 5 years, or	Cognizable	Bailable.	Any Magistrate.

Back to Index

		with fine, or with both.			
320	Fraudulent removal or concealment of property, etc., to prevent distribution among creditors.	Imprisonment of not be less than 6 months but which may extend to 2 years, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
321	Dishonest or fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	Imprisonment for 2 years, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
322	Dishonest or fraudulent execution of deed of transfer containing a false statement of consideration.	Imprisonment for 3 years, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
323	Fraudulent removal or concealment of property, of himself or any other person or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled.	Imprisonment for 3 years, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.

Back to Index

324(2)	Mischief.	Imprisonment for 6 months, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
324(3)	Mischief causing loss or damage to any property including property of Government or Local Authority.	Imprisonment for 1 year, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
324(4)	Mischief causing loss or damage to the amount of twenty thousand rupees but less than 2 lakh rupees.	Imprisonment for 2 years, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
324(5)	Mischief causing loss or damage to the amount of one lakh rupees or upwards.	Imprisonment for 5 years, or fine, or both.	Cognizable.	Bailable.	Magistrate of the first class.
324(6)	Mischief with preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint.	Imprisonment for 5 years, and fine.	Cognizable.	Bailable.	Magistrate of the first class.
325	Mischief by killing or maiming animal.	Imprisonment for 5 years, or fine, or both.	Cognizable.	Bailable.	Magistrate of the first class.

Back to Index

326(a)	Mischief by causing diminution of supply of water for agricultural purposes, etc.	Imprisonment for 5 years, or fine, or both.	Cognizable.	Bailable.	Magistrate of the first class.
326(b)	Mischief by injury to public road, bridge, navigable river, or navigable channel, and rendering it impassable or less safe for travelling or conveying property.	Imprisonment for 5 years, or fine, or both.	Cognizable.	Bailable.	Magistrate of the first class.
326(c)	Mischief by causing inundation or obstruction to public drainage attended with damage.	Imprisonment for 5 years, or with fine, or with both.	Cognizable.	Bailable.	Magistrate of the first class.
326(d)	Mischief by destroying or moving or rendering less useful a lighthouse or seamark, or by exhibiting false lights.	Imprisonment for 7 years, or fine, or both.	Cognizable.	Bailable.	Magistrate of the first class.
326(e)	Mischief by destroying or moving, etc., a landmark fixed by public authority.	Imprisonment for 1 year, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.

Back to Index

326(f)	Mischief by fire or explosive substance with intent to cause damage.	Imprisonment for 7 years and fine.	Cognizable.	Bailable.	Magistrate of the first class.
326(g)	Mischief by fire or explosive substance with intent to destroy a house, etc.	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
327(1)	Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tonnes burden.	Imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
327(2)	The mischief described in the last section when committed by fire or any explosive substance.	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
328	Running vessel with intent to commit theft, etc.	Imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
329(3)	Criminal trespass.	Imprisonment for 3 months, or fine of 5,000 rupees, or both.	Cognizable.	Bailable.	Any Magistrate.
329(4)	House- trespass.	Imprisonment for 1 year, or fine of 5,000 rupees, or both.	Cognizable.	Bailable.	Any Magistrate.

Back to Index

331(1)	Lurking house-trespass or house-breaking.	Imprisonment for 2 years and fine.	Cognizable.	Non- bailable.	Any Magistrate.
331(2)	Lurking house-trespass or house-breaking by night.	Imprisonment for 3 years and fine.	Cognizable.	Non- bailable.	Any Magistrate.
331(3)	Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.	Imprisonment for 3 years and fine.	Cognizable.	Non- bailable.	Any Magistrate.
	If the offence be theft.	Imprisonment for 10 years.	Cognizable.	Non- bailable.	Magistrate of the first class.
331(4)	Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.	Imprisonment for 5 years and fine.	Cognizable.	Non- bailable.	Any Magistrate.
	If the offence be theft.	Imprisonment for 14 years.	Cognizable.	Non- bailable.	Magistrate of the first class.
331(5)	Lurking house-trespass or house-breaking after preparation made for causing hurt, assault, etc.	Imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.
331(6)	Lurking house-trespass or house-breaking by night, after preparation	Imprisonment for 14 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.

Back to Index

	made for causing hurt, etc.				
331(7)	Grievous hurt caused whilst committing lurking house-trespass or house-breaking.	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
331(8)	Death or grievous hurt caused by one of several persons jointly concerned in house- breaking by night, etc.	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
332(a)	House- trespass in order to the commission of an offence punishable with death.	Imprisonment for life, or rigorous imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
332(b)	House- trespass in order to the commission of an offence punishable with imprisonment for life.	Imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Court of Session.
332(c)	House- trespass in order to the commission of an offence punishable with imprisonment.	Imprisonment for 2 years and fine.	Cognizable.	Bailable.	Any Magistrate.
	If the offence is theft.	Imprisonment for 7 years.	Cognizable.	Non- bailable.	Any Magistrate.

Back to Index

333	House- trespass, having made preparation for causing hurt, assault, etc.	Imprisonment for 7 years and fine.	Cognizable.	Non- bailable.	Any Magistrate.
334(1)	Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property.	Imprisonment for 2 years, or fine, or both.	Cognizable.	Non- bailable.	Any Magistrate.
334(2)	Being entrusted with any closed receptacle containing or supposed to contain any property, and fraudulently opening the same.	Imprisonment for 3 years, or fine, or both.	Cognizable.	Bailable.	Any Magistrate.
336(2)	Forgery.	Imprisonment for 2 years, or fine, or both.	Non- cognizable.	Bailable.	Magistrate of the first class.
336(3)	Forgery for the purpose of cheating.	Imprisonment for 7 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.
336(4)	Forgery for the purpose of harming the reputation of any person or knowing that it is likely to be used for that purpose.	Imprisonment for 3 years and fine.	Cognizable.	Bailable.	Magistrate of the first class.

Back to Index

337	Forgery of a record of a Court or of a Registrar of Births, etc., kept by a public servant.	Imprisonment for 7 years and fine	Non- cognizable.	Non- bailable.	Magistrate of the first class.
338	Forgery of a valuable security, will, or authority to make or transfer any valuable security, or to receive any money, etc.	Imprisonment for life, or imprisonment for 10 years and fine.	Non- cognizable.	Non- bailable.	Magistrate of the first class.
	When the valuable security is a promissory note of the Central Government.	Imprisonment for life, or imprisonment for 10 years and fine.	Cognizable.	Non- bailable.	Magistrate of the first class.
339	Having possession of a document, knowing it to be forged, with intent to use it as genuine; if the document is one of the description mentioned in section 337.	Imprisonment for 7 years and fine.	Cognizable.	Bailable.	Magistrate of the first class.
	If the document is one of the description mentioned in section 338.	Imprisonment for life, or imprisonment for 7 years and fine.	Non- cognizable.	Bailable.	Magistrate of the first class.
340(2)	Using as genuine a forged document	Punishment for forgery of	Cognizable.	Bailable.	Magistrate of the first class.

Back to Index

	which is known to be forged.	such document.			
341(1)	Making or counterfeiting a seal, plate, etc., with intent to commit a forgery punishable under section 338 or possessing with like intent any such seal, plate, etc., knowing the same to be counterfeit.	Imprisonment for life, or imprisonment for 7 years and fine.	Cognizable.	Bailable.	Magistrate of the first class.
341(2)	Making or counterfeiting a seal, plate, etc., with intent to commit a forgery punishable otherwise than under section 338 or possessing with like intent any such seal, plate, etc., knowing the same to be counterfeit.	Imprisonment for 7 years and fine.	Cognizable.	Bailable.	Magistrate of the first class.
341(3)	Possesses any seal, plate or other instrument knowing the same to be counterfeit.	Imprisonment for 3 years and fine.	Cognizable.	Bailable.	Magistrate of the first class.
341(4)	Fraudulently or dishonestly uses as genuine any	Same as if he had made or counterfeited	Cognizable.	Bailable.	Magistrate of the first class.

Back to Index

	seal, plate or other instrument knowing or having reason to believe the same to be counterfeit.	such seal, plate or other instrument.			
342(1)	Counterfeiting a device or mark used for authenticating documents described in section 338 or possessing counterfeit marked material.	Imprisonment for life, or imprisonment for 7 years and fine.	Non- cognizable.	Bailable.	Magistrate of the first class.
342(2)	Counterfeiting a device or mark used for authenticating documents other than those described in section 338 or possessing counterfeit marked material.	Imprisonment for 7 years and fine.	Non- cognizable.	Non- bailable.	Magistrate of the first class.
343	Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting, a will, etc.	Imprisonment for life, or imprisonment for 7 years and fine.	Non- cognizable.	Non- bailable.	Magistrate of the first class.
344	Falsification of accounts.	Imprisonment for 7 years, or fine, or both.	Non- cognizable.	Bailable.	Magistrate of the first class.

Back to Index

345(3)	Using a false property mark with intent to deceive or injure any person.	Imprisonment for 1 year, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
346	Removing, destroying or defacing property mark with intent to cause injury.	Imprisonment for 1 year, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
347(1)	Counterfeiting a property mark used by another, with intent to cause damage or injury.	Imprisonment for 2 years, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
347(2)	Counterfeiting a property mark used by a public servant, or any mark used by him to denote the manufacture, quality, etc., of any property.	Imprisonment for 3 years and fine.	Non- cognizable.	Bailable.	Magistrate of the first class.
348	Fraudulently making or having possession of any die, plate or other instrument for counterfeiting any public or private property mark.	Imprisonment for 3 years, or fine, or both.	Non- cognizable.	Bailable.	Magistrate of the first class.
349	Knowingly selling goods marked with a counterfeit property mark.	Imprisonment for 1 year, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.

Back to Index

350(1)	Fraudulently making a false mark upon any package or receptacle containing goods, with intent to cause it to be believed that it contains goods, which it does not contain, etc.	Imprisonment for 3 years, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
350(2)	Making use of any such false mark.	Imprisonment for 3 years, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
351(2)	Criminal intimidation.	Imprisonment for 2 years, or fine, or both.	Non- cognizable	Bailable	Any Magistrate.
351(3)	If threat be to cause death or grievous hurt, etc.	Imprisonment for 7 years, or fine, or both.	Non- cognizable	Bailable	Magistrate of the first class.
351(4)	Criminal intimidation by anonymous communication or having taken precaution to conceal whence the threat comes.	Imprisonment for 2 years, in addition to the punishment under section 351(1).	Non- cognizable.	Bailable.	Magistrate of the first class.
352	Insult intended to provoke breach of the peace.	Imprisonment for 2 years, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
353(1)	False statement, rumour, etc., circulated with intent to cause mutiny or offence	Imprisonment for 3 years, or fine, or both.	Non- cognizable.	Non- bailable.	Any Magistrate.

Back to Index

	against the public peace.				
353(2)	False statement, rumour, etc., with intent to create enmity, hatred or ill- will between different classes.	Imprisonment for 3 years, or fine, or both.	Cognizable.	Non- bailable.	Any Magistrate.
353(3)	False statement, rumour, etc., made in place of worship, etc., with intent to create enmity, hatred or ill- will.	Imprisonment for 5 years and fine.	Cognizable.	Non- bailable.	Any Magistrate.
354	Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure.	Imprisonment for 1 year, or fine, or both.	Non- cognizable.	Bailable.	Any Magistrate.
355	Appearing in a public place, etc., in a state of intoxication, and causing annoyance to any person.	Simple imprisonment for 24 hours, or fine of 1,000 rupees, or both or with community service.	Non- cognizable.	Bailable.	Any Magistrate.
356(2)	Defamation against the President or the Vice- President or the Governor of a State or Administrator of a	Simple imprisonment for 2 years, or fine or both, or community service.	Non- cognizable.	Bailable.	Court of Session.

Back to Index

	Union territory or a Minister in respect of his conduct in the discharge of his public functions when instituted upon a complaint made by the Public Prosecutor.				
	Defamation in any other case.	Simple imprisonment for 2 years, or fine or both or community service.	Non- cognizable.	Bailable.	Magistrate of the first class.
356(3)	Printing or engraving matter knowing it to be defamatory against the President or the Vice- President or the Governor of a State or Administrator of a Union territory or a Minister in respect of his conduct in the discharge of his public functions when instituted upon a complaint made by the Public Prosecutor.	Simple imprisonment for 2 years, or fine, or both.	Non- cognizable.	Bailable.	Court of Session.

Back to Index

	Printing or engraving matter knowing it to be defamatory, in any other case.	Simple imprisonment for 2 years, or fine, or both.	Non- cognizable.	Bailable.	Magistrate of the first class.
356(4)	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter against the President or the Vice- President or the Governor of a State or Administrator of a Union territory or a Minister in respect of his conduct in the discharge of his public functions when instituted upon a complaint made by the Public Prosecutor.	Simple imprisonment for 2 years, or fine, or both.	Non- cognizable.	Bailable.	Court of Session.
	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter in any other case.	Simple imprisonment for 2 years, or fine, or both.	Non- cognizable.	Bailable.	Magistrate of the first class.

Back to Index

357	Being bound to attend on or supply the wants of a person who is helpless from youth, unsoundness of mind or disease, and voluntarily omitting to do so.	Imprisonment for 3 months, or fine of 5,000 rupees, or both.	Non- cognizable.	Bailable.	Any Magistrate.

II.- - CLASSIFICATION OF OFFENCES AGAINST OTHER LAWS

Offence	Cognizable or non- cognizable.	Bailable or non-bailable.	By what court triable.
1	2	3	4
If punishable with death, imprisonment for life, or imprisonment for more than 7 years.	Cognizable.	Non- bailable.	Court of Session.
If punishable with imprisonment for 3 years and upwards but not more than 7 years.	Cognizable.	Non- bailable.	Magistrate of the first class.
If punishable with imprisonment for less than 3 years or with fine only.	Non- cognizable.	Bailable.	Any Magistrate.

Back to Index

THE SECOND SCHEDULE

(See section 522)

FORM No. 1

NOTICE FOR APPEARANCE BY THE POLICE

[See section 35(3)]

Serial No……. Police Station……

To,

.....

[Name of the Accused/Noticee]

.....

[Last known Address]

.....

[Phone No./Email ID (if any)]

In pursuance of sub- section (3) of section 35 of the Bharatiya Nagarik Suraksha Sanhita, 2023, I hereby inform you that during the investigation of FIR/ Case No …….. dated …… u/s. …… registered at Police Station ……..., it is revealed that there are reasonable grounds to question you to ascertain facts and circumstances from you, in relation to the present investigation. Hence you are directed to appear before me at …… ..... …… AM/PM on……... at

Police Station.

Name and Designation of the Officer In charge

(Seal)

Back to Index

FORM No. 2

SUMMONS TO AN ACCUSED PERSON

(See section 63)

To ..... (name of accused) of ..... (address)

Whereas your attendance is necessary to answer to a charge of .... (state shortly the offence charged), you are hereby required to appear in person (or by an advocate, before the (Magistrate) of ....., on the ..... day ..... Herein fail not.

Dated, this ..... day of ....., 20 .....

(Seal of the Court)

(Signature)

FORM No. 3

WARRANT OF ARREST

(See section 72)

To ..... (name and designation of the person or persons who is or are to execute the warrant).

Whereas (name of accused) of (address) stands charged with the offence of ..... (state the offence), you are hereby directed to arrest the said ....., and to produce him before me. Herein fail not.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

(See section 73)

This warrant may be endorsed as follows:- -

Back to Index

If the said ..... shall give bail himself in the sum of rupees ..... with one surety in the sum of rupees ..... (or two sureties each in the sum of rupees .....) to attend before me on the . ..... day of ..... and to continue so to attend until otherwise directed by me, he may be released.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 4

BOND AND BAIL- BOND AFTER ARREST UNDER A WARRANT

(See section 83)

I, ... (name), of ....., being brought before the District Magistrate of ..... (or as the case may be) under a warrant issued to compel my appearance to answer to the charge of ....., do hereby bind myself to attend in the Court of ..... on the ..... day of ..... next, to answer to the said charge, and to continue so to attend until otherwise directed by the Court; and, in case of my making default herein, I bind myself to forfeit, to Government, the sum of rupees .....

Dated, this ..... day of ....., 20 ..... .

(Signature)

I do hereby declare myself surety for the above- named ..... of ..... that he shall attend before in the Court of on the ..... day of ..... next, to answer to the charge on which he has been arrested, and shall continue so to attend until otherwise directed by the Court; and, in case of his making default therein, I bind myself to forfeit, to Government, the sum of rupees .....

Dated, this ..... day of ....., 20 ..... .

(Signature)

Back to Index

FORM No. 5

PROCLAMATION REQUIRING THE APPEARANCE OF A PERSON ACCUSED

(See section 84)

Whereas a complaint has been made before me that ..... (name, description and address) has committed (or is suspected to have committed) the offence of ....., punishable under section ..... of the Bharatiya Nyaya Sanhita, 2023, and it has been returned to a warrant of arrest thereupon issued that the said ..... (name) cannot be found, and whereas it has been shown to my satisfaction that the said ..... (name) has absconded (or is concealing himself to avoid the service of the said warranty);

Proclamation is hereby made that the said ..... of ..... is required to appear at ..... (place) before this Court (or before me) to answer the said complaint on the ..... day of .....

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 6

PROCLAMATION REQUIRING THE ATTENDANCE OF A WITNESS

(See sections 84, 90 and 93)

Whereas complaint has been made before me that ..... (name, description and address) has committed (or is suspected to have committed) the offence of ..... (mention the offence concisely) and a warrant has been issued to compel the attendance of ..... (name, description and address of the witness) before this Court to be examined touching the matter of the said complaint; and whereas it has been returned to the said warrant that the said ..... (name of witness) cannot be served, and it has been shown to my satisfaction that he has absconded (or is concealing himself to avoid the service of the said warrant);

Proclamation is hereby made that the said ..... (name) is required to appear at ..... (place) before the Court

Back to Index

..... on the ..... day of .....
next at ..... o'clock to be examined touching
..... the offence complained of.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 7

ORDER OF ATTACHMENT TO COMPEL THE ATTENDANCE OF A WITNESS

(See section 85)

To the officer in charge of the police station at .....

Whereas a warrant has been duly issued to compel the attendance of ..... (name, description and address) to testify concerning a complaint pending before this Court, and it has been returned to the said warrant that it cannot be served; and whereas it has been shown to my satisfaction that he has absconded (or is concealing himself to avoid the service of the said warrant); and thereupon a Proclamation has been or is being duly issued and published requiring the said ..... to appear and give evidence at the time and place mentioned therein;

This is to authorise and require you to attach by seizure the movable property belonging to the said ..... to the value of rupees ..... which you may find within the District ..... of ..... and to hold the said property under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 8

ORDER OF ATTACHMENT TO COMPEL THE APPEARANCE OF A PERSON ACCUSED

Back to Index

(See section 85)

To ..... (name and designation of the person or persons who is or are to execute the warrant).

Whereas complaint has been made before me that ..... (name, description and address) has committed (or is suspected to have committed) the offence of ..... punishable under section ..... of the Bharatiya Nyaya Sanhita, 2023 and it has been returned to a warrant of arrest thereupon issued that the said ..... (name) cannot be found; and whereas it has been shown to my satisfaction that the said ..... (name) has absconded (or is concealing himself to avoid the service of the said warrant) and thereupon a Proclamation has been or is being duly issued and published requiring the said ..... to appear to answer the said charge within ..... days; and whereas the said ..... is possessed of the following property, other than land paying revenue to Government, in the village (or town), of ....., in the District of ....., viz., ..., and an order has been made for the attachment thereof;

You are hereby required to attach the said property in the manner specified in clause (a), or clause (c), or both*, of sub- section (3) of section 85, and to hold the same under attachment pending further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

*Strike out the one which is not applicable, depending on the nature of the property to be attached.

FORM No. 9

ORDER AUTHORISING AN ATTACHMENT BY THE DISTRICT MAGISTRATE

(See section 85)

To the District Magistrate/Collector of the District of .....

Whereas complaint has been made before me that ..... (name, description and address) has committed (or is suspected to have committed) the offence

Back to Index

of ....., punishable under section ..... of the Bharatiya Nyaya Sanhita, 2023 and it has been returned to a warrant of arrest thereupon issued that the said ..... (name) cannot be found; and whereas it has been shown to my satisfaction that the said ..... (name) has absconded (or is concealing himself to avoid the service of the said warrant) and thereupon a Proclamation has been or is being duly issued and published requiring the said ..... (name) to appear to answer the said charge within ..... days; and whereas the said ..... is possessed of certain land paying revenue to Government in the village (or town) of ....., in the District of .....;

You are hereby authorised and requested to cause the said land to be attached, in the manner specified in clause (a), or clause (c), or both*, of sub- section (4) of section 85, and to be held under attachment pending the further order of this Court, and to certify without delay what you may have done in pursuance of this order.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

*Strike out the one which is not desired.

FORM No. 10

WARRANT IN THE FIRST INSTANCE TO BRING UP A WITNESS

(See section 90)

To ..... (name and designation of the police officer or other person or persons who is or are to execute the warrant).

Whereas complaint has been made before me that ..... (name and description of accused) of ..... (address) has (or is suspected to have) committed the offence of ..... (mention the offence concisely), and it appears likely that ..... (name and description of witness) can give evidence concerning the said complaint, and whereas I have good and sufficient reason to believe that he will not attend as a witness on the hearing of the said complaint unless compelled to do so;

This is to authorise and require you to arrest the said ..... (name of witness), and on the ..... day of ..... to

Back to Index

bring him before this Court ....., to be examined touching the offence complained of.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 11

WARRANT TO SEARCH AFTER INFORMATION OF A PARTICULAR OFFENCE

(See section 96)

To ..... (name and designation of the police officer or other person or persons who is or are to execute the warrant).

Whereas information has been laid ..... (or complaint has been made) before me of the commission ..... (or suspected commission) of the offence of ..... (mention the offence concisely), and it has been made to appear to me that the production of ..... (specify the thing clearly) is essential to the inquiry now being made (or about to be made) into the said offence (or suspected offence);

This is to authorise and require you to search for the said ..... (the thing specified) in the ..... (describe the house or place or part thereof to which the search is to be confined), and, if found, to produce the same forthwith before this Court, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

Signature)

FORM No. 12

WARRANT TO SEARCH SUSPECTED PLACE OF DEPOSIT

(See section 97)

Back to Index

To ..... (name and designation of the police officer above the rank of a constable).

Whereas information has been laid before me, and on due inquiry thereupon had, I have been led to believe that the ..... (describe the house or other place) is used as a place for the deposit (or sale) of stolen property (or if for either of the other purposes expressed in the section, state the purpose in the words of the section);

This is to authorise and require you to enter the said house (or other place) with such assistance as shall be required, and to use, if necessary, reasonable force for that purpose, and to search every part of the said house (or other place, or if the search is to be confined to a part, specify the part clearly), and to seize and take possession of any property (or documents, or stamps, or seals, or coins, or obscene objects, as the case may be) (add, when the case requires it) and also of any instruments and materials which you may reasonably believe to be kept for the manufacture of forged documents, or counterfeit stamps, or false seals, or counterfeit coins or counterfeit currency notes (as the case may be), and forthwith to bring before this Court such of the said things as may be taken possession of, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 13

BOND TO KEEP THE PEACE

(See sections 125 and 126)

Whereas I, ... (name), inhabitant of ..... (place), have been called upon to enter into a bond to keep the peace for the term of ..... or until the completion of the inquiry in the matter of ..... now pending in the Court of ....., I hereby bind myself not to commit a breach of the peace, or do any act that may probably occasion a breach of the peace, during the said term or until the completion of the said inquiry and, in case of my making default therein, I hereby bind myself to forfeit, to Government, the sum of rupees .....

Dated, this ..... day of ....., 20 ..... .

Back to Index

(Signature)

FORM No. 14

BOND FOR GOOD BEHAVIOUR

(See sections 127, 128 and 129)

Whereas I, ... (name), inhabitant of ..... (place), have been called upon to enter into a bond to be of good behaviour to Government and all the citizens of India for the term of ..... (state the period) or until the completion of the inquiry in the matter of ..... now pending in the Court of ....., I hereby bind myself to be of good behaviour to Government and all the citizens of India during the said term or until the completion of the said inquiry; and, in case of my making default therein, I hereby bind myself to forfeit to Government the sum of rupees .....

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

(Where a bond with sureties is to be executed, add)

We do hereby declare ourselves sureties for the above- named ..... that he will be of good behaviour to Government and all the citizens of India during the said term or until the completion of the said inquiry; and, in case of his making default therein, we bind ourselves, jointly and severally, to forfeit to Government the sum of rupees .....

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 15

SUMMONS ON INFORMATION OF A PROBABLE BREACH OF THE PEACE

(See section 132)

Back to Index

To ..... of .....

Whereas it has been made to appear to me by credible information that ..... (state the substance of the information), and that you are likely to commit a breach of the peace (or by which act a breach of the peace will probably be occasioned), you are hereby required to attend in person (or by a duly authorised agent) at the office of the Magistrate of ..... on the ..... day of ..... 20 ....., at ten o'clock in the forenoon, to show cause why you should not be required to enter into a bond for rupees ..... [when sureties are required, add, and also to give security by the bond of one (or two, as the case may be) surety (or sureties) in the sum of rupees ..... (each if more than one)], that you will keep the peace for the term of .....

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 16

WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY TO KEEP THE PEACE

(See section 141)

To the Officer in charge of the Jail at .....

Whereas ..... (name and address) appeared before me in person (or by his authorised agent) on the ..... day of ..... in obedience to a summons calling upon him to show cause why he should not enter into a bond for rupees ..... with one surety (or a bond with two sureties each in rupees .....), that he, the said ..... (name) would keep the peace for the period of months; and whereas an order was then made requiring the said ..... (name) to enter into and find such security ..... (state the security ordered when it differs from that mentioned in the summons), and he has failed to comply with the said order;

This is to authorise and require you to receive the said ..... (name) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of ..... (term of imprisonment) unless he

Back to Index

shall in the meantime be lawfully ordered to be released, and to return this warrant with an endorsement certifying the manner of its execution.

Dated, this .... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 17

WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY FOR GOOD BEHAVIOUR

(See section 141)

To the Officer in charge of the Jail at .....

Whereas it has been made to appear to me that ..... (name and description) has been concealing his presence within the district of ..... and that there is reason to believe that he is doing so with a view to committing a cognizable offence;

or

Whereas evidence of the general character of ..... (name and description) has been adduced before me and recorded, from which it appears that he is an habitual robber (or house- breaker, etc., as the case may be);

And Whereas an order has been recorded stating the same and requiring the said (name) to furnish security for his good behaviour for the term of (state the period) by entering into a bond with one surety (or two or more sureties, as the case may be), himself for rupees ..... and the said surety (or each of the said sureties) rupees ..... and the said ..... (name) has failed to comply with the said order and for such default has been adjudged imprisonment for (state the term) unless the said security be sooner furnished;

This is to authorise and require you receive the said ..... (name) into your custody, together with this warrant and him safely to keep in the Jail, or if he is already in prison, be detained therein, for the said period of (term of imprisonment) unless he shall in the meantime be lawfully ordered to be released, and to return this warrant with an endorsement certifying the manner of its execution.

Dated, this ..... day of ....., 20 ..... .

Back to Index

(Seal of the Court)

(Signature)

FORM No. 18

WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY

(See sections 141 and 142)

To the Officer in charge of the Jail at ..... (or other officer in whose custody the person is).

Whereas ..... (name and description of prisoner) was committed to your custody under warrant of the Court, dated the ..... day of ..... 20 .....; and has since duly given security under section ..... of the Bharatiya Nagarik Suraksha Sanhita, 2023.

or

Whereas ..... (name and description of prisoner) was committed to your custody under warrant of the Court, dated the ..... day of ..... 20 .....; and there have appeared to me sufficient grounds for the opinion that he can be released without hazard to the community;

This is to authorise and require you forthwith to discharge the said ..... (name) from your custody unless he is liable to be detained for some other cause.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 19

WARRANT OF IMPRISONMENT ON FAILURE TO PAY MAINTENANCE

(See section 144)

To the Officer in charge of the Jail at .....

Back to Index

Whereas ..... (name, description and address) has been proved before me to be possessed of sufficient means to maintain his wife ..... (name) [or his child ..... (name) or his father or mother ..... (name), who is by reason of (state the reason) unable to maintain herself (or himself)] and to have neglected (or refused) to do so, and an order has been duly made requiring the said ..... (name) to allow to his said ..... wife (or child or father or mother) for maintenance the monthly sum of rupees .....; and whereas it has been further proved that the said ..... (name) in wilful disregard of the said order has failed to pay rupees ....., being the amount of the allowance for the month (or months) of .....;

And thereupon an order was made adjudging him to undergo imprisonment in the said Jail for the period of .....;

This is to authorise and require you receive the said ..... (name) into your custody in the said Jail, together with this warrant, and there carry the said order into execution according to law, returning this warrant with an endorsement certifying the manner of its execution.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 20

WARRANT TO ENFORCE THE PAYMENT OF MAINTENANCE BY ATTACHMENT AND SALE

(See section 144)

To .....
..... (name and designation of the police officer or other person to execute the warrant).

Whereas an order has been duly made requiring ..... (name) to allow to his said wife (or child or father or mother) for maintenance the monthly sum of rupees ....., and whereas the said ..... (name) in wilful disregard of the said order has failed to pay rupees ....., being the amount of the allowance for the month (or months) of .....

Back to Index

This is to authorise and require you to attach any movable property belonging to the said ..... (name) which may be found within the district of ....., and if within ..... (state the number of days or hours allowed) next after such attachment the said sum shall not be paid (or forthwith), to sell the movable property attached, or so much thereof as shall be sufficient to satisfy the said sum, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 21

ORDER FOR THE REMOVAL OF NUISANCES

(See section 152)

To ..... (name, description and address).

Whereas it has been made to appear to me that you have caused an obstruction (or nuisance) to persons using the public roadway (or other public place) which, etc., (describe the road or public place) ..... by, etc., ... (state what it is that causes the obstruction or nuisance), and that such obstruction (or nuisance) still exists;

or

Whereas it has been made to appear to me that you are carrying on, as owner, or manager, the trade or occupation of ..... (state the particular trade or occupation and the place where it is carried on), and that the same is injurious to the public health (or comfort) by reason ..... (state briefly in what manner the injurious effects are caused), and should be suppressed or removed to different place;

or

Whereas it has been made to appear to me that you are the owner (or are in possession of or have the control over) a certain tank (or well or excavation) adjacent to the public way ..... (describe the thoroughfare), and that the safety of the public is endangered by reason of the said tank (or well or excavation) being without a fence or insecurely fenced);

Back to Index

or

Whereas, etc., etc., (as the case may be);

I do hereby direct and require you within ..... (state the time allowed) (state what is required to be done to abate the nuisance) ..... or to appear at ..... in the ..... Court of ..... on the ..... day of ..... next, and to show cause why this order should not be enforced;

or

I do hereby direct and require you within ..... (state the time allowed) to cease carrying on the said trade or occupation at the said place, and not again to carry on the same, or to remove the said trade from the place where it is now carried on, or to appear, etc.;

or

I do hereby direct and require you within ..... (state the time allowed) to put up a sufficient fence (state the kind of fence and the part to be fenced); or to appear, etc.;

or

I do hereby direct and require you, etc., etc. (as the case may be).

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 22

MAGISTRATE'S NOTICE AND PEREMPTORY ORDER

(See section 160)

To ..... (name, description and address).

I hereby give you notice that it has been found that the order issued on the ..... day of ..... requiring you

Back to Index

..... (state substantially the requisition in the order) is reasonable and proper. Such order has been made absolute, and I hereby direct and require you to obey the said order within (state the time allowed), on peril of the penalty provided by the Bharatiya Nyaya Sanhita, 2023 for disobedience thereto.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 23

INJUNCTION TO PROVIDE AGAINST IMMINENT DANGER PENDING INQUIRY

(See section 161)

To ..... (name, description and address).

Whereas the inquiry into the conditional order issued by me on the ..... day of ....., 20 ....., is pending, and it has been made to appear to me that the nuisance mentioned in the said order is attended with such imminent danger or injury of a serious kind to the public as to render necessary immediate measures to prevent such danger or injury, I do hereby, under the provisions of section 161 of the Bharatiya Nagarik Suraksha Sanhita, 2023, direct and enjoin you forthwith to ..... (state plainly what is required to be done as a temporary safeguard), pending the result of the inquiry.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 24

MAGISTRATE'S ORDER PROHIBITING THE REPETITION, ETC., OF A NUISANCE

(See section 162)

To ..... (name, description and address).

Back to Index

Whereas it has been made to appear to me that, etc. . ..... (state the proper recital, guided by Form No. 21 or Form No. 25, as the case may be);

I do hereby strictly order and enjoin you not to repeat or continue, the said nuisance.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 25

MAGISTRATE'S ORDER TO PREVENT OBSTRUCTION, RIOT, ETC.

(See section 163)

To ..... (name, description and address).

Whereas it has been made to appear to me that you are in possession (or have the management) of ..... (describe clearly the property), and that, in digging a drain on the said land, you are about to throw or place a portion of the earth and stones dug- up upon the adjoining public road, so as to occasion risk of obstruction to persons using the road;

or

Whereas it has been made to appear to me that you and a number of other persons (mention the class of persons) are about to meet and proceed in a procession along the public street, etc., (as the case may be) and that such procession is likely to lead to a riot or an affray;

or

Whereas, etc., etc., (as the case may be);

I do hereby order you not to place or permit to be placed any of the earth or stones dug from land on any part of the said road;

or

I do hereby prohibit the procession passing along the said street, and strictly warn and enjoin you not to take any part in such procession (or as the case recited may require).

Back to Index

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 26

MAGISTRATE'S ORDER DECLARING PARTY ENTITLED TO RETAIN POSSESSION OF LAND, ETC., IN DISPUTE

(See section 164)

It appears to me, on the grounds duly recorded, that a dispute, likely to induce a breach of the peace, existed between ..... (describe the parties by name and residence or residence only if the dispute be between bodies of villagers) concerning certain ..... (state concisely the subject of dispute), situate within my local jurisdiction, all the said parties were called upon to give in a written statement of their respective claims as to the fact of actual possession of the said ..... (the subject of dispute), and being satisfied by due inquiry had thereupon, without reference to the merits of the claim of either of the said parties to the legal right of possession, that the claim of actual possession by the said ..... (name or names or description) is true; I do decide and declare that he is (or they are) in possession of the said ..... (the subject of dispute) and entitled to retain such possession until ousted by due course of law, and do strictly forbid any disturbance of his (or their) possession in the meantime.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 27

WARRANT OF ATTACHMENT IN THE CASE OF A DISPUTE AS TO THE POSSESSION OF LAND, ETC.

(See section 165)

To the officer in charge of the police station at ..... (or, To the Collector of .....).

Back to Index

Whereas it has been made to appear to me that a dispute likely to induce a breach of the peace, existed between ..... (describe the parties concerned by name and residence, or residence only if the dispute be between bodies of villagers) concerning certain ..... (state concisely the subject of dispute) situate within the limits of my jurisdiction, and the said parties were thereupon duly called upon to state in writing their respective claims as to the fact of actual possession of the said ..... (the subject of dispute), and whereas, upon due inquiry into the said claims, I have decided that neither of the said parties was in possession of the said ..... (the subject of dispute) (or I am unable to satisfy myself as to which of the said parties was in possession as aforesaid);

This is to authorise and require you to attach the said ..... (the subject of dispute) by taking and keeping possession thereof, and to hold the same under attachment until the decree or order of a competent Court determining the rights of the parties, or the claim to possession, shall have been obtained, and to return this warrant with an endorsement certifying the manner of its execution.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 28

MAGISTRATE'S ORDER PROHIBITING THE DOING OF ANYTHING ON LAND OR WATER

(See section 166)

A dispute having arisen concerning the right of use of ..... (state concisely the subject of dispute) situate within my local jurisdiction, the possession of which land (or water) is claimed exclusively by ..... (describe the person or persons), and it appears to me, on due inquiry into the same, that the said land (or water) has been open to the enjoyment of such use by the public (or if by an individual or a class of persons, describe him or them) and (if the use can be enjoyed throughout the year) that the said use has been enjoyed within three months of the institution of the said inquiry (or if the use is enjoyable only at a particular season, say, "during the last of the seasons at which the same is capable of being enjoyed");

I do order that the said ..... (the claimant or claimants of possession) or any one in their interest, shall not take (or retain) possession of the said land (or water) to the exclusion of the enjoyment of the right of use aforesaid, until he

Back to Index

(or they) shall obtain the decree or order of a competent Court adjudging him (or them) to be entitled to exclusive possession.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 29

BOND AND BAIL- BOND ON A PRELIMINARY INQUIRY BEFORE A POLICE OFFICER

(See section 189)

I, ... (name), of ....., being charged with the offence of ....., and after inquiry required to appear before the Magistrate of ..... or and after inquiry called upon to enter into my own recognizance to appear when required, do hereby bind myself to appear at ....., in the Court of ....., on the ..... day of ..... next (or on such day as I may hereafter be required to attend) to answer further to the said charge, and in case of my making default herein. I bind myself to forfeit to Government, the sum of rupees .....;

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

I hereby declare myself (or we jointly and severally declare ourselves and each of us) surety (or sureties) for the above said ..... (name) that he shall attend at ..... in the Court of ....., on the ..... day of ..... next (or on such day as he may hereafter be required to attend), further to answer to the charge pending against him, and, in case of his making default therein, I hereby bind myself (or we hereby bind ourselves) to forfeit to Government the sum of rupees .....

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

Back to Index

(Signature)

FORM No. 30

BOND TO PROSECUTE OR GIVE EVIDENCE

(See section 190)

I, ... (name) of ..... (place), do hereby bind myself to attend at ..... in the Court of ..... at ..... o'clock on the ..... day of ..... next and then and there to prosecute (or to prosecute and give evidence) (or to give evidence) in the matter of a charge of ..... against one A.B., and, in case of making default herein, I bind myself to forfeit to Government the sum of rupees .....

Dated, this ..... day of ....., 20 ..... .

(Signature)

FORM No. 31

SPECIAL SUMMONS TO A PERSON ACCUSED OF A PETTY OFFENCE

(See section 229)

To, ...

(Name of the accused)

of ..... (address)

Whereas your attendance is necessary to answer a charge of a petty offence ..... (state shortly the offence charged), you are hereby required to appear in person (or by an advocate) before ..... (Magistrate) of ..... on the ..... day of ..... 20 ....., or if you desire to plead guilty to the charge without appearing before the Magistrate, to transmit before the aforesaid date the plea of guilty in writing and the sum of ..... rupees as fine, or if you desire to appear by an advocate and to plead guilty through such an advocate, to authorise such advocate in writing to make such a plea of guilty on your behalf and to pay the fine through such advocate. Herein fail not.

Dated, this ..... day of ....., 20 ..... .

Back to Index

(Seal of the Court)

(Signature)

(Note.- - The amount of fine specified in this summons shall not exceed five thousand rupees.)

FORM No. 32

NOTICE OF COMMITMENT BY MAGISTRATE TO PUBLIC PROSECUTOR

(See section 232)

The Magistrate of ..... hereby gives notice that he has committed one ..... for trial at the next Sessions; and the Magistrate hereby instructs the Public Prosecutor to conduct the prosecution of the said case.

The charge against the accused is that, ... etc. (state the offence as in the charge)

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 33

CHARGES

(See sections 234, 235 and 236)

I. Charges with one- head

(1) (a) I, ... (name and office of Magistrate, etc.), hereby charge you ..... (name of accused person) as follows:- -

(b) On section 147.- - That you, on or about the ..... day of ....., at ....., waged war against the Government of India and thereby committed an offence punishable under section 147 of the Bharatiya Nyaya Sanhita, 2023 and within the cognizance of this Court.

(c) And I hereby direct that you be tried by this Court on the said charge.

Back to Index

(Signature and seal of the Magistrate)

[To be substituted for (b)]:- -

(2) On section 151.- - That you, on or about the ..... day of ....., at ....., with the intention of inducing the President of India [or, as the case may be, the Governor of ..... (name of State)] to refrain from exercising a lawful power as such President (or, as the case may be, the Government) assaulted President (or, as the case may be, the Governor), and thereby committed an offence punishable under section 151 of the Bharatiya Nyaya Sanhita, 2023, and within the cognizance of this Court.

(3) On section 198.- - That you, on or about the ..... day of ....., at ....., did (or omitted to do, as the case may be) ....., such conduct being contrary to the provisions of ..... Act ....., section ....., and known by you to be prejudicial to ....., and thereby committed an offence punishable under section 198 of the Bharatiya Nyaya Sanhita, 2023, and within the cognizance of this Court.

(4) On section 229.- - That you, on or about the ..... day of ....., at ....., in the course of the trial of ..... before ....., stated in evidence that "....." which statement you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 229 of the Bharatiya Nyaya Sanhita, 2023, and within the cognizance of this Court.

(5) On section 105.- - That you, on or about the ..... day of ....., at ....., committed culpable homicide not amounting to murder, causing the death of ....., and thereby committed an offence punishable under section 105 of the Bharatiya Nyaya Sanhita, 2023, and within the cognizance of this Court.

(6) On section 108.- - That you, on or about the ..... day of ....., at ....., abetted the commission of suicide by A.B., a person in a state of intoxication, and thereby committed an offence punishable under section 108 of the Bharatiya Nyaya Sanhita, 2023, and within the cognizance of this Court.

(7) On section 117(2).- - That you, on or about the ..... day of ....., at ....., voluntarily caused grievous hurt to ....., and thereby committed an offence punishable under

Back to Index

section 117(2) of the Bharatiya Nyaya Sanhita, 2023, and within the cognizance of this Court.

(8) On section 309(2).- - That you, on or about the ..... day of ....., at ....., robbed ..... (state the name), and thereby committed an offence punishable under section 309(2) of the Bharatiya Nyaya Sanhita, 2023, and within the cognizance of this Court.

(9) On section 310(2).- - That you, on or about the ..... day of ....., at ....., committed dacoity, an offence punishable under section 310(2) of the Bharatiya Nyaya Sanhita, 2023 and within the cognizance of this Court.

II. CHARGES WITH TWO OR MORE HEADS

(1) (a) I, ... (name and office of Magistrate, etc.), hereby charge you ..... (name of accused person) as follows:- -

(b) On section 179.- - First- - That you, on or about the ..... day of ....., at ....., knowing a coin to be counterfeit, delivered the same to another person, by name, A.B., as genuine, and thereby committed an offence punishable under section 179 of the Bharatiya Nyaya Sanhita, 2023 and within the cognizance of the Court of Session.

Secondly- - That you, on or about the ..... day of ....., at ....., knowing a coin to be counterfeit attempted to induce another person, by name, A.B., to receive it as genuine, and thereby committed an offence punishable under section 179 of the Bharatiya Nyaya Sanhita, 2023 and within the cognizance of the Court of Session.

(c) And I hereby direct that you be tried by the said Court on the said charge.

(Signature and seal of the Magistrate)

[To be substituted for (b)]:- -

(2) On sections 103 and 105.- - First- - That you, on or about the ..... day of ....., at ....., committed murder by causing the death of ....., and thereby committed an offence punishable under section 103 of the Bharatiya Nyaya Sanhita, 2023 and within the cognizance of the Court of Session.

Back to Index

Secondly- - That you, on or about the ..... day of ....., at ....., by causing the death of ....., committed culpable homicide not amounting to murder, and thereby committed an offence punishable under section 105 of the Bharatiya Nyaya Sanhita, 2023 and within the cognizance of the Court of Session.

(3) On sections 303(2) and 307.- - First- - That you, on or about the ..... day of ....., at, committed theft, and thereby committed an offence punishable under section 303(2) of the Bharatiya Nyaya Sanhita, 2023 and within the cognizance of the Court of Session.

Secondly- - That you, on or about the ..... day of ....., at ....., committed theft, having made preparation for causing death to a person in order to the committing of such theft, and thereby committed an offence punishable under section 307 of the Bharatiya Nyaya Sanhita, 2023 and within the cognizance of the Court of Session.

Thirdly- - That you, on or about the ..... day of ....., at ....., committed theft, having made preparation for causing restraint to a person in order to the effecting of your escape after the committing of such theft, and thereby committed an offence punishable under section 307 of the Bharatiya Nyaya Sanhita, 2023 and within the cognizance of the Court of Session.

Fourthly- - That you, on or about the ..... day of ....., at ....., committed theft, having made preparation for causing fear of hurt to a person in order to the restraining of property taken by such theft and thereby committed an offence punishable under section 307 of the Bharatiya Nyaya Sanhita, 2023 and within the cognizance of the Court of Session.

(4) Alternative charge on section 229.- - That you, on or about the ..... day of ....., at ....., in the course of the inquiry into ....., before ....., stated in evidence that ‘‘.....’’, and that you, on or about the ..... day of ....., at ....., in the course of the trial of, ... before, stated in the evidence that ‘‘.....’’, one of which statements you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 229 of the Bharatiya Nyaya Sanhita, 2023 and within the cognizance of the Court of Session.

(In cases tried by Magistrates substitute ‘‘within my cognizance’’ for ‘‘within the cognizance of the Court of Session’’.)

Back to Index

III. CHARGES FOR THEFT AFTER PREVIOUS CONVICTION

I, ... (name and office of Magistrate, etc.) hereby charge you ..... (name of accused person) as follows:- -

That you, on or about the ..... day of ....., at ....., committed theft, and thereby committed an offence punishable under section 303(2) of the Bharatiya Nyaya Sanhita, 2023 and within the cognizance of the Court of Session (or Magistrate, as the case may be).

And you, the said ..... (name of accused), stand further charged that you, before the committing of the said offence, that is to say, on the ..... day of ....., had been convicted by the ..... (state Court by which conviction was had) at ..... of an offence punishable under Chapter XVII of the Bharatiya

Nyaya Sanhita, 2023 with imprisonment for a term of three years, that is to say, the offence of house- breaking by night ..... (describe the offence in the words used in the section under which the accused was convicted), which conviction is still in full force and effect, and that you are thereby liable to enhanced punishment under section 13 of the Bharatiya Nyaya Sanhita, 2023.

And I hereby direct that you be tried, etc.

FORM No. 34

SUMMONS TO WITNESS

(See sections 63 and 267)

To ..... of .....

Whereas complaint has been made before me that ..... (name of the accused) of ..... (address) has (or is suspected to have) committed the offence of ..... (state the offence concisely with time and place), and it appears to me that you are likely to give material evidence or to produce any document or other thing for the prosecution.

You are hereby summoned to appear before this Court on the ..... day of ..... next at ten o'clock in the forenoon, to produce such document or thing or to testify what you know concerning the matter of the said complaint, and not to depart thence without leave of the Court; and you are hereby warned that, if you shall without just excuse neglect or refuse to appear on the said date, a warrant will be issued to compel your attendance.

Back to Index

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 35

WARRANT OF COMMITMENT ON A SENTENCE OF IMPRISONMENT OR FINE IF PASSED BY A COURT

(See sections 258, 271 and 278)

To the Officer in charge of Jail at .....

Whereas on the ..... day of ....., ... (name of the prisoner), the (1st, 2nd, 3rd, as the case may be) prisoner in case No. . ..... of the Calendar for 20 ....., was convicted before me ..... (name and official designation) of the offence of ..... (mention the offence or offences concisely) under section (or sections) ..... of the Bharatiya Nyaya Sanhita, 2023 (or of ..... Act .....), and was sentenced to ..... (state the punishment fully and distinctly).

This is to authorise and require you to receive the said ..... (prisoner's name) into your custody in the said Jail, together with this warrant, and thereby carry the aforesaid sentence into execution according to law.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 36

WARRANT OF IMPRISONMENT ON FAILURE TO PAY COMPENSATION

(See section 273)

To the Officer in charge of Jail at .....

Whereas ..... (name and description) has brought against ..... (name and description of the accused person) the complaint

Back to Index

that ..... (mention it concisely) and the same has been dismissed on the ground that there was no reasonable ground for making the accusation against the said ..... (name) and the order of dismissal awards payment by the said ..... (name of complainant) of the sum of rupees ..... as compensation; and whereas the said sum has not been paid and an order has been made for his simple imprisonment in Jail for the period of ..... days, unless the aforesaid sum be sooner paid;

This is to authorise and require you to receive the said ..... (name) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of ..... (term of imprisonment), subject to the provisions of section 8(6)(b) of the Bharatiya Nyaya Sanhita, 2023, unless the said sum be sooner paid, and on the receipt thereof, forthwith to set him at liberty, returning this warrant with an endorsement certifying the manner of its execution.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 37

ORDER REQUIRING PRODUCTION IN COURT OF PERSON IN PRISON FOR ANSWERING TO CHARGE OF OFFENCE

(See section 302)

To the Officer in charge of Jail at .....

Whereas the attendance of ..... (name of prisoner) at present confined/detained in the above- mentioned prison, is required in this Court to answer to a charge of ..... (state shortly the offence charged) or for the purpose of a proceeding ..... (state shortly the particulars of the proceeding).

You are hereby required to produce the said ..... under safe and sure conduct before this Court at ..... on the ..... day of ....., 20 ....., by ..... A.M. there to answer to the said charge, or for the purpose of the said proceeding, and after this Court has dispensed with his further attendance, cause him to be conveyed under safe and sure conduct back to the said prison.

Back to Index

And you are further required to inform the said ..... of the contents of this order and deliver to him the attached copy thereof.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

Countersigned.

(Seal)

(Signature)

FORM No. 38

ORDER REQUIRING PRODUCTION IN COURT OF PERSON IN PRISON FOR GIVING EVIDENCE

(See section 302)

To the Officer in charge of the Jail at .....

Whereas complaint has been made before this Court that ..... (name of the accused) of has committed the offence of ..... (state offence concisely with time and place) and it appears that ..... (name of prisoner) at present confined/detained in the above- mentioned prison, is likely to give material evidence for the prosecution/defence.

You are hereby required to produce the said ..... under safe and sure conduct before this Court at ..... on the ..... day of ....., 20 ....., by A.M. there to give evidence in the matter now pending before this Court, and after this Court has dispensed with his further attendance, cause him to be conveyed under safe and sure conduct back to the said prison.

And you are further required to inform the said ..... of the contents of this order and deliver to him the attached copy thereof.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

Back to Index

(Signature)

Countersigned.

(Seal)

(Signature)

FORM No. 39

WARRANT OF COMMITMENT IN CERTAIN CASES OF CONTEMPT WHEN A FINE IS IMPOSED

(See section 384)

To the Officer in charge of the Jail at .....

Whereas at a Court held before me on this day ..... (name and description of the offender) in the presence (or view) of the Court committed wilful contempt.

And whereas for such contempt the said ..... (name of the offender) has been adjudged by the Court to pay a fine of rupees ....., or in default to suffer simple imprisonment for the period of ..... (state the number of months or days).

This is to authorise and require you to receive the said ..... (name of the offender) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of ..... (term of imprisonment), unless the said fine be sooner paid; and, on the receipt thereof, forthwith to set him at liberty, returning this warrant with an endorsement certifying the manner of its execution.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 40

MAGISTRATE'S OR JUDGE'S WARRANT OF COMMITMENT OF WITNESS REFUSING TO ANSWER OR TO PRODUCE DOCUMENT

Back to Index

(See section 388)

To .....

(name and designation of officer of Court)

Whereas ..... (name and description), being summoned (or brought before this Court) as a witness and this day required to give evidence on an inquiry into an alleged offence, refused to answer a certain question (or certain questions) put to him touching the said alleged offence, and duly recorded, or having been called upon to produce any document has refused to produce such document, without alleging any just excuse for such refusal, and for his refusal has been ordered to be detained in custody for ..... (term of detention adjudged);

This is to authorise and require you to take the said ..... (name) into custody, and him safely to keep in your custody for the period of ..... days, unless in the meantime he shall consent to be examined and to answer the questions asked of him, or to produce the document called for from him, and on the last of the said days, or forthwith on such consent being known, to bring him before this Court to be dealt with according to law, returning this warrant with an endorsement certifying the manner of its execution.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 41

WARRANT OF COMMITMENT UNDER SENTENCE OF DEATH

(See section 407)

To the Officer in charge of the Jail at .....

Whereas at the session held before me on the ..... day of ....., 20 ....., ... (name of prisoner), the (1st, 2nd, 3rd, as the case may be), prisoner in case No. . ..... of the Calendar for 20 ..... at the said Session, was duly convicted of the offence of culpable homicide amounting to murder under section ..... of the Bharatiya Nyaya Sanhita, 2023, and sentenced to death, subject to the confirmation of the said sentence by the ..... Court of .....

Back to Index

This is to authorise and require you to receive the said ..... (prisoner's name) into your custody in the said Jail, together with this warrant, and him there safely to keep until you shall receive the further warrant or order of this Court, carrying into effect the order of the said ..... Court.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 42

WARRANT AFTER A COMMUTATION OF A SENTENCE

(See sections 427, 453 and 456)

To the Officer in charge of the Jail at .....

Whereas at a Session held on the ..... day of ....., 20 ....., ... (name of the prisoner), the (1st, 2nd, 3rd, as the case may be), prisoner in case No. . ..... of the Calendar for 20 ....., at the said Session, was convicted of the offence of ....., punishable under section ..... of the Bharatiya Nyaya Sanhita, 2023, and was sentenced to ..... and thereupon committed to your custody; and whereas by the order of the ..... Court of ..... order of the ..... (a duplicate of which is hereunto annexed) the punishment adjudged by the said sentence has been commuted to the punishment of imprisonment for life;

This is to authorise and require you safely to keep the said ..... (prisoner's name) in your custody in the said Jail, as by law is required, until he shall be delivered over by you to the proper authority and custody for the purpose of his undergoing the punishment of imprisonment for life under the said order,

or

if the mitigated sentence is one of imprisonment, say, after the words "custody in the said Jail", "and there to carry into execution the punishment of imprisonment under the said order according to law".

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

Back to Index

(Signature)

FORM No. 43

WARRANT OF EXECUTION OF A SENTENCE OF DEATH

(See sections 453 and 454)

To the Officer in charge of the Jail at ..... Whereas ..... (name of the prisoner), the (1st, 2nd, 3rd, as the case may be) prisoner in case No. . ..... of the Calendar for 20 ..... at the Session held before me on the ..... day of ....., 20 ....., has been by a warrant of the Court, dated the ..... day of ....., committed to your custody under sentence of death; ..... and whereas the order of the High Court at ..... confirming the said sentence has been received by this Court.

This is to authorise and require you to carry the said sentence into execution by causing the said ..... to be hanged by the neck until he be dead, at ..... (time and place of execution), and to return this warrant to the Court with an endorsement certifying that the sentence has been executed.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 44

WARRANT TO LEVY A FINE BY ATTACHMENT AND SALE

(See section 461)

To .....

(name and designation of the police officer or other person or persons who is or are to execute the warrant).

Whereas ..... (name and description of the offender) was on the ..... day of ....., 20 ....., convicted before me of the offence of ..... (mention the offence concisely), and sentenced to pay a fine of rupees .....; and whereas the said

Back to Index

..... (name), although required to pay the said fine, has not paid the same or any part thereof;

This is to authorise and require you to attach any movable property belonging to the said ..... (name), which may be found within the district of .....; and, if within ..... (state the number of days or hours allowed) next after such attachment the said sum shall not be paid (or forthwith), to sell the movable property attached, or so much thereof as shall be sufficient to satisfy the said fine, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 45

WARRANT FOR RECOVERY OF FINE

(See section 461)

To the Collector of the district of ..... Whereas ..... (name, address and description of the offender) was on the ..... day of ....., 20 ....., convicted before me of the offence of ..... (mention the offence concisely), and sentenced to pay a fine of rupees .....; and Whereas the said ..... (name), although require to pay the said fine, has not paid the same or any part of thereof;

You are hereby authorised and requested to realise the amount of the said fine as arrears of land revenue from the movable or immovable property, or both, of the said ..... (name) and to certify without delay what you have done in pursuance of this order.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 46

Back to Index

BOND FOR APPEARANCE OF OFFENDER RELEASED PENDING REALISATION OF FINE

[See section 464 (1) (b)]

Whereas I, ... (name) inhabitant of .....

(place), have been sentenced to pay a fine of rupees ..... and in default of payment thereof to undergo imprisonment for .....; and whereas the Court has been pleased to order my release on condition of my executing a bond for my appearance on the following date (or dates), namely:- -

I hereby bind myself to appear before the Court of ..... at ..... o'clock on the following date (or dates), namely:- - and, in case of making default herein, I bind myself to forfeit to Government the sum of rupees .....

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

WHERE A BOND WITH SURETIES IS TO BE EXECUTED, ADD- -

We do hereby declare ourselves sureties for the above- named that he will appear before the Court of ..... on the following date (or dates), namely:- -

And, in case of his making default therein, we bind ourselves jointly and severally to forfeit to Government the sum of rupees .....

(Signature)

FORM No. 47

BOND AND BAIL- BOND FOR ATTENDANCE BEFORE OFFICER IN CHARGE OF POLICE STATION OR COURT

[See sections 478, 479, 480, 481, 482(3) and 485]

I, ... (name), of ..... (place), having been arrested or detained without warrant by the Officer in charge of ..... police station (or having been brought before the Court of

Back to Index

.....), charged with the offence of ....., and required to give security for my attendance before such Officer of Court on condition that I shall attend such Officer or Court on every day on which any investigation or trial is held with regard to such charge, and in case of my making default herein, I bind myself to forfeit to Government the sum of rupees .....

Dated, this ..... day of ....., 20 ..... .

(Signature)

I hereby declare myself (or we jointly and severally declare ourselves and each of us) surety (or sureties) for the above said ..... (name) that he shall attend the Officer in charge of ..... police station or the Court of ..... on every day on which any investigation into the charge is made or any trial on such charge is held, that he shall be, and appear, before such Officer or Court for the purpose of such investigation or to answer the charge against him (as the case may be), and, in case of his making default herein, I hereby bind myself (or we, hereby bind ourselves) to forfeit to Government the sum of rupees .....

Dated, this ..... day of ....., 20 ..... .

(Signature)

FORM No. 48

WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY

(See section 487)

To the Officer in charge of the Jail at .....

(or other officer in whose custody the person is)

Whereas ..... (name and description of prisoner) was committed to your custody under warrant of this Court, dated the ..... day of ....., and has since with his surety (or sureties) duly executed a bond under section 485 of the Bharatiya Nagarik Suraksha Sanhita, 2023;

This is to authorise and require you forthwith to discharge the said ..... (name) from your custody, unless he is liable to be detained for some other matter.

Back to Index

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 49

WARRANT OF ATTACHMENT TO ENFORCE A BOND

(See section 491)

To the Police Officer in charge of the police station at .....

Whereas ..... (name, description and address of person) has failed to appear on ..... (mention the occasion) pursuant to his recognizance, and has by default forfeited to Government the sum of rupees ..... (the penalty in the bond); and whereas the said ..... (name of person) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him;

This is to authorise and require you to attach any movable property of the said ..... (name) that you may find within the district of ....., by seizure and detention, and, if the said amount be not paid within ....., days to sell the property so attached or so much of it as may be sufficient to realise the amount aforesaid, and to make return of what you have done under this warrant immediately upon its execution.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 50

NOTICE TO SURETY ON BREACH OF A BOND

(See section 491)

To ..... of .....

Back to Index

Whereas on the ..... day of ..... , 20 ....., you became surety for ..... (name) of ..... (place) that he should appear before this Court on the ..... day of ..... and bound yourself in default thereof to forfeit the sum of rupees ..... to Government; and whereas the said ..... (name) has failed to appear before this Court and by reason of such default you have forfeited the aforesaid sum of rupees.

You are hereby required to pay the said penalty or show cause, within ..... days from this date, why payment of the said sum should not be enforced against you.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 51

NOTICE TO SURETY OF FORFEITURE OF BOND FOR GOOD BEHAVIOUR

(See section 491)

To ..... of .....

Whereas on the ..... day of ....., 20 ....., you became surety by a bond for ..... (name) of ..... (place) that he would be of good behaviour for the period of ..... and bound yourself in default thereof to forfeit the sum of rupees ..... to Government; and whereas the said ..... (name) has been convicted of the offence of ..... (mention the offence concisely) committed since you became such surety, whereby your security bond has become forfeited;

You are hereby required to pay the said penalty of rupees ..... or to show cause within ..... days why it should not be paid.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

Back to Index

FORM No. 52

WARRANT OF ATTACHMENT AGAINST A SURETY

(See section 491)

To ..... of ....

Whereas ..... (name, description and address) has bound himself as surety for the appearance of ..... (mention the condition of the bond) and the said ..... (name) has made default, and thereby forfeited to Government the sum of rupees ..... (the penalty in the bond);

This is to authorise and require you to attach any movable property of the said ..... (name) which you may find within ..... the district of ....., by seizure and detention; and, if the said amount be not paid within days, to sell the property so attached, or so much of it as may be sufficient to realise the amount aforesaid, and make return of what you have done under this warrant immediately upon its execution.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 53

WARRANT OF COMMITMENT OF THE SURETY OF AN ACCUSED PERSON ADMITTED TO BAIL

(See section 491)

To the Superintendent (or Keeper) of the Civil Jail at .....

Whereas ..... (name and description of surety) has bound himself as a surety for the appearance of ..... (state the condition of the bond) and the said ..... (name) has therein made default whereby the penalty mentioned in the said bond has been forfeited to Government; and whereas the said ..... (name of surety) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him, and the same cannot be recovered by attachment and sale of his movable property, and an order has been made for his imprisonment in the Civil Jail for ..... (Specify the period);

Back to Index

This is to authorise and require you, the said Superintendent (or Keeper) to receive the said ..... (name) into your custody with the warrant and to keep him safely in the said Jail for the said ..... (term of imprisonment), and to return this warrant with an endorsement certifying the manner of its execution.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 54

NOTICE TO THE PRINCIPAL OF FORFEITURE OF BOND TO KEEP THE PEACE

(See section 491)

To ..... (name, description and address)

Whereas on the ..... day of ....., 20 ..... , you entered into a bond not to commit, etc., ... (as in the bond), and proof of the forfeiture of the same has been given before me and duly recorded;

You are hereby called upon to pay the said penalty of rupees ..... or to show cause before me within ..... days why payment of the same should not be enforced against you.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 55

WARRANT TO ATTACH THE PROPERTY OF THE PRINCIPAL ON BREACH OF A BOND TO KEEP THE PEACE

(See section 491)

To .....

Back to Index

(name and designation of police officer), at the police station of .....

Whereas ..... (name and description) did, on the ..... day of ....., 20 ....., enter into a bond for the sum of rupees ..... binding himself not to commit a breach of the peace, etc., (as in the bond), and proof of the forfeiture of the said bond has been given before me and duly recorded; and whereas notice has been given to the said ..... (name) calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum;

This is to authorise and require you to attach by seizure movable property belonging to the said ..... (name) to the value of rupees ....., which you may find within the district of ....., and, if the said sum be not paid within ....., to sell the property so attached, or so much of it as may be sufficient to realise the same; and to make return of what you have done under this warrant immediately upon its execution.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 56

WARRANT OF IMPRISONMENT ON BREACH OF A BOND TO KEEP THE PEACE

(See section 491)

To the Superintendent (or Keeper) of the Civil Jail at .....

Whereas proof has been given before me and duly recorded that ..... (name and description) has committed a breach of the bond entered into by him to keep the peace, whereby he has forfeited to Government the sum of rupees .....; and whereas the said ..... (name) has failed to pay the said sum or to show cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his movable property, and an order has been made for the imprisonment of the said ..... (name) in the Civil Jail of the period of ..... (term of imprisonment);

This is to authorise and require you, the said Superintendent (or Keeper) of the said Civil Jail to receive the said ..... (name) into your custody, together with this warrant, and to keep his safely in the said Jail for the said period of

Back to Index

..... (term of imprisonment), and to return this warrant with an endorsement certifying the manner of its execution.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

FORM No. 57

WARRANT OF ATTACHMENT AND SALE ON FORFEITURE OF BOND FOR GOOD BEHAVIOUR

(See section 491)

To the Police Officer in charge of the police station at .....

Whereas ..... (name, description and address) did, on the ..... day of ....., 20 ....., give security by bond in the sum of rupees ..... for the good behaviour of ..... (name, etc., of the principal), and proof has been given before me and duly recorded of the commission by the said ..... (name) of the offence of ..... whereby the said bond has been forfeited; and whereas notice has been given to the said ..... (name) calling upon him to show cause why the said sum should not be paid, and he has failed to do so to pay the said sum;

This is to authorise and require you to attach by seizure movable property belonging to the said ..... (name) to the value of rupees ..... which you may find within the district of ....., and, if the said sum be not paid within ....., to sell the property so attached, or so much of it as may be sufficient to realise the same, and to make return of what you have done under this warrant immediately upon its execution.

Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

Back to Index

FORM No. 58

WARRANT OF IMPRISONMENT ON FORFEITURE OF BOND FOR GOOD BEHAVIOUR

(See section 491)

To the Superintendent (or Keeper) of the Civil Jail at .....

Whereas ..... (name, description and address) did, on the ..... day of ....., 20 ....., give security by bond in the sum of rupees ..... for the good behaviour of ..... (name, etc., of the principal), and proof of the breach of the said bond has been given before me and duly recorded, whereby the said ..... (name) has forfeited to Government the sum of rupees ....., and whereas he has failed to pay the said sum or to show cause why the said sum should not be paid although duly called upon to do so, and payment thereof cannot be enforced by attachment of his movable property, and an order has been made for the imprisonment of the said ..... (name) in the Civil Jail for the period of ..... (term of imprisonment);

This is to authorise and require you, the Superintendent (or Keeper), to receive the said ..... (name) into your custody, together with this warrant, and to keep him safely in the said Jail for the said period of ..... (term of imprisonment), returning this warrant with an endorsement certifying the manner of its execution. Dated, this ..... day of ....., 20 ..... .

(Seal of the Court)

(Signature)

Back to Index

STATEMENT OF OBJECTS AND REASONS

1. The Code of Criminal Procedure, 1973 regulates the procedure for arrest, investigation, inquiry and trial of offences under the Indian Penal Code and under any other law governing criminal offences. The Code provides for a mechanism for conducting trials in a criminal case. It gives the procedure for registering a complaint, conducting a trial and passing an order, and filing an appeal against any order.

2. Fast and efficient justice system is an essential component of good governance. However, delay in delivery of justice due to complex legal procedures, large pendency of cases in the Courts, low conviction rates, insufficient use of technology in legal system, delays in investigation system, inadequate use of forensics are the biggest hurdles in speedy delivery of justice, which impacts the poor man adversely. In order to address these issues a citizens centric criminal procedure is the need of the hour.

3. The experience of seven decades of Indian democracy calls for a comprehensive review of our criminal laws, including the Code of Criminal Procedure and adapt them in accordance with the contemporary needs and aspirations of the people.

4. The Government with the mantra, "Sabka Saath, Sabka Vikas, Sabka Vishwas and Sabka Prayas" is committed to ensure speedy justice to all citizens in conformity with these constitutional and democratic aspirations. The Government is committed to make a comprehensive review of the framework of criminal laws to provide accessible and speedy justice to all.

5. In view of the above, it is proposed to repeal the Code of Criminal Procedure, 1973 and enact a new law. It provides for the use of technology and forensic sciences in the investigation of crime and furnishing and lodging of information, service of summons, etc., through electronic communication. Specific time- lines have been prescribed for time bound investigation, trial and pronouncement of judgements. Citizen centric approach have been adopted for supply of copy of first information report to the victim and to inform them about the progress of investigation, including by digital means. In cases where punishment is

7. years or more, the victims shall be given an opportunity of being heard before withdrawal of the case by the Government. Summary trial has been made mandatory for petty and less serious cases. The accused persons may be examined through electronic means, like video conferencing. The magisterial system has also been streamlined.

6. Accordingly, a Bill, namely, the Bharatiya Nagarik Suraksha Sanhita, 2023 was introduced in the Lok Sabha on 11th August, 2023. The Bill was referred to the Departmentrelated Parliamentary Standing Committee on Home Affairs for its

Back to Index

consideration and report. The Committee after deliberations made its recommendations in its report submitted on 10th November, 2023. The recommendations made by the Committee have been considered by the Government and it has been decided to withdraw the Bill pending in the Lok Sabha and introduce a new Bill incorporating therein those recommendations made by the Committee that have been accepted by the Government.

7. The Notes on Clauses explains the various provision of the Bill.

8. The Bill seeks to achieve the above objectives.

Back to Index

Linked Provisions of Section 2(1)(k) of Bharatiya Nagarik Suraksha Sanhita, 2023:

Juvenile Justice - Care and Protection of Children Act, 2015 - Section 36 – inquiry:

(1) On production of a child or receipt of a report under section 31, the Committee shall hold an inquiry in such manner as may be prescribed and the Committee, on its own or on the report from any person or agency as specified in sub- section (2) of section 31, may pass an order to send the child to the children's home or a fit facility or fit person, and for speedy social investigation by a social worker or Child Welfare Officer or Child Welfare Police Officer:

Provided that all children below six years of age, who are orphan, surrendered or appear to be abandoned shall be placed in a Specialised Adoption Agency, where available.

(2) The social investigation shall be completed within fifteen days so as to enable the Committee to pass final order within four months of first production of the child:

Provided that for orphan, abandoned or surrendered children, the time for completion of inquiry shall be as specified in section 38.

(3) After the completion of the inquiry, if Committee is of the opinion that the said child has no family or ostensible support or is in continued need of care and protection, it may send the child to a Specialised Adoption Agency if the child is below six years of age, children's home or to a fit facility or person or foster family, till suitable means of rehabilitation are found for the child, as may be prescribed, or till the child attains the age of eighteen years:

Provided that the situation of the child placed in a children's home or with a fit facility or person or a foster family, shall be reviewed by the Committee, as may be prescribed.

(4) The Committee shall submit a quarterly report on the nature of disposal of cases and pendency of cases to the District Magistrate in the manner as may be prescribed, for review of pendency of cases.

(5) After review under sub- section (4), the District Magistrate shall direct the Committee to take necessary remedial measures to address the pendency, if necessary and send a report of such reviews to the State Government, who may cause the constitution of additional Committees, if required:

Provided that if the pendency of cases continues to be unaddressed by the Committee even after three months of receiving such directions, the State Government shall terminate the said Committee and shall constitute a new Committee.

(6) In anticipation of termination of the Committee and in order that no time is lost in constituting a new Committee, the State Government shall maintain a standing panel of eligible persons to be appointed as members of the Committee.

(7) In case of any delay in the constitution of a new Committee under sub- section (5), the Child Welfare Committee of a nearby district shall assume responsibility in the intervening period.

Go Back to Section 2(1)(k), Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 2(1)(v) of Bharatiya Nagarik Suraksha Sanhita, 2023:

Terrorist Affected Areas - Special Courts Act, 1984 - Section 9 - Public Prosecutors:

(1) For every Special Court, the Central Government shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors:

Provided that the Central Government may also appoint for any case or class of cases a Special Public Prosecutor.

(2) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section only if he has been in practice as an Advocate for not less than seven years or has held any post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law,

(3) Every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (ii) of section 2 of the Code, and the provisions of the Code shall have effect accordingly.

National Investigation Agency Act 2008 - Section 15 - Public Prosecutors:

(1) The Central Government shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors:

Provided that the Central Government may also appoint for any case or class or group of cases a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an Advocate for not less than seven years or has held any post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code, and the provisions of the Code shall have effect accordingly.

Go Back to Section 2(1)(v), Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 14 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Delhi Police Act, 1978 - Section 70 - Power of Central Government to authorise Commissioner of Police and certain other officers to exercise powers of District Magistrates and Executive Magistrates under Code of Criminal Procedure, 1973:

(1) The Central Government may, by notification in the Official Gazette and subject to such conditions and limitations as may be specified therein, empower- -

(a) the Commissioner of Police to exercise and perform in relation to Delhi the powers and duties of an Executive Magistrate and of a District Magistrate under such of the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as may be specified in the notification;

(b) any officer subordinate to the Commissioner of Police (not being an officer below the rank of an Assistant Commissioner of Police) to exercise and perform in relation to such areas in Delhi as may be specified in the notification the powers and duties of an Executive Magistrate under such of the provisions of the said Code as may be specified in the notification.

(2) Every officer subordinate to the Commissioner of Police shall, in the exercise and performance of any powers and duties which he is empowered to exercise or perform under sub- section (1), be subject to the general control of the Commissioner of Police in the same manner and to the same extent as an Executive Magistrate appointed under section 20 of the said Code would be subject to the general control of the District Magistrate appointed under that section.

(3) The Commissioner of Police or any officer subordinate to him shall not be subject in the exercise and performance of any powers and duties which he is empowered to exercise and perform under sub- section (1), to the general control of the District Magistrate appointed under section 20 of the said Code.

(4) The provisions of this section shall have effect notwithstanding anything contained in the Code.

Union Territories - Separation of Judicial and Executive Functions Act, 1969 - Section 5 - Functions exercisable by judicial and executive Magistrates:

Where under any law the functions exercisable by a Magistrate relate to matters which involve the application or sifting of evidence or the formulation of any decision which exposes any person to any punishment, or penalty, or detention in custody pending investigation, inquiry or trial or would have the effect of sending him for trial before any Court, such functions shall, subject to the provisions of this Act and the Code of Criminal Procedure, 1898, as amended by this Act, be exercisable by a Judicial Magistrate and where such functions relate to matters which are administrative or executive in nature, such as the grant of a licence, the suspension or cancellation of a licence, sanctioning a prosecution, or withdrawing from a prosecution, they shall, subject as aforesaid, be exercisable by an Executive Magistrate.

Bonded Labour System Abolition Act, 1976 - Section 21 - Offences to be tried by Executive Magistrates:

(1) The State Government may confer on an Executive Magistrate, the powers of a Judicial Magistrate of the first class or of the second class for the trial of offences under this Act; and, on such conferment of powers, the Executive Magistrate on whom the powers are so conferred, shall be deemed, for the purposes of the Code of Criminal Procedure, 1973 (2 of 1974), to be a Judicial Magistrate of the first class, or of the second class, as the case may be.

(2) An offence under this Act may be tried summarily by a Magistrate.

Go Back to Section 14, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 18 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Terrorist Affected Areas - Special Courts Act, 1984 - Section 9 - Public Prosecutors:

(1) For every Special Court, the Central Government shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors:

Provided that the Central Government may also appoint for any case or class of cases a Special Public Prosecutor.

(2) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section only if he has been in practice as an Advocate for not less than seven years or has held any post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law,

(3) Every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (ii) of section 2 of the Code, and the provisions of the Code shall have effect accordingly.

National Investigation Agency Act, 2008 - Section 15- Public Prosecutors:

(1) The Central Government shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors:

Provided that the Central Government may also appoint for any case or class or group of cases a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an Advocate for not less than seven years or has held any post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code, and the provisions of the Code shall have effect accordingly.

Go Back to Section 18, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 26 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Punjab Courts Act, 1918 - Section 45 - Mode of conferring powers:

Except as otherwise provided by this part, any powers that may be conferred by the High Court on any person under this part may be conferred on such person either by name or by virtue of office.

Go Back to Section 26, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 35 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Cantonments Act, 2006 - Section 314 - Arrest without warrant:

Any member of the police force employed in a cantonment may, without a warrant, arrest any person committing in his view a breach of any of the provisions of this Act which are specified in Schedule IV:

Provided that- -

(a) no person shall be so arrested who consents to give his name and address, unless there is reasonable ground for doubting the accuracy of the name or address so given, the burden of proof of which shall lie on the arresting officer, and no person so arrested shall be detained after his name and address have been ascertained; and

(b) no person shall be so arrested for an offence under section 300 except - -

(i) at the request of the person importuned, or of a military officer in whose presence the offence was committed; or

(ii) by or at the request of a member of the Military, Naval or Air Force Police, who is employed in the cantonment and authorised in this behalf by the Officer Commanding the Station, and in whose presence the offence was committed or by or at the request of any police officer not below the rank of assistant sub- inspector who is deployed in the cantonment and authorised in this behalf by the Officer Commanding the station.

Northern Indian Canal and Drainage Act, 1873 - Section 73 - Power to arrest without warrant:

Any person incharge of or employed upon any canal or drainage work may remove from the lands or buildings belonging thereto, or may take into custody without a warrant and take forthwith before a Magistrate or to nearest police station, to be dealt with according to law, any person who, within his view, commits any of the following offences :-

(1)Wilfully damages or obstructs any canal or drainage work.

(2) Without proper authority interferes with the supply or flow of water in or from any canal or drainage work, or in any river or stream, so as to endanger, damage or render less useful any canal or drainage work.

Northern India Ferries Act, 1878 - Section 29 - Power to arrest without warrant:

The police may arrest without warrant any person committing an offence against section 25 or section 28.

Railway Property (Unlawful Possession) Act, 1966 - Section 6 - Power to arrest without warrant:

Any superior officer or member of the Force may, without an order from a Magistrate and without a warrant, arrest any person who has been concerned in an offence punishable under this Act or against whom a reasonable suspicion exists of his having been so concerned.

Railway Protection Force Act, 1957 - Section 12 - Power to arrest without warrant:

Any member of the Force may, without an order from a Magistrate and without a warrant, arrest-
-

(i) any person who voluntarily causes hurt to, or attempts voluntarily to cause hurt to, or wrongfully restrain or attempts wrongfully to restrain, or assaults, threatens to assault, or uses, or threatens or attempts to use, criminal force to him or any other member of the Force in the execution of his duty as such member, or with intent to prevent or to deter him from discharging his duty as such member, or in consequence of anything done or attempted to be done by him in the lawful discharge of his duty as such member; or

(ii) any person who has been concerned in, or against whom a reasonable suspicion exists of his having been concerned in, or who is found taking precautions to conceal his presence under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence which relates to railway property, passenger area and passengers; or

(iii) any person found taking precautions to conceal his presence within the railway limits under circumstances which afford reason to believe that he is taking such precautions with a view to committing theft of, or damage to railway property, passenger area and passengers; or

(iv) any person who commits or attempts to commit a cognizable offence which involves or which is likely to involve imminent danger to the life of any person engaged in carrying on any work relating to railway property.

Delhi Police Act, 1978 - Section 78 - Arrest without warrant in case of certain offences under Act 59 of 1960:

Any police officer may arrest, without a warrant from a Magistrate, any person committing in his presence any offence punishable under clauses (a) to (m) (both inclusive) of sub- section (1) of section 11 of the Prevention of Cruelly to Animals Act, 1960 (59 of 1960).

Essential Services Maintenance (Assam) Act, 1980 - Section 8 - Power to arrest without warrant:

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any police officer may arrest without warrant any person who is reasonably suspected of having committed any offence under this Act.

Essential Services Maintenance Act, 1968 - Section 7 - Power to arrest without warrant:

Notwithstanding anything contained in the Code of Criminal Procedure, 1898, any police officer may arrest without warrant any person who is reasonably suspected of having committed any offence under this Act.

Essential Services Maintenance Act, 1981 - Section 10 - Power to arrest without warrant:

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any police officer may arrest without warrant any person who is reasonably suspected of having committed any offence under this Act.

Explosives Act, 1884 - Section 13 - Power to arrest without warrant persons committing dangerous offences:

Whoever is found committing any act for which he is punishable under this Act or the rules under this Act, and which tends to cause explosion or fire in or about any place where an explosive is manufactured or stored, or any railway or port, or any carriage, aircraft or vessel, may be apprehended without a warrant by a police officer, or by the occupier of, or the agent or servant of, or other person authorised by the occupier of, that place, or by any agent or servant of, or other person authorised by, the railway administration or conservator of the port or officer in charge of the airport, and be removed from the place where he is arrested and conveyed as soon as conveniently may be before a Magistrate.

Indian Forest Act, 1927 - Section 64 - Power to arrest without warrant:

(1) Any Forest- officer or Police- officer may, without orders from a Magistrate and without a warrant, arrest any person against whom a reasonable suspicion exists of his having been concerned in any forest- offence punishable with imprisonment for one month or upwards.

(2) Every officer making an arrest under this section shall, without unnecessary delay and subject to the provisions of this Act as to release on bond, take or send the person arrested before the Magistrate having jurisdiction in the case, or to the officer in charge of the nearest police station.

(3) Nothing in this section shall be deemed to authorise such arrest for any act which is an offence under Chapter IV unless such act has been prohibited under clause (c) of section 30.

Metro Railway (Operation and Maintenance) Act, 2002 - Section 82 - Power of arrest without warrant:

(1) If a person commits any offence mentioned in sections 59, 61, 1[sections 65 to 68, 71 to 79], he may be arrested without warrant or other written authority by any metro railway official or by a police officer not below the rank of a head constable or by any other person whom such metro railway official or police officer may call to his aid:

Provided that where a person has been arrested, by any person other than the police officer, he shall be made over to a police officer, or, in the absence of a police officer, take such person or cause him to be taken in custody to the nearest police station.

(2) A person so arrested under sub- section (1) shall be produced before the nearest Magistrate, having authority to try him or commit him for trial, as early as possible but within a period not exceeding twenty- four hours of such arrest exclusive of the time necessary for the journey from the place of arrest to the court of the Magistrate.

Motor Vehicles Act, 1988 - Section 202 - Power to arrest without warrant:

(1) A police officer in uniform may arrest without warrant any person who in his presence commits an offence punishable under section 184 or section 185 or section 197:

Provided that any person so arrested in connection with an offence punishable under section 185 shall, within two hours of his arrest, be subjected to a medical examination referred to in sections 203 and 204 by a registered medical practitioner failing which he shall be released from custody.

(2) A police officer in uniform may arrest without warrant any person, who has committed an offence under this Act, if such person refuses to give his name and address.

(3) A police officer arresting without warrant the driver of a motor vehicle shall if the circumstances so require take or cause to be taken any steps he may consider proper for the temporary disposal of the vehicle.

Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 42 - Power of entry, search, seizure and arrest without warrant or authorisation:

(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including paramilitary forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,- -

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub- inspector:

Provided further that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub- section (1) or records grounds for his belief under the proviso thereto, he shall within seventy- two hours send a copy thereof to his immediate official superior.

Navy Act, 1957- Section 84 arrest without warrant:

(1) Any person subject to naval law may be ordered without warrant into naval custody by any superior officer for any offence triable under this Act.

(2) A person subject to naval law may arrest without warrant any other person subject to naval law though he may be of a higher rank who in his view commits an offence punishable with death, or imprisonment for life or for a term which may extend to fourteen years.

(3) A provost- marshal may arrest any person subject to naval law in accordance with the provisions of section 89.

(4) It shall be lawful for the purpose of effecting arrest, or taking a person into custody, without warrant to use such force as may be necessary for the purpose.

Go Back to Section 35, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 41 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Extradition Act, 1962 - Section 9 - Power of Magistrate to issue warrant of arrest in certain cases:

(1) Where it appears to any Magistrate that a person within the local limits of his jurisdiction, is a fugitive criminal of a foreign State, he may, if he thinks fit, issue a warrant for the arrest of that person on such information and on such evidence as would, in his opinion, justify the issue of a warrant if the offence of which the person is accused or has been convicted had been committed within the local limits of his jurisdiction.

(2) The Magistrate shall forthwith report the issue of a warrant under sub- section (1) to the Central Government and shall forward the informa-tion, and the evidence, or certified copies thereof to that Government.

(3) A person arrested on a warrant issued under sub- section (1) shall not be detained for more than three months unless within that period the Magistrate receives from the Central Government an order made with reference to such person under Section 5.

Go Back to Section 41, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 60 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Extradition Act, 1962 - Section 24 - Discharge of person apprehended if not surrendered or returned within two months:

If a fugitive criminal who, in pursuance of this Act, has been committed to prison to await his surrender or return to any foreign State is not conveyed out of India within two months after such committal, the High Court upon application made to it by or on behalf of the fugitive criminal and upon proof that reasonable notice of the intention to make such application has been given to the Central Govern-ment may order such prisoner to be discharged unless sufficient cause is shown to the contrary.

Go Back to Section 60, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 63 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 - Section 33D - Form of summons and mode of serving it:

(1) Every summons shall be in writing, in duplicate, and shall state the purpose for which it is issued, and shall be signed by the Consolidation Officer issuing it, and if he have a seal, shall also bear his seal.

(2) Such summons shall be served by tendering or delivering a copy of it to the person summoned or, if he cannot be found, by affixing a copy of it to some conspicuous part of his usual residence. If his usual residence is in another district, the summons may be sent by post to the Collector of that district, who shall cause it to be served as aforesaid.

Go Back to Section 63, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 98 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Criminal law Amendment Act, 1961 - Section 4 - Power to declare certain publications forfeited and to issue search warrants for the same:

(1) Where any newspaper or book as defined in the Press and Registration of Books Act, 1867, or any other document, wherever printed appears to the State Government to contain any matter the publication of which is punishable under section 2 or sub- section (2) of section 3, the State Government may, by notification in the Official Gazette, staling the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter and every copy of such book or other document to be forfeited to the Government, and thereupon any police officer may seize the same wherever found and any Magistrate may by warrant authorise any police officer not below the rank of Sub- Inspector to enter upon and search for the same in any premises where any copy of such issue or any copy of such book or other document may be or may be reasonably suspected to be,

(2) The powers conferred by sub- section (1) on the State Government may also be exercised by the Central Government.

(3) In sub- section (1) "document" includes also any painting, drawing or photograph, or other visible representation

Go Back to Section 98, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 118 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Wild Life - Protection Act, 1972 - Section 58G - Management of properties seized or forfeited under this Chapter:

(1) The State Government may, by order published in the Official Gazette, appoint as many of its officers (not below the rank of Conservator of Forests) as it thinks fit, to perform the functions of an Administrator.

(2) The Administrator appointed under sub- section (1) shall receive and manage the property in relation to which an order has been made under sub- section (1) of section 58F or under section 58- I in such manner and subject to such conditions as may be prescribed.

(3) The Administrator shall also take such measures as the State Government may direct, to dispose of the property which is forfeited to the State Government.

Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 68G - Management of properties seized or forfeited under this Chapter:

(1) The Central Government may, by order published in the Official Gazette, appoint as many of its officers (not below the rank of a Joint Secretary to the Government) as it thinks fit, to perform the functions of an Administrator.

(2) The Administrator appointed under sub- section (1) shall receive and manage the property in relation to which an order has been made under subsection (1) of section 68F or under section 68- I in such manner and subject to such conditions as may be prescribed.

(3) The Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is forfeited to the Central Government.

Go Back to Section 118, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 119 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Wild Life (Protection) Act, 1972 - Section 58H - Notice of forfeiture of property:

(1) If having regard to the value of the properties held by any person to whom this Chapter applies, either by himself or through any other person on his behalf, his known sources of income, earnings or assets, and any other information or material available to it as a result of a report from any officer making an investigation under section 58E or otherwise, the competent authority for reasons to be recorded in writing believes that all or any of such properties are illegally acquired

properties, it may serve a notice upon such person (hereinafter referred to as the person affected) calling upon him within a period of thirty days specified in the notice to show cause why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the State Government under this Chapter and in support of his case indicate the sources of his income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars.

(2) Where a notice under sub- section (1) to any person specifies any property as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person.

Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 103 - Notice of forfeiture of property:

(1) If, having regard to the value of the properties held by any person to whom this Chapter applies, either by himself or through any other person on his behalf, his known sources of income, earnings or assets, and any other information or material available to it as a result of a report from any officer making an investigation under section 68E or otherwise, the competent authority has reason to believe (the reasons for such belief to be recorded in writing) that all or any of such properties are illegally acquired properties, it may serve a notice upon such person (hereinafter referred to as the person affected) calling upon him within a period of thirty days specified in the notice to indicate the sources of his income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the Central Government under this Chapter.

(2) Where a notice under sub- section (1) to any person specifies any property as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person:

Provided that no notice for forfeiture shall be served upon any person referred to in clause (cc) of sub- section (2) of section 68A or relative of a person referred to in that clause or associate of a person referred to in that clause or holder of any property which was at any time previously held by a person referred to in that clause.

Explanation.- - For the removal of doubts, it is hereby declared that in a case where the provisions of section 68J are applicable, no notice under this section shall be invalid merely on the ground that it fails to mention the evidence relied upon or it fails to establish a direct nexus between the property sought to be forfeited and any activity in contravention of the provisions of this Act.

Go Back to Section 119, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 120 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Wild Life - Protection Act, 1972 - Section 58- I - Forfeiture of property in certain cases:

(1) The competent authority may, after considering the explanation, if any, to the show cause notice issued under section 58H, and the materials available before it and after giving to the person affected and in a case where the person affected holds any property specified in the notice through any other person, to such other person, also a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are illegally acquired properties:

Provided that if the person affected (and in a case where the person affected holds any property specified in the notice through any other person, such other person also), does not appear before the competent authority or represent his case before it within a period of thirty days specified in the show cause notice, the competent authority may proceed to record a finding under this sub-section ex parte on the basis of evidence available before it.

(2) Where the competent authority is satisfied that some of the properties referred to in the show cause notice are illegally acquired properties but is not able to identify specifically such properties, then, it shall be lawful for the competent authority to specify the properties which, to the best of its judgment, are illegally acquired properties and record a finding accordingly under sub- section (1) within a period of ninety days.

(3) Where the competent authority records a finding under this section to the effect that any property is illegally acquired property, it shall declare that such property shall, subject to the provisions of this Chapter stand forfeited to the State Government free from all encumbrances.

(4) In case the person affected establishes that the property specified in the notice issued under section 58H is not an illegally acquired property and therefore not liable to be forfeited under the Act, the said notice shall be withdrawn and the property shall be released forthwith.

(5) Where any shares in a company stand forfeited to the State Government under this Chapter, the company shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or the article of association of the company, forthwith register the State Government as the transferee of such shares.

Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 68- I - Forfeiture of property in certain cases:

(1) The competent authority may, after considering the explanation, if any, to the show cause notice issued under section 68H, and the materials available before it and after giving to the person affected (and in a case where the person affected holds any property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are illegally acquired properties:

Provided that if the person affected (and in a case where the person affected holds any property specified in the notice through any other person such other person also) does not appear before the competent authority or represent his case before it within a period of thirty days specified in

the show cause notice, the competent authority may proceed to record a finding under this sub-section ex parte on the basis of evidence available before it.

(2) Where the competent authority is satisfied that some of the properties referred to in the show cause notice are illegally acquired properties but is not able to identify specifically such properties, then, it shall be lawful for the competent authority to specify the properties which, to the best of its judgment, are illegally acquired properties and record a finding accordingly under subsection (1).

(3) Where the competent authority records a finding under this section to the effect that any property is illegally acquired property, it shall declare that such property shall, subject to the provisions of this Chapter stand forfeited to the Central Government free from all encumbrances:

Provided that no illegally acquired property of any person who is referred to in clause (cc) of sub-section (2) of section 68A or relative of a person referred to in that clause or associate of a person referred to in that clause or holder of any property which was at any time previously held by a person referred to in that clause shall stand forefeited.

(4) Where any shares in a company stand forfeited to the Central Government under this Chapter, then, the company shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or the article of association of the company, forthwith register the Central Government as the transferee of such shares.

Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 - Section 7 - Forfeiture of property in certain cases:

(1) The competent authority may, after considering the explanation, if any, to the show cause notice issued under section 6, and the materials available before it and after giving to the person affected (and in a case where the person affected holds any property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are illegally acquired properties.

(2) Where the competent authority is satisfied that some of the properties referred to in the show cause notice are illegally acquired properties but is not able to identity specifically such properties, then it shall be lawful for the competent authority to specify the properties which, to the best of its judgment, are illegally acquired properties and record a finding accordingly under sub- section (1).

(3) Where the competent authority records a finding under this section to the effect that any property is illegally acquired property, it shall declare that such property shall, subject to the provisions of this Act, stand forfeited to the Central Government free from all encumbrances.

(4) Where any shares in a company stand forfeited to the Central Government under this Act then, the company shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or the articles of association of the company, forthwith register the Central Government as the transferee of such shares.

Go Back to Section 120, Bharatiya Nagrik Suraksha Sanhita, 2023

Linked Provisions of Section 121 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Wild Life - Protection Act, 1972 - Section 58K - Fine in lieu of forfeiture:

(1) Where the competent authority makes a declaration that any property stands forfeited to the State Government under section 58- I and it is a case where the source of only a part of the illegally acquired property has not been proved to the satisfaction of the competent authority, it shall make an order giving option to the person affected to pay, in lieu of forfeiture, a fine equal to the market value of such part.

(2) Before making an order imposing a fine under sub- section (1), the person affected shall be given a reasonable opportunity of being heard.

(3) Where the person affected pays the fine due under sub- section (1), within such time as may be allowed in that behalf, the competent authority may, by order revoke the declaration of forfeiture under section 58- I and thereupon such property shall stand released.

Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 68K - Fine in lieu of forfeiture:

(1) Where the competent authority makes a declaration that any property stands forfeited to the Central Government under section 68- I and it is a case where the source of only a part of the illegally acquired property has not been proved to the satisfaction of the competent authority, it shall make an order giving an option to the person affected to pay, in lieu of forfeiture, a fine equal to the market value of such part.

(2) Before making an order imposing a fine under sub- section (1), the person affected shall be given a reasonable opportunity of being heard.

(3) Where the person affected pays the fine due under sub- section (1), within such time as may be allowed in that behalf, the competent authority may, by order revoke the declaration of forfeiture under section 68- I and thereupon such property shall stand released.

Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 - Section 9 - Fine in lieu of forfeiture:

(1) Where the competent authority makes a declaration that any property stands forfeited to the Central Government under section 7 and it is a case where the source of only a part, being less than one- half, of the income, earnings or assets with which such property was acquired has not been proved to the satisfac-tion of the competent authority, it shall make an order giving an option to the person affected to pay, in lieu of forfeiture, a fine equal to one and one fifth times the value of such part.

Explanation. – For the purposes of this sub- section, the value of any part of income, earnings, assets, with which any property has been acquired, shall be –

(a) in the case of any part of income or earnings, the amount of such part of income or earnings;

(b) in the case of any part of assets, the proportionate part of the full value of the consideration for the acquisition of such assets.

(2) Before making an order imposing a fine under sub- section (1),the person affected shall be given a reasonable opportunity of being heard.

(3) Where the person affected pays the fine due under sub- section (1),within such time as may be allowed in that behalf, the competent authority, may by order, revoke the declaration of forfeiture under section 7 and thereupon such property shall stand released.

Go Back to Section 121, Bharatiya Nyaya Sanhita, 2023

Linked Provisions of Section 122 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 68M - Certain transfers to be null and void:

Where after the making of an order under sub- section (1) of section 68F or the issue of a notice under section 68H or under section 68L, any property referred to in the said order or notice is transferred by any mode whatsoever such transfer shall, for the purposes of the proceedings under the Chapter, be ignored and if such property is subsequently forfeited to the Central Government under section 68- I, then, the transfer of such property shall be deemed to be null and void.

Prohibhition of Benami Property Transactions Act, 1988 - Section 57 - Certain transfers to be null and void:

Notwithstanding anything contained in the Transfer of the Property Act, 1882 (4 of 1882) or any other law for the time being in force, where, after the issue of a notice under section 24, any property referred to in the said notice is transferred by any mode whatsoever, the transfer shall, for the purposes of the proceedings under this Act, be ignored and if the property is subsequently confiscated by the Central Government under section 27, then, the transfer of the property shall be deemed to be null and void.

Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 - Section 11 - Certain transfers to be null and void:

Where after the issue of a notice under section 6 or under section 10, any property referred to in the said notice is transferred by any mode whatsoever such transfer shall, for the purposes of the proceedings under this Act, be ignored and if such property is subsequently forfeited to the Central Government under section 7, then, the transfer of such property shall be deemed to be null and void.

Unlawful Activities (Prevention) Act, 1967 - Section 32 - Certain transfers to be null and void:

Where, after the issue of an order under section 25 or issue of a notice under section 27, any property referred to in the said order or notice is transferred by any mode whatsoever, such transfer shall, for the purpose of the proceedings under this Chapter, be ignored and if such

property is subsequently forfeited, the transfer of such property shall be deemed to be null and void.

Wild Life (Protection) Act, 1972 - 58M - Certain transfers to be null and void:

Where after the making of an order under sub- section (1) of section 58F or the issue of a notice under section 58H or under section 58L, any property referred to in the said order or notice is transferred by any mode whatsoever, such transfer shall, for the purposes of the proceedings under this Chapter, be ignored and if such property is subsequently forfeited to the State Government under section 58- I, then, the transfer of such property shall be deemed to be null and void.

Go Back to Section 122, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 123 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Prevention of Money- Laundering Act, 2002 - Section 61 - Procedure in respect of letter of request:

Every letter of request, summons or warrant, received by the Central Government from, and every letter of request, summons or warrant, to be transmitted to a contracting State under this Chapter shall be transmitted to a contracting State or, as the case may be, sent to the concerned Court in India and in such form and in such manner as the Central Government may, by notification, specify in this behalf.

Go Back to Section 123, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 129 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Suppression of Immoral Traffic In Women and Girls Act, 1956 - Section 12 - Security for good behaviour from habitual offenders:

(1) When a court convicting a person of an offence under this Act finds that he has been habitually committing, or attempting to commit, or abetting the commission of, that offence or any other offence under this Act and the court is of opinion that it is necessary or desirable to require that person to execute a bond for good behaviour, such court may at the time of passing the sentence on the person order him to execute a bond for a sum proportionate to his means with or without sureties for his good behaviour during such period not exceeding three years as it thinks fit.

(2) If the conviction is set aside on appeal or otherwise the bond so executed shall become void.

(3) An order under this section may also be made by an Appellate Court or by the High Court when exercising its powers of revision.

(4) When a magistrate receives information from the police or otherwise that any person within the local limits of his jurisdiction habitually commits, or attempts to commit, or abets the commission of, any offence under this Act, such magistrate may require such person to show cause why he should not be ordered to execute a bond with sureties for his good behaviour for

such period not exceeding three years as the magistrate thinks fit and thereupon the provisions of sections 112 to 126 of the Code of Criminal Procedure, 1898 (5 of 1898), shall apply in such a case.

Go Back to Section 129, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 250 of Bharatiya Nagarik Suraksha Sanhita, 2023:

The Territorial Army Act, 1948 - Section 8 – Discharge:

Every person enrolled under this Act shall be entitled to receive his discharge from the Territorial Army on the expiration of the period for which he was enrolled and any such person may, prior to the expiration of that period, be discharged from the said army by such authority and subject to such conditions as may be prescribed:

Provided that no enrolled person who is for the time being engaged in military service under the provisions of this Act, shall be entitled to receive his discharge before the termination of such service.

Provincial Insolvency Act, 1920 - Section 41 – Discharge:

(1) a debtor may, at any time after the order of adjudication and shall, within the period specified by the Court, apply to the Court for an order of discharge, and the Court shall fix a day, notice whereof shall be given in such manner as may be prescribed, for hearing such application, and any objections which may be made thereto.

(2) Subject to the provisions of this section, the Court may, after considering the objections of any creditor and, where a receiver has been appointed, the report of the receiver

(a) grant or refuse an absolute order of discharge; or

(b) suspend the operation of the order for a specified time; or

(c) grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the insolvent, or with respect to his after- acquired property.

Provincial Insolvency Act, 1920 - Section 42 – Cases in which Court must refuse an absolute discharge:

(1) The Court shall refuse to grant an absolute order of discharge under section 41 on proof of any of the following facts, namely:

(a) that the insolvents assets are not of a value equal to eight annas in the rupee on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of a value equal to eight annas in the rupee on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible;

(b) that the insolvent has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his insolvency;

(c) that the insolvent has continued to trade after knowing himself to be insolvent;

(d) that the insolvent has contracted any debt provable under this Act without having at the time of contracting it any reasonable or probable ground of expectation (the burden of proving which shall lie on him) that he would be able to pay it;

(e) that the insolvent has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities;

(f) that the insolvent has brought on, or contributed to, his insolvency by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs;

(g) that the insolvent has, within three months preceding the date of the presentation of the petition, when unable to pay his debts as they became due, given an undue preference to any of his creditors;

(h) that the insolvent has on any previous occasion been adjudged an insolvent or made a composition or arrangement with his creditors;

(i) that the insolvent has concealed or removed his property or any part thereof, or has been guilty of any other fraud or fraudulent breach of trust.

(2) For the purposes of this section, the report of the receiver shall be deemed to be evidence; and the Court may presume the correctness of any statement contained therein.

(3) The powers of suspending, and of attaching conditions to, an insolvents discharge may be exercised concurrently.

Provincial Insolvency Act, 1920 - Section 43 – Adjudication to be annulled on failure to apply for discharge:

(1) If the debtor does not appear on the day fixed for hearing his application for discharge or on such subsequent day as the Court may direct, or if the debtor does not apply for an order of discharge within the period specified by the Court, [the Court may annul the order of adjudication or make such other order as it may think fit, and if the adjudication is so annulled, the provisions of section 37 shall apply.

(2) Where a debtor has been released from custody under the provisions of this Act and the order of adjudication is annulled under sub- section (1), the Court may, if it thinks fit, re- commit the debtor to his former custody, and the Officer- in- charge of the prison to whose custody such debtor is so re- committed shall receive such debtor into his custody according to such re-commitment, and thereupon all processes which were in force against the person of such debtor at the time of such release as aforesaid shall be deemed to be still in force against him as if no order of adjudication had been made.

Provincial Insolvency Act, 1920 - Section 44 – Effect of order of discharge:

(1) An order of discharge shall not release the insolvent from

(a) any debt due to the Government;

(b) any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party;

(c) any debt or liability in respect of which he has obtained forbearance by any fraud to which he was a party; or

(d) any liability under an order for maintenance made under section 488 of the [Code of Criminal Procedure, 1898 (5 of 1898)].

(2) Save as otherwise provided by sub- section (1), an order of discharge shall release the insolvent from all debts provable under this Act.

(3) An order of discharge shall not release any person who, at the date of the presentation of the petition, was a partner or co- trustee with the insolvent, or was jointly bound or had made any joint contract with him or any person who was surety for him.

National Cadet Corps Act, 1948 - Section 8 - Discharge:

Every person enrolled under this Act shall be entitled to receive his or her discharge from the Corps on the expiration of the period for which he or she was enrolled or on his or her ceasing to be borne on the roll of the university or school to which he or she may belong:

Provided that any person enrolled may be discharged at any time by such authority and subject to such conditions as may be prescribed.

Lok Sahayak Sena Act, 1956 - Section 7 – Discharge:

Every volunteer shall be entitled to receive his discharge from the force on the Expiration of the period for which he was enrolled, but may, prior to the expiration of that period, be discharged from the Force by such authority and subject to such conditions as may be prescribed.

Indian Territorial Force Act, 1920 - Section 8 - Discharge:

Every person enrolled shall be entitled to receive his discharge from the Indian Territorial Force on the expiration of the period for which he was enrolled, and any such person may, prior to the expiration of that period, be discharged from the said Force by such authority and subject to such conditions as may be prescribed, and shall be so discharged on a recommendation of the Advisory Committee in this behalf:

Provided that no person enrolled who is for the time being engaged in military service under the provisions of this Act shall be entitled to receive his discharge before the termination of such service.

Indian Securities Act, 1920 - Section 17 – Immediate discharge in certain cases:

On payment by or on behalf of the Government to the holder of a bearer bond or other Government security payable to bearer of the amount expressed therein on or after the date when it becomes due, or on renewal of a bearer, bond or other security payable to bearer under section 11, or on renewal of a Government promissory note under section 13, or on conversion, consolidation or subdivision of a bearer bond or other security payable in the same way and to the same extent as if such bearer bond, promissory note other security were a promissory note payable to bearer:

Provided that in the case of a Government promissory note renewed under section 13, nothing in this section shall be deemed to bar a claim against the Government in respect of such note by any person who had no notice of the proceedings under that section, or who derives title through any such person.

Indian Securities Act, 1920 - Section 18 – Discharge in other cases:

Save as otherwise provided in this Act –

(i) on payment of the amount due on a Government security on or after the date on which payment becomes due, or Discharge in other cases

(ii) When a duplicate security has been issued under section 10, or

(iii) When a renewed renewed security has been issued under section 12 or section 13, or a new security or has or have been issued upon conversion, consolidation or sub- division under section 15 ,the Government shall be discharged from all liability in respect of the security or securities so paid or in place of which a duplicate, renewed, or new securities has or have been issued:

(a) in the case of payment- after the lapse of six years from the date on which payment was due;

(b) in years a duplicate security- after the lapse of six years from the date of publication under sub – section (3) of section 10 of the list in which the security is first mentioned, or from the date of the last payment of interest on the original security, whichever date is later;

(c)in the case of a renewed security or of a new security issued upon conversion , consolidation or sub- division after the lapse of six years from the date of the issue thereof.

Indian Securities Act, 1920 - Section 18A - Discharge in respect of interest:

Save as otherwise expressly provided in the terms of a Government security, no person shall entitled to claim interest on any such security in respect of any period which has elapsed after the earliest date on which demand could have been made for the payment of the amount due on such security.

Indian Army Act, 1911 - Section 16 – Discharge:

The prescribed, authority may, in conformity with any rules prescribed in this behalf, discharge from the service any person, subject to this Act.

Indian Air Force Act, 1932 - Section 15 – Discharge:

The prescribed authority may, in conformity with any rules prescribed in this behalf, discharge from the service any person subject to this Act.

Auxiliary Force Act, 1920 - Section 17 – Discharge:

(1) Any enrolled person who has attained the age of forty- five years or has completed four years' service from the date of his enrolment shall, on application made by him in the prescribed manner, be entitled to receive his discharge from the Auxiliary Force, India.

(2) An enrolled person who is not entitled to his discharge under sub- section (1) may be discharged by the competent military authority on a recommendation of the Advisory Committee in this behalf.

Go Back to Section 250 of Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 273 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Companies Act, 2013 - Section 445 - Compensation for accusation without reasonable cause:

The provisions of section 250 of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply mutatis mutandis to compensation for accusation without reasonable cause before the Special Court or the Court of Session.

Go Back to Section 273, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 283 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Essential Commodities Act, 1955 - Section 12A - Power to try summarily:

(1) If the Central Government is of opinion that a situation has arisen where, in the interests of production, supply or distribution of any essential commodity not being an essential commodity referred to in clause (a) of sub- section (2) or trade or commerce therein and other relevant considerations, it is necessary that the contravention of any order made under section 3 in relation to such essential commodity should be tried summarily, the Central Government may, by notification in the Official Gazette, specify such order to be a special order for purposes of summary trial under this section, and every such notification shall be laid, as soon as may be after it is issued, before both Houses of Parliament:

Provided that-

(a) every such notification issued after the commencement of the Essential Commodities (Amendment) Act, 1971, shall, unless sooner rescinded, cease to operate at the expiration of two years after the publication of such notification in the Official Gazette;

(b) every such notification in force immediately before such commencement shall, unless sooner rescinded, cease to operate at the expiration of two years after such commencement:

Provided further that nothing in the foregoing proviso shall affect any case relating to the contravention of a special order specified in any such notification if proceedings by way of summary trial have commenced before that notification is rescinded or ceases to operate and the provisions of this section shall continue to apply to that case as if that notification had not been rescinded or had not ceased to operate.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) all, offences relating to-

(a) the contravention of an order made under section 3 with respect to- -

(ii) foodstuffs, including edible oilseeds and oil; or (iii) drugs; and

(b) where any notification issued under sub- section (1) in relation to a special order is in force, the contravention of such special order,

shall be tried in a summary way by a Judicial Magistrate of the First Class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:

Provided that, in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or re- hear the case in the manner provided by the said Code.

(3) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), there shall be no appeal by a convicted person in any case tried summarily under this section in which the Magistrate passes a sentence of imprisonment not exceeding one month, and of fine not exceeding two thousand rupees whether or not any order of forfeiture of property or an order under section 452 of the said Code is made in addition to such sentences, but an appeal shall lie where any sentence in excess of the aforesaid limits is passed by the Magistrate.

(4) All cases relating to the contravention of an order referred to in clause (a) of sub- section (2), not being a special order, and pending before a Magistrate immediately before the commencement of the Essential Commodities (Amendment) Act, 1974, and, where any notification is issued under sub- section (1) in relation to a special order, all cases relating to the contravention of such special order and pending before a Magistrate immediately before the date of the issue of such notification, shall, if no witnesses have been examined before such commencement or the said date, as the case may be, be tried in a summary way under this section,

and if any such case is pending before a Magistrate who is not competent to try the same in a summary way under this section, it shall be forwarded to a Magistrate so competent.

Northern India Ferries Act, 1878 - Section 30 - Power to try summarily:

Any Magistrate or Bench of Magistrates having summary jurisdiction under Chapter XVIII of the Code of Criminal Procedure, may try any offence against this Act in manner provided by that Chapter.

Prevention of Corruption Act, 1988 - Section 6 - Power to try summarily:

(1) Where a special Judge tries any offence specified in sub- section (1) of section 3, alleged to have been committed by a public servant in relation to the contravention of any special order referred to in sub- section (1) of section 12A of the Essential Commodities Act, 1955 (10 of 1955) or of an order referred to in clause (a) of sub- section (2) of that section, them, notwithstanding anything contained in sub- section (1) of section 5 of this Act or section 260 of the Code of Criminal Procedure, 1973 (2 of 1974), the special Judge shall try the offence in a summary way, and the provisions of sections 262 to 265 both inclusive) of the said Code shall, as far as may be, apply to such trial:

Provided that, in the case of any conviction in a summary trial under this section, it shall be lawful for the special Judge to pass a sentence of imprisonment for a term not exceeding one year:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the special Judge that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the special Judge shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or re- hear the case in accordance with the procedure prescribed by the said Code for the trial of warrant cases by Magistrates.

(2) Notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 (2 of 1974), there shall be no appeal by a convicted person in any case tried summarily under this section in which the special Judge passes a sentence of imprisonment not exceeding one month, and of fine not exceeding two thousand rupees whether or not any order under section 452 of the said Code is made in addition to such sentence, but an appeal shall lie where any sentence in excess of the aforesaid limits is passed by the special Judge.

Go Back to Section 283, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 305 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Code of Civil Procedure, 1908 - Section 6 - Prisoner to be brought to Court in custody:

In any other case, the officer in charge of the prison shall, upon delivery of the Court's order, cause the person named therein to be taken to the Court so as to be present at the time mentioned in such order, and shall cause him to be kept in custody in or near the Court until he has been

examined or until the Court authorises him to be taken back to the prison in which he is confined or detained.

Go Back to Section 305, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 306 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Code of Civil Procedure, 1908 – Order 16A Rule 7 - Power to issue commission for examination of witness in prison:

(1) Where it appears to the Court that the evidence of a person confined or detained in a prison, whether within the State or elsewhere in India, is material in a suit but the attendance of such person cannot be secured under the preceding provisions of this order, the Court may issue a commission for the examination of that person in the prison in which he is confined or detained.

(2) The provisions of Order XXVI shall, so far may be, apply in relation to the examination on commission of such person in prison as they apply in relation to the examination on commission of any other person.

Go Back to Section 306, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 332 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Gram Nyayalayas Act, 2008 - Section 32 - Evidence of formal character on affidavit: (1) The evidence of any person where such evidence is of a formal character, may be given by affidavit and may, subject to all just exceptions, be read in evidence in any suit or proceeding before a Gram Nyayalaya.

(2) The Gram Nyayalaya may, if it thinks fit, and shall, on the application of any of the parties to the suit or proceeding, summon and examine any such person as to the facts contained in his affidavit.

Family Courts Act, 1984 - Section 16 - Evidence of formal character on affidavit:

(1) The evidence of any person where such evidence is of a formal character, may be given by affidavit and may, subject to all just exceptions, be read in evidence in any suit or proceeding before a Family Court.

(2) The Family Court may, if it thinks fit, and shall, on the application of any of the parties to the suit or proceeding summon and examine any such person as to the facts contained in his affidavit.

Go Back to Section 332, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 343 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Indo- Tibetan Border Police Force Act, 1992 - Section 119 - Tender of pardon to accomplice:

(1) With a view to obtaining the evidence of any person supposed to have been directly or indirectly concern in or privy to an offence triable by a Force Court other than a Summary Force Court under this Act, the commanding officer, the convening officer or the Force Court, at any stage of the investigation or inquiry into or the trial of, the offence, may tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances

within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.

(2) The commanding officer or the convening officer who tenders a pardon under sub- section (1) shall record-

(a) his reasons for so doing;

(b) whether the tender was or was not accepted by the person to whom it was made, and shall, on application made by the accused, furnish him with a copy of such record free of cost.

(3) Every person accepting a tender of pardon made under sub- section (1)-

(a) shall be examined as a witness by the commanding officer of the accused and in the subsequent trial, if any;

(b) may be detained in Force custody until the termination of the trial.

Sashastra Seema Bal Act, 2007 - Section 119 - Tender of pardon to accomplice:

(1) With a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence triable by a Force Court other than a Summary Force Court under this Act, the commanding officer, the convening officer or the Force Court, at any stage of investigation or inquiry into or the trial of, the offence, may tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.

(2) The commanding officer or the convening officer who tenders pardon under sub- section (1) shall record,- -

(a) his reasons for so doing;

(b) whether the tender was or was not accepted by the person to whom it was made, and shall, on application made by accused, furnish him with a copy of such record free of cost.

(3) Every person accepting a tender of pardon made under sub- section (1)- -

(a) shall be examined as a witness by the commanding officer of the accused and in the subsequent trial, if any;

(b) may be detained in Force custody until the termination of the trial.

Go Back to Section 343, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 345 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Indo- Tibetan Border Police Force Act, 1992 - Section 120 - Trial of person not complying with conditions of pardon:

(1) Where, in regard to a person who has accepted a tender of pardon made under section 119, the Judge Attorney, or as the case may be, the Deputy Judge Attorney- General, or the Additional Judge Attorney- General or the officer approved under section 95, certifies that in his opinion

such person has, either by willfully concealing anything essential or by giving false evidence, not complied with the conditions on which the tender was made, such person may be tried for the offence in respect of which the pardon was so tendered or for any other offence of which he appears to have been guilty in connection with the same matter, and also for the offence of giving false evidence :

Provided that such person shall not be tried jointly with any of the other accused.

(2) Any statement made by such person accepting the tender of pardon and recorded by his commanding officer or Force Court may be given in evidence against him at such trial.

(3) At such trial, the accused shall be entitled to plead that he has complied with the condition upon which such tender was made; in which case it shall be for the prosecution to prove that the condition has not been complied with.

(4) At such trial, the Force Court shall, before arraignment, ask the accused whether he pleads that he has complied with the conditions on which the tender of pardon was made.

(5) If the accused does so plead, the Court shall record the plea and proceed with the trial and it shall, before giving its finding on the charge, find whether or not the accused has complied with the conditions of the pardon, and, if it finds that he has so complied, it shall give a verdict of not guilty.

Sashastra Seema Bal Act, 2007 - Section 120 - Trial of person not complying with conditions of pardon:

(1) Where, in regard to a person who has accepted a tender of pardon made under section 119, the Judge Attorney, or as the case may be, the Deputy Judge Attorney- General, or the Additional Judge Attorney- General, or the officer approved under section 95, certifies that in his opinion such person has either by willfully concealing anything essential or by giving false evidence, not complied with the conditions on which the tender was made, such person may be tried for the offence in respect of which the pardon was so tendered or for any other offence of which he appears to have been guilty in connection with the same matter, and also for the offence of giving false evidence:

Provided that such person shall not be tried jointly with any of the other accused.

(2) Any statement made by such person accepting the tender of pardon and recorded by his commanding officer or Force Court may be given in evidence against him at such trial.

(3) At such trial, the accused shall be entitled to plead that he has complied with the condition upon which such tender was made; in which case it shall be for the prosecution to prove that the condition has not been complied with.

(4) At such trial, the Force Court shall, before arraignment, ask the accused whether he pleads that he has complied with the conditions on which the tender of pardon was made.

(5) If the accused does so plead, the Court shall record the plea and proceed with the trial and it shall, before giving its finding on the charge, find whether or not the accused has complied with

the conditions of the pardon, and, if it finds that he has so complied, it shall give a verdict of not guilty.

Go Back to Section 345, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 359 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Child And Adolescent Labour - Prohibhition And Regulation Act, 1986 - Section 14D - Compounding of offences:

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the District Magistrate may, on the application of the accused person, compound any offence committed for the first time by him, under sub- section (3) of section 14 or any offence committed by an accused person being parent or a guardian, in such manner and on payment of such amount to the appropriate Government, as may be prescribed.

(2) If the accused fails to pay such amount for composition of the offence, then, the proceedings shall be continued against such person in accordance with the provisions of this Act.

(3) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded.

(4) Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought in writing, to the notice of the Court in which the prosecution is pending and on the approval of the composition of the offence being given, the person against whom the offence is so compounded, shall be discharged.

Consumer Protection Act, 2019 - Section 96 - Compounding of offences:

(1) Any offence punishable under sections 88 and 89, may, either before or after the institution of the prosecution, be compounded, on payment of such amount as may be prescribed:

Provided that no compounding of such offence shall be made without the leave of the court before which a complaint has been filed under section 92:

Provided further that such sum shall not, in any case, exceed the maximum amount of the fine, which may be imposed under this Act for the offence so compounded.

(2) The Central Authority or any officer as may be specially authorised by him in this behalf, may compound offences under sub- section (1).

(3) Nothing in sub- section (1) shall apply to person who commits the same or similar offence, within a period of three years from the date on which the first offence, committed by him, was compounded.

Explanation.- - For the purposes of this sub- section, any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence.

(4) Where an offence has been compounded under sub- section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded.

(5) The acceptance of the sum of money for compounding an offence in accordance with sub-section (1) by the Central Authority or an officer of the Central Authority empowered in this behalf shall be deemed to amount to an acquittal within the meaning of the Code of Criminal Procedure, 1973 (2 of 1974).

Electricity Act, 2003 - Section 152 - Compounding of offences:

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Appropriate Government or any officer authorised by it in this behalf may accept from any consumer or person who committed or who is reasonably suspected of having committed an offence of theft of electricity punishable under this Act, a sum of money by way of compounding of the offence as specified in the Table below:

TABLE

Name of Service	Rate at which the sum of money for compounding to b per Kilowatt (KW)/ Horse Power (HP) or part there Tension (LT) supply and per Kilo Volt Ampere contracted demand for High Tension (HT)
(1)	**(2)**
1. Industrial Service	twenty thousand rupees;
2. Commercial Service	ten thousand rupees;
3. Agricultural Service	two thousand rupees;
4. Other Services	four thousand rupees;

PROVIDED that the Appropriate Government may, by notification in the Official Gazette, amend the rates specified in the Table above.

(2) On payment of the sum of money in accordance with sub- section (1), any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such consumer or person in any criminal court.

(3) The acceptance of the sum of money for compounding an offence in accordance with sub-section (1) by the Appropriate Government or an officer empowered in this behalf shall be deemed to amount to an acquittal within the meaning of section 300 of the Code of Criminal Procedure, 1973 (2 of 1974).

(4) The compounding of an offence under sub- section (1) shall be allowed only once for any person or consumer.

Information Technology Act, 2000 - Section 77A - Compounding of offences:

A court of competent jurisdiction may compound offences, other than offences for which the punishment for life or imprisonment for a term exceeding three years has been provided, under this Act:

Provided that the court shall not compound such offence where the accused is, by reason of his previous conviction, liable to either enhanced punishment or to a punishment of a different kind:

Provided further that the court shall not compound any offence where such offence affects the socio economic conditions of the country or has been committed against a child below the age of 18 years or a woman.

(2) The person accused of an offence under this Act may file an application for compounding in the court in which offence is pending for trial and the provisions of sections 265B and 265C of the Code of Criminal Procedure, 1973 shall apply.

Legal Metrology Act, 2009 - Section 48 - Compounding of offences:

(1) Any offence punishable under section 25, sections 27 to 39, Section 41, sections 45 to 47, or any rule made under sub- section (3) of section 52 may, either before or after the institution of the prosecution, be compounded, on payment for credit to the Government of such sum as may be prescribed.

(2) The Director or legal metrology officer as may be specially authorised by him in this behalf, may compound offences punishable under section 25, sections 27 to 39, Section 41, or any rule made under sub- section (3) of section 52.

(3) The Controller or legal metrology officer specially authorised by him, may compound offences punishable under section 25, sections 27 to 31, sections 33 to 37, Section 41, sections 45 to 47, and any rule made under sub- section (3) of section 53:

Provided that such sum shall not, in any case, exceed the maximum amount of the fine, which may be imposed under this Act for the offence so compounded.

(4) Nothing in sub- section (1) shall apply to person who commits the same or similar offence, within a period of three years from the date on which the first offence, committed by him, was compounded.

Explanation.- - For the purposes of this sub- section, any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence.

(5) Where an offence has been compounded under sub- section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded.

(6) No offence under this Act shall be compounded except as provided by this section.

Limited Liability Partnership Act, 2008 - Section 39 - Compounding of offences:

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Regional Director or any other officer not below the rank of Regional Director authorised by the Central Government may compound any offence under this Act which is punishable with fine only, by collecting from a person reasonably suspected of having committed the offence, a sum which may extend to the amount of the maximum fine provided for the offence but shall not be lower than the minimum amount provided for the offence.

(2) Nothing contained in sub- section (1) shall apply to an offence committed by a limited liability partnership or its partner or its designated partner within a period of three years from the date on which similar offence committed by it or him was compounded under this section.

Explanation.- - For the removal of doubts, it is hereby clarified that any second or subsequent offence committed after the expiry of the period of three years from the date on which the offence was previously compounded, shall be deemed to be the first offence.

(3) Every application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments thereon, to the Regional Director or any other officer not below the rank of Regional Director authorised by the Central Government, as the case may be.

(4) Where any offence is compounded under this section, whether before or after the institution of any prosecution, intimation thereof shall be given to the Registrar within a period of seven days from the date on which the offence is so compounded.

(5) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence.

(6) Where the compounding of any offence is made after the institution of any prosecution, such compounding shall be brought by the Registrar in writing, to the notice of the court in which prosecution is pending and on such notice of the compounding of the offence being given, the offender in relation to which the offence is so compounded shall be discharged.

(7) The Regional Director or any other officer not below the rank of Regional Director authorised by the Central Government, while dealing with the proposal for compounding of an offence may, by an order, direct any partner, designated partner or other employee of the limited liability partnership to file or register, or on payment of fee or additional fee as required to be paid under this Act, such return, account or other document within such time as may be specified in the order.

(8) Notwithstanding anything contained in this section, if any partner or designated partner or other employee of the limited liability partnership who fails to comply with any order made by the Regional Director or any other officer not below the rank of Regional Director authorised by the Central Government, under sub- section (7), the maximum amount of fine for the offence, which was under consideration of Regional Director or such authorised officer for compounding under this section shall be twice the amount provided in the corresponding section in which punishment for such offence is provided.

Mines and Minerals (Development and Regulation) Act, 1957 - Section 23A - Compounding of offences:

(1) Any offence punishable under this Act or any rule made thereunder may, either before or after the institution of the prosecution, be compounded by the person authorised under section 22 to make a complaint to the court with respect to that offence, on payment to that person, for credit to the Government, of such sum as that person may specify:

Provided that in the case of an offence punishable with fine only, no such sum shall exceed the maximum amount of fine which may be imposed for that offence.

(2) Where an offence is compounded under sub- section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded, and the offender, if in custody, shall be released forthwith.

Offshore Areas Mineral (Development And Regulation) Act, 2002 - Section 30 - Compounding of offences:

(1) Any offence punishable under this Act may, either before or after the institution of the prosecution, be compounded by the administering authority or any other officer authorised by the Central Government with respect to that offence, on payment for credit to that Government of such sum as that administering authority or officer, as the case may be, may specify:

Provided that such sum shall not, in any case, exceed the maximum amount of the fine which may be imposed under this Act for the offence so compounded.

(2) Where an offence is compounded under sub- section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded and the offender, if in custody, shall be released forthwith.

Rubber Act, 1947 - Section 26A - Compounding of offences:

Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974), any offence punishable under this Act may, either before the institution of prosecution or with the permission of the Court after the institution of the prosecution, be compounded by the Board on payment to the Board such sum of money as does not exceed the value of the goods in respect of which contravention has been committed.

Go Back to Section 359, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 381 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Companies Act, 2013 - Section 298 - Power to order costs:

The Tribunal may, in the event of the assets of a company being insufficient to satisfy its liabilities, make an order for the payment out of the assets, of the costs, charges and expenses incurred in the winding up, in such order of priority inter se as the Tribunal thinks just and proper.

Go Back to Section 381, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 388 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Presidency Small Cause Courts Act, 1882 - Section 87 - Imprisonment or committal of person refusing to answer or produce document:

If any witness before the Small Cause Court refuses to answer such questions as are put to him, or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, the Court may sentence him to simple imprisonment, or commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the mean- time such person consents to answer such questions or to produce such document, as the case may be, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of section {Substituted by Act 10 of 1914, section 2 and Schedule I, for "83 or section 85"} [480 or section 482 of the Code of Criminal Procedure, 1898 (5 of 1898)

Go Back to Section 388, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 392 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Patent Act, 1859 - Section 29 – Judgment:

Costs.

If it stall appear to any of the said Courts of Judicature at the hearing of any application under the provisions of Sections XXIV or XXV of this Act that, by reason of any of the objections therein mentioned, the said exclusive privilege in the invention or in any part thereof has not been acquired, the Court shall give judgment accordingly, and shall make such order as to the costs of and consequent upon the application as it may think just: and thereupon the petitioner, his executors, administrators, and assigns shall, so long as the judgment continues in force, cease to be entitled to such exclusive privilege.

Patent Act, 1856 - Section 28 – Judgment:

Costs

If it shall appear to any of the said Courts of Judicature at the hearing of any application under the provisions of Section XXIII or XXIV of this Act that, by reason of any of the objections therein mentioned, the said exclusive privilege in the invention or in any part thereof has not been

acquired, the Court shall give judgment accordingly, and shall make such order as to the costs of and consequent upon the application as it may think just; and thereupon the petitioner, his executors, administrators, and assigns, shall, so long as the judgment continues in force, cease to be entitled to such exclusive privilege.

Family Courts Act, 1984 - Section 17 – Judgment:

Judgment of a Family Court shall contain a concise statement of the case, the point for determination, the decision thereon and the reasons for such decision.

Go Back to Section 392, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 411 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Presidency Small Cause Courts Act, 1882 - Section 11 - Procedure in case of difference of opinion:

Save as hereinafter otherwise provided, when two or more of the Judges sitting together differ on any question, the opinion of the majority shall prevail; and if the Court is equally divided, the Chief Judge, if he is one of the Judges so differing, or, in his absence, the Judge first in rank and precedence of the Judges so differing, shall have the casting voice.

Go Back to Section 411, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 436 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Divorce Act, 1869 - Section 9 - Reference to High Court:

When any question of law or usage having the force of law arises at any point in the proceedings previous to the hearing of any suit under this Act by a District Court or at any subsequent stage of such suit, or in the execution of the decree therein or order thereon,

the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the case and refer it, with the Court's own opinion thereon, to the decision of the High Court.

If the question has arisen previous to or in the hearing, the District Court may either stay such proceedings, or proceed in the case pending such reference, and pass a decree contingent upon the opinion of the High Court upon it.

If a decree or order has been made, its execution shall be stayed until the receipt of the order of the High Court upon such reference.

Employees' State Insurance Act, 1948 - Section 81 - Reference to High Court:

An Employees' Insurance Court may submit any question of law for the decision of the High Court and if it does so shall decide the question pending before it in accordance with such decision.

Expenditure- Tax Act, 1957 - Section 25 - Reference to High Court:

(1) Within ninety days of the date upon which he is served with an order under section 22 or section 24, the assessee or the Commissioner may present an application in the prescribed form and where the application is by the assessee, accompanied by a fee of one hundred rupees, to the Appellate Tribunal requiring the Appellate Tribunal to refer to the High Court any question of law arising out of such order, and the Appellate Tribunal shall, if in its opinion a question of law arises out of such order, state the case for the opinion of the High Court.

(2) An application under sub- section (1) may be admitted after the expiry of the period of ninety days aforesaid if the Tribunal is satisfied that there was sufficient cause for not presenting it within the said period.

(3) If on an application made under sub- section (1) the Appellate Tribunal- -

(a) refuses to state a case on the ground that no question of law arises; or

(b) rejects it on the ground that it is time- barred; the applicant may, within three months from the date on which he is served with a notice of refusal or rejection, as the case may be, apply to the High Court, and the High Court may, if it is not satisfied with the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case to the High Court, and on receipt of such requisition the Appellate Tribunal shall state the case:

Provided that if in any case where the Appellate Tribunal has been required by an assessee to state a case the Appellate Tribunal refuses to do so on the ground that no question of law arises, the assessee may, within thirty days from the date on which he receives notice of refusal to state the case, withdraw his application, and if he does so, the fee paid by him under sub- section (1) shall be refunded to him.

(4) The statement to the High Court shall set forth the facts, the determination of the Appellate Tribunal and the question of law which arises out of the case.

(5) If the High Court is not satisfied that the case as stated is sufficient to enable it to determine the question of law raised thereby, it may require the Appellate Tribunal to make such modifications therein as it may direct.

(6) The High Court, upon hearing any such case, shall decide the question of law raised therein, and in doing so may, if it thinks fit, alter the form of the question of law and shall deliver judgment thereon containing the ground on which such decision is founded and shall send a copy of the judgment under the seal of the Court and the signature of the Registrar to the Appellate Tribunal and the Appellate Tribunal shall pass such orders as are necessary to dispose of the case conformably to such judgment.

(7) Where the amount of any assessment is reduced as a result of any reference to the High Court, the amount if any, over- paid as expenditure- tax shall be refunded with such interest as the Commissioner may allow, unless the High Court, on intimation given by the Commissioner within thirty days of the result of such reference that he intends to ask for leave to appeal to the Supreme Court, makes an order authorising the Commissioner to postpone payment of such refund until the disposal of the appeal in the Supreme Court.

(8) The costs of any reference to the High Court shall be in the discretion of the Court.

(9) Section 5 of the Indian Limitation Act, 1908 (09 of 1908), shall apply to an application to the High Court under this section.

Code of Civil Procedure, 1908 - Section 113 - Reference to High Court:

Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit:

Provided that where the Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefore, and refer the same for the opinion of the High Court.

Explanation.- In this section, "Regulation" means any Regulation of the Bengal, Bombay or Madras Code or Regulation as defined in the General Clauses Act, 1897 (10 of 1897), or in the General Clauses Act of a State.

Income- Tax Act, 1961 - Section 256 - Statement of case to the High Court (Omitted):

(1) The assessee or the Principal Commissioner or Commissioner may, within sixty days of the date upon which he is served with notice of an order passed before the 1st day of October, 1998, under section 254, by application in the prescribed form, accompanied where the application is made by the assessee by a fee of two hundred rupees, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order and, subject to the other provisions contained in this section, the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such application, draw up a statement of the case and refer it to the High Court:

Provided that the Appellate Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period hereinbefore specified, allow it to be presented within a further period not exceeding thirty days.

(2) If, on an application made under sub- section (1), the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the assessee or the Principal Commissioner or Commissioner, as the case may be, may, within six months from the date on which he is served with notice of such refusal, apply to the High Court, and the High Court may, if it is not satisfied with the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to

state the case and to refer it, and on receipt of any such requisition, the Appellate Tribunal shall state the case and refer it accordingly.

(2A) The High Court may admit an application after the expiry of the period of six months referred to in sub- section (2), if it is satisfied that there was sufficient cause for not filing the same within that period.

(3) Where in the exercise of its powers under sub- section (2), the Appellate Tribunal refuses to state a case which it has been required by the assessee to state, the assessee may, within thirty days from the date on which he receives notice of such refusal, withdraw his application, and, if he does so, the fee paid shall be refunded.

Income- Tax Act, 1961 - Section 257 - Statement of case to Supreme Court in certain cases:

If, on an application made against an order made under section 254 before the 1st day of October, 1998, under section 256 the Appellate Tribunal is of the opinion that, on account of a conflict in the decisions of High Courts in respect of any particular question of law, it is expedient that a reference should be made direct to the Supreme Court, the Appellate Tribunal may draw up a statement of the case and refer it through its President direct to the Supreme Court.

Income- Tax Act, 1961 - Section 258 - Power of High Court or Supreme Court to require statement to be amended (Omitted):

If the High Court or the Supreme Court is not satisfied that the statements in a case referred to it are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Appellate Tribunal for the purpose of making such additions thereto or alterations therein as it may direct in that behalf.

Income- Tax Act, 1961 - Section 259 – Case before High Court to be heard by not less than two judges:

(1) When any case has been referred to the High Court under section 256, it shall be heard by a Bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such judges or of the majority, if any, of such judges.

(2) Where there is no such majority, the judges shall state the point of law upon which they differ, and the case shall then be heard upon that point only by one or more of the other judges of the High Court, and such point shall be decided according to the opinion of the majority of the judges who have heard the case including those who first heard it.

Income- Tax Act, 1961 - Section 260 – Decision of High Court or Supreme Court on the case stated:

(1) The High Court or the Supreme Court upon hearing any such case shall decide the questions of law raised therein, and shall deliver its judgment thereon containing the grounds on which

such decision is founded, and a copy of the judgment shall be sent under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgment.

(1A) Where the High Court delivers a judgment in an appeal filed before it under section 260A, effect shall be given to the order passed on the appeal by the Assessing Officer on the basis of a certified copy of the judgment.

(2) The costs of any reference to the High Court or the Supreme Court which shall not include the fee for making the reference shall be in the discretion of the Court.

Go Back to Section 436, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 439 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Dock Workers Regulation of Employement Act, 1948 - Section 6A - Power to order inquiry:

1. The Government may, at any time, appoint any person to investigate or enquire into the working of a Board and submit a report to the Government.

2. The Board shall give to the person so appointed all facilities for the proper conduct of the investigation or inquiry and furnish to him such documents, accounts or information in the possession of the Board as he may require.

Go Back to Section 439, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 458 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Air Force Act, 1950 - Section 166 - Execution of sentence of imprisonment:

(1) Whenever any sentence of imprison-ment is passed under this Act or whenever any sentence of death or transportation is commuted to imprisonment, the confirming officer or such other officer as may be prescribed, shall, save as otherwise provided in sub- sections (3) and (4), direct either that the sentence shall be carried out by confinement in a military or air force prison or that it shall be carried out by confinement in a civil prison.

(2) When a direction has been made under sub- section (1) the commanding officer of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer- in- charge of the prison in which such person is to be confined and shall arrange for his dispatch to such prison with the warrant.

(3) In the case of a sentence of imprisonment for a period not exceeding three months, the officers referred to in sub- section (1) may direct that the sentence shall be carried out by confinement in air force custody instead of in a civil or military or air force prison.

(4) On active service, a sentence of imprisonment may be carried out by confinement in such place as the officer commanding the forces in the field may, from time to time, appoint.

Army Act, 1950 - Section 169 - Execution of sentence of imprisonment:

(1) Whenever any sentence of imprisonment is passed under this Act by a court- martial or whenever any sentence of death of transportation is commuted to imprisonment, the confirming officer or in case of a summary court- martial, the officer holding the court or such other officer as may be prescribed, shall, save as otherwise provided in sub- sections (3) and (4), direct either that the sentence shall be carried out by confinement in a military prison or that it shall be carried out by confinement in a civil prison.

(2) When a direction has been made under sub- section (1), the commanding officer, of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer incharge of the prison in which such person is to be confined and shall arrange for his despatch to such prison with the warrant.

(3) In the case of a sentence of imprisonment for a period not exceeding three months and passed under this Act by a court- martial, the appropriate officer under sub-section (1), may direct that the sentence shall be carried out by confinement in military custody instead of in a civil or military prison.

(4) On active service, a sentence of imprisonment may be carried out by confinement in such place as the officer commanding the forces in the field may from time to time, appoint.

Assam Rifles Act, 2006 - Section 143 - Execution of sentence of imprisonment:

(1) Whenever any sentence of imprisonment is passed under this Act by an Assam Rifles Court or whenever any sentence of death is commuted to imprisonment, the confirming officer or in case of a Summary Assam Rifles Court, the officer holding the Court or such other officer as may be prescribed, shall, save as otherwise provided in sub- sections (3) and (4), direct that the sentence shall be carried out by confinement in a civil prison.

(2) When a direction has been made under sub- section (1), the Commandant of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the prison in which such person is to be confined and shall arrange for his dispatch to such prison with the warrant.

(3) In the case of a sentence of imprisonment for a period not exceeding three months and passed under this Act by an Assam Rifles Court the appropriate officer under subsection (1) may direct that the sentence shall be carried out by confinement in force custody instead of in a civil prison.

(4) On active duty, a sentence of imprisonment may be carried out by confinement in such place as the Deputy Inspector- General within whose command the person sentenced is serving or any prescribed officer may from time to time appoint.

Border Security Force Act, 1968 - Section 121 - Execution of sentence of imprisonment:

(1) Whenever any sentence of imprisonment is passed under this Act by a Security Force Court or whenever any sentence of death is commuted to imprisonment, the confirming officer or in case of a Summary Security Force Court the officer holding the court or such other officer as may

be prescribed shall, save as otherwise provided in sub- sections (3) and (4) direct that the sentence shall be carried out by confinement in a civil prison.

(2) When a direction has been made under sub- section (1) the Commandant of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the prison in which such person is to be confined and shall arrange for his dispatch to such prison with the warrant.

(3) In the case of a sentence of imprisonment for a period not exceeding three months and passed under this Act by a Security Force Court, the appropriate officer under subsection (1) may direct that the sentence shall be carried out by confinement in Force custody instead of in a civil prison.

(4) On active duty, a sentence of imprisonment may be carried out by confinement in such place as the Deputy Inspector- General within whose command the person sentenced is serving or any prescribed officer, may from time to time appoint.

Coast Guard Act, 1978 - Section 100 - Execution of sentence of imprisonment:

(1) Whenever any sentence of imprisonment is passed under this Act or whenever any sentence of death is commuted to imprisonment, the presiding officer of the Coast Guard Court which passed the sentence or such other officer as may be prescribed shall direct that the sentence shall be carried out by confinement in a civil prison.

(2) When a direction has been made under sub- section (1), the Commanding Officer of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the prison in which such person is to be confined and shall arrange for his dispatch to such prison with the warrant.

Indian Air Force Act, 1932 - Section 113 - Execution of sentence of imprisonment:

Whenever any sentence of imprisonment is passed under this Act, or whenever any sentence so passed is commuted to imprisonment, the commanding officer of the person under sentence, or such other officer as may be prescribed, shall forward a warrant in the prescribed form to the officer in charge of the civil prison in which such person is to be confined, and shall forward him to such prison with the warrant:

Provided that, in the case of a sentence of imprisonment for a period not exceeding three months, the confirming authority, or, in the case of a sentence which does not require confirmation, the court, may direct that the sentence shall be carried out by confinement in air force custody:

Provided further that on active service a sentence of imprisonment may be carried out by confinement in such place as the officer commanding the forces in the field may, from time to time, appoint.

Indo- Tibetan Border Police Force Act, 1992 - Section 135 - Execution of sentence of imprisonment:

(1) Whenever any sentence of im-prisonment is passed under this Act by a Force Court or whenever any sentence of death is commuted to imprisonment, the confirming officer or in case of a Summary Force Court the officer holding the Court or such other officer as may be prescribed shall, save as otherwise provided in sub- sections (3) and (4), direct that the sentence shall be carried out by confinement in a civil prison.

(2) When a direction has been made under sub- section (1), the commanding officer of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the prison in which such person is to be confined and shall arrange for his dispatch to such prison with the warrant.

(3) In the case of a sentence of imprisonment for a period not exceeding three months and passed under this Act by a Force Court, the appropriate officer under sub- section (1) may direct that the sentence shall be carried out by confinement in Force custody instead of in a civil prison.

(4) On active duty, a sentence of imprisonment may be carried out by confinement in such place as the officer not below the rank of Additional Deputy Inspector- General within whose command the person sentenced is serving or any prescribed officer may from time to time appoint.

National Security Guard Act, 1986 - Section 117 - Execution of sentence of imprisonment:

(1) Whenever any sentence of imprisonment is passed under this Act by a Security Guard Court or whenever any sentence of death is commuted to imprisonment, the confirming officer, or in case of a Summary Security Guard Court the officer holding the Court or such other officer as may be prescribed, shall, save as otherwise provided in sub- sections (3) and (4), direct that the sentence shall be carried out by confinement in a civil prison.

(2) When a direction has been made under sub- section (1), the Commander of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the prison in which such person is to be confined and shall arrange for his despatch to such prison with the warrant.

(3) In the case of a sentence of imprisonment for a period not exceeding three months and passed under this Act by a Security Guard Court, the appropriate officer under sub- section (1) may direct that the sentence shall be carried out by confinement in Security Guard custody instead of in a civil prison.

(4) On active duty, a sentence of imprisonment may be carried out by confinement in such place as the Deputy Inspector- General within whose command the person sentenced is serving or any prescribed officer, may, from time to time, appoint.

Sashastra Seema Bal Act, 2007 - Section 135 - Execution of sentence of imprisonment:

(1) Whenever any sentence of imprisonment is passed under this Act by a Force Court or whenever any sentence of death is commuted to imprisonment, the confirming officer or in case of a Summary Force Court the officer holding the Court or such other officer as may be prescribed shall, save as otherwise provided in sub- sections (3) and (4), direct that the sentence shall be carried out by confinement in a civil prison.

(2) When a direction has been made under sub- section (1), the commanding officer of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the prison in which such person is to be confined and shall arrange for his dispatch to such prison with the warrant

(3) In the case of a sentence of imprisonment for a period not exceeding three months and passed under this Act by a Force Court, the appropriate officer under sub- section (1) may direct that the sentence shall be carried out by confinement in Force custody instead of in a civil prison.

(4) On active duty, a sentence of imprisonment may be carried out by confinement in such place as the officer not below the rank of Additional Deputy Inspector- General within whose command the person sentenced is serving or any prescribed officer may from time to time appoint.

Go Back to Section 458, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 497 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Indian Army Act, 1911 - Section 126A - Order for custody and disposal of property pending trial in certain Cases:

When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before a court- martial during a trial, the court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the trial, and if the property is subject to speedy or natural decay may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Go Back to Section 497, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 519 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Delhi sales tax Act, 1975 - Section 62 - Extension of period of limitation in certain cases:

(1) An Appellate Authority may admit an appeal under section 43 after the period of limitation laid down in that section, if the appellant satisfies the appellate authority that he has sufficient cause for not preferring the appeal within such period.

(2) In computing the period laid down under sections 43, 45, 46 and 47, the provisions of sections 4 and 12 of the Limitation Act, 1963 (36 of 1963) shall, so far as may be, apply.

(3) In computing the period of limitation prescribed by or under any provisions of this Act, or the rules made thereunder, other than sections 43, 45, 46 or 47, any period during which any proceeding is stayed by an order or injunction of any court shall be excluded.

Go Back to Section 519, Bharatiya Nagarik Suraksha Sanhita, 2023

Linked Provisions of Section 523 of Bharatiya Nagarik Suraksha Sanhita, 2023:

Arbitration and Conciliation Act, 1996 - Section 82 - Power of High Court to make rules:

The High court may make rules consistent with this Act as to all proceedings before the court under this Act.

Banking Regulation Act, 1949 - Section 45U - Power of High Court to make rules:

The High Court may make rules consistent with this Act and the rules made under section 52 prescribing—

(a) the manner in which inquiries and proceedings under Part III or Part IIIA may be held;

(b) the offences which may be tried summarily;

(c) the authority to which, and the conditions subject to which, appeals may be preferred and the manner in which such appeals may be filed and heard;

(d) any other matter for which provision has to be made for enabling the High Court to effectively exercise its functions under this Act.

Family Courts Act, 1984 - Section 21 - Power of High Court to make rules:

(1) The High Court may, by notification in the Official Gazette, make such rules as it may deem necessary for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) normal working hours of Family Courts and holding of sittings of Family Courts on holidays and outside normal working hours;

(b) holding of sittings of Family Courts at places other than their ordinary places of sitting;

(c) efforts which may be made by, and the procedure which may be followed by, a Family Court for assisting and persuading parties to arrive at a settlement.

Guardians and Wards Act, 1890 - Section 50 - Power of High Court to make rules:

(1) In addition to any other power to make rules conferred expressly or impliedly by this Act, the High Court may from time to time make rules consistent with this Act-

(a) as to the matters respecting which, and the time at which, reports should be called for from Collectors and subordinate Courts;

(b) as to the allowances to be granted to, and the security to be required from, guardians, and the cases in which such allowances should be granted;

(c) as to the procedure to be followed with respect to applications of guardians for permission to do acts referred to in sections 28 and 29;

(d) as to the circumstances in which such requisitions as are mentioned in clauses (a), (b), (c) and (d) of section 34 should be made;

(e) as to the preservation of statements and accounts delivered and exhibited by guardians;

(f) as to the inspection of those statements and accounts by persons interested;

(ff) as to the audit of accounts under section 34A, the class of persons who should be appointed to audit accounts, and the scales of remuneration to be granted to them;

(g) as to the custody of money, and securities for money, belonging to wards;

(h) as to the securities on which money belonging to wards may be invested;

(i) as to the education of wards for whom guardians, not being Collectors, have been appointed or declared by the Court; and

(j) generally, for the guidance of the Courts in carrying out the purposes of this Act.

(2) Rules under clauses (a) and (i) of sub- section (1) shall not have effect until they have been approved by the State Government, nor shall any rule under this section have effect until it has been published in the Official Gazette.

Pondicherry (Administration) Act, 1962 - Section 12 - Power of High Court to make rules:

The High Court may, from time to time, make rules, consistent with this Act, to provide for all or any of the following matters, namely:—

(a) the translation of any papers filed in the High Court and the preparation of paper- books for hearing all appeals and the copying, typing or printing of any such papers or translation and the recovery from the persons at whose instance or on whose behalf papers are filed of the expenses thereby incurred.

(b) the court- fees payable for instituting proceedings in the High Court, the fees to be charged for processes issued by the High Court or by any officer of the court and the amount payable in any proceeding in the High Court in respect of fees of the advocate of any party to such proceedings;

(c) the procedure to be followed in the High Court;

(d) the approval, admission, enrolment, removal and suspension of advocates from Pondicherry.

Special Marriage Act, 1954 - Section 41 - Power of High Court to make rules regulating procedure:

(1) The High Court shall, by notification in the Official Gazette, make such rules consistent with the provisions contained in this Act and the Code of Civil Procedure, 1908 (5 of 1908), as it may consider expedient for the purpose of carrying into effect the provisions of Chapters V, VI and VII.

(2) In particular, and without prejudice to the generality of the foregoing provision, such rules shall provide for,- -

(a) the impleading by the petitioner of the adulterer as a co- respondent on a petition for divorce on the ground of adultery, and the circumstances in which the petitioner may be excused from doing so;

(b) the awarding of damages against any such co- respondent;

(c) the intervention in any proceeding under Chapter V or Chapter VI by any person not already a party thereto;

(d) the form and contents of petitions for nullity of marriage or for divorce and the payment of costs incurred by parties to such petitions; and

(e) any other matter for which no provision or no sufficient provision is made in this Act, and for which provision is made in the Indian Divorce Act, 1869 (4 of 1869).

Go Back to Section 523, Bharatiya Nagarik Suraksha Sanhita, 2023

MANU/SC/0158/1962

Back to Section 2b of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 224/60

Decided On: 20.11.1962

Birichh Bhuian and Ors. Vs. State of Bihar

Hon'ble Judges/Coram:

J.R. Mudholkar, K. Subba Rao, N. Rajagopala Ayyangar and Syed Jaffer Imam, JJ.

JUDGMENT

K. Subba Rao, J.

1. This appeal by Certificate raises the question of the scope of s. 537 of the Criminal Procedure Code.

2. The facts are not in dispute and may be briefly stated. On September 16, 1956, at about 3- 55 P.M. the Sub Inspector of Police, attached to Chainpur outpost, found 10 to 15 persons gambling by the side of the road. He arrested five out of them and the rest had escaped. The Sub Inspector took the arrested persons to the out- post and as one of the arrested persons Jamal adopted a violent attitude, he ordered him to be handcuffed whereupon he began to abuse the Sub Inspector. It happened that a large number of Bhuians, male and female, were dancing close to the outpost. Some of them hearing the noise rushed with lathies to the out- post, assaulted the Sub- Inspector and two constables and looted the out- post. Three charge- sheets were filed in the court of the Sub- Divisional Officer in respect of the said incidents, first against the appellants Nos. 1 to 4 and others under Sections 147, 452 and 379 of the Indian Penal Code alleging that they raised the outpost, looted some properties and assaulted the informant and others; the second against the appellants 5 and 4 others under s. 224 of the Indian Penal Code and the third against appellant No. 5 and 4 others under s. 11 of the Bengal Public Gambling Act. The said Sub Divisional Officer took cognizance of the said cases and transferred them to the court of the Magistrate 1st Class, Daltonganj. On December 29, 1956, on a petition filed by the Prosecuting Inspector the said Magistrate held a joint trial. On July 22, 1957, he delivered a single judgment convicting appellants Nos. 1 to 4 under s. 147 of the India Penal Code and also under Sections 452 and 380/34 of the Indian Penal Code and sentencing them to undergo rigorous imprisonment for one year for the former offence. No sentence was imposed for the latter offences. The appellant No. 5, along with 4 others was convicted under s. 224 of the Indian Penal Code and sentenced to two years' rigorous imprisonment and was also convicted under s. 11 of the Bengal Public Gambling Act, and Sections 353 and 380/34 of the Indian Penal Code, but no separate sentence was awarded for the said offences, The appellant and others preferred an appeal against the said concessions and sentences to the court of the Additional Judicial Commissioner of Ranchi and he

by his judgment dated July 10, 1958, convicted the appellants Nos. 1 to 4 under s. 147 of the Indian Penal Code and acquitted them in respect of other charges. The conviction of the appellant No. 5 under s. 224, Indian Penal Code, was maintained but the sentence was reduced to one year's rigorous imprisonment and a sentence of rigorous imprisonment for one month was imposed on appellants Nos. 4 and 5 and others under s. 11 of the Bengal Public Gambling Act. The learned Judicial Commissioner held that the offence under s. 11 of the Bengal Public Gambling Act was not committed in the course of the same transaction as the other offences were committed at the police- post and therefore there was a misjoinder of charges. Nonetheless he held that the said defect was curable as no prejudice had been caused to the appellants. The appellants preferred a revision petition to the High Court of Judicature at Patna and the said High Court dismissed the same on the ground that by reason of s. 537(b) of the Criminal Procedure Code the conviction could not be set aside as the said misjoinder of charges did not occasion a failure of justice. The present appeal was filed against the said order on a certificate issued by the High Court.

3. The learned counsel for the appellants contended that s. 537(b) of the Criminal Procedure Code could only save irregularities in the matter of framing of charges but could not cure a joint trial of charges against one person or several persons, that was not sanctioned by the Code. Elaborating his argument the learned counsel contended that the expression 'mis- joinder of charges' in s. 537(b) of the Code must be confined only to mis- joinder of accusations - according to him charge in the Code means only an accusation - and therefore a joint trial of offences and persons outside the scope of Sections 233 to 239, of the Criminal Procedure Code, would not be misjoinder of charges within the meaning of said expression.

4. As the question raised turns upon the construction of the provisions of s. 537 of the Criminal Procedure Code, it would be convenient to read the material part of it at this stage :-

"Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII or on appeal or revision on account.....

(a) of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or

(b) of any error, omission or irregularity in the charge, including any misjoinder of charges, or

(c) XX XX XX XX

(d) of any misdirection in any charge to a jury unless such error, omission, irregularity, or mis-direction has in fact occasioned a failure of justice.

EXPLANATION :- In determining whether any error, omission or irregularity in any proceeding under this Code has occasioned failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

5. Clause (b) was inserted by Act XXVI of 1955. The word 'charge' which occurred after 'warrant' in clause (a) was omitted and the new clause which specifically relates to charge was added. Further the expression 'mis- joinder of charges' was included in the general terms 'error, omission or irregularity in the charge'. The object of the section is manifest from its provisions. As the object of all rules of procedure is to ensure a fair trial so that justice may be done, the section in terms says that any violation of the provisions to the extent narrated therein not resulting in a failure of

justice does not render a trial void. The scope of clause (b) could be best understood, if a brief historical background necessitating the amendment was noticed. The Judicial Committee in Subrahmania Ayyar v. King Emperor I.L.R. (1902) Mad. 61 L.R. 28 IndAp 257 held that the disregard of an express provision of law as to the mode of trial was not a mere irregularity such as could be remedied by s. 537 of the Criminal Procedure Code. There the trial was held in contravention of the provisions of Sections 233 and 234 of the Code of Criminal Procedure which provide that every separate offence shall be charged and tried separately except that the three offences of the same kind may be tried together in one charge if committed within a period of one year. It was held that the mis- joinder of charges was not an irregularity but an illegality and therefore the trial having been conducted in a manner prohibited by law was held to the altogether illegal. The Judicial Committee in Abdul Rehman v. The King Emperor I.L.R. (1927) Rang 53; L.R. 54 IndAp 96.) considered that a violation of the provisions of s. 360 of the Code which provides that the depositions should be read over to the witnesses before they sign, was only an irregularity curable under s. 537 of the Code. Adverting to Subrahmania Ayyar's case it pointed out that the procedure adopted in that case was one which the Code positively prohibited and it was possible that in might have worked actual injustice to the accused. The question again came before the Privy Council in Babu Lal Choukhani v. Emperor I.L.R. (1938) Cal. 295. One of the points there was whether the trial was held in infringement of s. 239(d) of the Criminal Procedure Code. The Board held that it was not. Then the question was posed that if there was a contravention of the said section, whether the case would be governed by Subrahmania Ayyar's case or Abdul Rehman's case. The Board did not think it was necessary to discuss the precise scope of what was decided in Subrahmania Ayyar's case because in their understanding of s. 239(d) of the Code that question did not arise in that case. The point was again mooted by the Board in Pulukuri Kotayya v. King Emperor I.L.R. 1948 Mad. 1. In that case there had been a breach of the proviso to s. 162 of the Code. It was held that in the circumstances of the case the said breach did not prejudice the accused and therefore the trial was saved by s. 537 thereof. Sir Join Beaumont speaking for the Board observed at p. 12 "When a trial is conducted in a manner different from that prescribed by the Code, as in Subrahmania Ayyar v. King Emperor I.L.R. (1902) Mad. 1, the trial is bad, and no question of curing an irregularity arises, but if the trial is conducted substantially in the manner prescribed by the Code, but some irregularity occurs in the course of such conduct, the irregularity can be cured under s. 537, and no the less so because the irregularity involves, as must nearly always be the case, a breach of one or more of the very comprehensive provisions of the Code. The distinction drawn in many of the cases in India between an illegality and an irregularity is one of the degree rather than of kind". It will be seen from the said observations that the Judicial Committee left to the courts to ascertain in each case whether an infringement of a provision of Code is an illegality or an irregularity. There was a marked cleavage of opinion in India whether the later decisions of the Privy Council modified the rigor of the rule laid down in Subrahmania Ayyar's case and a view was expressed in several decisions that a mere mis- joinder of charges did not necessarily vitiate the trial unless there was a failure of justice, while other decisions took a contrary view. This court in Janardan Reddy v. The State of Hyderabad MANU/SC/0027/1951 : [1951]2SCR344 left open the question for future decision. In this state of law, the Parliament has intervened to set at rest the conflict by passing Act XXVI of 1955 making a separate provision in respect of errors, omissions or irregularities in a charge and also enlarging the meaning of the expression such errors etc. so as to include a misjoinder of charges. After the amendment there is no scope for contending that mis- joinder of charges is not saved by s. 537 of the Criminal Procedure Code if it has not occasioned a failure of justice.

6. The next question is what is the meaning of the word 'charges' in the expression 'mis- joinder of charges'. The word 'charge', the learned counsel of the appellants contends means only an accusation of a crime or an information given by the Court of an allegation made against the accused. Does the section only save irregularities in the matter of mis- joinder of such accusations ? Does it only save the irregularities committed in mixing up accessions in respect of offences or persons the joinder whereof has been permitted by the provisions of the Criminal Procedure Code ? The mis- joinder cured by the section, it is said, is illustrated by the decision in Kadiri Kunhahammad v. The State of Madras MANU/SC/0212/1959 : 1960CriLJ1013 There in a case of conspiracy of commit a breach of trust a separate charge was framed in contravention of the proviso to s. 222 of the Criminal Procedure Code i.e. in regard to an amount misappropriated during the period exceeding one year. This Court held that as acts of misappropriation committed during the curse of the same transaction could be tried together in one trial, the contravention of s. 222 was only an irregularity, for that act of misappropriation could have been split up into two parts, each of them covering a period less than one year and made subject of a separate charge. In that view it was held that s. 537 saved the trial, as there was no failure of justice. There a joint trial was permitted by the relevant provisions of the Code, but the defect was only in having one charge instead of two charges. The question is whether the expression should be given only the limited meaning as contended above. The word 'charge' is defined in s. 4(c). It says that the charge includes any head of a charge where charge contained more heads than one. This definition does not throw any light, but it may be noted that that is only an inclusive one. Chapter XIX provides for the form of charges and for joinder of charges. Section 221 to 232 give the particulars that a charge shall contain and the manner of rectifying defects if found therein. Section 221 says that in every charge the court shall state the offence with which the accused is charged. Section 222 provides that the charge shall contain such particulars as to the time and place of the alleged offence and the person against whom or the thing in respect of which it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged. Section 233 repeats that a charge shall also contain such particulars mentioned in Sections 221 and 222. The form of a charge prescribed in Schedule 5 shows that it contains an accusation that a person committed a particular offence. It is, therefore, clear that a charge is not an accusation made or information given in abstract but an accusation made against a person in respect of an act committed or omitted in violation of a penal law forbidding or commanding it. In other words it is an accusation made against a person in respect of an offence alleged to have been committed by him. If so, section 234 to 239 deal with joinder of such charges. Section 233 says that for every distinct offence of which any person is accused, there shall be a separate charge and every such charge shall be tried separately, except in cases maintained in Sections 234, 235, 236 and 239. Sections 234 to 236 permit joinder of charges and trial of different offences against a single accused in the circumstances mentioned in those sections and s. 239 provides for the joinder of charges and the trial of several persons. The scheme of the said sections also indicates that a charge is not a mere abstraction but a concrete accusation against a person in respect to an offence and that their joinder is permitted under certain circumstances whether the joinder of charges is against one person or different persons. If the joinder of such charges is made in contravention of the said provisions, it will be misjoinder of charges. As we have noted already, before sub- section (b) was added to s. 537 of the Criminal Procedure Code there was a conflict of view on the question whether such a misjoinder was only an irregularity which could be cured under that section, or an illegality which made it void. The amendment steered clear of that conflict and expressly

included the misjoinder of charges in the errors and irregularities which could be cured thereunder. To summarise : a charge is a precise formulation of a specific accusation made against person of an offence alleged to have been committed by him. Sections 234 to 239 permit the joinder of such charges under specified conditions for the purpose of a single trial. Such a joinder may be of charges in respect of different offences committed by a single person or several persons. If the joinder of charges was contrary to the provisions of the Code it would be a mis- joinder of charges. Section 537 prohibits the revisional or the appellate court from setting aside a finding, sentence or order passed by a court of competent jurisdiction on the ground of such a misjoinder unless it has occasioned a failure of justice. In this case there was a clear misjoinder of charges against several persons. But the High Court held that there was no failure of justice and the appellants held their full say in the matter and they were not prejudiced in any way. We, therefore, hold that the High Court was right in not setting aside the convictions of the accused and the sentence passed against them.

7. In the result the appeal fails and is dismissed.

8. Appeal dismissed.

MANU/SC/0794/2000

Back to Section 2d of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal Nos. 1111- 1112 of 2000 [Arising out of SLP (Crl.) Nos. 2221- 2222 of 2000]

Decided On: 13.12.2000

The State of Bihar Vs. Chandra Bhushan Singh and Ors.

Hon'ble Judges/Coram:

K.T. Thomas and R.P. Sethi, JJ.

JUDGMENT

R.P. Sethi, J.

1. Leave granted.

2. Respondents, who are the employees of the Railways, were caught red handed on 25.3.1987 while carrying away Railway Cement unlawfully for sale. Upon inquiry, offences under The Railways Property (Unlawful Possession) Act, 1966 (hereinafter referred to as "the Act") were held proved against the accused persons. Inquiry Report (Complaint) under the Act was filed by M.I, Khan, Inspector, RPF, Samastipur, against the accused persons in the court i of Judicial Magistrate, First Class, Samastipur. The accused persons filed applications before the Magistrate praying for their discharge on the ground that Sub- Inspector of Railway Protection Force, who submitted charge- sheet against them was not a "police officer" within the meaning of Section 173 of the CrPC (hereinafter referred to as "the Code") and upon his report submitted in the court, the Magistrate had no jurisdiction to take cognizance. Their prayer was rejected by the Magistrate against which they filed petitions in the High Court for quashing the order of the Magistrate. The High Court allowed the petitions of the respondents- accused and quashed the proceedings pending against them before the Railway Magistrate, vide the order impugned in these appeals.

3. We have heard the learned Counsel appearing for the parties and perused the record and relevant provisions of the Act besides the Code.

4. Mr. P.S. Mishra, the learned Sr. Advocate appearing for the respondents has frankly conceded that the order of the High Court impugned in these appeals cannot be justified. He has, however, prayed that as the respondents- accused had raised various other contentions for quashing of the proceedings before the Magistrate, this Court may consider desirability of adjudicating such pleas or remand the case back to the High Court for decision on the points raised but not decided.

5. Section 3 of the Act provides the penalty for unlawful possession of railway property. Section 6 authorises a superior officer or member of the Force to arrest any person who has been concerned in an offence punishable under the Act or against whom a reasonable suspicion exists of his having been so concerned without an order from the Magistrate and without a warrant. Section 7 provides that every person arrested under the Act, shall, if the arrest is made by a person other than the officer of the Force, to forward such person, without delay to the nearest officer of the Force, Section 8 of the Act provides:

Inquiry how to be made against arrested persons- (1) When any such person is arrested by an officer of the Force for an offence punishable under this Act or is forwarded to him under Section 7, he shall proceed to inquire into the charge against such persons.

(2) For this purpose the officer of the Force may exercise the same powers and shall be subject to the same provisions as the officer in charge of a police station may exercise and is subject to under the CrPC, 1898, when investigating a cognizable case:

Provided that-

(a) if the officer of the Force is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case, or forward him in custody to such Magistrate;

(b) if it appears to the officer of the Force that there is no sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person on his executing a bond, with or without sureties as the officer of the Force may direct, to appear, if and when so required, before the Magistrate having jurisdiction, and shall make a full report of all the particulars of the case to his official superior.

6. In this case, after seizure of the Railway property and interrogation of the accused, Case Crime No. 14/87 under Section 3 of the Act was registered. As per statement of accused Baleshwar Singh further recovery of 136 bags of cement in addition to the cement already seized, was effected. Shri M.I. Khan, IPF/SPJ inquired the case and submitted the complaint before the Magistrate. Copy of the complaint has been annexed with this appeal as Annexure P- 3. A perusal of Annexure P-3 unambiguously indicates that it was not a report within the meaning of Section 173 of the Code but a complaint filed before the Magistrate, obviously under Section 200 of the Code. The process against the accused appears to have been issued under Section 204 of the Code. By no stretch of imagination, Exhibit P- 3 can be termed to be a report within the meaning of Section 173 of the Code. Merely because the inquiry was held by a member of the Force having some similar powers as are possessed by an investigating officer, would not make the complaint to be a report within the meaning of Section 173 of the Code.

7. Section 2(d) of the Code defines the complaint to mean any allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code, that some person, whether

known or unknown, has committed an offence but does not include a police report. Explanation to Clause (d) to Section 2 of the Code provides:

Explanation- A report made a police officer in a case which discloses, after investigation, the commission of a non- cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant.

Section 2(d) of the Code encompasses a police report also as a deemed complaint if the matter is investigated by a police officer regarding the case involving commission of a non- cognizable offence. In such a case, the report submitted by a police officer cannot be held to be without jurisdiction merely because proceedings were instituted by the police officer after investigation, when he had no power to investigate.

8. For quashing the proceedings, the High Court relied upon the judgment of this Court in Balkishan A. Devidayal, etc. v. State of Maharashtra, etc. MANU/SC/0112/1980 : 1980CriLJ1424 . The reliance appears to be misconceived. In that case the court, while interpreting the provisions of Section 25 of the Evidence Act held, "an officer of the RPF could not, therefore, be deemed to be a 'police officer' within the meaning of Section 25 of the Evidence Act and, therefore, any confessional or incriminating statement recorded by him in the course of an inquiry under Section 8(1) of the 1966 Act cannot be excluded from evidence under the said section". As noted earlier by us, this Court in Balkishan's case also observed that an officer conducting an inquiry under Section 8(1) of the Act has not been invested with all powers of an officer incharge of a police station making an investigation under Chapter XIV of the Code. He has no power to file a charge sheet before the Magistrate concerned under Section 173 of the Code. The main purpose of the Act was to invest powers of investigation and prosecution of an offence relating to Railway property in the RPF in the same manner as in a case relating to the offences under the law dealing with excise and customs. The offences under the Act are non- cognizable which cannot be investigated by a police officer under the Code. The result is that initiation of inquiry for an offence inquired into under this Act can be only on the basis of a complaint by an officer of the Force, as was actually done in this case.

9. To the same effect is the judgment of this Court in Criminal Appeal Nos. 512- 515 of 1997 decided on 2.5.1997 (State of Bihar and Ors. v. Ganesh Chaudhry and Ors.).

10. Mr. Mishra, the learned Senior counsel vehemently argued that the case be remanded back to the High Court for adjudication of other grounds on the basis of which the proceedings were sought to be quashed. He pointedly referred to the averments made in para 27 of the petition filed in the High Court to urge that as the trial of the case was pending against the accused for over a period of 5 years, the proceedings against them are liable to be quashed under a notification allegedly issued by the State Government. Learned Counsel has neither shown us the notification nor the authority of law under which such notification could have been issued by the State Government. He also tried to emphasise that even on admitted facts no case under Section 3 of the Act was made out against the accused and that the proceedings initiated against his clients

were otherwise not sustainable. We are of the opinion that such pleas cannot be raised before us at this stage and the case cannot be remanded back to the High Court in view of the fact that the proceedings against the respondents appear to have been sufficiently prolonged on one pretext or the other for over a period of 13 years. We are, however, of the opinion that the respondents have a statutory right to raise all such pleas as are available to them under the law during the trial before the Magistrate. All such pleas, when raised, can appropriately be considered and disposed of by the trial court.

11. In view of what has been stated hereinabove, these appeals are allowed by setting aside the order of the High Court and upholding the order of the Magistrate refusing to discharge the respondents in the complaint pending before him. The Magistrate is further directed to expedite the trial.

MANU/SC/1119/2015

Neutral Citation: 2015/INSC/737

Back to Section 2wa of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 1315 of 2015 (Arising out of SLP (Crl.) No. 7954 of 2014)

Decided On: 06.10.2015

Back to Section 372 of Code of Criminal Procedure, 1973

Satya Pal Singh Vs. State of M.P. and Ors.

Hon'ble Judges/Coram:

T.S. Thakur and V. Gopala Gowda, JJ.

JUDGMENT

V. Gopala Gowda, J.

1. Leave granted.

2. This criminal appeal by special leave is directed against the impugned judgment and order dated 04.03.2014 passed in Criminal Appeal No. 547 of 2013 by the High Court of M.P. at Gwalior whereby the High Court has upheld the decision of the Sessions Court, Bhind, M.P. (the trial court) in Sessions Case No. 293/2010 by acquitting all the accused i.e. Respondent Nos. 2 to 6 herein.

3. The Appellant herein made a written complaint dated 19.07.2010 regarding the death of his daughter, Ranjana (hereinafter referred to as "the deceased") to the Addl. Superintendent of Police, Bhind, M.P. The FIR was registered on 27.07.2010. The trial court after the examination of evidence on record passed the judgment and order dated 13.06.2013 acquitting all the accused of the charges levelled against them for the offences punishable Under Sections 498A and 304B of Indian Penal Code, 1860 (for short "Indian Penal Code") and Section 4 of the Dowry Prohibition Act, 1961 and alternatively for the offence punishable Under Section 302 of Indian Penal Code. Being aggrieved of the decision of the trial court, the Appellant approached the High Court against the order of acquittal of Respondent Nos. 2 to 6. The High Court vide its judgment and order dated 04.03.2014 has upheld the trial court's decision of acquittal of all the accused persons. The impugned judgment and order of the High Court is challenged in this appeal before this Court questioning its correctness.

4. Being aggrieved of the impugned judgment and order the Appellant being the legal heir of the deceased filed an appeal before the High Court under proviso to Section 372 of the Code of

Criminal Procedure, 1973 (for short "the Code of Criminal Procedure"). The High Court, however, has mechanically disposed of the appeal by passing a cryptic order without examining as to whether the leave to file an appeal filed by the Appellant as provided Under Sub- section (3) to Section 378 of Code of Criminal Procedure can be granted or not. The correctness of the same is questioned by the Appellant in this appeal inter alia urging various grounds.

5. Mr. Prashant Shukla, the learned Counsel on behalf of the Appellant placed strong reliance upon the judgment rendered by Delhi High Court in Ram Phal v. State and Ors. MANU/DE/1687/2015 : 221 (2015) DLT 1 wherein the Full Bench, after interpreting the proviso to Section 372 read with Section 2(wa) of the Code of Criminal Procedure, has held that the father of the victim has locus standi to prefer an appeal, being a private party coming under the definition of victim Under Section 2(wa) of the Code of Criminal Procedure. It was contended by him that in the instant case, the Appellant, being father of the deceased, has locus standi to file an appeal before the High Court against the order of acquittal under proviso to Section 372 without seeking the leave of the High Court as required Under Sub- section (3) of Section 378 of Code of Criminal Procedure. Thus, the appeal filed by the Appellant was maintainable before the High Court of M.P. under the abovesaid provisions of Code of Criminal Procedure. He further urged that undoubtedly, the said legal aspect of the matter has not been dealt with by the High Court and the appeal was decided on merits but without examining as to whether the leave to file an appeal by the Appellant is required to be granted or not under the above provisions of Code of Criminal Procedure.

6. The learned Counsel for the Appellant drew the attention of this Court towards the decision rendered by Delhi High Court in the case referred to supra, wherein it has elaborately adverted to the definition of victim as defined Under Section 2(wa) of Code of Criminal Procedure and proviso to Section 372 of Code of Criminal Procedure and has examined them in the light of their legislative history. It has also adverted to 154th Law Commission Report of 1996 in connection with the said legal provision of Code of Criminal Procedure and has succinctly held that where the victim is unable to prefer an appeal then the appeal can be preferred by persons - such as relatives, foster children, guardians, fiance or live- in partners, etc. of the victim, who are in a position to do so in his/her behalf. He urged that in the instant case, there is no need for the Appellant, being the father of the deceased, to seek leave of the High Court as provided Under Sub- section (3) to Section 378 of Code of Criminal Procedure to maintain the appeal before it as it is his statutory right to prefer an appeal against the order of acquittal of all accused persons in view of proviso to Section 372 of Code of Criminal Procedure.

7. It was further urged by him that the High Court ought to have granted the leave to the Appellant to file an appeal by the Appellant as required Under Sub- section (3) of Section 378 of Code of Criminal Procedure and thereafter it ought to have examined and disposed of the appeal on merits.

8. He further vehemently contended that the appeal before the High Court was filed by the Appellant challenging the acquittal order passed by the trial court but the High Court has concurred with the decision of the trial court mechanically without re- appreciating the evidence on record. He further submitted that the decision of the High Court suffers from error in law as the High Court, being the Appellate Court, was required to re- appreciate the evidence on record to exercise its appellate jurisdiction in the appeal filed by the Appellant with reference to the legal contentions urged in the memorandum of appeal but it has failed to do so. The High Court in a very cursory and casual manner has held that after a perusal of evidence on record it found no reason to interfere with the decision of the trial court as the prosecution has failed to establish beyond reasonable doubt that the charges levelled against all the accused are proved and it has dismissed the appeal by passing a cryptic order, which amounts to non- exercise of appellate jurisdiction properly by the High Court. Thus, the impugned judgment and order of the High Court is vitiated in law and therefore, the same is required to be set aside by this Court. He further requested this Court to remand the matter to the High Court for re- appreciation of the evidence on record and pass appropriate order on merits of the case after hearing both the parties.

9. We have carefully examined the above mentioned provisions of Code of Criminal Procedure and the Full Bench decision of Delhi High Court referred to supra upon which strong reliance is placed by the learned Counsel for the Appellant. There is no doubt that the Appellant, being the father of the deceased, has locus standi to prefer an appeal before the High Court under proviso to Section 372 of Code of Criminal Procedure as he falls within the definition of victim as defined Under Section 2(wa) of Code of Criminal Procedure to question the correctness of the judgment and order of acquittal passed by the trial court in favour of Respondent Nos. 2 to 6 in Sessions Case No. 293/2010.

10. The proviso to Section 372 of Code of Criminal Procedure was amended by Act No. 5 of 2009. The said proviso confers a statutory right upon the victim, as defined Under Section 2(wa) of Code of Criminal Procedure to prefer an appeal against an order passed by the trial court either acquitting the accused or convicting him/her for a lesser offence or imposing inadequate compensation. In this regard, the Full Bench of Delhi High Court in the case referred to supra has elaborately dealt with the legislative history of insertion of the proviso to Section 372 of Code of Criminal Procedure by Act No. 5 of 2009 with effect from 31.12.2009. The relevant provision of Section 372 of Code of Criminal Procedure reads thus:

372. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force:

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.

The said amendment to the provision of Section 372 of Code of Criminal Procedure was prompted by 154th Law Commission Report. The said Law Commission Report has undertaken a comprehensive review of Code of Criminal Procedure and its recommendations were found to be very appropriate in amending the Code of Criminal Procedure particularly in relation to provisions concerning arrest, custody and remand, procedure to be followed in summons and warrant- cases, compounding of offences and special protection in respect of women and inquiry and trial of persons of unsound mind. Further, the Law Commission in its report has noted the relevant aspect of the matter namely that the victims are the worst sufferers in a crime and they do not have much role in the Court proceedings. They need to be given certain rights and compensation so that there is no distortion of the criminal justice system. The said report of the Law Commission has also taken note of the views of the criminologist, penologist and reformers of criminal justice system at length and has focused on victimology, control of victimization and protection of the victims of crimes and the issues of compensation to be awarded in favour of them. Therefore, the Parliament on the basis of the aforesaid Report of the Law Commission, which is victim oriented in approach, has amended certain provisions of the Code of Criminal Procedure and in that amendment the proviso to Section 372 of Code of Criminal Procedure was added to confer the statutory right upon the victim to prefer an appeal before the High Court against acquittal order, or an order convicting the accused for the lesser offence or against the order imposing inadequate compensation.

11. The Full Bench of the High Court of Delhi after examining the relevant provisions Under Section 2(wa) and proviso to Section 372 of Code of Criminal Procedure, in the light of their legislative history has held that the right to prefer an appeal conferred upon the victim or relatives of the victim by virtue of proviso to Section 372 is an independent statutory right. Therefore, it has held that there is no need for the victim in terms of definition Under Section 2(wa) of Code of Criminal Procedure to seek the leave of the High Court as required Under Sub- section (3) of Section 378 of Code of Criminal Procedure to prefer an appeal under proviso to Section 372 of Code of Criminal Procedure. The said view of the High Court is not legally correct for the reason that the substantive provision of Section 372 of Code of Criminal Procedure clearly provides that no appeal shall lie from any judgment and order of a Criminal Court except as provided for by Code of Criminal Procedure. Further, Sub- section (3) to Section 378 of Code of Criminal Procedure provides that for preferring an appeal to the High Court against an order of acquittal it is necessary to obtain its leave.

We have to refer to the rules of interpretation of statutes to find out what is the effect of the proviso to Section 372 of Code of Criminal Procedure, it is well established that the proviso of a statute must be given an interpretation limited to the subject- matter of the enacting provision. Reliance is placed on the decision of this Court rendered by four Judge Bench in Dwarka Prasad v. Dwarka Das Saraf MANU/SC/0505/1975 : (1976) 1 SCC 128, the relevant para 18 of which reads thus:

18. ... A proviso must be limited to the subject- matter of the enacting clause. It is a settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment. "Words are dependent on the principal enacting words to which they are tacked as a proviso. They cannot be

read as divorced from their context" (Thompson v. Dibdin 1912 AC 533). If the rule of construction is that prima facie a proviso should be limited in its operation to the subject- matter of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction.

(Emphasis laid by this Court)

12. Further, a three Judge Bench of this Court by majority of 2:1 in the case of S. Sundaram Pillai v. V.R. Pattabiraman MANU/SC/0387/1985 : (1985) 1 SCC 591 has elaborately examined the scope of proviso to the substantive provision of the Section and rules of its interpretation. The relevant paras are reproduced hereunder:

30. Sarathi in Interpretation of Statutes at pages 294- 295 has collected the following principles in regard to a proviso:

(a) When one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject- matter of the proviso.

(b) A proviso must be construed with reference to the preceding parts of the clause to which it is appended.

(c) Where the proviso is directly repugnant to a section, the proviso shall stand and be held a repeal of the section as the proviso speaks the latter intention of the makers.

(d) Where the section is doubtful, a proviso may be used as a guide to its interpretation: but when it is clear, a proviso cannot imply the existence of words of which there is no trace in the section.

(e) The proviso is subordinate to the main section.

(f) A proviso does not enlarge an enactment except for compelling reasons.

(g) Sometimes an unnecessary proviso is inserted by way of abundant caution.

(h) A construction placed upon a proviso which brings it into general harmony with the terms of section should prevail.

(i) When a proviso is repugnant to the enacting part, the proviso will not prevail over the absolute terms of a later Act directed to be read as supplemental to the earlier one.

(j) A proviso may sometimes contain a substantive provision.

XXX

32. In Ishverlal Thakorelal Almaula v. Motibhai Nagjibhai it was held that the main object of a proviso is merely to qualify the main enactment. In Madras and Southern Mahrata Railway Co. Ltd. v. Bezwada Municipality Lord Macmillan observed thus:

The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case.

33. The above case was approved by this Court in CIT v. Indo Mercantile Bank Ltd. where Kapur, J. held that the proper function of a proviso was merely to qualify the generality of the main enactment by providing an exception and taking out, as it were, from the main enactment a portion which, but for the proviso, would fall within the main enactment. In Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subbash Chandra Yograj Sinha Hidayatullah, J., as he then was, very aptly and succinctly indicated the parameters of a proviso thus:

As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule.

XXX

36. While interpreting a proviso care must be taken that it is used to remove special cases from the general enactment and provide for them separately.

37. In short, generally speaking, a proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes a proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive provision itself.

(Emphasis supplied)

Thus, from a reading of the abovesaid legal position laid down by this Court in the cases referred to supra, it is abundantly clear that the proviso to Section 372 of Code of Criminal Procedure must be read along with its main enactment i.e., Section 372 itself and together with Sub- section (3) to Section 378 of Code of Criminal Procedure otherwise the substantive provision of Section 372 of Code of Criminal Procedure will be rendered nugatory, as it clearly states that no appeal shall lie from any judgment or order of a Criminal Court except as provided by Code of Criminal Procedure.

13. Thus, to conclude on the legal issue:

whether the Appellant herein, being the father of the deceased, has statutory right to prefer an appeal to the High Court against the order of acquittal under proviso to Section 372 of Code of Criminal Procedure without obtaining the leave of the High Court as required Under Sub- section (3) to Section 378 of Code of Criminal Procedure", this Court is of the view that the right of questioning the correctness of the judgment and order of acquittal by preferring an appeal to the High Court is conferred upon the victim including the legal heir and others as defined Under Section 2(wa) of Code of Criminal Procedure, under proviso to Section 372, but only after obtaining the leave of the High Court as required Under Sub- section (3) to Section 378 of Code of Criminal Procedure. The High Court of M.P. has failed to deal with this important legal aspect of the matter while passing the impugned judgment and order.

14. Adverting to another contention of the learned Counsel on behalf of the Appellant regarding the failure on the part of the High Court to re- appreciate the evidence it is clear from a perusal of the impugned judgment and order passed by the High Court that it has dealt with the appeal in a very cursory and casual manner, without adverting to the legal contentions and evidence on record. The High Court in a very mechanical way has stated that after a perusal of the evidence on record it found no reason to interfere with the decision of the trial court as the prosecution has failed to establish the charges levelled against the accused beyond reasonable doubt and it has dismissed the appeal by passing a cryptic order. This Court is of the view that the High Court, being the Appellate Court, has to exercise its appellate jurisdiction keeping in view the serious nature of the charges levelled against the accused. The High Court has failed to exercise its appellate jurisdiction properly in the appeal filed by the Appellant against the judgment and order of acquittal passed by the trial court.

15. Hence, the impugned judgment and order of the High Court is not sustainable in law and the same is liable to be set aside by this Court and the case is required to be remanded to the High Court to consider for grant of leave to file an appeal by the Appellant as required Under Sub-section (3) to Section 378 of Code of Criminal Procedure and thereafter proceed in the matter.

16. For the reasons stated supra, this appeal is allowed by setting aside the impugned judgment and order of the High Court. The case is remanded to the High Court to hear the Appellant with regard to grant of leave to file an appeal as the Appellant is legal heir of the victim as defined Under Section 2(wa) of Code of Criminal Procedure and dispose of the appeal in accordance with law in the light of observations made in this order as expeditiously as possible.

MANU/SC/0336/1996

Back to Section 4 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 281 of 1996.

Decided On: 29.02.1996

Attiq- Ur- Rehman Vs. Municipal Corporation of Delhi and Ors.

Hon'ble Judges/Coram:

Dr. A.S. Anand and Saiyed Saghir Ahmad, JJ.

ORDER

1. Special leave granted.

2. The only question involved in this case is whether in the absence of the appointment of a Municipal Magistrate, a Metropolitan Magistrate can take cognizance and try an accused for commission of an offence punishable under the Delhi Municipal Corporation Act, 1957 ?

3. The circumstances in which this question has arisen need a brief notice at the thresh- hold.

4. On 6.6.1989, a Junior Engineer of the complainant Municipal Corporation of Delhi (respondent No. 1 herein) filed a report against the appellant alleging unauthorised construction of roof and a stair- case on the ground floor of the appellant's property situate at 1535- 1537, Church Road, Kashmere Gate, Delhi. The appellant apprehending demolition of his house, filed Civil suit No. 616 of 1989 in the Court of Sub- Judge, Delhi, contending inter alia - that the replacement of the roof and the alleged repairs/alterations were permissible under the building bye- laws and required no formal order of sanction and, therefore, the appellant could not be said to have carried out any unauthorised construction and sought an injunction against Respondent No. 1 restraining it from demolishing the alleged unauthorised construction. After contest, the suit was decreed. It was found that the notice for demolition had not been properly served. Respondent No. 1 was restrained from demolishing the property of the appellant except "in due process of law." The Junior Engineer of respondent No. 1 filed three more reports on 21.8.1989, 4.9.1989 and 17.11.1989 alleging further unauthorised constructions in the said property by the appellant. On the basis of those reports, Municipal Corporation of Delhi, respondent No. 1, on 17th November, 1989 filed a criminal complaint (Case No. 533 of 1989) under Section 332 read with Section 461 of the Delhi Municipal Corporation Act, 1957 (hereinafter 'the Act') against the appellant in the Court of Sh. R.S. Khanna, Metropolitan Magistrate, Delhi. The appellant moved two applications before the Metropolitan Magistrate, Delhi one for the stay of criminal proceedings during the

pendency of the civil suit and the second seeking return of the complaint on the ground that the Metropolitan Magistrate had no jurisdiction to try him for the offence under Section 332 read with Section 461 of the Act in view of the provisions of Section 469 of the Act and in the absence of any Notification conferring powers of the Municipal Magistrates on the Metropolitan Magistrates. Both the applications were rejected on 26th February, 1991. The learned Metropolitan Magistrate held that the plea of the appellant that the court had no jurisdiction to try the offence was not maintainable and there was no justification for staying the criminal proceedings during the pendency of the civil suit as the scope of the suit and the criminal complaint was different. Aggrieved, the appellant filed a criminal revision petition in the High Court of Delhi which was summarily dismissed on 26th May, 1991. Hence this appeal by special leave.

5. Learned counsel for the appellant submitted that an offence under the Act can only be tried by a Municipal Magistrate appointed under the Act and a Metropolitan Magistrate exercising general jurisdiction has no authority to take cognizance of an offence under the Act and try any person accused of an offence under the Act. It was argued that the learned Metropolitan Magistrate fell in error in rejecting the applications and the High court also failed to appreciate the importance of the question involved and erroneously dismissed the Criminal Revision Petition in limine by a non- speaking order.

6. Learned counsel for the respondent argued with equal vehemence that in the absence of appointment of Municipal Magistrates under the Act, jurisdiction to try "offences under other laws" vested in the Metropolitan Magistrates and the appellant was rightly put on trial before the Metropolitan Magistrate.

7. We do find some substance in the submission of learned Counsel for the appellant that the High Court ought not to have dismissed the criminal revision petition by a non- speaking order in limine, in view of the importance of the question raised in the revision petition but we are of the opinion that instead of remanding the case back to the High Court, we need to decide the question of law ourselves since on facts there is no dispute and the appeal has remained pending in this Court for about five years.

8. With a view to answer the question noted in the opening part of our judgment, it is necessary to notice some of the relevant provisions of the Act and the Code of Criminal Procedure 1973 (hereinafter Cr. P.C.).

9. Section 466(a) of the Act makes Cr. P.C. applicable to the proceedings under the Act and makes an offence under Section 313 of the Act cognizable.

10. Section 467 deals with the prosecution of offences and reads as under: -

467. Prosecutions- - Save, as otherwise provided in this Act, no court shall proceed to the trial of any offence,-

(a) under Sub- section (5) of Section 313 or Section 332 or Sub- section (1) of Section 333 or Sub-section (1) of Section 334 or Section 343 or Section 344 or Section 345 or Section 347 except on the complaint of or upon information received from such officer of the Corporation, not being below the rank of a Deputy Commissioner, as may be appointed by the Administrator;

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11. Section 469 of the Act reads as follows :

469. Municipal Magistrate.

(1) The Central Government may appoint one or more magistrates of the first class for the trial of offences against this Act and against any rule, regulation or bye- law made thereunder and may prescribe the time and place at which such magistrate or magistrates shall sit for the despatch of business.

(2) Such magistrates shall be called municipal magistrate and shall beside the trial of offences as aforesaid, exercise all other powers and discharge all other functions of a magistrate as provided in this Act or any rule, regulation or bye- law made thereunder.

(3) Such magistrates and the members of their staff shall be paid such salary, pension, leave and other allowances as may, from time to time, be fixed by the Central Government.

(4) The Corporation shall, out of the Municipal Fund, pay to the Central Government the amounts of the salary, pension, leave and other allowances as fixed under Sub- section (3) together with all other incidental charges in connection with the establishments of the said magistrates.

(5) Each such magistrate shall have jurisdiction over the whole of Delhi.

(6) For the purposes of the Code of Criminal Procedure, 1898, all municipal magistrates appointed under this Act shall be deemed to be magistrates appointed under Section 12 of the said Code.

(7) Nothing in this shall be deemed to preclude any magistrate appointed hereunder from trying any offence under any other law.

12. Section 470 of the Act provides as follows :

470. All offences against this Act or any rule, regulation or bye- law made thereunder, whether committed within or without the limits of Delhi, shall be cognizable by a municipal magistrate and such magistrate shall not be deemed to be incapable of taking cognizance of any such offence or of any offence under any enactment which is repealed by, or which ceases to have effect under this Act by reason only of his being liable to pay any municipal tax or rate or benefited out of the Municipal Fund.

13. Chapter II of Cr. P.C. deals with the Constitution of Criminal Courts and offices.

14. Section 4 Cr. P.C. reads as follows :

4. Trial of offences under the Indian Penal Code and other laws.-

(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

15. Section 5 Cr. P.C. Provides as follows :

5. Saving- Nothing contained in this Code shall, in the absence of a specific provisions to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

16. Section 6 Cr. P.C. reads as follows :

Classes of Criminal Courts. - Besides the High Courts and the Courts constituted under any law, other than this Code, there shall be, in every State the following classes of Criminal Courts, namely-

(i) Courts of Session ;

(ii) Judicial Magistrates of the first class and, in any metropolitan area, Metropolitan Magistrates;

(iii) Judicial Magistrates of the second class; and

(iv) Executive Magistrates.

17. Sections 8 and 16 of Cr. P.C. deal with the courts of Metropolitan Magistrates and inter alia provide that in every metropolitan area, the State Government may, after consultation with the High Court establish courts of Metropolitan Magistrates at such places and in such number as it may specify. The presiding officers of such courts shall be appointed by the High Court and the jurisdiction and powers of every such Magistrate shall extend throughout the metropolitan area. The High Court shall appoint a Metropolitan Magistrate as Chief Metropolitan Magistrate in every metropolitan area and may also appoint Additional Chief Metropolitan Magistrates and such other Metropolitan Magistrates as it may deem necessary.

18. Section 11 of Cr. P.C. deals with the establishment of the courts of the Judicial Magistrates while Section 13 deals with the appointments of Special Judicial Magistrates.

19. Section 14 Cr. P.C. deals with the local jurisdiction of Judicial Magistrates and inter- alia provides :

14. Local jurisdiction of Judicial Magistrates - (1) Subject to the control of the High Court, the Chief Judicial Magistrate may, from time to time, define the local limits of the areas within which the Magistrates appointed under Section 11 or under Section 13 may exercise all or any of the powers with which they may respectively be invested under this Code :

Provided that the Court of a Special Judicial Magistrate may hold its sitting at any place within the local area for which it is established .

(2) ...

(3) ...

20. It is in the light of the aforesaid provisions that we have to resolve the question formulated above.

21. Facts are not in dispute insofar as the question of jurisdiction is concerned. Admittedly at the relevant time no Municipal Magistrate had been appointed in accordance with the provisions of Section 469 of the Act and the complaint was filed by respondent No. 1 in the Court of Metropolitan Magistrate, Delhi, for trial of an offence punishable under Section 332 of the Act. The learned Metropolitan Magistrate is a Judicial Magistrate of the First Class but there was no notification by which the powers of Municipal Magistrates were conferred on him.

22. From a plain reading of Section 4 Cr. P.C. (supra) it emerges that the provisions of Criminal Procedure Code are applicable where an offence under the Indian Penal Code or under any other law is being investigated, inquired into, tried or otherwise dealt with.

23. Section 469 of the Act empowers the Central Government to appoint one or more Magistrates of the First Class to try offences under the Act. All such Magistrates are called Municipal Magistrates and shall besides the trial of offences under the Act, rules, regulations or bye- laws framed thereunder, exercise all other functions of a Magistrate as provided in the Act and are not precluded from trying offences under any other law as well. Every Municipal Magistrate appointed under Section 469 of the Act by the Central Government is a Judicial Magistrate of the First Class and shall be deemed to be a Magistrate appointed under Section 12 Cr. P.C. Thus, no person who is not a Judicial Magistrate of the First Class can be conferred powers of a Municipal Magistrate to try offences under the Act, rules, regulations or bye- laws made under the Act.

24. The bar of jurisdiction of ordinary criminal courts to try offences under the Act is brought about by Section 470 of the Act which inter alia provides that all offences under the Act, whether committed within or without the limits of Delhi shall be cognizable by a Municipal Magistrate. Vide Section 467 of the Act no court shall proceed to the trial of any offence specified in the section, including an offence under Section 332 of the Act except on a complaint of or information received from an officer, not below the rank of Deputy Commissioner, appointed by the Administrator of the Corporation.

25. Keeping in view the scheme of the Act and the relevant provisions of the Code of Criminal Procedure, it emerges that the Government has an obligation under Section 469 of the Act to appoint Municipal Magistrates for trial of offences under the Act, rules, regulations or bye- laws

made thereunder. The use of the word "may" in Section 469 of the Act only indicates that the Government has the discretion to appoint one or more Municipal Magistrates but it certainly does not relieve the Government of its obligation to appoint Municipal Magistrates and once such Municipal Magistrates are appointed, they alone would have the jurisdiction to try offences under the Act as per the mandate of Section 470 of the Act. The bar under Section 470 of the Act becomes operative only when a Municipal Magistrate has been appointed for trial of offences under the Act. The jurisdiction of the criminal courts under Section 4 Cr. P.C. is comprehensive and exhaustive. To the extent that no valid machinery is set up under any other law for trial of any particular case, the jurisdiction of the ordinary criminal court cannot be said to have been excluded. Exclusion of jurisdiction of a court of general jurisdiction can be brought about only by setting up of a court of limited jurisdiction in respect of the limited field provided that the vesting and the exercise of that limited jurisdiction is clear and operative. Thus, where there is no valid machinery for the exercise of jurisdiction in a specific case, the exercise of jurisdiction by the Judicial Magistrates or the Metropolitan Magistrates, as the case may, is not excluded. The law and procedure for trial of cases under the Indian Penal Code and those under other statutes, according to Section 4 Cr. P.C, is not different except that in the cases of offences under other laws, the procedure laid down by the Cr. P.C. is subject to the provisions of the relevant enactment for the time being in force for regulating the manner of trial of offences under that enactment.

26. A conjoint reading of the provisions of Cr. P.C. and the Act, therefore, unambiguously suggests that in the absence of courts of special jurisdiction i.e. Municipal Magistrates to be appointed under Section 469 of the Act, a Judicial Magistrate of the First Class or a Metropolitan Magistrate, as the case may be, shall have the jurisdiction and powers to try the offences under the Act in accordance with the procedure envisaged by Section 467 of the Act and in accordance with the limitation the time prescribed for initiation of the criminal proceedings under Section 471 of the Act. This interpretation is in accord with the position that every offence committed under the Indian Penal Code or under any other law for the time being in force must be tried and an accused cannot be permitted to raise any objection with regard to the forum for trial of the offence, where the specific forum has not been constituted under the Act because the law does not contemplate an offence, to go untried. Where, no court of a Municipal Magistrate has been constituted under Section 469 of the Act and no Notification has also been issued conferring the powers of a Municipal Magistrate on a particular Judicial Magistrate of the First class or a Metropolitan Magistrate, as the case may be, the jurisdiction of an ordinary criminal court to take cognizance of the offences committed under the Act, rules, regulations or bye- laws made thereunder is exercisable by the courts of general jurisdiction established to try offences under the Indian Penal Code as well as the offences under any other law.

27. We, therefore, unhesitatingly come to the conclusion that in the absence of establishment of the courts of a Municipal Magistrate under Section 469 of the Act, the Magistrates of the First Class including Metropolitan Magistrates are competent to try offences punishable under the Act, rules, regulations or bye- laws made thereunder. Our answer to the question posed in the opening part of the judgment, therefore, is in the affirmative.

28. In view of the aforesaid discussion, we do not find any error to have been committed by the learned Metropolitan Magistrate in taking cognizance of the complaint filed by respondent No. 1 under Section 332 read with Section 461 of the Act against the appellant since it is not disputed that the complaint had been filed in the manner prescribed by the Act. Respondent No. 1 could not have filed the complaint before a Municipal Magistrate, since no such Municipal Magistrate had been appointed. The legal maxim 'lex non cogit ad impossibilia' which means "the law does not compel a man to do that which he cannot possibly do" is squarely attracted to the fact situation in this case. This appeal, therefore, must fail and is hereby dismissed. The trial court is directed to expeditiously conduct the trial of the criminal complaint No. 533 of 1989 for the offence under Sections 332/461 of the Delhi Municipal Corporation Act, 1957. We need not emphasise that if in the meanwhile a court of Municipal Magistrate has been established under Section 469 of the Act, the trial of the complaint shall be conducted by that court and the complaint shall be deemed to have been transferred to that court for its trial in accordance with law from the court of the Metropolitan Magistrate. Nothing said hereinabove shall, however, be construed as any expression of opinion on the merits of the case.

MANU/MH/0010/1931

Back to Section 9 of Code of Criminal Procedure, 1973

IN THE HIGH COURT OF BOMBAY

Criminal Revision No. 48 of 1931

Decided On: 03.03.1931

Emperor Vs. Lakshman Chavji Narangikar

Hon'ble Judges/Coram:

Govind D. Madgavkar, S.S. Patkar and S.J. Murphy, JJ.

JUDGMENT

Authored By: Govind D. Madgavkar, S.S. Patkar, S.J. Murphy

Govind D. Madgavkar, J.

1. This application raises a question of some importance under Section 526 of the Code of Criminal Procedure. On September 25, 1930, a disturbance took place at Chirner, thirteen miles from Panvel, forty- seven accused were sent up before the Magistrate, and on January 31, 1931, were committed by him for trial before the Sessions Court of Thana under Sections 120B(1), 147, 148, 149, 224, 302, 332, 379, and 395 of the Indian Penal Code. The trial would have taken place at Thana with a jury.

2. On February 12, 1931, the following notification, No. 8252- 2 dated February 5, 1931, was published in the Bombay Government Gazette-

Under Section 193(2) of the Code of Criminal Procedure, 1898 (V of 1898), the Governor in Council is pleased to direct that Mr. N.R. Gundil, LL.B., Assistant Judge and Additional Sessions Judge, Thana, shall try the case known as the Chirner Riot Case, which has been committed to the Sessions by Mr. R.R. Sonalkar, a Magistrate of the First Class in the district of Kolaba, and under Section 9(2) of the said Code he is further pleased to direct that Mr. Gundil shall hold his Court for the trial of the said case at Alibag.

3. A trial at Alibag would be with assessors.

4. The accused apply to this Court for a transfer of the case. The original application was dated February 11, and asked that the trial should take place at Thana. But the application as amended is to transfer the case from the Court of Mr. Gundil, Additional Sessions Judge holding his Court for the trial of this case at Alibag, to the Court of Session sitting at Thana.

5. Three points are taken for the petitioners, firstly, that the notification in question, at least in regard to the second part, is ultra vires, secondly, that in any case this Court has jurisdiction under Section 526 of the Criminal Procedure Code, and thirdly, particularly on the ground of convenience and to a certain extent even by reason of the right of trial by jury at Thana, the case should be transferred.

6. The contentions for the Crown, as presented by the learned Advocate General, are shortly as follows:-

Firstly, the order in question is an administrative order, not open to modification by this Court, secondly, the venue and the question of jury or assessors are matters not for this Court but for the Local Government under Section 9(2) and Section 269, thirdly, as in this application the petitioners do not object to Mr. Gundil trying the case, Section 526 has no application, as the case still remains and is asked to be retained in the Sessions Court of Thana, so that we are indirectly asked to order Mr. Gundil to sit at Thana and try the case with a jury and we have no power to do so, and lastly, on the merits there is no greater inconvenience at Alibag than at Thana. It was also suggested that an order of this Court might be rendered infructuous if the Local Government chose now to issue a further notification.

7. As to the preliminary point, particularly of administrative powers and this last ground, it is to be observed that the term 'administrative order' is one, not known to law, British or Indian. Unlike France, with its droit administrate if (administrative law) and its Conseil d' Etat (State Council) to administer it, administrative laws and administrative Courts find no place in the constitution of Great Britain or of India. The powers of the Local Government like the rights of other corporations and bodies can only be derived from the law and extend no further than what the ordinary law permits. The Executive Government, Local or Imperial, is as subject to the law, and their acts and orders are not less open to test in the Courts than those of the humblest citizen. Therefore no special sanctity or legality attaches to the notification as falling within the category of ' administrative orders'.

8. In regard to possible action by Government in the future, treating the matter not as a hint, much less as a threat, but as an argument, for consideration on the merits, pure and simple, it fails, in my opinion, on three grounds. Firstly, every case must be decided on the record as it stands, and not on the record as it might stand by reason of some possible future action by either party. Secondly, the scheme of the Code clearly demarcates the respective powers and functions and is intended to prevent any possible conflict between the action of the Local Government and of this Court, express provision being made, where necessary, to avoid such conflict as in Section 526, Sub- section (7), and in Section 178. Thirdly, though I do not wish to stress this ground, a transfer by us to this Court itself under Section 526, Sub- section. (1)(e)(iii) would not be open to interference by the Local Government,

9. Under the scheme of the Criminal Procedure Code the general framework of the administration of justice, such as the division of the province into sessions divisions and their boundaries and places of sitting, the appointment of Sessions Judges and the classification of offences into those triable with a jury and those triable with assessors, is left under Sections 7- 9 and Section 269 to the Local Government. But within this framework this Court has under the Government of India Act and the Letters Patent the widest possible responsibility and the superintendence of the Courts and powers of transfer under Section 526 for the ends of justice and for the convenience of the parties and the like in any particular case; and such a transfer of any particular case from one Court or Judge to another within this framework as fixed by the Local Government for the general administration of justice is a matter to be decided by this Court and not by the Local Government, If this scheme and this demarcation are correct, an argument from generalities that the greater includes the less or that a class of cases includes any particular case is beside the point, since it "obliterates the division of functions and of powers, creates confusion and might lead to a conflict, which it must be the aim of the Code to avoid. This Court cannot alter the regular place of sitting of any Sessions Court, from the place directed by the Local Government under Section 9. But it can, and repeatedly does, under Section 526, change the venue of trial of any case from any one of these places to another, both notified under Section 9, though it cannot to a third, not so notified and directed by itself. And it was. in fact, very fairly conceded by the learned Advocate General at the close of his argument that this Court had power under Section 526- the present notification notwithstanding- to direct a transfer of the case to another Court of Session such as Surat or Ratnagiri, and that we also had power to transfer a case from the Sessions Judge of Thana who sits at Thana to the Additional Sessions Judge sitting at Thana or Ali- bag, or vice versa. The fact, therefore, that in any particular case the exercise of our power of transfer might result in a change of venue and incidentally from assessors to jury or vice versa is no argument whatever, in my opinion, against the present petition.

10. In this regard, the language of the relevant sections, such as Sections 9(2) and 297 and 298, is conclusive. Under Section 9(2), headed "Courts and Offices outside the Presidency- towns", the Local Government may, by general or special order in the official Gazette, direct at what place or places the Court of Session (not any persona designata) shall hold its sitting. Again in Section 193(2), under the head "Conditions requisite for the Institution of Proceedings", the only condition requisite under (1) for a trial before a Sessions Judge is commitment, and under (2) the further conditions requisite for trials before Additional Sessions Judges and Assistant Sessions Judges are directions by the Local Government by general or special order, or by the Sessions Judge. The word "only" in Section 193(2) would show, along with the heading above, that the clause is intended not so much to extend the power of transfer of the Local Government as to limit the powers of the Additional and the Assistant Sessions Judge to try such cases alone as the Local Government or the Sessions Judge empowers them to do. It is true that by themselves the words "special order" could perhaps, on the strict and literal meaning, be construed in both sections as meaning "in any particular case". But reading the sections in their context this was not, in my opinion, the intention of the Legislature either under Section 9(2) or Section 193(2). These sections, like Section 267 regarding trial by jury or assessors in cases or classes of cases, contemplate general directions for the convenience of the people and the administration of justice and special orders where such general orders have to be modified by reason of circumstances, affecting the population such as plague, flood, disturbances and the like Whatever its powers under Section 178, neither by Section 9 nor by Section 193 did the Legislature, in my opinion, intend that the

Local Government should interfere with the ordinary course of justice in a particular case or transfer a particular case from a particular Judge to another particular Judge, And the notification, therefore, even if it is within the letter of these sections, violates their spirit. And, in any case, it is not, like a direction under Section 197, exempted from our power under Section 526.

11. There is one further flaw in the notification, viz., that it directs not a Court, nor even an officer as such, to hold his sitting at Ali- bag, but Mr. Gundil as a persona designata. I do not propose to express a definite opinion whether such a flaw does or does not necessarily vitiate the whole notification, and cause it to be ultra vires, as, in any case, I propose to consider the petition on the merits. I reserve, therefore, my opinion on the question of the validity of the present notification, but assume for the purpose of this application that it is valid.

12. As to our powers under Section 526, the convenience of parties needs no definition. The "ends of justice", as I have pointed out in the case of Evans, In re MANU/MH/0065/1926 : I.L.R. (1926) Bom. 741 28 Bom L.R. 1043 is a term impossible to define. If I may be permitted to quote from that case (p. 749):-

What then are the 'ends of justice'? To the particular result in any particular case justice is indifferent. The end of justice is no more conviction than acquittal. It is justice, by the ascertainment of the truth as to the facts on a balance of evidence on each side. If so, do the ends of justice require, or do they not, that the accused person from the moment of his arrest should have reasonable access to his legal advisers; or does it suffice that this access should commence under the Prisons Act (IX of 1894) from the time when the exclusive Police custody has ceased? To this question, the answer is, in my opinion, clear. If the end of justice is justice and the spirit of justice is fairness, then each side should have equal opportunity to prepare its own case and to lay its evidence fully, freely, and fairly, before the Court. This necessarily involves preparation. Such preparation is far more effective from the point of view of justice, if it is made with the aid of skilled legal advice- advice so valuable that in the gravest of criminal trials, when life or death hangs in the balance, the very State, which undertakes the prosecution of the prisoner, also provides him, if poor, with such legal assistance.

13. To this I might add two other considerations, second only in importance to this for the ends of justice. Confidence in the Court administering justice on the part of both parties and of the public is also a vital element in the administration of justice, so much so that a reasonable apprehension, tantamount to lack of confidence, has been held by the Courts to render a transfer advisable. A special Judge or a special venue directed by the Local Government is apt or at least is capable of being used to destroy this confidence, and except where the supreme need of justice is clearly such as to override these considerations, the ordinary course of justice is best left untouched.

14. In the present case on the question of convenience, without entering into details as to the comparative salubrity of the jail or lock- up at Thana with the jail or lock- up called the Hirakot at Alibag, it seems to me clear that for the last fifty years the Local Government themselves have always recognised the superior convenience of Thana as against Alibag to parties and witnesses from the Panvel and Karjat talukas in the case of Sessions trials and important civil suits over five thousand rupees. This is clear from the fact that even when in the other talukas of the Kolaba District formerly the District Magistrates of Kolaba, empowered as Additional Sessions Judge in the rains- as now the Sessions Court by any of its Judges in (SIC) months- were directed to hold a sitting at Alibag, the two talukas of Panvel and Karjat have for nearly fifty years been excluded, and the Sessions cases from these two talukas have all along been tried at Thana; and even when for a year or so in 1920 a First Class Subordinate Judge's Court was established at Alibag, suitors from Panvel and Karjat were expressly allowed to retain their right of litigation at Thana,

15. From the particular affidavits in this case it appears that there is a daily motor- service from Chirner to Panvel and another from Panvel to Thana. There is no service between Chirner and Alibag; and though the distance- as the crow flies- is undoubtedly shorter, there is only a track from Chirner to a village called Avre, according to the petitioners a' foot- track, according to the arguments for the Crown possible also to bullock- carts. Then there is a wide creek with a ferry over which passage depends upon stray boats on to Rewas and thence by motor car to Alibag. The affidavits both in quantity and quality for the petitioners are, in my opinion, stronger and fortify the general conclusion I have already stated that the general public convenience of trials civil and criminal from Panvel is at Thana and not at Alibag. It is not alleged by Government that there is any particular inconvenience of the present trial at Thana so as to prejudice them or any particular convenience at Alibag. The utmost contention for the Grown is that Alibag is not less convenient to themselves and to the petitioners than Thana. That contention, for the reasons stated above, in my opinion, fails.

16. The petitioners have already engaged pleaders from Bombay and Thana as well as some from Panvel to defend them before the Magistrate. The witnesses for the Crown number over a hundred and those for the defence over two hundred. The Sessions trial will probably last two or three months. A trial at Alibag would compel advocates from Thana and Bombay to live there throughout while one in Thana makes it possible for the accused to engage counsel to come up daily from Bombay. For the purpose of legal defence, Alibag is practically a taluka head- quarters, while Thana is an important judicial centre with. easy access to Bombay. It is no reflection on the Bar at Alibag to hold that the defence would have far greater facilities by a trial at Thana. How important an element such legal assistance is for the ends of justice I have already stated in my judgment in Evans, In re MANU/MH/0065/1926 : I.L.R. (1926) Bom. 741 28 Bom. L.R. 1043 The Government can easily afford special fees to spend on counsel at Alibag. But not so the accused petitioners who may not be able to afford the prohibitive fees necessary to induce advocates or counsel from Bombay or Thana to leave their work there and remain in Alibag for two or three months. This point, therefore, is in favour of the petitioners.

17. On the second point as to trial by jury, it has always been held by all the Courts, as for instance, by this Court in King- Emperor v. Parbhushankar I.L.R. (1901) Bom. 680 3 Bom, L.R. 278 that "the scheme of the Code shows that in the view of the Legislature it is less advantageous to an accused to be tried with the aid of assessors than by a jury." To this opinion from so high an authority as the late Sir Lawrence Jenkins and the similar remarks of Mr. Justice Chandavarkar to the same effect at page 694, it is needless to add. Particularly, in a case of this gravity involving life or death to the accused, it is impossible, in my opinion, for this Court to ignore the consideration that in the present case the accused rightly or wrongly attach appreciable value to this right of trial, and if so, this element also is in favour of the petition the more that there is no allegation or affidavit for Government against a jury at Thana or in favour of assessors at Alibag.

18. With the general argument that by an order such as the one proposed we should be indirectly defeating the intentions of the Legislature by encroaching on the province of the Local Government if the venue of the trial were changed I have already dealt. The Legislature contemplates general directions by the Local Government in regard to places where the Courts of Session should sit with modifications by special orders for public contingencies. The Local Government have similar powers in cases and classes of cases to decide by notification once for all until modified whether such trials generally shall be with the aid of assessors or of a jury. And the fact that the exercise of our powers of transfer on the merits of a particular case, whether for the convenience of parties and witnesses or for the ends of justice, might result in a change of place of trial or in a change from jury to assessors or vice versa, is in no way repugnant to the intentions of the Legislature, as expressed in Section 9 and Section 193(2), or in regard to the particular notification. The only exception to our powers under Section 526 in a particular case is that laid down in Sub- section (7), viz., where under Section 197(2) the Local Government has specified the officer or the Court or both by whom a Judge may be tried. Such a direction by the Local Government is not open to transfer by this Court. Even where a Local Government has specified a Sessions Division under Section 178 for the trial of cases or classes of cases, which it can only do where there has been no previous order of this Court under Section 526, such a specific direction still remains subject to our powers under Section 526 of subsequent transfer on proper cause shown. A transfer in many cases involves a change of venue. No statute or decision is cited to show that such a consequence or a change from jury to assessors or vice versa is a bar to our powers under Section 526.

19. But even assuming that the petitioners attach greater value to a jury than to the point of convenience, if they satisfy us on the latter point, their table of comparative values, real or professed, should not affect our decision, more particularly if they succeed, as in my opinion, they do, on both points.

20. For these reasons I would hold that even if the notification in question is intra vires, we have power under Section 526 to transfer the trial under Clause (1)(d) and Clause (e) Sub- clause (ii) from Mr. Gundil sitting at Alibag, which is a Court subordinate to our authority, to the Court of the Sessions Judge at Thana, which is also such a criminal Court of equal jurisdiction, and that

the petitioners have shown that such an order will tend to the general convenience of parties and of witnesses.

21. As to the form of the order, the fact that the petitioners while they ask for a trial at Thana are indifferent whether they are tried by Mr. Gundil or any other officer presents, in my opinion, no difficulty. There is a permanent Sessions Court and Judge at Thana.

22. I would accordingly allow the application and transfer the trial of the case from Mr. Gundil sitting as Additional Sessions Judge at Alibag to the Court of the Sessions Judge at Thana.

S.S. Patkar, J.

23. This is an application for transfer made by forty- seven accused who are committed to the Court of Session at Thana by the committing Magistrate for offences under Sections 120 B(1), 147, 148, 149, 224, 302, 332, 379, and 395 of the Indian Penal Code.

24. After the commitment of the case by the Magistrate to the Court of Session at Thana, the Local Government by Government Notification No. 8252/2 dated February 5, 1931, under Section 193(2) of the Code of Criminal Procedure, directed Mr. N. R. Gundil, Assistant Judge and Additional Sessions Judge, Thana, to try the case known as the Chirner Riot Case committed to the Court of Session at Thana, and under Section 9(2) of the same Code directed that Mr. Gundil should hold his Court for the trial of the said case at Alibag.

25. The accused have made this application on the ground that the action of the Local Government is illegal and ultra vires, and, secondly, that the case should not be tried at Alibag on the ground of inconvenience, and on the ground that the transfer is expedient for the ends of justice.

26. The first question arising in this application is whether the order of the Local Government is illegal and ultra vires. Under Section 7 of the Criminal Procedure Code, every province shall be a sessions division, and every sessions division, for the purposes of this Code, shall be a district or consist of districts. The Thana sessions division consists of two districts, the district of Thana and the district of Kolaba. Under Section 9, Sub- section (1), the Local Government shall establish a Court of Session for every sessions division and appoint a Judge for such Court, and under Sub-section (3), the Local Government may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts. Under Section 193, Sub-section (1), of the Criminal Procedure Code, except as otherwise expressly provided, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the accused has been committed to it by a Magistrate duly empowered in that behalf. Under Sub- section (2), the Additional Sessions Judges and Assistant Sessions Judges shall try such cases only as the

Local Government, by general or special order; may direct them to try or as the Sessions Judge of the division, by general or special order, may make over to them for trial. Under 193, Sub- section (2), the Local Government had power by special order to direct the Additional Sessions Judge, Mr. Gundil, to try this particular case. Under Section 9, Sub- section (2), of the Criminal Procedure Code, the Local Government may, by general or special order, in the official Gazette, direct at what place or places the Court of Session shall hold its sittings, but until such order is made, the Court of Session shall hold its sittings as heretofore.

27. It is contended on behalf of the accused that the Local Government has already issued a notification directing the Court of Session to be held at Alibag in certain months commencing on dates to be fixed by the Sessions Judge of Thana, and that the notification dated February 5, 1931, does not direct any new place where the Court of Session should hold its sitting, and further that the notification does not order the Court of Session to hold its sitting at Alibag, but has directed a particular Additional Sessions Judge to hold the sitting of his Court at Alibag. Under Section 193(2) the Local Government had power to direct Mr. Gundil, the Additional Sessions Judge, to try this particular case. The previous orders of the Local Government were general orders under Section 9(2), and there is nothing in Section 9(2) to prevent a special order being passed directing at what place a Court of Session should hold its sitting. If by reason of an outbreak of plague or any other cause it becomes necessary or expedient that a Court of Session should hold its sitting in respect of all the cases at a different place or should try a particular case at a particular place, the words of Section 9(2) are wide enough to cover such an order. An order passed under Section 9(2) is an administrative order passed by the Local Government, and the special order of the Local Government in the present case directing the Additional Sessions Judge to try this particular case at Alibag does not appear to contravene the provisions of Section 9(2). Under Section 20 of the Indian Penal Code a "Court of Justice" denotes a Judge empowered by law to act judicially alone, and Mr. Gundil having been empowered by the Local Government to try this case could by a special order be directed to hold the sitting of his Court at Alibag.

28. I therefore, think that the order of Government passed under Section 193(2) and Section 9(2) is not illegal and ultra vires.

29. It is next contended on behalf of the accused that on the ground of convenience and for the ends of justice the case should be transferred from the Court of Mr. Gundil holding his sitting at Alibag to the Sessions Judge at Thana. It is urged on behalf of the Crown that the High Court has no power to transfer the case from Mr. Gundil holding his Court at Alibag to the Sessions Court at Thana on the ground that the case was committed by the Magistrate to the Court of Session at Thana, and Mr. Gundil was authorised by the Local Government to try this case under

30. Section 193(2), and the Additional Sessions Judge is exercising his jurisdiction as a Sessions Court at Thana, and the case cannot, therefore, be transferred to the same Court, namely, the Sessions Court at Thana. The application as originally drafted, contained a prayer that the case should be transferred from Alibag to Thana, and it is contended on behalf of the Crown that the

High Court has no jurisdiction to fix the place of the sitting of the Court, and that the Local Government alone has the power to fix the place of the sitting of the Court under Section 9(2) of the Criminal Procedure Code.

31. Under Section 526 of the Criminal Procedure Cede, the High Court has power to order a particular case to be transferred from a criminal Court subordinate to its authority to any other criminal Court of equal or superior jurisdiction. Under Section 9 the Court of Session has to be established by the Local Government and it has to appoint a Judge of such Court, and it may appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts. The Additional Sessions Judges and Assistant Sessions Judges exercising jurisdiction in the Sessions Courts would, therefore, be exercising jurisdiction as Courts of Session. The application as now amended contains a prayer for the transfer of the case from the Court of the Additional Sessions Judge holding his Court at Alibag to the Sessions Judge at Thana.

32. The question in the present case is whether the Additional Sessions Judge who has been appointed to try the case is the same Court as the Court of Sessions Judge at Thana. The Additional Sessions Judge can try such cases under Section 193(2) as the Sessions Judge of the division, by general or special order, make over to him for trial, and under Section 438(2) an Additional Session Judge shall have and may exercise all powers of a Sessions Judge under Chapter XXXII in respect of any case which may be transferred to him by or under any general or special order of the Sessions Judge. It is, therefore, clear that the Additional Sessions Judge exercising jurisdiction is a different Court from the Sessions Judge who transfers the case to him for trial. Similarly an Assistant Sessions Judge empowered to pass any sentence authorised by law under Section 31(3) exercises jurisdiction as a Sessions Court, but a person convicted by an Assistant Sessions Judge on whom a sentence of imprisonment not exceeding four years has been passed may appeal to the Court of Session. In such cases the Assistant Sessions Judge though exercising jurisdiction as a Sessions Court is a different Court to that of the Court of Session to which an appeal from his decision lies. I think, therefore, that the Additional Sessions Judge and the Assistant Sessions Judge appointed under Section 9(8), though exercising jurisdiction as a Sessions Court, are, while exercising their functions in respect of particular cases which have been made over to them, different Courts to the Sessions Judge who has been appointed under Section 9(1) of the Code of Criminal Procedure.

33. Apart, however, from the general consideration of the provisions of the Criminal Procedure Code, Mr. Gundil has been specially appointed by name as the person to try this particular case at Alibag. The appointment, therefore, is by name and not in virtue of an office, and it is (SIC) whether in case Mr. Gundil ceases to exercise his powers as Assistant or Additional Sessions Judge, his successor can be determined by the Sessions Judge under Section 559(8) of the Code. Further, if the Sessions Judge after deciding a sessions case by reason of transfer or any other cause ceases to exercise his jurisdiction as a Sessions Judge in any particular sessions sub-division, his successor in office as Sessions Judge alone would be entitled to make a complaint under Section 195 of the Criminal Procedure Code in respect of any offence committed in relation to the proceedings before the Sessions Judge, and it is doubtful whether an Additional Sessions

Judge will have the power to make a complaint with regard to an offence committed in the proceedings conducted before the Sessions Judge who has ceased to exercise his powers in the same sessions division.

34. If the contention of the learned Advocate General in support of the validity of the Government notification that the words "Court of Session" in Section 9(2) signify an individual Judge of such a Court and not necessarily all the Judges of such Court be accepted as correct, the criminal Court in Section 526 of the Code would mean an individual Judge of the Court, and there can be transfer from an individual Judge of a Court to another Judge of the same Court, both being criminal Courts subordinate to the High Court. "Court" under Section 3 of the Indian Evidence Act includes all Judges and Magistrates and all persons except arbitrators legally authorized to take evidence. " Criminal Court", under Section 4 of the old Criminal Procedure Code, Act X of 1872, means and includes every Judge or Magistrate or body of Judges or Magistrates inquiring into or trying any criminal case or engaged in any judicial proceeding. Under Section 17, Sub- section (3), all Assistant Judges are subordinate to the Sessions Judge in whose Court they exercise jurisdiction. An Additional Sessions Judge exercises jurisdiction of a Sessions Court when empowered under Section 193(2) and Section 438(2) of the Criminal Procedure Code. The Assistant Sessions Judge, the Additional Sessions Judge, and the Sessions Judge exercise co-ordinate or equal jurisdiction of a Sessions Court within the limits of the authority conferred on them by the Code, and are nevertheless different Courts each subordinate to the High Court.

35. I think, therefore, that an Additional Sessions Judge exercising jurisdiction as a Sessions Judge under the Criminal Procedure Code is a Court subordinate to the High Court, and is also a Court different from the Sessions Judge of the sessions division, who, when exercising functions as a Sessions Judge, is also a Court subordinate to the High Court. I think, therefore, that the High Court has power to transfer the case from the Court of Additional Sessions Judge, Mr. Gundil, to the Court of the Sessions Judge at Thana.

36. The order passed by the Local Government under Section 9(2) is not a bar to an order of transfer by the High Court under Section 526. Under Section 526(7), an order under Section 197 of the Criminal Procedure Code will not be affected by any order under Section 526. Any order under Section 9(2) is not saved by any of the provisions of Section 526 of the Criminal Procedure Code.

37. The next question is whether there are sufficient grounds for transfer of the case. The application is based on the ground of general convenience of the accused and their witnesses. Several affidavits have been filed in the case in support of the contention that a transfer from the Court of Mr. Gundil at Alibag to the Sessions Court at Thana will tend to the general convenience of the accused and their witnesses. According to the accused, along the road from Chirner to Panvel, which is a distance of thirteen miles, there is motor service, and there is also motor service from Panvel to Thana, a distance of twenty miles. It is further contended that the accused have engaged pleaders from Panvel, Thana and Bombay, and it would be inconvenient for them to

attend at Alibag the Sessions case which is likely to last for nearly three months. 118 witnesses are to be examined on behalf of the prosecution and about 225 for the defence. On the other hand, it is contended on behalf of the Crown that Chirner is about five miles from Avre, and after crossing the creek one can go to Rewas and from Rewas to Alibag. There is a conflict of evidence as to whether there is any cart- road from Chirner to Avre, and as to whether boats are available at Avre to cross the creek and reach Rewas. On behalf of the accused it is stated that the usual practice of going to Alibag from Chirner is first to go to Karanja, a distance of eighteen miles from Chirner by cart- road, and then to cross the creek from Karanja to Re was, and there is difficulty of securing motors which run from Rewas to Alibag between 9 and 10 a.m. It is further contended on behalf of the accused that the accommodation in the jail for the accused is insufficient, and that there would be scant accommodation for the relatives of the accused and their pleaders, and there is want of a good library. Making due allowance for exaggeration in the affidavits filed on behalf of the accused and on consideration of the conflicting affidavits made in the case, it appears to me that the balance of convenience is in favour of the accused, and that it would tend to the general convenience of the accused if the transfer is ordered from the Court of the Additional Sessions Judge holding his sittings at Alibag to the Sessions Judge at Thana. It is not suggested on behalf of the Crown that the trial at Alibag is more convenient to the prosecution.

38. It is further contended on behalf of the accused that if the trial is held at Alibag, they will lose the valuable right of trial by jury, whereas if the trial is held at Thana they will secure the right of trial by jury, as the Sessions trial at Thana will be by jury and the trial at Alibag will be with the aid of assessors, According to the view of Sir Lawrence Jenkins in the Full Bench decision in the case of King- Emperor v. Parbhushankar I.L.R. (1901) Bom. 680 3 Bom. L.R. 278 the scheme of the Code shows that in the view of the Legislature it is less advantageous to an accused to be tried with the aid of assessors than by a jury.

39. It further appears that though a First Class Subordinate Judge was appointed at Alibag for one year by Notification No. 5240 dated June 9, 1920, the talukas of Panvel and Karjat were excluded from his special jurisdiction, and though the District Magistrate of Kolaba was appointed as an Additional Sessions Judge in the Thana Sessions Division in particular months and was directed to try cases committed for trial by the Magistrates in the Kolaba District, by notification No. 2153 dated April 21, 1903, the operation of that notification was withdrawn so far as the talukas of Karjat and Panvel were concerned by a subsequent Notification No. 473, dated January 30, 1905.

40. I think, therefore, that on the ground of convenience and on the ground that an order for transfer is expedient for the ends of justice, I would transfer the case under Section 526 from the Court of the Additional Sessions Judge, Mr. Gundil, holding his sitting at Alibag, to the Court of the Sessions Judge at Thana. Though the High Court may not have the power under Section 526 of the Criminal Procedure Code to order any particular trial to be held at any particular place, the High Court has the power to decide that a particular place of sittings of any Court is inconvenient, and that an order of transfer from a Court sitting at a particular place to another Court sitting at a different place will tend to the general convenience of the accused and their witnesses, and if

the High Court comes to the conclusion that a transfer is necessary, a change of place is inevitable. It is unnecessary in this case to go into the question of the powers of the High Court under Clause 29 of the Letters Patent and Section 107 of the Government of India Act. Under Section 526 of the Criminal Procedure Code the High Court has the power to transfer a case from a criminal Court subordinate to its authority to any other criminal Court of equal or superior jurisdiction.

41. I think, therefore, that the present case pending before Mr. Gundil, Additional Sessions Judge holding his Court at Alibag, should be transferred to the Court of the Sessions Judge at Thana.

S.J. Murphy, J.

42. The applicants have been committed to the Sessions Court of Thana on charges of rioting and murder, and the case has some political significance, as it arose out of the Satyagraha movement in connection with the breaking of forest laws at Chirner, in the Panvel taluka of the Thana District, The trial will be a heavy one, for we are told there are 118 prosecution and 225 defence witnesses, and the Local Government has made an order, directing that it shall be held by Mr. Gundil, Additional Sessions Judge of Thana, and that he should hold it at Alibag. This order was issued on February 5, 1931.

43. The application, which was in the first instance for a direction to Mr. Gundil to hold his trial at Thana, is opposed by the Advocate General for the Crown. At the end of the hearing the terms of the application were amended, and the final request was for a transfer of the case to the Sessions Court of Thana, sitting at Thana. The grounds set out in the application are three- fold, being-

(1) that the order under Section 9(2) of the Code of Criminal Procedure directing Mr. Gundil to hold the trial at Alibag is illegal, and

(2) under Section 526 (1)(d), that a trial at Thana will tend to the general convenience of the parties and witnesses, and finally,

(3) under Section 526 (1)(e) that such an order is expedient for the ends of justice.

44. The points arise cut of the following circumstances-

45. The Sessions Division of Thana includes two revenue districts, those of Thana and Kolaba. The present arrangements under Section 9(2) are, that cases coming from Thana District and the Karjat and Panvel Talukas of the Kolaba District, are tried at Thana, and those from the remaining talukas of the Kolaba District at Alibag.

46. The present orders as to the mode of trial are that the Judges of the sessions division sit with a jury at Thana, and with assessors at Alibag. Chirner is in the Panvel Taluka, and the order directing Mr. Gundil to hold this trial at Alibag is a special one. The only section of the Code prescribing the place of trial within a sessions division is Section 9(2). It provides that the place or places shall be indicated by general or special order by the Local Government. The word "special" must include an order relating to a class of cases for trial, and on the principle that the greater necessarily connotes the lesser, cannot be held to stop short prior to the limit of a single case.

47. I agree with my learned brother in thinking that the order of the 5th February last was one within the competence of the Local Government to make, and that it is valid.

48. The next consideration is whether we have any authority to vary it by directing Mr. Gundil to hold this trial at Thana as requested.

49. This was the prayer made originally in the application which stated in terms that applicants had no objection to the Judge appointed to try them, but only to the place at which he was directed to do so by the Government.

50. I think it is clear that no such order can be made. There is no provision of the Criminal Procedure Code authorising this Court to direct that a trial shall be held at a particular place, and Section 526 covers only cases of transfer from one Court to another, though a transfer from one Court to another may, of course, involve a change of the place of sitting. Sub- section (1) of the section is in terms that the High Court may order- (ii) that any particular case or appeal, or class of cases or appeals, be transferred from a criminal Court subordinate to its authority to any other criminal Court of equal or superior jurisdiction. This view has been placed before us by the learned Advocate General, and on the language of the section, it is clearly correct; and I believe we have no power to direct Mr. Gundil, as Additional Sessions Judge, to sit at Thana to try this case.

51. But the application has been allowed to be amended, and the second and third points really arise on the amendment. The amendment is not, I think, happily worded, and as it stands is really meaningless. It is, that the case should be transferred to " the Sessions Court at Thana sitting at Thana." But the Sessions Court is the sessions division of Thana and the case has already been committed to that Court and is fixed for trial by one of the two Judges who compose it. The

intention really is that it should be transferred to the Court of Mr. Sanjana, the Sessions Judge, he being the only other Court- left after eliminating the Additional Sessions Judge Mr. Gundil - to try it, in that sessions division. Here again, I think, Mr. Coyajee is asking us to do something we are not empowered to do. If we have no power under Section 526 to direct Mr. Gundil to hold this trial at Thana, it follows that I must hold that we could make no such order in the case of Mr. Sanjana; though doubtless, in the absence of a special order to him by the Local Government, under Section 9(2) he would sit at Thana for the trial, while if such an order is made, he would sit in accordance with its terms and if it so directed, at Alibag, despite the transfer suggested to us to his Court, on which I think we cannot put the limitation as to the place of trial prayed for.

52. It will be convenient at this point to discuss the application so far as it is made under Section 526 (1)(e). The reason for a transfer most strenuously urged before us, and the real reason of the application, as is clear from its terms and the affidavits in support, is that applicants will be tried by a Judge and jury at Thana, while at Alibag the trial will be with the aid of assessors. The argument is that a trial by jury will be expedient for the ends of justice under this sub- clause of the section.

53. The Criminal Procedure Code provides for two varieties of trial in the Sessions Court, and the authority to decide which kind shall prevail in a particular Court, that is sessions division, or part of a sessions division, or part of it, is given by Section 269 to the Local Government and is to be declared by notification in the Local Government Gazette with the previous sanction of the Governor General in Council. There are accordingly sessions divisions in which all offences are triable by jury, others in which some classes of offences are so to be tried, and still others, such as the Thana Sessions Divisions, in part of which trial by jury is the rule, and in another part of which trials are with assessors. It has been held in the case reported in Queen- Empress v. Ganapathi Vannianar I.L.R (1900) Mad. 632 that the right of a trial by jury is one attaching to a place, or to class of offences in that place, and not to a person, and that the words "particular class of cases" do not necessarily mean offences as classified in the Indian Penal Code, but would cover many other classifications which might be made. In the Madras case the classification being considered was a special one, and in this one an order might conceivably be made to cover it by the description of the case as "arising out of the movement to break the forest laws in the Panvel Taluka." The relevance of the point and the ruling is that by the Criminal Procedure Code the discretion to direct where a particular Sessions Court shall sit is under Section 9(2) left to the Local Government, and the further question of whether it shall try cases with a jury, or sit with assessors, is also one for the Local Government, with the previous sanction of the Governor General in Council, to determine. This being so plainly the case, I think, the choice is one outside the scope of our discretion, having been left to another authority by the Statute, and that it is not possible for us to hold that the fact that trial is by jury at Thana comes within the terms of Section 526 (1)(e), on the ground that it is expedient for the ends of justice to have such a trial. In fact, I think, the Legislature never intended that this Court should have such a discretion, and that it is not for us to say that one form of trial is more expedient for the ends of justice than another, which is equally legal.

54. The only possible ground remaining for a transfer appears to me to be the one under Section 528 (1)(d), the general convenience of the parties and witnesses.

55. Applicants' case is that the facts fall within this clause, and the Crown's that they do not.

56. The arguments under this clause are again three- fold, being greater ease of access from Chirner to Thana, better accommodation at Thana for accused, witnesses and accused's friends, and greater facilities for legal aid at that place. Better accommodation for accused is a question for Government, and there are jails both at Thana and Alibag. Accommodation for accused's friends we can hardly consider, as they are neither parties nor witnesses. In fact, both Thana and Alibag are towns and the head- quarters of districts, always frequented by people having business in the Courts and otherwise, and though Thana is the larger town, it can hardly be seriously argued that the comparatively small number connected with this case who will require lodgings, cannot be suited in Alibag.

57. Chirner is thirteen miles by cross- country road from Panvel, which is twenty miles by main road from Thana. It is five miles by cart track to Avre, where a creek is crossed in boats, to Rewas from where there is a road fifteen miles long to Alibag. As the crow flies, it is nearer Alibag. The argument is that owing to the need of crossing the creek, it is easier and quicker to go from Chirner to Thana than it is to Alibag. This is denied by the Crown. The affidavits in support of applicants' contention exaggerate the difficulties, for in the fair season there is no difficulty in crossing the creek. Moreover, we are told, the witnesses are to be called in batches and will be allowed to go when examined and they will therefore only have to go to Alibag or Thana once.

58. I think there is no real preponderance of convenience either way.

59. The argument as to greater facilities for legal aid appears to me no stronger. Sessions cases are tried regularly at Alibag, where there is also a Sub- Judge's Court, and there is a local bar and we are told a law library. If outside lawyers are to be detained for the defence, they will have to attend throughout and whether they do so at Thana or at Alibag can make little difference, though if residents of Thana or Bombay that place would of course suit them better, but it is a question of who is retained and we do not know who is. Alibag has a daily steamer service to Bombay, and there is also a road route available. My view of the case is that we can make no order in the terms of the original application and that similarly we cannot properly make one on the grounds stated in Section 526 (1)(e) of the Code; but that we could make an order transferring the case to the Court of Mr. Sanjana by name, or to his Court as Sessions Judge, had a real case of hardship under Section 526 (1)(d) been made out, which, I think, on the merits, it has not been. But to my mind there is a real difficulty even here. There is no objection to a trial by Mr., Gundil, and as shown by the application and the affidavits, the objection is really to his sitting at Alibag with assessors, and the alternative prayer was only made because of the legal difficulty. The intention of the Legislature seems to me, for reasons already given, to have been that the place of trial and

the form it should take, whether it should be by jury or with the aid of assessors, should rest with Government, and not with the High Court; and this appears to me to be shown conclusively by the provisions of the Code, which even after such an order of transfer is made, leave it open to the Local Government to notify the place of sitting of the Sessions Judge, as it did that of the Additional Sessions Judge, or even on the conditions set out in Section 269, to provide that this particular trial shall be held with the aid of assessors at Thana.

60. Though I do so with regret, and much hesitation and diffidence, I feel I cannot concur in the order proposed by my learned brethren. In my opinion, the application should be dismissed.

Back to Section 29 of Code of Criminal Procedure, 1973

MANU/SC/0022/2001

IN THE SUPREME COURT OF INDIA

Appeal (crl.) 66 of 2001

Decided On: 12.01.2001

Pankajbhai Nagjibhai Patel Vs. The State of Gujarat and Ors.

Hon'ble Judges/Coram:

K.T. Thomas and R.P. Sethi, JJ.

JUDGMENT

K.T. Thomas, J.

1. Leave granted.

2. A Judicial Magistrate of first class, after convicting an accused of the offence under Section 138 of the Negotiable Instruments Act (for short `the NI Act') sentenced him to imprisonment for six months and a fine of Rs.83,000/- . The conviction and sentence were confirmed by the Sessions Judge in appeal and the revision filed by the convicted person was dismissed by the High Court. When the special leave petition was moved, learned counsel confined his contention to the question whether a Judicial Magistrate of first class could have imposed a sentence of fine beyond Rs.5,000/- in view of the limitation contained in Section 29(2) of the Code of Criminal Procedure (for short `the Code'). As the decision of this Court in K. Bhaskaran vs. Sankaran Vaidhyan Balan and anr. MANU/SC/0625/1999 : 1999CriLJ4606 is in support of the said contention we issued notice to the respondent mentioning that it is limited to the question of sentence. Learned counsel for the respondent contended that the decision of this Court to the effect that power of the Judicial Magistrate of first class is limited in the matter of imposing a sentence of fine of Rs.5000/- is not correct in view of the non- obstante clause contained in Section 142 of the NI Act. We, therefore, heard both counsel on that aspect.

3. Section 138 of the NI Act provides the punishment as imprisonment for a term which may extend to one year or fine which may extend to "twice the amount of cheque" or with both. Section 29(2) of the Code was referred to in Shaskaran's decision (supra) which contains the limitation for a Magistrate of first class in the matter of imposing fine as a sentence or as part of the sentence. That sub- section says that "the court of a Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding five thousand rupees, or of both." On the strength of the said sub- section it was held in Bhaskaran's case thus:

"The trial in this case was held before a Judicial Magistrate of the first class who could not have imposed a fine exceeding Rs.5000/- besides imprisonment. The High Court while convicting the accused in the same case could not impose a sentence of fine exceeding the said limit."

4. In order to obviate the said hurdle learned counsel for the respondent adopted a twin contention. First is that the non- obstante clause in Section 142 of the Act is enough to bypass the limitation imposed by Section 29(2) of the Code. Second is that even apart from the said non-obstante words in the said provision, Section 5 of the Code itself mandated that nothing in the Code would affect any special jurisdiction or power conferred by any other law.

5. We would first consider the effect of the non- obstante clause in Section 142 of the NI Act. The section reads thus:

"142. Cognizance of offences.- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974); -

(a) no court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138;

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under Section 138."

6. It is clear that the aforesaid non- obstante expression is intended to operate only in respect of three aspects, and nothing more. The first is this: Under the Code Magistrate can take cognizance of an offence either upon receiving a complaint, or upon a police report, or upon receiving information from any person, or upon his own knowledge except in the cases differently indicated in Chapter XIV of the Code. But Section 142 of the NI Act says that in so far as the offence under Section 138 is concerned no court shall take cognizance except upon a complaint made by the payee or the holder in due course of the cheque.

7. The second is this: Under the Code a complaint could be made at any time subject to the provisions of Chapter XXXVI. But so far as the offence under Section 138 of the NI Act is concerned such complaint shall be made within one month of the cause of action. The third is this: Under Article 511 of the First Schedule of the Code, if the offence is punishable with imprisonment for less than 3 years or with fine only under any enactment (other than Indian

Penal Code) such offence can be tried by any Magistrate. Normally Section 138 of the NI Act which is punishable with a maximum sentence of imprisonment for one year would have fallen within the scope of the said Article. But Section 142 of the NI Act says that for the offence under Section 138, no court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of first class shall try the said offence.

8. Thus, the non- obstante limb provided in Section 142 of the NI Act is not intended to expand the powers of a Magistrate of first class beyond what is fixed in Chapter III of the Code. Section 29, which falls within Chapter III of the Code, contains a limit for a Magistrate of first class in the matter of imposing a sentence as noticed above i.e. if the sentence is imprisonment it shall not exceed 3 years and if the sentence is fine (even if it is part of the sentence) it shall not exceed Rs.5000/- .

9. Two decisions holding a contrary view have been brought to our notice. The first is that of a Single Judge of the Madras High Court in A.Y. Prabhakar vs. Naresh Kumar N. Shah MANU/TN/0056/1993. The other is that of a Single Judge of the Kerala High Court which simply followed the aforesaid decision of the Madras High Court [K.P. vs. T.K. Sreedharan, 1996(2) C L J 1223 1996(1) K L T 40. The learned Single Judge of the Kerala High Court (Balanarayana Marar, J) dissented from a contrary view expressed in an earlier judgment of the same High Court and had chosen to agree with the view of the Madras High Court held in Prabhakar vs. Naresh Kumar N. Shah (supra). What Marar, J. had adopted was not a healthy course in the comity of Judges in that he had sidelined the earlier decision of the same High Court even after the same was brought to his notice. If he could not agree with the earlier view of the same High Court he should have referred the question to be decided by a larger bench. Learned Single Judge of the Madras High Court did not advance any reasoning except saying that Section 29(2) of the Code is not applicable in view of the primary clause in Section 142 of the NI Act. As pointed out by us earlier, the scope of the said primary clause cannot be stretched to any area beyond the three facets mentioned therein. Hence the two decision cited above cannot afford any assistance in this appeal.

10. The second contention depends upon the construction of Section 5 of the Code. Before that Section is considered it is advantageous to have a look at the preceding section which is in a way cognate to the provision cited. Section 4(1) of the Code concerns only with offences under the Indian Penal Code but sub- section (2) says that all offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions of the Code unless any other enactment contains provisions regulating the manner or place of such investigation, inquiry or trial or how otherwise such offences should be dealt with. This means, if an other enactment does not regulate the manner or place of trial etc of any particular offence the provisions of the Code will continue to control the investigation or inquiry or trial of such offence. Now Section 5 of the Code has to be seen.

"5.Saving.- Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force."

11. Non- application of the Code on "any special jurisdiction or power conferred by any other law for the time being in force" is thus limited to the area where such special jurisdiction or power is conferred. Section 142 of the NI Act has not conferred any "special jurisdiction or power" on a Judicial Magistrate of first class. That section has only excluded the powers of other magistrates from trying the offence under Section 138 of the NI Act.

12. In this context it is profitable to refer to the method usually adopted by the Parliament for conferring special jurisdiction or powers on magistrates of first class in the matter of awarding sentences obviating the limitation stipulated in Section 29(2) of the Code. The Essential Commodities Act contained a provision as Section 12 which read thus:

"12. Special provision regarding fine- Notwithstanding anything contained in section 29 of the Code of Criminal Procedure, 1973 (2 of 1974), it shall be lawful for any Metropolitan Magistrate, or any Judicial Magistrate of the first class specially empowered by the State Government in this behalf, to pass a sentence of fine exceeding five thousand rupees on any person convicted of contravening any order made under section 3."

(Of course the said provision has since been deleted from the statute book when jurisdiction to try the offences under the Essential Commodities Act has been conferred on Special Court which is deemed to be a Court of Sessions.)

13. Another instance is, Section 36 of the Drugs and Cosmetics Act which says that "Notwithstanding anything contained in the Code it shall be lawful for any Metropolitan Magistrate or Judicial Magistrate of the first class to pass any sentence authorised by this Act in excess of the powers under the Code". A similar provision is incorporated in Section 21 of the Prevention of Food Adulteration Act also.

14. Those instances bear ample illustrations as to how the legislature had exercised when it wanted the limitations specified under Section 29 of the Code to be surmounted under special enactments. (Those instances are only illustrative, and not exhaustive.) In the absence of any such provision in the NI Act we cannot read any special power into it as having conferred on a magistrate of first class in the matter of imposition of sentence.

15. In this context, we may also point out that if a Magistrate of first class thinks that the fact situation in a particular case warrants imposition of a sentence more severe than the limit fixed under Section 29 of the Code, the legislature has taken care of such a situation also. Section 325 of the Code is included for that purpose. Sub- section (1) of that Section reads thus:

"Whenever a Magistrate is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than that which such Magistrate is empowered to inflict, or, being a Magistrate of the second class, is of opinion that the accused ought to be required to execute a bond under section 106, he may record the opinion and submit his proceedings, and forward the accused, to the Chief Judicial Magistrate to whom he is subordinate."

16. If proceedings are so submitted to the Chief Judicial Magistrate under Section 325(1) of the Code it is for the Chief Judicial Magistrate to pass such judgment, sentence or order in the case, as he thinks fit. It is so provided in sub- section (3) thereof.

17. Even that apart, a Magistrate who thinks it fit that the complainant must be compensated with his loss he can resort to the course indicated in Section 357 of the Code. This aspect has been dealt with in Bhaskaran's case (supra) as follows:

"However, the Magistrate in such cases can alleviate the grievance of the complainant by making resort to Section 357(3) of the Code. It is well to remember that this Court has emphasised the need for making liberal use of that provision (Hari Singh v. Sukhbir Singh MANU/SC/0183/1988 : 1989CriLJ116). No limit is mentioned in the sub- section and therefore, a Magistrate can award any sum as compensation. Of course while fixing the quantum of such compensation the Magistrate has to consider what would be the reasonable amount of compensation payable to the complainant. Thus, even if the trial was before a Court of Magistrate of the first class in respect of a cheque which covers an amount exceeding Rs.5000/- the Court has power to award compensation to be paid to the complainant."

18. In our view this question does not now pose any practical difficulty. Whenever a magistrate of the first class feels that the complainant should be compensated he can, after imposing a term of imprisonment, award compensation to the complainant for which no limit is prescribed in Section 357 of the Code.

19. In the result, while retaining the sentence of imprisonment of six months we delete the fine portion from the sentence and direct the appellant to pay compensation of Rs.83,000/ - to the respondent- complainant. The said amount shall be deposited with the trial court within six months failing which the trial court shall resort to the steps permitted by law to realise it from the appellant.

20 .This appeal is disposed of accordingly.

MANU/SC/0070/1960

Back to Section 36 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Petition No. 59 of 1960

Decided On: 28.10.1960

R.P. Kapur and Ors. Vs. Sardar Pratap Singh Kairon and Ors.

Hon'ble Judges/Coram:

J.C. Shah, K.C. Das Gupta, M. Hidayatullah, N. Rajagopala Ayyangar and S.K. Das, JJ.

JUDGMENT

S.K. Das J.

1. This is a writ petition. The three petitioners before us are (1) R. P. Kapur, a member of the Indian Civil Service, who before his suspension was serving as a Commissioner in the State of Punjab, (2) Sheila Kapur, his wife, and (3) Kaushalya Devi, his mother- in- law. They have moved this Court under Art. 32 of the Constitution for the enforcement of their rights under Arts. 14 and 21 of the Constitution, which rights they say have been violated by the respondents who are the State of Punjab, Sardar Pratap Singh Kairon, Chief Minister thereof, and certain officials, police administrative and magisterial who have been conducting, or are connected with, the investigation or inquiry into a number of criminal cases instituted against the petitioners. We shall refer to some of these officials later in this judgment in relation to the part which they have played or area playing in those criminal cases.

2. Briefly stated the case of the petitioners is that petitioner no. 1 had the misfortune to incur the wrath of the Chief Minister of the State. It is alleged that the Chief Minister was annoyed with petitioner no. 1, because the latter did not show his readings to give evidence for the prosecution in a case known as the Karnal Murder Case (later referred to as the Grewal case) in which one D. S. Grewal, then Superintendent of Police, Karnal, and some other police officials were, along with others, accused of some serious offences. That case was transferred by this Court to a Special Judge, at Delhi, who commenced the trial sometime in May/June 1959. Petitioner no. 1 was a the time Commissioner of Ambala, and he alleges that he was told by the Chief Minister that it was proposed to cite the Deputy Commissioner and the Deputy Inspector- General of Police as prosecution witnesses in the said case and it would be in the fitness of things that petitioner no. 1 should also figure as a prosecution witness; to this suggestion petitioner no. 1 gave a somewhat dubious reply to the effect that his appearance as a prosecution witness might or might not help the prosecution. Another reason for the displeasure of the Chief Minister, as alleged in the petition, related to certain orders which petitioner no. 1 had passed as Commissioner, Patiala Division, in a revenue case known as the Sangrur case. We shall presently give more details of that case, but it is enough to state here that the allegation is that in that case petitioner no. 1 passed

certain orders, involving the disposal of properties worth about Rs. 9 lacs, which were adverse to one Surinder Kairon, son of the Chief Minister. It is stated that as a result of the displeasure which petitioner no. 1 had incurred for the two reasons mentioned above, a special procedure was adopted in the investigation of the criminal cases instituted against the petitioners; and some new cases were started through the instrumentality of the C.I.D. Police with a view to subject the petitioners to harassment and persecution. The substantial allegation, to quote the language of the petition, is that "a special procedure or rather a technique has been devised for circumventing the mandatory provisions of the law (meaning the Code of Criminal Procedure) as regards the petitioners, two of whom are ladies and who are being dragged about unnecessarily because they happen to be related to petitioner no. 1". It is stated that there has been a deliberate departure from the normal and legal procedure in the matter of institution and investigation of criminal cases against the petitioners - a departure said to be the result of "an evil eye and unequal hand" which the petitioners allege constitutes a denial of the right of equal protection of the laws guaranteed to them under Art. 14 of the Constitution. The special procedure or technique of which the petitioners complain is said to consist of several items, such as (1) entertainment of a criminal complaint personally by the Chief Minister; (2) institution of complaints by the C.I.D. police; (3) registration of first informations after such complaints; (4) investigations in advance of the complaints; (5) investigation by specially chosen (hand- picked as learned Counsel for the petitioners has suggested) C.I.D. officials, not necessarily of high rank, who have no power to investigate; (6) the arrangement of a special C.I.D. squad to "unearth something" against the petitioners, etc. In the petitioner four criminal cases were referred to as illustrative of the special procedure, said to be unwarranted by law, adopted against the petitioners, and in a supplementary petition filed on June 9, 1960, some more cases were referred to. After we had conveyed to learned Counsel for the petitioners that we could not consider the supplementary petition which the respondent had no opportunity of meeting, the supplementary petition was withdrawn. Therefore, we do not propose to say anything about the cases which are referred to in the supplementary petition. The four cases mentioned in the original petition are :-

(1) F.I.R. no. 304 of 1958, given by one M. L. Sethi, referred to hereinafter for brevity as Sethi's case;

(2) F.I.R. no. 39 of 1959, instituted on the complaint of one M. L. Dhingra, called hereinafter as Dhingra's case;

(3) F.I.R. no. 135 of 1959, instituted on the complaint of the Civil Supply Officer, Karnal, the accused in this case being the State Orphanage Advisory Board of which petitioner no. 1 was Vice- President at the relevant time and Kartar Singh, farm manager of Kaushalya Devi, called the Orphanage case; and

(4) F.I.R. no. 26 of 1960, instituted on the complaint of Daryao Singh, D.S.P., C.I.D., Karnal, (one of the respondent police officials) in which there are three accused persons including petitioner no. 1, called for brevity the Ayurvedic Fund case.

3. We may say at once that we are not concerned with the merits of any of the aforesaid cases : that is a question which will fall for consideration if and when the cases are tried in Court. Therefore, nothing said in this judgment shall be construed as affecting the merits of the cases. Two questions have been posed before us in relation to these cases : one is if in the matter of institution and investigation of these cases a special procedure unknown to law has been adopted; and the other is if the petitioner have been singled out for unequal treatment in administering the law relating to the institution and investigation of criminal cases in the State. The two questions are in one sense connected, for if a special procedure unknown to law has been adopted against the petitioners, that by itself will be a denial of the right of the equal protection of the laws. Learned Counsel for the petitioners has, however, argued the second question somewhat independently of the first question, and he had submitted that even if the procedure adopted against the petitioners is warranted by law, it is a departure from the normal procedure and has been adopted with "an evil eye and unequal hand" so as to put the petitioners to harassment and persecution. We shall consider both these questions in relation to the procedure adopted in the four cases referred to above.

4. It is necessary to state that the petition has been contested by the respondents. The Chief Minister has himself made no affidavit in respect of the allegations made against him; but affidavits in reply have been made by the Chief Secretary and the Home Secretary to the Punjab Government and some of the responded officials. To these affidavits we shall advert later in somewhat greater detail. We shall also have something to say about the failure of the Chief Minister to make an affidavit. It is enough to state here that the respondents have seriously contested both the allegations made on behalf of the petitioners, namely, (1) that a special procedure unknown to law was adopted against them or (2) that the procedure adopted was motivated by "an evil eye and unequal hand" so as to persecute and harass the petitioners. The respondents have said that the procedure adopted was warranted by law and the employment of the C.I.D. officials in the investigation of the cases against the petitioners was due to the special nature of the cases. The respondents have also contested the correctness of the allegation that petitioner no. 1 had incurred the displeasure of the Chief Minister on account of the two reasons stated in the petition. In brief, the claim of the respondents is that there has been no violation of the rights of the petitioners guaranteed under Arts. 14 and 21, and there are no grounds for interference by this Court under Art. 32 of the Constitution. It has been stated on behalf of the respondents that in the two cases called Sethi's case and Dhingra's case, the petitioners had moved the High Court without success for quashing the proceedings and in Sethi's case, an appeal to this Court against the order of the High Court also proved unsuccessful. It is also pointed out that a petition made by petitioner no. 1 in the High Court for proceeding by way of contempt of court against the Chief Minister on some of the allegations now raised or allegations similar in nature, was dismissed in limine and the learned Advocate- General of the Punjab has taken us through the order of the High Court in respect of some of the allegations made.

5. Having stated the respective cases of the parties before us, we shall proceed now to a more detailed examination of the procedure adopted in the four cases instituted against the petitioners. But before we do so, it is necessary to say a few words about Grewal's case and Sangrur case

which are stated to furnish the reasons why petitioner no. 1 incurred the displeasure of the Chief Minister. It is alleged that in Grewal's case petitioner no. 1 was asked to give evidence for the prosecution, but he gave a dubious reply which displeased the Chief Minister. It is worthy of note, however, that the trial in Grewal's case began in May- June, 1959; Sethi's complaint was made in December, 1958 and Dhingra's in February, 1959. Obviously, those two cases could not be the result of any refusal by petitioner no. 1 to give evidence in Grewal's case. On May 28, 1959, petitioner no. 1 wrote to the Chief Secretary about Sethi's case and Dhingra's case, but no allegation was made therein against the Chief Minister. What the petitioner wanted then was that an opportunity should be given to him to explain his position. On June 9, 1959, petitioner no. 1 again wrote to the Chief Secretary about the complaints of Sethi and Dhingra - again there was no allegation against the Chief Minister. On June 29, 1959, petitioner no. 1 filed two petitions in the Punjab High Court for quashing the proceedings in Sethi's case and Dhingra's case; in this petition an allegation was made that powerful influences were operating against the petitioner "to harm him and debar him officially" and Sethi's case and Dhingra's case were the result of such influences, but there was no specific mention of Grewal's case and of any request to the petitioner to give evidence in that case. It was for the first time on July 20, 1959, when the petition for contempt proceedings was filed that a specific allegation against the Chief Minister was made in paragraphs 35 to 37 thereof (this is annexure I to the present petition). This petition was dismissed in limine, the High Court saying that it was not prima facie satisfied that the allegation was made out. We do not think that petitioner no. 1 has been able to advance his case any further in spite of the fact that the Chief Minister has made no affidavit, a matter to which we shall advert later.

6. As to the Sangrur case, that was also referred to in the petition of July 20, 1959, and the High Court did not accept the allegation of petitioner no. 1. What happened in that case was this. The late Sardar Mukan Singh of Sangrur left two widows, Sardarni Pritam Kuar and Sardarni Pavitar Kaur. Sardarni Pavitar Kaur had three daughters one of whom was married to Surinder Singh Kairon, son of the Chief Minister. The Sangrur estate was in charge of the Court of Wards, that is, the Financial Commissioner, Punjab. On June 19, 1958, the Court of Wards decided to release the estate after partitioning the immovable property between the two widows. At one time a question arose as to whether the immovable properties should be partitioned into five equal shares for the two widows and three daughters or into two shares only for the two widows. Sometime before May 6, 1959, it was decided that the partition would be of two shares only and thereafter a detailed mode of partition was agreed to between the parties. This is clear from the note of petitioner no. 1 dated May 6, 1959. Thereafter there was no more dispute left, and the case of petitioner no. 1 that he was arrested on July 18, 1959, because he dictated an adverse order some days previously which had been typed but not yet signed does not prima facie appear to be correct, apart altogether from the question whether petitioner no. 1 was acting merely as the channel between the Deputy Commissioner, and the Financial Commissioner, the latter being the only authority competent to pass final orders in the matter.

7. We have, therefore, come to the conclusion that the petitioners have not established what they have alleged, namely, that R. P. Kapur, one of the petitioners, had incurred the displeasure of the Chief Minister by reason of what happened in the Grewal case and the Sangrur case. Whether there were other reasons, administrative or otherwise, for the displeasure of the Chief Minister is a matter which is not germane to the present case. In the affidavits filed before us some reference

has been made to the past record of R. P. Kapur. We consider it unnecessary to refer to that record; firstly, because it is not relevant to the case before us, and secondly because we think that it is not fair to refer to the confidential record of an officer unless the circumstances in which certain adverse remarks were made are known.

8. We proceed now to consider the four criminal cases pending against the petitioners or some of them, in relation to the two points urged : (1) whether in the institution and investigation of these cases a special procedure unknown to law has been adopted and (2) if the petitioners have been singled out for unequal treatment in administering the law relating to the institution and investigation of criminal cases in the State.

9. The first two cases, namely, Sethi's case and Dhingra's case need be dealt with at some length. Sethi's case started on a complaint which it was said was sent direct to the Chief Minister. Four material allegations about fraudulent misrepresentation were made in that complaint. It was alleged that R. P. Kapur had fraudulently misrepresented to Sethi that a particular piece of land which he had sold to Sethi had been purchased by him at Rs. 10 per square yard; that he had fraudulently concealed from Sethi the pendency of certain proceedings before the Land Acquisition Collector, Delhi, and of the acquisition of the said land under section 17 of the relevant Act; that he had made a fraudulent misrepresentation as regards the scheme of housing with regard to the area in which the land lay. Though the complaint was dated December 10, 1958, it appears to have been made over to the Additional Inspector General of Police on December 23, 1958. The Additional Inspector General of Police then appears to have passed an order to the following effect : "Register a case and investigate personally". This was addressed to Sardar Hardayal Singh, D.S.P. Thereupon Sardar Hardayal Singh, Deputy Superintendent of Police, C.I.D., Amritsar, appears to have drawn up a first information report. The original complaint which Sethi filed has not been produced before us. What was produced before us was a carbon copy and on that carbon copy was the order of the Additional Inspector General of Police to which we have already made a reference. The allegation of the petitioners was that the original complaint had been sent to the Chief Minister and the Chief Minister had passed certain orders thereon. On behalf of the petitioners it was suggested that the original was not produced in order to conceal from the Court the orders which the Chief Minister had passed thereon. We have stated earlier that the Chief Minister had filed no affidavit in respect of these allegations. An affidavit has been filed by A. N. Kashyap, Home Secretary to the Government but obviously he was not in a position to say anything about the allegations made against the Chief Minister. We, therefore, proceed on the basis that so far as Sethi's case is concerned, a complaint was made or sent to the Chief Minister who thereupon sent it to the Additional Inspector General of Police who in his turn sent it to Sardar Hardayal Singh, Deputy Superintendent of Police, C.I.D., at Amritsar. The short question before us is - does this amount to adopting a procedure unknown to law or even to unequal treatment so as to attract Art. 14 of the Constitution ? Learned Counsel for the petitioners has taken us through the relevant provisions in Part V, Chapter XIV, of the Code of Criminal Procedure and has submitted that under section 154 of the Code every information relating to the commission of a cognizable offence should be given to an officer in charge of a police station and under section 156 any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area would have power to inquire into or try under the provisions of Chapter XV relating

to the place of inquiry or trial. He has also referred to section 157 under which the officer in charge of a police station, shall forthwith send a report of the first information to a Magistrate empowered to take cognizance of the offence and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed to the spot to investigate the facts and circumstances of the case, and if necessary to take measures for the discovery and arrest of the offender. It is contended that the provisions of sections 154, 156 and 157 of the Code have been violated in the case against the petitioners; and thus the petitioners have been subjected to a special procedure unknown to law or, at any rate, to unequal treatment, treatment different from that of other persons against whom informations of a cognizable offence are made.

10. We are unable to accept these contentions as correct. First of all, section 154, Code of Criminal Procedure, does not say that an information of a cognizable offence can only be made to an officer in charge of a police station. That section merely lays down, inter alia, that every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information shall be signed by the person giving it and the substance thereof shall be entered in a book to be kept by the such officer in such form as the State Government may prescribe in that behalf. Section 156 gives power to an officer in charge of police station to investigate without the order of a Magistrate any cognizable case which a Court, having jurisdiction in the local area etc. would have power to inquire into or try; sub- section (2) of section 156 lays down that no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate. There has been some argument before us as to the meaning of the expression "any such case" occurring in sub- section (2) of section 156. As we are not resting our decision on sub- section (2) of section 156, Code of Criminal Procedure, we consider it unnecessary to embark upon a discussion as to the true scope and effect of sub- section (2) of section 156. Section 157 of the Criminal Procedure Code lays down the procedure which an officer in charge of a police station must follow where information of a cognizable offence is made. Now, there is another important provision in the Code which is of great relevance in this case and must be read. That provision is contained in section 551 which is in these terms :

"Section 551. Police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station."

11. The Additional Inspector General of Police to whom Sethi's complaint was sent was, without doubt, a police officer superior in rank to an officer in charge of police station. Sardar Hardayal Singh, Deputy Superintendent of Police, C.I.D., Amritsar, was also an officer superior in rank to an officer in charge of a police station. Both these officers could, therefore, exercise the powers, throughout the local area to which they were appointed, as might be exercised by an officer in charge of a police station within the limits of his police station.

It is not disputed that the Jurisdictional area of the Additional Inspector General of Police was the whole of the State. As to the jurisdictional area of the Deputy Superintendent of Police, C.I.D., the contention on behalf of the respondent State is that though he was posted at Amritsar, his jurisdictional area extended over the whole State. The learned Advocate- General for the respondent State has drawn our attention to Police Rule 21.28 in the Punjab Police Rules, 1934, Vol. III, issued by and with the authority of the State Government under sections 7 and 12 of the Police Act (V of 1861). That rule lays down that the Criminal Investigation Department has no separate jurisdiction and the Deputy Inspector General of Police, Criminal Investigation Department, may decide to take over the control of any particular investigation himself or depute one or more of his officers to work directly under the control of the Superintendent of Police of the district. Police Rule 21.32 enumerates some of the cases in which the assistance of the Criminal Investigation Department may be sought. Police Rule 25.14 says that the Criminal Investigation Department is able to obtain expert technical assistance, and in cases where such assistance is required the assistance of the Criminal Investigation Department may be obtained. In the affidavit made by Sardar Hardayal Singh, he has stated that he was entrusted with the investigation of Sethi's case because of its technical nature and also because his share of duty as a Gazetted Officer attached to the Criminal Investigation Department was the whole of the State in view of the memorandum no. 9581- H- 51/7912 dated October 26, 1951. That memorandum shows that the Deputy Inspector General, C.I.D. and all gazetted officers of the Criminal Investigation Department have jurisdiction extending over the whole of the Punjab State. This is also supported by the affidavit made by Shamshere Singh, Additional Inspector General of Police. Learned Counsel for the petitioners has pointed out that Sethi's case involved no technical questions and the ground stated in the affidavits of Shamshere Singh and Sardar Hardayal Singh is not, therefore, correct. The question before us is not whether the reason for which the investigation was made over to Sardar Hardayal Singh is correct or not. The question before us is, whether in making over the investigation to Sardar Hardayal Singh a special procedure unknown to law was adopted or the law as to the investigation of cases was administered with an evil eye or unequal hand. If the police officer concerned thought that the case should be investigated by the C.I.D. - even thought for a reason which does not appeal to us - it cannot be said that the procedure adopted was illegal. We are unable to agree with learned Counsel for the petitioners that any of these two contentions has been made out in the present case. We are satisfied that the Inspector General of Police, C.I.D. had power to deal with Sethi's complaint and had further power to direct investigation of the same by Sardar Hardayal Singh who as a police officer superior in rank to an officer incharge of a police station could exercise powers of an officer in charge of a police station in respect of the same. It cannot, therefore, be said that the procedure adopted was unknown to law. Nor are we satisfied that the procedure adopted was motivated by any evil purpose, though we are not quite impressed by the reason given by Shamshere Singh or Sardar Hardayal Singh that Sethi's case was of a technical nature and, therefore, required the assistance of the C.I.D. Even if it was not of a technical nature, it was open to the Additional Inspector General of Police to make over the investigation to a Deputy Superintendent of Police in view of the status of the petitioners. In paragraph 31 of his affidavit A. N. Kashyap, Home Secretary, has said that the Inspector General of Police on receiving the complaint from Sethi ordered on his own the registration of the case without any order or direction from the Chief Minister. The correctness of this statement has been very seriously commented on. In the absence of any affidavit from the Chief Minister and of the original complaint, we have preferred to proceed in this case on the footing that the Additional Inspector General of Police got the complaint from the Chief Minister and then passed necessary orders thereon. Even on that footing

we are unable to hold that there has been any violation of legal procedure or that an unfair discrimination has been made against the petitioners.

12. Learned Counsel for the petitioners has relied on certain observations made by this Court in H. N. Rishbud and Inder Singh v. The State of Delhi MANU/SC/0049/1954 : 1955CriLJ526 . The observations occur at page 1160 of the report and are to effect that it is of considerable importance to an accused person that the evidence collected against him during investigation is collected under the responsibility of an authorised and competent investigating officer. These observations were made in case where the question that fell for decision was whether the provisions in section 5(4) and the provisos to section 3 of the Prevention of Corruption Act, 1947 (Act II of 1947) and the corresponding section 5A of the prevention of Corruption (Second Amendment) Act, 1952 (Act LIX of 1952), were mandatory or not. It was held that they were mandatory and an investigation conducted in violation thereof was illegal. It was also held that an illegality committed in the course of an investigation did not affect the competence and jurisdiction of the Court for trial; but if any breach of the mandatory provisions relating to investigation were brought to the notice of the Court at an early stage of the trial, the Court would have to consider the nature and extent of the violation and pass appropriate orders for such reinvestigation as might be called for. We do not think that the observations made and the decision are of any assistance to the petitioners. We have held that there has been no violation of any mandatory provisions as to investigation in Sethi's case against the petitioners and the investigation procedure followed is legal. Our attention has been drawn to King Emperor v. Nilkantha I.L.R. 35 Mad. 247 On a certificate by the Advocate- General, the case was considered by a Full Bench of the Madras High Court and one of the questions for decision was - "Is an Inspector of the Criminal Investigation Department an authority legally competent to investigate the facts within the meaning of section 157, Evidence Act ?" The question was answered in the affirmative by the majority of judges, Abdur Rahim, J. and Sundara Ayyar, J., dissenting. In the course of the arguments before their Lordships, one of the questions mooted was whether Inspectors of the Criminal Investigation Department were appointed to any local area within the purview of section 551, Code of Criminal Procedure. Some of the Judges held that the whole Presidency was their local area; some held that that was not so. On the materials before us, we have no hesitation in holding that the Deputy Superintendent of Police entrusted with the investigation of Sethi's case had the necessary authority to hold the investigation. The decision in Pulin Bihari Ghosh v. The King I.L.R. [1950] Cal. 124 on which also some reliance has been placed does not appear to us to be in point : that was a case in which the Magistrate purported to act both under section 202 and section 156(3), Code of Criminal Procedure, and it was held that proceedings under section 202 and investigation under section 156(3) could not proceed simultaneously; it was further held that a direction under section 156(3) could only be made to an officer in charge of a police station. No question arose there of the exercise of powers under section 551, Code of Criminal Procedure, and the decision does not establish what the petitioners are seeking to establish in the present case. More in point is the decision in Textile Traders Syndicate Ltd. v. State of U.P. MANU/UP/0078/1959 : AIR1959All337 where it was held that an Inspector of Police in the Criminal Investigation Department was superior in rank to that of an officer in charge of a police station and under section 551, Code of Criminal Procedure. He could exercise the powers of an officer in charge of a police station throughout the State.

13. Turning now to Dhingra's case, the position is this. Admittedly, a complaint dated February 27, 1959, was sent to the Chief Minister with a covering letter in which it was stated that "R. P. Kapur had already started tampering with the evidence and I, therefore, request that orders be passed that he Police should take in hand investigation immediately and collect all material evidence". The Chief Minister wrote on this : "Inspector General, Police, is sick. Will Addl. Inspector General please take immediate action in taking over papers from Government departments concerned and the papers with Sri Dhingra. Please give a prima facie report." The Additional Inspector General then made the following endorsement : "Please take immediate necessary action. Depute one of your officers to contact Sri Dhingra and get the necessary records from him. Immediate action may be taken to take over the record from the various departments. A case may be registered. I have informed Chief Secretary and he agrees with this". This was addressed to the Deputy Inspector General, C.I.D., and the latter wrote - "Case should be registered and investigated by Bir Singh, D.S.P., under your supervision. Immediate steps should be taken to get the salient records of Sri Dhingra." This was addressed to Ujager Singh, Superintendent of Police, C.I.D. The case was then registered by Sardar Sampuran Singh, Inspector of Police, Police Station Chandigarh, and the investigation was in charge of Sardar Bir Singh, Deputy Superintendent of Police, C.I.D.

14. The legal position as to the institution of Dhingra's case and its investigation is the same as in Sethi's case. The legal sanction for both is section 551 Code of Criminal Procedure, and the reasons which we have given for holding that the procedure followed in instituting and investigating Sethi's case is legally valid apply to Dhingra's case also. On behalf of the petitioners it has been submitted that the hand of the Chief Minister is no longer concealed in respect of Dhingra's case. It is pointed out that in 1959, a complaint is made in respect of offences alleged to have been committed about five years ago in 1954 and the Chief Minister, without any enquiry whatsoever, says "Please give a prima facie report," and the same C.I.D. machinery is again set in rapid motion as in Sethi's case, and this at a time when Sethi's case was kept "hanging as a sword" over the petitioners. It has been further submitted that the direction as to the seizure of papers was not justified in law, as the Chief Minister had no legal power to give such a direction. We do not think that these submissions establish what the petitioners have to establish in order to succeed on their writ petition, namely, that in the institution of Dhingra's case and its investigation, a procedure unknown top law has been followed or that the petitioners have been singled out for an unfair and discriminating treatment. We do not know what reasons led the Chief Minister to make the endorsement on the complaint of Dhingra as he did and why instead of referring the complaint to the officer in charge of the police station concerned, a reference was made to the Additional Inspector General or the Criminal Investigation Department. These are matters within his special knowledge, and he has chosen to throw no light on them. Shamshere Singh has said in his affidavit that he dealt with Dhingra's case in exercise of his powers under section 551, Code of Criminal Procedure. Sardar Bir Singh has said in his affidavit that this case was also of a technical nature and so the investigation was entrusted to him. As we have said in Sethi's case this reason does not appear to us to be a convincing reason, but the Police officers concerned may honestly have thought that the case should be investigated by the Criminal Investigation Department. We are not called upon to express any opinion on the merits of Dhingra's case, and all that we say now is that the petitioners have failed to establish either of their two contentions - (1) that the procedure adopted was illegal, or (2) that the petitioners were unfairly discriminated against.

15. We go now to the remaining two cases, the Orphanage Case and the Ayurvedic Fund case. One was instituted on the complaint of the Civil Supply Officer, Karnal, and the other on the statement of Daryao Singh, Deputy Superintendent of Police, C.I.D., Karnal. The Orphanage case is against the Orphanage Advisory Board of which R. P. Kapur was the Vice President at the relevant time, and Kartar Singh, farm manager of Kaushalya Devi. It related to the alleged violation of certain Contrail Orders in the matter of a brick kiln. The Ayurvedic Fund case is against R. P. Kapur and certain other persons, who are not petitioners before us. It alleged criminal breach of trust etc. in respect of certain funds in the hands of the persons accused therein. As we are not deciding these cases on merits, it is unnecessary to give further details of the allegations made in those cases.

16. No specific illegality has been brought to our notice with regard to the institution of the Orphanage case except some allegations of high- handedness in the matter of seizure of records of Orphanage in spite of the protest of the General Manager of the Orphanage and some allegations against Choudhari Ram Singh, who was then Deputy Inspector General, Ambala Range. These allegations, be they true or not, do not establish any such illegality as would lead us to quash the investigation.

17. As to the Ayurvedic Fund case, Daryao Singh said in his affidavit :

"I say that the Audit Report contained details of meddling with Orphanage funds and of having made payments to one Kartar Singh, an employee of the petitioner no. 1 and the attorney of Shrimati Kaushalya Devi. It appears that there was excess and double payment of funds. There were purchases of timber and wood without calling for any quotations. It disclosed the issue of Orphanage funds to Madhuban Co- operative Society and that the materials like cement, iron and steel which were under control were also used in the construction of private building of Shri Kapur and his family and the use of such materials went up to 20,000 rupees."

18. Here again we do not express any opinion as to the correctness or otherwise of the allegations made. All that need be said at this stage is that the institution of the case is not illegal, nor is its investigation vitiated by discrimination.

19. It is indeed true that the investigation of these case has been entrusted to certain officers of the Criminal Investigation Department, whether for good reason or not we cannot say. But that circumstance does not by itself make the investigation bad in law. The officers can exercise their powers of investigation under section 551, Code of Criminal Procedure. Daryao Singh, it may be stated, was an Inspector of the Criminal Investigation Department at Karnal and became a Deputy Superintendent of Police, C.I.D., in December, 1959. He also could exercise the powers under section 551, Code of Criminal Procedure.

20. For the reasons given above, we have come to the conclusion that the petitioners are not entitled to succeed and the writ petition must be dismissed, in the circumstances of this case there will be no order for costs.

21. Before parting with this case we consider it necessary to make some observations with regard to a matter which has caused us some anxiety and concern. Serious allegations have been made against the Chief Minister in this case. He is a party respondent and had notice of the allegations made. In Sethi's complaint it was alleged that he had passed certain orders on the original complaint, which was sent to the Additional Inspector General of Police with those orders. The original complaint was not made available to us on the ground that it could not be traced. The Additional Inspector General of Police said in his affidavit that on receiving the complaint from Sri M. L. Sethi, he ordered the investigation of the case without any order or direction from the Chief Minister. He did not specifically say if he received the complaint direct from Sethi or through the Chief Minister. In Dhingra's case the Chief Minister passed an order which might mean that he ordered the submission of prima facie report or merely directed that a report should be submitted if a prima facie case was made out. It is not clear why he ordered the seizure of papers before even a prima facie report was given, in respect of an offence said to have been committed, five years ago. These are all matters on which the Chief Minister alone was in a position to enlighten us. In view of the allegations made against him, we consider that the Chief Minister owed a duty to this Court to file an affidavit stating what the correct position was so far as he remembered it. We recognise that it may not be possible for a Chief Minister to remember the circumstances in which a document passes through his hands; there must be many papers which a Chief Minister has to deal with in the day to day business of administration. If the Chief Minister did not remember the circumstances, it would have been easy for him to say so. If he remembered the circumstances, he could have refuted the allegations with equal ease. This is not a case where the refutation should have been left to Secretaries and other officers, who could only speak from the records and were not in a position to say why the Chief Minister passed certain orders. The petitioners are obviously suffering from a sense of grievance that they have not had a fair deal. We have held that there is not legal justification for that grievance; but in an executive as well as judicial administration justice must not only be done but it must appear that justice is being done. An affidavit from the Chief Minister would have cleared much of the doubt which in the absence of such an affidavit arose in this case.

22. Petition dismissed.

MANU/SC/0559/2014

Neutral Citation: 2014/INSC/463

Back to Section 41 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 1277 of 2014 (Arising out of SLP (Crl.) No. 9127 of 2013)

Decided On: 02.07.2014

Arnesh Kumar Vs. State of Bihar

Back to Section 46 of Code of Criminal Procedure, 1973

Hon'ble Judges/Coram:

C.K. Prasad and Pinaki Chandra Ghose, JJ.

JUDGMENT

C.K. Prasad, J.

1. The Petitioner apprehends his arrest in a case Under Section 498- A of the Indian Penal Code, 1860 (hereinafter called as Indian Penal Code) and Section 4 of the Dowry Prohibition Act, 1961. The maximum sentence provided Under Section 498- A Indian Penal Code is imprisonment for a term which may extend to three years and fine whereas the maximum sentence provided Under Section 4 of the Dowry Prohibition Act is two years and with fine.

2. Petitioner happens to be the husband of Respondent No. 2 Sweta Kiran. The marriage between them was solemnized on 1st July, 2007. His attempt to secure anticipatory bail has failed and hence he has knocked the door of this Court by way of this Special Leave Petition.

3. Leave granted.

4. In sum and substance, allegation levelled by the wife against the Appellant is that demand of Rupees eight lacs, a maruti car, an air- conditioner, television set etc. was made by her mother-in- law and father- in- law and when this fact was brought to the Appellant's notice, he supported his mother and threatened to marry another woman. It has been alleged that she was driven out of the matrimonial home due to non- fulfilment of the demand of dowry.

5. Denying these allegations, the Appellant preferred an application for anticipatory bail which was earlier rejected by the learned Sessions Judge and thereafter by the High Court.

6. There is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498- A of the Indian Penal Code was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498- A is a cognizable and non- bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed- ridden grand- fathers and grand- mothers of the husbands, their sisters living abroad for decades are arrested.

"Crime in India 2012 Statistics" published by National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762 persons all over India during the year 2012 for offence Under Section 498- A of the Indian Penal Code, 9.4% more than the year 2011. Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951 which depicts that mothers and sisters of the husbands were liberally included in their arrest net. Its share is 6% out of the total persons arrested under the crimes committed under Indian Penal Code. It accounts for 4.5% of total crimes committed under different sections of penal code, more than any other crimes excepting theft and hurt. The rate of charge- sheeting in cases Under Section 498A, Indian Penal Code is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads. As many as 3,72,706 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal.

7. Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Code of Criminal Procedure. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.

8. Law Commissions, Police Commissions and this Court in a large number of judgments emphasized the need to maintain a balance between individual liberty and societal order while exercising the power of arrest. Police officers make arrest as they believe that they possess the power to do so. As the arrest curtails freedom, brings humiliation and casts scars forever, we feel differently. We believe that no arrest should be made only because the offence is non- bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation. Despite this legal position, the Legislature did not find any improvement. Numbers of arrest have not decreased.

Ultimately, the Parliament had to intervene and on the recommendation of the 177th Report of the Law Commission submitted in the year 2001, Section 41 of the Code of Criminal Procedure (for short 'Code of Criminal Procedure), in the present form came to be enacted. It is interesting to note that such a recommendation was made by the Law Commission in its 152nd and 154th Report submitted as back in the year 1994. The value of the proportionality permeates the amendment relating to arrest. As the offence with which we are concerned in the present appeal, provides for a maximum punishment of imprisonment which may extend to seven years and fine, Section 41(1)(b), Code of Criminal Procedure which is relevant for the purpose reads as follows:

41. When police may arrest without warrant.- (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person -

(a) x x x x x x

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:

(i) x x x x x

(ii) the police officer is satisfied that such arrest is necessary -

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this Sub- section, record the reasons in writing for not making the arrest.

x x x x x x

From a plain reading of the aforesaid provision, it is evident that a person accused of offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on its satisfaction that such person had committed the offence punishable as aforesaid. Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent

the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts. Law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. Law further requires the police officers to record the reasons in writing for not making the arrest. In pith and core, the police office before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by Sub- clauses (a) to (e) of Clause (1) of Section 41 of Code of Criminal Procedure.

9. An accused arrested without warrant by the police has the constitutional right Under Article 22(2) of the Constitution of India and Section 57, Code of Criminal Procedure to be produced before the Magistrate without unnecessary delay and in no circumstances beyond 24 hours excluding the time necessary for the journey. During the course of investigation of a case, an accused can be kept in detention beyond a period of 24 hours only when it is authorised by the Magistrate in exercise of power Under Section 167 Code of Criminal Procedure. The power to authorise detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution. Our experience tells us that it is not exercised with the seriousness it deserves. In many of the cases, detention is authorised in a routine, casual and cavalier manner. Before a Magistrate authorises detention Under Section 167, Code of Criminal Procedure, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested is satisfied. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that condition precedent for arrest Under Section 41 Code of Criminal Procedure has been satisfied and it is only thereafter that he will authorise the detention of an accused. The Magistrate before authorising detention will record its own satisfaction, may be in brief but the said satisfaction must reflect from its order. It shall never be based upon the ipse dixit of the police officer, for example, in case the police officer considers the arrest necessary to prevent such person from committing any further offence or for proper investigation of the case or for preventing an accused from tampering with evidence or making inducement etc., the police officer shall furnish to the Magistrate the facts, the reasons and materials on the basis of which the police officer had reached its conclusion. Those shall be perused by the Magistrate while authorising the detention and only after recording its satisfaction in writing that the Magistrate will authorise the detention of the accused. In fine, when a suspect is arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether specific reasons have been recorded for arrest and if so, prima facie those reasons are relevant

and secondly a reasonable conclusion could at all be reached by the police officer that one or the other conditions stated above are attracted. To this limited extent the Magistrate will make judicial scrutiny.

10. Another provision i.e. Section 41A Code of Criminal Procedure aimed to avoid unnecessary arrest or threat of arrest looming large on accused requires to be vitalised. Section 41A as inserted by Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008 (Act 5 of 2009), which is relevant in the context reads as follows:

41A. Notice of appearance before police officer.- (1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of Sub- section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.

11. Aforesaid provision makes it clear that in all cases where the arrest of a person is not required Under Section 41(1), Code of Criminal Procedure, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police office is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged Under Section 41 Code of Criminal Procedure has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

12. We are of the opinion that if the provisions of Section 41, Code of Criminal Procedure which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of

anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 Code of Criminal Procedure for effecting arrest be discouraged and discontinued.

13. Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:

(1) All the State Governments to instruct its police officers not to automatically arrest when a case Under Section 498- A of the Indian Penal Code is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Code of Criminal Procedure;

(2) All police officers be provided with a check list containing specified sub- clauses Under Section 41(1)(b)(ii);

(3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

(4) The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

(5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;

(6) Notice of appearance in terms of Section 41A of Code of Criminal Procedure be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

(7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.

(8) Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

14. We hasten to add that the directions aforesaid shall not only apply to the cases Under Section 498- A of the Indian Penal Code or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

15. We direct that a copy of this judgment be forwarded to the Chief Secretaries as also the Director Generals of Police of all the State Governments and the Union Territories and the Registrar General of all the High Courts for onward transmission and ensuring its compliance.

16. By order dated 31st of October, 2013, this Court had granted provisional bail to the Appellant on certain conditions. We make this order absolute.

17. In the result, we allow this appeal, making our aforesaid order dated 31st October, 2013 absolute; with the directions aforesaid.

MANU/SC/0157/1997

Back to Section 50 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Writ Petition (Criminal) No. 539 of 1986.

Decided On: 18.12.1996

D.K. Basu Vs. State of West Bengal

Hon'ble Judges/Coram:

Kuldip Singh and Dr. A.S. Anand, JJ.

ORDER

Dr. A.S. Anand, J.

1. The Executive Chairman, Legal Aid Services, West Bengal, a non- political organisation registered under the Societies Registration Act, on 26th August, 1986 addressed a letter to the Chief Justice of India drawing his attention to certain news items published in the Telegraph dated 20, 21 and 22 of July, 1986 and in the Statesman and Indian Express dated 17th August, 1986 regarding deaths in police lock- ups and custody. The Executive Chairman after reproducing the news items submitted that it was imperative to examine the issue in depth and to develop "custody jurisprudence" and formulate modalities for awarding compensation to the victim and/or family members of the victim for atrocities and death caused in police custody and to provide for accountability of the officers concerned. It was also stated in the letter that efforts are often made to hush up the matter of lock- up deaths and thus the crime goes unpunished and "flourishes". It was requested that the letter alongwith the news items be treated as a writ petition under "public interest litigation" category.

2. Considering the importance of the issue raised in the letter and being concerned by frequent complaints regarding custodial violence and deaths in police lock up, the letter was treated as a writ petition and notice was issued on 9.2.1987 to the respondents.

3. In response to the notice, the State of West Bengal filed a counter. It was maintained that the police was not hushing up any matter of lock- up death and that wherever police personnel were found to the responsible for such death, action was being initiated against them. The respondents characterised the writ petition as misconceived, misleading and untenable in law.

4. While the writ petition was under consideration a letter addressed by Shri Ashok Kumar Johri on 29.7.87 to Hon'ble Chief Justice of India drawing the attention of this Court to the death of one

Mahesh Bihari of Pilkhana, Aligarh in police custody was received. That letter was also treated as a writ petition and was directed to be listed alongwith the writ petition filed by Shri D.K. Basu. On 14.8.1987 this Court made the following order:

In almost every states there are allegations and these allegations are now increasing in frequency of deaths in custody described generally by newspapers as lock- up deaths. At present there does not appear to be any machinery to effectively deal with such allegations. Since this is an all India question concerning all States, it is desirable to issue notices to all the State Governments to find out whether they are desire to say anything in the matter. Let notices issue to all the State Governments. Let notice also issue to the Law Commission of India with a request that suitable suggestions may be made in the matter. Notice be made returnable in two months from today.

5. In response to the notice, affidavits have been filed on behalf of the States of West Bengal, Orissa, Assam, Himachal Pradesh, Madhya Pradesh, Haryana, Tamil Nadu, Meghalaya, Maharashtra and Manipur. Affidavits have also been filed on behalf of Union Territory of Chandigarh and the Law Commission of India.

6. During the course of hearing of the writ petitions, the Court felt necessity of having assistance from the Bar and Dr. A.M. Singhvi, senior advocate was requested to assist the Court as amicus curiae.

7. Learned Counsel appearing for different States and Dr. Singhvi, as a friend of the court, presented the case ably and though the effort on the part of the States initially was to show that "everything was well" within their respective States, learned Counsel for the parties, as was expected of them in view of the importance of the issue involved, rose above their respective briefs and rendered useful assistance to this Court in examining various facets of the issue and made certain suggestions for formulation of guidelines by this Court to minimise, if not prevent, custodial violence and for award of compensation to the victims of custodial violence and the kith and kin of those who die in custody on account of torture.

8. The Law Commission of India also in response to the notice issued by this Court forwarded a copy of the 113th Report regarding "Injuries in police custody and suggested incorporation of Section 114- B in the Indian Evidence Act."

9. The importance of affirmed rights of every human being need no emphasis and, therefore, to deter breaches thereof becomes a sacred duty of the Court, as the custodian and protector of the fundamental and the basic human rights of the citizens. Custodial violence, including torture and death in the lock ups, strikes a blow at the Rule of Law, which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by the

persons who are supposed to be the protectors of the citizens. It is committed under the shield of uniform and authority in the four walls of a police station or lock- up, the victim being totally helpless. The protection of an individual from torture and abuse by the police and other law enforcing officers is a matter of deep concern in a free society.

These petitions raise important issues concerning police powers, including whether monetary compensation should be awarded for established infringement of the Fundamental Rights guaranteed by Articles 21 and 22 of the Constitution of India. The issues are fundamental.

10. "Torture" has not been defined in the Constitution or in other penal laws. 'Torture' of a human being by another human being is essentially an instrument to impose the will of the 'strong' over the 'weak' by suffering. The word torture today has become synonymous with the darker side of the human civilisation.

Torture is a wound in the soul so painful that sometimes you can almost touch it, but it is also such intangible that there is no way to heal it. Torture is anguish squeezing in your chest, cold as ice and heavy as a stone paralyzing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself.

Adriana P. Bartow

11. No violation of any one of the human rights has been the subject of so many Conventions and Declarations as 'torture'- all aiming at total banning of it in all forms, but inspite of the commitments made to eliminate torture, the fact remains that torture is more widespread now than ever before. "Custodial torture" is a naked violation of human dignity and degradation which destroys, to a very large extent, the individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilisation takes a step backward- flag of humanity must on each such occasion fly half- mast.

12. In all custodial crimes what is of real concern is not only infliction of body pain but the mental agony which a person undergoes within the four walls of police station or lock- up. Whether it is a physical assault or rape in police custody, the extent of trauma, a person experiences is beyond the purview of law.

13. "Custodial violence" and abuse of police power is not only peculiar to this country but it is widespread. It has been the concern of international community because the problem is universal and the challenge is almost global. The Universal Declaration of Human Rights in 1948, which marked the emergence of a worldwide trend of protection and guarantee of certain basic human rights, stipulates in Article 5 that "No one shall be subjected to torture or to cruel, inhuman or

degrading treatment or punishment." Despite the pious declaration, the crime continues unabated, though every civilised nation shows its concern and takes steps for its eradication.

14. In England, torture was once regarded as a normal practice to get information regarding the crime, the accomplices and the case property or to extract confessions, but with the development of common law and more radical ideas imbibing human thought and approach, such inhuman practices were initially discouraged and eventually almost done away with, certain aberrations here and there notwithstanding. The police powers of arrest, detention and interrogation in England were examined in depth by Sir Cyril Philips Committee- 'Report of a Royal Commission on Criminal Procedure' (Command- Papers 8092 of 1981). The report of the Royal Commission is, instructive. In regard to the power of arrest, the Report recommended that the power to arrest without a warrant must be related to and limited by the object to be served by the arrest, namely, to prevent the suspect from destroying evidence or interfering with witnesses or warning accomplices who have not yet been arrested or where there is a good reason to suspect the repetition of the offence and not to every case irrespective of the object sought to be achieved.

15. The Royal Commission suggested certain restrictions on the power of arrest on the basis of the 'necessity principle'. The Royal Commission said:

...we recommend that detention upon arrest for an offence should continue only on one or more for the following criteria:

(a) the person's unwillingness to identify himself so that a summons may be served upon him;

(b) the need to prevent the continuation or repetition of that offence;

(c) the need to protect the arrested person himself or other persons or property;

(d) the need to secure of preserve evidence of or relating to that offence or to obtain such evidence from the suspect by questioning him; and

(e) the likelihood of the person failing to appear at court to answer any charge made against him.

The Royal Commission also suggested:

To help to reduce the use of arrest we would also propose the introduction here of a scheme that is used in Ontario enabling a police officer to issue what is called an appearance notice. That procedure can be used to obtain attendance at the police station without resorting to arrest provided a power to arrest exists, for example to be finger printed or to participate in an identification parade. It could also be extended to attendance for interview at a time convenient both to the suspect and to the police officer investigating the case....

16. The power of arrest, interrogation and detention has now been streamlined in England on the basis of the suggestions made by the Royal Commission and incorporated in Police and Criminal Evidence Act, 1984 and the incidence of custodial violence has been minimised there to a very great extent.

17. Fundamental rights occupy a place of pride in the Indian Constitution. Article 21 provides "no person shall be deprived of his life or personal liberty except according to procedure established by law". Personal liberty, thus, is a sacred and cherished right under the Constitution. The expression "life or personal liberty" has been held to include the right to live with human dignity and thus it would also include within itself a guarantee against torture and assault by the State or its functionaries. Article 22 guarantees protection against arrest and detention in certain cases and declares that no person who is arrested shall be detained in custody without being informed of the grounds of such arrest and he shall not be denied the right to consult and defend himself by a legal practitioner of his choice. Clause (2) of Article 22 directs that the person arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the Magistrate. Article 20(3) of the Constitution lays down that a person accused of an offence shall not be compelled to be a witness against himself. These are some of the constitutional safeguards provided to a person with a view to protect his personal liberty against any unjustified assault by the State. In tune with the constitutional guarantee a number of statutory provisions also seek to protect personal liberty, dignity and basic human rights of the citizens. Chapter V of Criminal Procedure Code, 1973 deals with the powers of arrest of a person and the safeguards which are required to be followed by the police to protect the interest of the arrested person. Section 41, Cr. P.C. confers powers on any police officer to arrest a person under the circumstances specified therein without any order or a warrant of arrest from a Magistrate. Section 46 provides the method and manner of arrest. Under this Section no formality is necessary while arresting a person. Under Section 49, the police is not permitted to use more restraint than is necessary to prevent the escape of the person. Section 50 enjoins every police officer arresting any person without warrant to communicate to him the full particulars of the offence for which he is arrested and the grounds for such arrest. The police officer is further enjoined to inform the person arrested that he is entitled to be released on bail and he may arrange for sureties in the event of his arrest for a non- bailable offence. Section 56 contains a mandatory provision requiring this police officer making an arrest without warrant to produce the arrested person before a Magistrate without unnecessary delay and Section 57 echoes Clause (2) of Article 22 of the Constitution of India. There are some other provisions also like Sections 53 54 and 167 which are aimed at affording procedural safeguards to a person arrested by the police. Whenever a person dies in custody of the police, Section 176 requires the Magistrate to hold an enquiry into the cause of death.

18. However, inspite of the constitutional and statutory provisions aimed at safeguarding the personal liberty and life of a citizen, growing incidence of torture and deaths in police custody has been a disturbing factor. Experience shows that worst violations of human rights take place during the course of investigation, when the police with a view to secure evidence or confession often resorts to third degree methods including torture and adopts techniques of screening arrest by either not recording the arrest or describing the deprivation of liberty merely as a prolonged

interrogation. A reading of the morning newspapers almost everyday carrying reports of dehumanising torture, assault, rape and death in custody of police or other governmental agencies is indeed depressing. The increasing incidence of torture and death in custody has assumed such alarming proportions that it is affecting the credibility of the Rule of Law and the administration of criminal justice system. The community rightly feels perturbed. Society's cry for justice becomes louder.

19. The Third Report of the National Police Commission in India expressed its deep concern with custodial violence and lock- up deaths. It appreciated the demoralising effect which custodial torture was creating on the society as a whole. It made some very useful suggestions. It suggested:

...An arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances:

(i) The case involves a grave offence like murder, dacoity, robbery, rape etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror stricken victims.

(ii) The accused is likely to abscond and evade and the processes of law.

(iii) The accused is given to violent behavior and is likely to commit further offences unless his movements are brought under restraint.

(iv) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again. It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines....

The recommendations of the Police Commission (supra) reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. These recommendations, however, have not acquired any statutory status so far.

20. This Court in Joginder Kumar v. State MANU/SC/0311/1994 : 1994CriLJ1981 , (to which one of us, namely, Anand, J. was a party) considered the dynamics of misuse of police power of arrest and opined:

No arrest can be made because it is lawful for the police officer to do so. The existence of the power of arrest is one thing. The justification for the exercise of it is quite another.... No arrest should be made without a reasonable satisfaction reached after some investigation about the genuineness and bonafides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person his liberty is a serious matter.

21. Joinder Kumar's case (supra) involved arrest of a practising lawyer who had been called to the police station in connection with a case under inquiry on 7.1.94. On not receiving any satisfactory account of his whereabouts the family members of the detained lawyer preferred a petitioner in the nature of habeas corpus before this Court on 11.1.94 and in compliance with the notice the lawyer was produced on 14.1.94 before this Court. The police version was that during 7.1.94 and 14.1.94 the lawyer was not in detention at all but was only assisting the police to detect some cases. The detenue asserted otherwise. This Court was not satisfied with the police version. It was noticed that though as that day the relief in habeas corpus petition could not be granted but the questions whether there had been any need to detain the lawyer for 5 days and if at all he was not in detention then why was this Court not informed, were important questions which required an answer. Besides if there was detention for 5 days, for what reason was he detained. The Court, therefore, directed the District Judge, Ghaziabad to make a detailed enquiry and submit his report within 4 weeks. The Court voiced its concern regarding complaints of violations of human rights during and after arrest. It said:

The horizon of human rights is expanding. At the same time, the crime rate is also increasing. Of late, this Court has been receiving complaints about violations of human rights because of indiscriminate arrests. How are we to strike a balance between the two?

....

A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges. On the one hand, and individual duties, obligations and responsibilities on the others of weighing and balancing the rights, liberties, and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis of deciding which comes first- the criminal or society, the law violator or the abider.

This Court then set down certain procedural "requirements" in cases of arrest.

22. Custodial death is perhaps one of the worst crimes in a civilised society governed by the Rule of Law. The rights inherent in Articles 21 and 22(1) of the Constitution require to be jealously and scrupulously protected. We cannot wish away the problem. Any form of torture or cruel,

inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become law breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchism. No civilised nation can permit that to happen. Does a citizen shed off his fundamental right to life, the moment a policeman arrests him? Can the right to life of a citizen be put in abeyance on his arrest? These questions touch the spinal cord of human rights jurisprudence. The answer, indeed, has to be an emphatic 'No'. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, under trials , detenues and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law.

23. In Neelabati Bahera v. State of Orissa MANU/SC/0307/1993 : 1993CriLJ2899 , (to which Anand, J. was a party) this Court pointed out that prisoners and detenues are not denuded of their fundamental rights under Article 21 and it is only such restrictions as are permitted by law, which can be imposed on the enjoyment of the fundamental rights of the arrestees and detenues. It was observed:

It is axiomatic that convicts, prisoners or under trials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of the State to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law, while the citizen is in its custody. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, under trials or other prisoners in custody, except according to procedure established by law. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions. The wrongdoer is accountable and the State is responsible if the person in custody of the police is deprived of his life except according to the procedure established by law.

24. Instances have come to our notice where the police has arrested a person without warrant in connection with the investigation of an offence, without recording the arrest, and the arrested person has been subjected to torture to extract information from him for the purpose of further investigation or for recovery of case property or for extracting confession etc. The torture and injury caused on the body of the arrestee has sometimes resulted into his death. Death in custody is not generally shown in the records of the lock- up and every effort is made by the police to dispose of the body or to make out a case that the arrested person died after he was released from custody. Any complaint against such torture or death is generally not given any attention by the police officers because of ties of brotherhood. No first information report at the instance of the victim or his kith and kin is generally entertained and even the higher police officers turn a blind eye to such complaints. Even where a formal prosecution is launched by the victim or his kith

and kin, no direct evidence is available to substantiate the charge of torture or causing hurt resulting into death, as the police lock- up where generally torture or injury is caused is away from the public gaze and the witnesses are either police men or co- prisoners who are highly reluctant to appear as prosecution witnesses due to fear of retaliation by the superior officers of the police. It is often seen that when a complaint is made against torture, death or injury, in police custody, it is difficult to secure evidence against the policemen responsible for resorting to third degree methods since they are incharge of police station records which they do not find difficult to manipulate. Consequently, prosecution against the delinquent officers generally results in acquittal. State of Madhya Pradesh v. Shyamsunder Trivedi and Ors. MANU/SC/0722/1995 : (1995)4SCC262 is an apt case illustrative of the observations made by us above. In that case, Nathu Banjara was tortured at police station, Rampura during the interrogation. As a result of extensive injuries caused to him he died in police custody at the police station. The defence set up by the respondent police officials at the trial was that Nathu had been released from police custody at about 10.30 p.m. after interrogation on 13.10.1986 itself vide entry Ex. P/22A in the Roznamcha and that at about 7.00 a.m. on 14.10.1981, a death report Ex. P/9 was recorded at the police station. Rampura, at the instance of Ramesh respondent No. 6, to the effect that he had found "one unknown person" near a tree by the side of the tank rigging with pain in his chest and that as soon as respondent No. 6 reached near him, the said person died. The further case set up by SI Trivedi, respondent No. 1, incharge of the police station was that after making a Roznamcha entry at 7.00 a.m. about his departure from the police station he (respondent No. 1- Shyamsunder Trivedi) and Constable Rajaram respondent proceeded to the spot where the dead body was stated to be lying for conducting investigation under Section 174 Cr. P.C. He summoned Ramesh Chandra and Goverdhan respondents to the spot and in their presence prepared a panchnama Ex. P/27 of the dead body recording the opinion therein to the effect that no definite cause of death was known.

25. The First Additional Sessions Judge acquitted all the respondents of all the charges holding that there was no direct evidence to connect the respondents with the crime. The State of Madhya Pradesh went up in appeal against the order of acquittal and the High Court maintained the acquittal of respondents 2 to 7 but set aside the acquittal of respondent No. 1, Shyamsunder Trivedi for offences under Section 218 201 and 342 IPC. His acquittal for the offences under Section 302/149 and 147 IPC was, however, maintained. The State filed an appeal in this Court by special leave. This Court found that the following circumstances had been established by the prosecution beyond every reasonable doubt and coupled with the direct evidence of PWs 1, 3, 4, 8 and 18 those circumstances were consistent only with the hypotheses of the guilt of the respondents and were inconsistent with their innocence:

(a) that the deceased had been brought alive to the police station and was last seen alive there on 13.1081;

(b) that the dead body of the deceased was taken out of the police station on 14.10.81 at about 2 p.m. for being removed to the hospital;

(c) that SI Trivedi respondent No. 1, Ram Naresh Shukla, Respondent No. 3, Rajaram, respondent No. 4 and Ganiuddin respondent No. 5 were present at the police station and had all joined hands to dispose of the dead body of Nathu- Banjara;

(d) that SI Trivedi, respondent No. 1 created false evidence and fabricated false clues in the shape of documentary evidence with a view to screen the offence and for that matter, the offender;

(e) SI Trivedi respondent in connivance with some of his subordinates, respondents herein had taken steps to cremate the dead body in hot haste describing the deceased as a 'lavaris' though the identity of the deceased, when they had interrogated for a sufficient long time was well known to them.

and opined that:

The observations of the High Court that the presence and participation of these respondents in the crime is doubtful are not borne out from the evidence on the record and appear to be an unrealistic over simplification of the tell tale circumstances established by the prosecution.

26. One of us (namely, Anand. J.) speaking for the Court went on to observe:

The trial court and the High Court, if we may say so with respect, exhibited a total lack of sensitivity and a 'could not careless' attitude in appreciating the evidence on the record and thereby condoning the barbarous third degree methods which are still being used, at some police stations, despite being illegal. The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt, by the prosecution, ignoring the ground realities, the fact situations and the peculiar circumstances of a given case, as in the present case, often results in miscarriage of justice and makes the justice delivery system a suspect. In the ultimate analysis the society suffers and a criminal gets encouraged. Tortures in police custody, which of late are on the increase, receive encouragement by this type of an unrealistic approach of the Courts because it reinforces the belief in the mind of the police that no harm would come to them, if an old prisoner dies in the lock- up, because there would hardly be any evidence available to the prosecution to directly implicate them with the torture. The Courts, must not loose sight of the fact that death in police custody is perhaps one of the worst kind of crime in a civilised society, governed by the rule of law and poses a serious threat to an orderly civilised society.

This Court then suggested:

The Courts are also required to have a change in their outlook and attitude, particularly in cases involving custodial crimes and they should exhibit more sensitivity and adopt a realistic rather than a narrow technical approach, while dealing with the cases of custodial crime so that as far as possible within their powers, the guilty should not escape so that the victim of the crime has the satisfaction that ultimately the Majesty of Law has prevailed.

27. The State appeal was allowed and the acquittal of respondents 1, 3, 4 and 5 was set aside. The respondents were convicted for various offences including the offence under Section 304 Part 11/34 IPC and sentenced to various terms of imprisonment and fine ranging from Rs. 20,000 to Rs. 50,000. The fine was directed to be paid to the heirs of Nathu Banjara by way- of compensation. It was further directed:

The Trial Court shall ensure, in case the fine is deposited by the accused respondents, that the payment of the same is made to the heirs of deceased Nathu Banjara, and the Court shall take all such precautions as are necessary to see that the money is not allowed to fall into wrong hands and is utilised for the benefit of the members of the family of the deceased Nathu Banjara, and if found practical by deposit in Nationalised Bank or post office on such terms as the Trial. Court may in consultation with the heirs for the deceased consider fit and proper.

28. It needs no emphasis to say that when the crime goes unpunished, the criminals are encouraged and the society suffers. The victim of crime or his kith and kin become frustrated and contempt for law develops. It was considering these aspects that the Law Commission in its 113th Report recommended the insertion of Section 114B in the Indian Evidence Act. The Law Commission recommend in its 113th Report that in prosecution of a police officer for an alleged offence of having caused bodily injury to a person, if there was evidence that the injury was caused during the period when the person was in the custody of the police, the Court may presume that the injury was caused by the police officer having the custody of that person during that period. The Commission further recommended that the Court, while considering the question of presumption, should have regard to all relevant circumstances including the period of custody, statement made by the victim, medical evidence and the evidence which the Magistrate may have recorded. Change of burden of proof was, thus, advocated. In Shyam Sunder Trivedi's case (supra) this Court also expressed the hope that the Government and the legislature would give serious thought to the recommendation of the law Commission. Unfortunately, the suggested amendment, has not been incorporated in the statute so far. The need of amendment requires no emphasis - sharp rise in custodial violence, torture and death in custody, justifies the urgency for the amendment and we invite Parliament's attention to it.

29. Police is, no doubt, under a legal duty and has legitimate right to arrest a criminals and to interrogate him during the investigation of an offence but it must be remembered that the law does nor permit use of third degree methods or torture of accused in custody during interrogation and investigation with a view to solve the crime. End cannot justify the means. The interrogation and investigation into a crime should be in true sense purposeful to make the investigation

effective. By torturing a person and using third degree methods, the police would be accomplishing behind the closed doors what the demands of our legal order forbid. No society can permit it.

30. How do we check the abuse of police power? Transparency of action and accountability perhaps are two possible safeguards which this Court must insist upon. Attention is also required to be paid to properly develop work culture, training and orientation of the police force consistent with basic human values. Training methodology of the police needs restructuring. The force needs to be infused with basic human values and made sensitive to the constitutional ethos. Efforts must be made to change the attitude and approach of the police personnel handling investigations so that they do not sacrifice basic human values during interrogation and do not resort to questionable forms of interrogation. With a view to bring in transparency, the presence of the counsel of the arrestee at some point of time during the interrogation may deter the police from using third degree methods during interrogation.

31. Apart from the police, there are several other governmental authorities also like Directorate of Revenue Intelligence, Directorate of Enforcement, Coastal Guard, Central Reserve Police Force (CRPF), Border Security Force (BSF), The Central Industrial Security Force (CISF), the State Armed Police, Intelligence Agencies like the Intelligence Bureau, R.A.W., Central Bureau of Investigation (CBI), CID, Traffic Police, Mounted Police and ITBP, which have the power to detain a person and to interrogate him in connection with the investigation of economic offences, offences under the Essential Commodities Act, Excise and Customs Act, Foreign Exchange Regulation Act etc. There are instances of torture and death in custody of these authorities as well. In Re Death of Sawinder Singh Grover , (to which Kuldip Singh, J.) was a party) this Court took suo moto notice of the death of Sawinder Singh Grover during his custody with the Directorate of Enforcement. After getting an enquiry conducted by the Additional District Judge, which disclosed a prima facie case for investigation and prosecution, this Court directed the CBI to lodge a FIR and initiate criminal proceedings against all persons named in the report of the Additional District Judge and proceed against them. The Union of India/Directorate of Enforcement was also directed to pay a sum of Rs. 2 lacs to the widow of the deceased by way of ex gratia payment at the interim stage. Amendment of the relevant provisions of law to protect the interest of arrested person in such cases too is a genuine need.

32. There is one other aspect also which needs our consideration. We are conscious of the fact that the police in India have to perform a difficult and delicate task, particularly in view of the deteriorating law and order situation, communal riots, political turmoil, student unrest, terrorist activities, and among others the increasing number of underworld and armed gangs and criminals. Many hard core criminals like extremists, the terrorists, drug peddlers, smugglers who have organised gangs, have taken strong roots in the society. It is being said in certain quarters that with more and more liberalisation and enforcement of fundamental rights, it would lead to difficulties in the detection of crimes committed by such categories of hardened criminals by soft peddling interrogation. It is felt in those quarters that if we lay too much of emphasis on protection of their fundamental rights and human rights, such criminals may go scot- free without

exposing any element or iota of criminality with the result, the crime would go unpunished and in the ultimate analysis the society would suffer. The concern is genuine and the problem is real. To deal with such a situation, balanced approach is needed to meet the ends of justice. This is all the more so, in view of the expectation of the society that police must deal with the criminals in an efficient and effective manner and bring to book those who are involved in the crime. The cure cannot, however, be worse than the disease itself.

33. The response of the American Supreme Court to such an issue in Miranda v. Arizona, 384 US 436, is instructive. The Court said:

A recurrent argument, made in these cases is that society's need for interrogation out- weights the privilege. This argument is not unfamiliar to this Court. See e.g., Chambers v. Florida, 309 US 227 : 84 1 ed 716,: 60 S.Ct. 472 (1940). The whole thrust of our foregoing discussion demonstrates that the Constitution has prescribed the rights of the individual when confronted with the power of Government when it provided in the Fifth Amendment that an individual cannot be compelled to be a witness against himself. That right cannot be abridged.

(Emphasis ours)

34. There can be no gain saying that freedom of an individual must yield to the security of the State. The right of preventive detention of individuals in the interest of security of the State in various situations prescribed under different statues has been upheld by the Courts. The right to interrogate the detenues, culprits or arrestees in the interest of the nation, must take precedence over an individual's right to personal liberty. The latin maxim salus populi est suprema lex (the safety of the people is the supreme law) and salus republican est suprema. lex)(safety of the State is the supreme law) co- exist and are not only important and relevant but lie at the heart of the doctrine that the welfare of an individual must yield to that of the community. The action of the State, however, must be "right, just and fair". Using any form of torture for extracting any kind of information would neither be 'right nor just nor fair' and, therefore, would be impermissible, being offensive to Article 21. Such a crime- suspect must be interrogated- indeed subjected to sustained and scientific interrogation - determined in accordance with provisions of law. He cannot, however, be tortured or subjected to third degree methods or eliminated with a view to elicit information, extract confession or derive knowledge about his accomplices, weapons etc. His Constitutional right cannot be abridged except in the manner permitted by law, though in the very nature of things there would be qualitative difference in the method of interrogation of such a person as compared to an ordinary criminal. Challenge of terrorism must be met with innovative ideas and approach. State terrorism is no answer to combat terrorism. State terrorism would only provide legitimacy to 'terrorism'. That would be bad for the State, the community and above all for the Rule of law. The State must, therefore, ensure that various agencies deployed by it for combating terrorism act within the bounds of law and not become law unto themselves. That the terrorist has violated human rights of innocent citizens may render him liable for punishment but it cannot justify the violation of his human rights except in the manner permitted

by law. Need, therefore, is to develop scientific methods of investigation and train the investigators properly to interrogate to meet the challenge.

35. In addition to the statutory and constitutional requirements to which we have made a reference, we are of the view that it would be useful and effective to structure appropriate machinery for contemporaneous recording and notification of all cases of arrest and detention to bring in. transparency and accountability. It is desirable that the officer arresting a person should prepare a memo of his arrest at the time of arrest in the presence of at least one witness who may be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. The date and time of arrest shall be recorded in the memo which must also be counter signed by the arrestee.

36. We, therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by atleast one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation center or other lock- up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a penal for all Tehsils and Districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and state headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

37. Failure to comply with the requirements hereinabove mentioned shall apart from rendering the concerned official liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.

38. The requirements, referred to above flow from Articles 21 and 22(1) of the Constitution and need to be strictly followed. These would apply with equal force to the other governmental agencies also to which a reference has been made earlier.

39. These requirements are in addition to the constitutional and statutory safeguards and do not detract from various other directions given by the courts from time to time in connection with the safeguarding of the rights and dignity of the arrestee.

40. The requirements mentioned above shall be forwarded to the Director General of Police and the Home Secretary of every State/Union Territory and it shall be their obligation to circulate the same to every police station under their charge and get the same notified at every police station at a conspicuous place. It would also be useful and serve larger interest to broadcast the requirements on the All India Radio besides being shown on the National network of Doordarshan and by publishing and distributing pamphlets in the local language containing these requirements for information of the general public. Creating awareness about the rights of the arrestee would in our opinion be a step in the right direction to combat the evil of custodial crime and bring in transparency and accountability. It is hoped that these requirements would help to curb, if not totally eliminate, the use of questionable methods during interrogation and investigation leading to custodial commission of crimes.

PUNITIVE MEASURES

UBI JUS IBI REMEDIUM- There is no wrong without a remedy. The law wills that in every case where a man is wronged and undamaged he must have a remedy. A mere declaration of invalidity of an action or finding of custodial violence or death in lock- up, does not by itself provide any meaningful remedy to a person whose fundamental right to life has been infringed. Much more needs to be done.

41. Some punitive provisions are contained in the Indian Penal Code which seek to punish violation of right to life. Section 220 provides for punishment to an officer or authority who detains or keeps a person in confinement with a corrupt or malicious motive. Sections 330 and 331 provide for punishment of those who inflict injury or grievous hurt or a person to extort confession or information in regard to commission of an offence. Illustrations (a) and (b) to Section 330 make a police officer guilty of torturing a person in order to induce him to confess the commission of a crime or to induce him to point out places where stolen property is deposited. Section 330, therefore, directly makes torture during interrogation and investigation punishable under the Indian Penal Code. These statutory provisions, are however, inadequate to repair the wrong done to the citizens. Prosecution of the offender is an obligation of the State in case of every crime but the victim of crime needs to be compensated monetarily also. The Court, where the infringement of the fundamental right is established, therefore, cannot stop by giving a mere declaration. It must proceed further and give compensatory relief, not by way of damages as in a civil action but by way of compensation under the public law jurisdiction for the wrong done, due to breach of public duty by the State of not protecting the fundamental right to life of the citizen. To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience.

42. Article 9(5) of the International Covenant on Civil and Political Rights, 1966 (ICCPR) provides that "anyone who has been the victim of unlawful arrest or detention shall have enforceable right to compensation". Of course, the Government of India at the time of its ratification (of ICCPR) in 1979 had made a specific reservation to the effect that the Indian Legal system does not recognise a right to compensation for victims of unlawful arrest or detention and thus did not become a party to the Covenant. That reservation, however, has now lost its relevance in view of the law laid down by this Court in a number of cases awarding compensation for the infringement of the fundamental right to life of a citizen. See with advantage Rudal Shah v. State of Bihar MANU/SC/0380/1983 : 1983CriLJ1644 ; Sebastian M. Hongrey v. Union of India MANU/SC/0163/1984 : [1984]3SCR22 ; Bhim Singh v. State of J and K MANU/SC/0064/1985 : 1986CriLJ192 and Saheli v. Commissioner of Police, Delhi MANU/SC/0478/1989 : AIR1990SC513 . There is indeed no express provision in the Constitution of India for grant of compensation for violation of a fundamental right to life, nonetheless, this Court has judicially evolved a right to compensation in cases of established unconstitutional deprivation of personal liberty or life.

43. Till about two decades ago the liability of the Government for tortious act of its public servants was generally limited and the person affected could enforce his right in tort by filing a civil suit and there again the defence of sovereign immunity was allowed to have its play. For the violation of the fundamental right to life or the basic human rights, however, this Court has taken the view that the defence of sovereign immunity is not available to the State for the tortious acts of the public servants and for the established violation of the rights guaranteed by Article 21 of the Constitution of India. In Neelabati Behera v. State, (supra) the decision of this Court in Kasturi Lal Ralia Ram Jain v. State of U.P. MANU/SC/0086/1964 : (1966)IILLJ583SC , wherein the plea of sovereign immunity had been upheld in a case of vicarious liability of the State for the tort committed by its employees was explained thus:

In this context, it is sufficient to say that the decision of this Court in Kasturilal upholding the State's plea of sovereign immunity for tortious acts of its servants is confined to the sphere of liability in tort, which is distinct from the State's liability for contravention of fundamental rights to which the doctrine of sovereign immunity has no application in the constitutional scheme, and is no defence to the constitutional remedy under Articles 32 and 226 of the Constitution which enables award of compensation for contravention of fundamental rights, when the only practicable mode of enforcement of the fundamental rights can be the award of compensation. The decisions of this Court in Rudul Sah and others in that line relate to award of compensation for contravention of fundamental rights, in the constitutional remedy under Articles 32 and 226 of the Constitution. On the other hand, Kasturilal related to the value of goods seized and not returned to the owner due to the fault of Government Servants, the claim being of damages for the tort of conversion under the ordinary process, and not a claim for compensation for violation of fundamental rights. Kasturilal is, therefore, inapplicable in this context and distinguishable.

44. The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the

private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 21 and 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the Courts under the public law jurisdiction for penalising the wrong doer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

45. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A Court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim- civil action for damages is a long drawn and cumbersome judicial process. Monetary compensation for redressal by the Court finding the infringement of the indefeasible right to life of the citizen is, therefore, a useful and at times perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the bread winner of the family.

46. In Nilabati Bahera's case (supra), it was held:

Adverting to the grant of relief to the heirs of a victim of custodial death for the infraction or invasion of his rights guaranteed under Article 21 of Constitution of India, it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortious act of the State as that remedy in private law indeed is available to the aggrieved party. The citizen complaining of the infringement of the indefeasible right under Article 21 of the Constitution cannot be told that for the established violation of the fundamental right to life, he cannot get any relief under the public law by the courts exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writs and the courts have, therefore, to evolve new tools to give relief in public law by moulding it according to the situation with a view to preserve and protect the Rule of Law, while concluding his first Hamlyn Lecture in 1949 under the title "Freedom under the Law" Lord Denning in his own style warned:

No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do: and will not do things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power is not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up- to

date machinery, by declarations, injunctions and actions for negligence... This is not the task of parliament.... The courts must do this. Of all the great tasks that lie ahead this is the greatest. Properly exercised the new powers of the executive lead to the welfare state; but abused they lead to a totalitarian state. None such must ever be allowed in this country.

47. A similar approach of redressing the wrong by award of monetary compensation against the State for its failure to protect the fundamental rights of the citizen has been adopted by the Courts of Ireland, which has a written constitution, guaranteeing fundamental rights, but which also like the Indian Constitution contains no provision of remedy for the infringement of those rights. That has, however, not prevented the Courts in Ireland from developing remedies, including the award of damages, not only against individuals guilty of infringement, but against the State itself.

48. The informative and educative observations of O'Dalaigh CJ in The State (At the Prosecution of Quinn) v. Ryan (1965) IR 70 122, deserve special notice. The Learned Chief Justice said:

It was not the intention of the Constitution in guaranteeing the fundamental rights of the citizen that these rights should be set at nought or circumvented. The intention was that rights of substance were being assured to the individual and that the Courts were the custodians of those rights. As a necessary corollary, it follows that no one can with impunity set these rights at bought or circumvent them, and that the Court's powers in this regard are as ample as the defence of the Constitution requires.

49. In Byrne v. Ireland (1972) IR 241, Walsh, J. opined at p 264:

In several parts in the Constitution duties to make certain provisions for the benefit of the citizens are imposed on the State in terms which bestow rights upon the citizens and, unless some contrary provision appears in the Constitution, the Constitution must be deemed to have created a remedy for the enforcement of these rights. It follows that, where the right is one guaranteed by the State, it is against the State that the remedy must be sought if there has been a failure to discharge the constitutional obligation imposed.

50. In Maharaj v. Attorney General of Trinidad and Tobago (1978) 2 All E.R. 670, The Privy Council while interpreting Section 6 of the Constitution of Trinidad and Tobago held that though not expressly provided therein, it permitted an order for monetary compensation, by way of 'redress' for contravention of the basic human rights and fundamental freedoms. Lord Diplock speaking for the majority said:

It was argued on behalf of the Attorney General that Section 6(2) does not permit of an order for monetary compensation despite the fact that this kind of redress was ordered in Jaundou v.

Attorney General of Guvana. Reliance was placed on the reference in the sub- section to 'enforcing, or securing the enforcement of, any of the provisions of the said foregoing sections' as the purpose for which orders etc. could be made. An order for payment of compensation, it was submitted, did not amount to the enforcement of the rights that had been contravened. In their Lordships' view an order for payment of compensation when a right protected under Section 1 'has been' contravened is clearly a form of 'redress' which a person is entitled to claim under Section 6(1) and may well be the only practicable form of redress, as by now it is in the instant case. The jurisdiction to make such an order is conferred on the High Court by para (a) of Section 6(2), viz. jurisdiction 'to hear and determine any application made by any person in pursuance of Sub- section (1) of this section'. The very wise powers to make orders, issue writs and give directions are ancillary to this.

51. Lord Diplock then went on to observe (at page 680):

Finally, their Lordships would say something about the measure of monetary compensation recoverable under Section 16 where the contravention of the claimant's constitutional rights consists of deprivation of liberty otherwise than by due process of law. The claim is not a claim in private law for damages for the tort of false imprisonment, under which the damages recoverable are at large and would include damages for loss of reputation. It is a claim in public law for compensation for deprivation of liberty alone.

52. In Simpson v. Attorney General [Baigent's case] (1994) NZLR. 667 the Court of Appeal in New Zealand dealt with the issue in a very elaborate manner by reference to a catena of authorities from different jurisdictions. It considered the applicability of the doctrine of vicarious liability for torts, like unlawful search, committed by the police officials which violate the New Zealand Bill of Rights Act, 1990. While dealing with the enforcement of rights and freedoms as guaranteed by the Bill of Rights for which no specific remedy was provided. Hardie Boys, J. observed:

The New Zealand Bill of Rights Act, unless it is to be no more than an empty statement, is a commitment by the Crown that those who in the three branches of the government exercise its functions, powers and duties will observe the rights that the Bill affirms. It is I consider implicit in that commitment indeed essential to its worth, that the Courts are not only to observe the Bill in the discharge of their own duties but are able to grant appropriate and effective remedies where rights have been infringed. I see no reason to think that this should depend on the terms of a written constitution. Enjoyment of the basic human rights are the entitlement of every citizen, and their protection the obligation of every civilised state. They are inherent in and essential to the structure of society. They do not depend on the legal or constitutional form in which they are declared. The reasoning that has led the Privy Council and the Courts of Ireland and India to the conclusions reached in the cases to which I have referred (and they are but a sample) is in my opinion equally valid to the New Zealand Bill of Rights Act if it is to have life and meaning.

53. The Court of Appeal relied upon the judgments of the Irish Courts the Privy Council and referred to the law laid down in Nilabati Behera v. State, (supra) thus:

Another valuable authority comes from India, where the Constitution empowers the Supreme Court to enforce rights guaranteed under it. In Nilabati Bahera v. State of Orissa (1993) Crl. LJ 2899, the Supreme Court awarded damages against the State to the mother of a young man beaten to death in police custody. The Court held that its power of enforcement imposed a duty to "forge new tools", of which compensation was an appropriate one where that was the only mode of redress available. This was not a remedy in tort, but one in public law based on strict liability for the contravention of fundamental rights to which the principle of sovereign immunity does not apply. These observations of Anand, J. at p. 2912 may be noted.

The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much as protector and guarantor of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights.

54. Each of the five members of the Court of Appeal in Simpson's case (supra) delivered a separate judgment but there was unanimity of opinion regarding the grant of pecuniary compensation to the victim, for the contravention of his rights guaranteed under the Bill of Right Act, notwithstanding the absence of an express provision in that behalf in the Bill of Rights Act.

55. Thus, to sum up, it is now a well accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrong doer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of

them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit.

56. Before parting with this judgment we wish to place on record our appreciation for the learned Counsel appearing for the States in general and Dr. A.M. Singhvi, learned senior counsel who assisted the Court amicus curiae in particular for the valuable assistance rendered by them.

MANU/SC/0382/1983

Back to Section 46 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Writ Petition (Criminal) Nos. 1053- 1054 of 1982

Decided On: 15.02.1983

Sheela Barse Vs. State of Maharashtra

Hon'ble Judges/Coram:

A.N. Sen, P.N. Bhagwati and R.S. Pathak, JJ.

JUDGMENT

1. This writ petition is based on a letter addressed by Sheela Barse, a journalist, complaining of custodial violence to women prisoners whilst confined in the police lock up in the city of Bombay. The petitioner stated in her letter that she interviewed fifteen women prisoners in the Bombay Central Jail with the permission of the Inspector General of Prisons between 11 and 17th May, 1982 and five out of them told her that they had been assaulted by the police in the police lock up. Of these five who complained of having been assaulted by the police, the petitioner particularly mentioned the cases of two, namely, Devamma and Pushpa Paeen who were allegedly assaulted and tortured whilst they were in the police lock up. It is not necessary for the purpose of this writ petition to go into the various allegations in regard to the ill- treatment meted out to the women prisoners in the police lock up and particularly the torture and beating to which Devamma and Pushpa Paeen were said to have been subjected because we do not propose to investigate into the correctness of these allegations which have been disputed on behalf of the State of Maharashtra. But, since these allegations were made by the women prisoners interviewed by the petitioner and particularly by Devamma and Pushpa Paeen and there was no reason to believe that a journalist like the petitioner would invent or fabricate such allegations if they were not made to her by the women prisoners, this Court treated the letter of the petitioner as a writ petition and issued notice to the State of Maharashtra, Inspector General of Prisons, Maharashtra, Superintendent, Bombay Central Jail and the Inspector General of Police, Maharashtra calling upon them to show cause why the writ petition should not be allowed. It appears that on the returnable date of the show cause notice no affidavit was filed on behalf of any of the parties to whom show cause notice was issued and this Court therefore adjourned the hearing of the writ petition to enable the State of Maharashtra and other parties to file an affidavit in reply to the averments made in the letter of the petitioner. this Court also directed that in the meanwhile Dr. (Miss) A.R. Desai, Director of College of Social Work, Nirmala Niketan, Bombay will visit the Bombay Central Jail and interview women prisoners lodged there including Devamma and Pushpa Paeen without any one else being present at the time of interview and ascertain whether they had been subjected to any torture or ill- treatment and submit a report to this Court on or before 30th August, 1982. The State Government and the Inspector General of Prisons were directed to provide all facilities to Dr. Miss A.R. Desai to carry out this assignment entrusted to her. The object of assigning this commission to Dr. Miss A.R. Desai was to ascertain whether

allegations of torture and ill- treatment as set out in the letter of the petitioner were, in fact, made by the women prisoners including Devamma and Pushpa Paeen to the petitioner and what was the truth in regard to such allegations. Pursuant to the order made by this Court, Dr. Miss A.R. Desai visited Bombay Central prison and after interviewing women prisoners lodged there, made a detailed report to this Court. The Report is a highly interesting and instructive socio- legal document which provides an insight into the problems and difficulties facing women prisoners and we must express our sense of gratitude to Dr. Miss A.R. Desai for the trouble taken by her in submitting such a wonderfully thorough and perceptive report. We are not concerned here directly with the conditions prevailing in the Bombay Central Jail or other jails in the State of Maharashtra because the primary question which is raised in the letter of the petitioner relates to the safety and security of women prisoners in police lock up and their protection against torture and ill- treatment. But even so we would strongly recommend to the Inspector General of Prisons, Maharashtra that he may have a look at this Report made by Dr. Miss A.R. Deasai and consider what further steps are necessary to be taken in order to improve the conditions in the Bombay Central Jail and other jails in the State of Maharashtra and to make life for the women prisoners more easily bearable by them. There is only one matter about which we would like to give directions in this writ petition and that is in regard to the need to provide legal assistance not only to women prisoners but to all prisoners lodged in the jails in the State of Maharashtra. We have already had occasion to point out in several decisions given by this Court that legal assistance to a poor or indigent accused who is arrested and put in jeopardy of his life or personal liberty is a constitutional imperative mandated not only by Article 39 but also by Articles 14 and 21 of the Constitution. It is a necessary sine qua non of justice and where it is not provided, injustice is likely to result and undeniably every act of injustice corrodes the foundations of democracy and Rule of Law, because nothing rankles more in the human heart than a feeling of injustice and those who suffer and cannot get justice because they are priced out of the legal system, lose faith in the legal process and a feeling begins to overtake them that democracy and Rule of Law are merely slogans or myths intended to perpetuate the domination of the rich and the powerful and to protect the establishment and the vested interests. Imagine the helpless condition of a prisoner who is lodged in a jail who does not know to whom he can turn for help in order to vindicate his innocence or defend his constitutional or legal rights or to protect himself against torture and ill- treatment or oppression and harassment at the hands of his custodians. It is also possible that he or the members of his family may have other problems where legal assistance is required but by reason of his being incarcerated, it may be difficult if not impossible for him or the members of his family to obtain proper legal advice or aid. It is therefore absolutely essential that legal assistance must be made available to prisoners in jails whether they be under-trial or convicted prisoners.

2. The Report of Dr. Miss A.R. Desai shows that there is no adequate arrangement for providing legal assistance to women prisoners, and we dare say the situation which prevails in the matter of providing legal assistance in the case of women prisoners must also be the same in regard to male prisoners. It is pointed out in the Report of Dr. Miss A.R. Desai that two prisoners in the Bombay Central Jail, one a German national and the other a That national were duped and defrauded by a lawyer, named Mohan Ajwani who misappropriated almost half the belongings of the German national and the jewellery of the That national on the plea that he was retaining such belongings and jewellery for payment of his fees. We do not know whether this allegation made by these two German and That women prisoners is true or not but, if true, it is a matter of

great shame for the legal profession and it needs to be thoroughly investigated. The profession of law is a noble profession which has always regarded itself as a branch of social service and a lawyer owes a duty to the society to help people in distress and more so when those in distress are women and in jail. Lawyers must realise that law is not a pleasant retreat where we are concerned merely with mechanical interpretation of rules made by the legislature but it is a teeming open ended avenue through which most of the traffic of human existence passes. There are many casualties of this traffic and it is the function of the legal profession to help these casualties in a spirit of dedication and service. It is for the lawyers to minimise the numbers of those casualties who still go without legal assistance. The lawyers must positively reach out to those sections of humanity who are poor, illiterate and ignorant and who, when they are placed in a crisis such as an accusation of crime or arrest or imprisonment, do not know what to do or where to go or to whom to turn. If lawyers, instead of coming to the rescue of persons in distress, exploit and prey upon them, the legal profession will come into disrepute and large masses of people in the country would lose faith in lawyers and that would be destructive of democracy and Rule of Law. If it is true- that these two German and That women prisoners were treated by Mohan Ajwani in the manner alleged by them- and this is a question on which we do not wish to express any opinion ex parte it deserves the strongest condemnation. We would therefore direct that the allegations made by the two German and That women prisoners as set out in paragraph 9.2 of the Report of Dr. Miss A.R. Desai be referred to the Maharashtra State Bar Council for taking such action as may be deemed fit.

3. But, this incident highlights the need for setting up a machinery for providing legal assistance to prisoners in jails. There is fortunately a legal aid organisation in the State of Maharashtra beaded by the Maharashtra State Board of Legal Aid and Advice which has set up committees at the High Court and district levels. We would therefore direct the Inspector General of Prisons in Maharashtra t issue a circular to all Superintendents of Police in Maharashtra requiring them-

(1) to send a list of all under- trial prisoners to the Legal Aid Committee of the district in which the jail is situate giving particulars of the date of entry of the under- trial prisoners in the jail and to the extent possible, of the offences with which they are charged and showing separately male prisoners and female prisoners.

(2) to furnish to the concerned District Legal Aid Committee a list giving particulars of the persons arrested on suspicion under Section 41 of the CrPC who have been in jail beyond a period of 15 days.

(3) to provide facilities to the lawyers nominated by the concerned District Legal Aid Committee to enter the jail and to interview the prisoners who have expressed their desire to have their assistance.

(4) to furnish to the lawyers nominated by the concerned District Legal Aid Committee whatever information is required by them in regard to the prisoners in jail.

(5) to put up notices at prominent places in the jail that lawyers nominated by the concerned District Legal Aid Committee would be visiting the jail on particular days and that any prisoner who desires to have their assistance can meet them and avail of their counselling services; and

(6) to allow any prisoner who desires to meet the lawyers nominated by the concerned District Legal Aid Committee to interview and meet such lawyers regarding any matter for which he requires legal assistance and such interview should be within sight but out of hearing of any jail official.

4. We would also direct that in order to effectively carry out these directions which are being given by us to the Inspector General of Prisons, the Maharashtra State Board of Legal Aid and Advice will instruct the District Legal Aid Committees of the districts in which jails are situate to nominate a couple of selected lawyers practising in the district Court to visit the jail or jails in the district atleast once in a fortnight with a view to ascertaining whether the law laid down by the Supreme Court and the High Court of Maharashtra in regard to the rights of prisoners including the right to apply for bail and the right to legal aid is being properly and effectively implemented and to interview the prisoners who have expressed their desire to obtain legal assistance and to provide them such legal assistance as may be necessary for the purpose of applying for release on bail or parole and ensuring them adequate legal representation in Courts, including filing or preparation of appeals or revision applications against convictions and legal aid and advice in regard to any other problems which may be facing them or the members of their families. The Maharashtra State Board of Legal Aid & Advice will call for periodic reports from the district legal aid committees with a view to ensuring that these directions given by us are being properly carried out. We would also direct the Maharashtra State Board of Legal Aid and Advice to pay an honorarium of Rs. 25/- per lawyer for every visit to the jail together with reasonable travelling expenses from the court house to jail and back. These directions in so far as the city of Bombay is concerned, shall be carried out by substituting the High Court Legal Aid Committee for the District Legal Aid Committee, since there is no District Legal aid committee in the city of Bombay but the Legal Aid Programme is carried out by the High Court Legal Aid Committee. We may point out that this procedure is being followed with immense benefit to the prisoners in jails by the Tamil Nadu State Legal Aid & Advice Board.

5. We may now take up the question as to how protection can be accorded to the women prisoners in police lock ups. We put forward several suggestions to the learned Advocate appearing on behalf of the petitioner and the State of Maharashtra in the course of the hearing and there was a meaningful and constructive debate in Court. The State of Maharashtra offered its full co-operation to the Court in laying down the guidelines which should be followed so far as women prisoners in police lock ups are concerned and most of the as suggestions made by us were readily accepted by the State of Maharashtra. We propose to give the following directions as a result of

meaningful and constructive debate in Court in regard to various aspects of the question argued before us.

(i) We would direct that four or five police lock ups should be selected in reasonably good localities where only female suspects should be kept and they should be guarded by female constables. Female suspects should not be kept in police lock up in which male suspects are detained. The State of Maharashtra has intimated to us that there are already three cells where female suspects are kept, and are guarded by female constables and has assured the Court that two more cells with similar arrangements will be provided exclusively for female suspects.

(ii) We would further direct that interrogation of females should be carried out only in the presence of female police officers/constables.

(iii) Whenever a person is arrested by the police without warrant, he must be immediately informed of the grounds of his arrest and in case of every arrest it must immediately be made known to the arrested person that he is entitled to apply for bail. The Maharashtra State Board of Legal Aid & Advice will forthwith get a pamphlet prepared setting out the legal rights of an arrested person and the State of Maharashtra will bring oat sufficient number of printed copies of the pamphlet in Marathi which is the languages of the people in the State of Maharashtra as also in Hindi and English and printed copies of the pamphlet in all the three languages shall be affixed in each cell in every police lock up and shall be read out to the arrested person in any of the three languages which he understands as soon as he is brought to the police station.

(iv) We would also direct that whenever a person is arrested by the police and taken to the police lock up, the police will immediately give an intimation of the fact of such arrest to the nearest Legal Aid Committee and such Legal Aid Committee will take immediate steps for the purpose of providing legal assistance to the arrested person at State cost provided he is willing to accept such legal assistance. The State Government will provide necessary funds to the concerned Legal Aid Committee for carrying out this direction.

(v) We would direct that in the city of Bombay, a City Sessions Judge, to be nominated by the principal Judge of the City Civil Court, preferably a lady Judge, if there is one, shall make surprise visits to police lock ups in the city periodically with a view to providing the arrested persons an opportunity to air their grievances and ascertaining what are the conditions in the police lock ups and whether the requisite facilities are being provided and the provisions of law are being observed and the directions given by us are being carried out. If it is found as a result of inspection that there are any lapses on the part of the police authorities, the City Sessions Judge shall bring them to the notice of the Commissioner of Police and if necessary to the notice of the Home Department and if even this approach fails, the City Sessions Judge may draw the attention of the Chief Justice of the High Court of Maharashtra to such lapses. This direction in regard to police

lock ups at the districts head quarters, shall be carried out by the Sessions Judge of the district concerned.

(vi) We would direct that as soon as a person is arrested, the police must immediately obtain from him the name of any relative or friend whom he would like to be informed about his arrest and the police should get in touch with such relative or friend and inform him about the arrest; and lastly.

(vii) We would direct that the magistrate before whom an arrested person is produced shall enquire from the arrested person whether he has any complaint of torture or mal- treatment in police custody and inform him that he has right under Section 54 of the CrPC 1973 to be medically examined. We are aware that Section 54 of the CrPC 1973 undoubtedly provides for examination of an arrested person by a medical practitioner at the request of the arrested person and it is a right conferred on the arrested person. But very often the arrested person is not aware of this right and on account of, his ignorance, he is unable to exercise this right even though he may have been tortured or maltreated by the police in police lock up. It is for this reason that we are giving a specific direction requiring the magistrate to inform the arrested person about this right of medical examination in case he has any complaint of torture or mal- treatment in police custody.

6. We have no doubt that if these directions which are being given by us are carried out both in letter and spirit, they will afford considerable protection to prisoners in police lock ups and save them from possible torture or ill- treatment. The writ petition will stand disposed of in terms of this order.

MANU/SC/0311/1994

IN THE SUPREME COURT OF INDIA

Writ Petition (Criminal) No. 9 of 1994

Decided On: 25.04.1994

Joginder Kumar Vs. State of U.P. and Ors.

Back to Section 50 of Code of Criminal Procedure, 1973

Back to Section 56 of Code of Criminal Procedure, 1973

Hon'ble Judges/Coram:

M.N. Venkatachaliah, C.J., S. Mohan and Dr. A.S. Anand, JJ.

ORDER

1. This is a petition under Article 32 of the Constitution of India. The Petitioner is a young man of 28 years of age who has completed his L.L.B. and has enrolled himself as an advocate. The Senior Superintendent of police, Ghaziabad, Respondent No. 4 called the Petitioner in his office for making enquiries in some case. The Petitioner on 7- 1- 1994 at about 10 O'clock appeared personally along with his brothers Sri. Mangeran Choudhary, Nahar Singh Yadav, Harinder Singh Tewatia, Amar Singh and Ors. before the Respondent No. 4. Respondent No. 4 kept the Petitioner in his custody. When the brother of the Petitioner made enquiries about the Petitioner, he was told that the Petitioner will be set free in the evening after making some enquiries in connection with a case. On 7- 1- 1994 at about 12.55 p.m. the brother of the Petitioner being apprehensive of the intentions of Respondent No. 4, sent a telegram to the Chief Minister of U.P. apprehending his brother's implication in some criminal case and also further apprehending the Petitioner being shot dead in fake encounter.

2. In spite of the frequent enquiries, the whereabouts of the Petitioner could not be located. On the evening of 7- 1- 1994, it came to be known that Petitioner is detained in illegal custody of 5th Respondent SHO, P.S. Mussoria.

3. On 8- 1- 1994, it was informed that the 5th Respondent was keeping the Petitioner in detention to make further enquiries in some case. So far as Petitioner has not been. produced before the concerned Magistrate. instead the 5th Respondent directed the relative of the Petitioner to approach the 4th Respondent S.S.P. Ghaziabad for release of the Petitioner.

4. On 9- 1- 1994, in the evening when the brother of Petitioner along with relatives went to P.S. Mussorie to enquire about the well- being of his brother, it was found that the Petitioner had been taken to some undisclosed destination. Under these circumstances, the present petition has been preferred for the release of Joginder Kumar, the Petitioner, herein.

5. This Court on 11- 1- 1994 ordered notice to State of U.P. as well as S.S.P. Ghaziabad.

6. The said Senior Superintendent of Police along with Petitioner appeared before this Court on 14- 1- 1994. According to him, the Petitioner has been released. To question as to why the Petitioner was detained for a period of five days, he would submit that the Petitioner was not in detention at all. His help was taken for detecting some cases relating to abduction and the Petitioner was helpful in co- operating with the police. Therefore, there is no question of detaining him. Though, as on today the relief in habeas corpus petition cannot be granted yet this Court cannot put an end to the writ petition on this score. Where was the need to detain the Petitioner for five days, if really the Petitioner "was not in detention, why was not this Court informed are some questions which remain unanswered, If really, there was a detention for five days, for what reason was he detained? These matters require to be enquired into. Therefore, we direct the learned District Judge. Ghaziabad to make a detailed enquiry and submit his report within four weeks from the date of receipt of this order.

7. The horizon of human rights is expending. At the same time, the Crime rate is also increasing! of late, this Court has been receiving complaints about violation of human rights because of indiscriminate arrests. How are we to strike a balance between the two?

8. A realistic approach should be made in this direction, The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively: of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first- the criminal or society, the law violator or the law abider;

of meeting the challenge which Mr. Justice Cardozo so forth rightly met when he wrestled with a similar task of balancing individual rights against society's rights and wisely held that the exclusion rule was bad law, that society come first, and that the criminal should not go free because the constable blundered. In People v. Defore 242 N Y. 13, 24: 150 N.E. 585, 589 (1926), Justice Cardozo observed:

The question is whether protection for the individual would not be gained at a disproportionate loss of a protection for society. On the one side is the social need that crime shall be repressed, on the other, the social need that law shall not be flouted by the insolence of, office. There are dangers in any choice. The rule of the Adams case (People v. Adams 176 N.Y. 351: 68 N.E. 636 (1903) strikes a balance between opposing interests. We must hold it to be the law until those - organs of Government by which a change of public policy is normally effected shall give notice to the courts that change has come to pass.

To the same effect is the statement by Judge Learned Hand. In Re Fried 161 F. 2d 453, 465 (2d Cir. 1947):

The protection of the individual from oppression and abuse by the police and other enforcing officers is indeed a major interest in a free society; but so is the effective prosecution of Crime, an interest which at times seems to be forgotten. Perfection is impossible; like other human institutions criminal proceedings must be a compromise.

9. The quality of a nation's civilisation can. be largely measured by the methods it uses in the enforcement of criminal law.

This Court in Smt. Nandini Satpathy v. P.L. Dani MANU/SC/0139/1978 : AIR 1978 SC 1025 at page 1032 quoting Lewis Mayers stated:

The paradox has been put sharply by Lewis Mayers:

To strike the balance between the needs of law enforcement on the one hand and the protection of the citizen from oppression and injustice at the hands of the law- enforcement machinery on the other is perennial a problem of statecraft. The pendulum over the years has swung to the right.

Again in paragraph 21 at page 1033 it was observed:

We have earlier spoken of the conflicting claims requiring reconciliation. Speaking pragmatically, there exists a rivalry between' societal interest in effecting crime detection and constitutional rights which accused individuals possess. Emphasis may shift, depending on circumstances, in balancing these interests as has been happening in America. Since Miranda (1966) 384 U.S. 436) there has been retreat from stress on protection of the accused and gravitation towards society's interest in convicting law- brakers. Currently, the trend in the Americal jurisdiction according to legal journals, is that 'respect for (constitutional) principles is eroded when they leap their proper bounds to interfere with the legitimate interests of society in enforcement of its laws..... (Couch v. United States MANU/USSC/0164/1973 : (1972) 409 U.S. 322, 336. Our constitutional perspective has, therefore, to be relative and cannot afford to be absolutist, especially when torture technology, crime escalation and other social variables affect the application of principles in producing humane justice.

10. The National Police Commission in its Third Report referring to the quality of arrests by the Police in India mentioned power of arrest as one of the Chief sources of corruption in the police. The report suggested that, by and large, nearly 60% of the arrests were either unnecessary or unjustified and that such unjustified police action accounted for 43.2% of the expenditure of the jails. The said Commission in its Third Report at page 31 observed thus:

It is obvious that a major portion of the arrests were connected with very minor prosecutions and cannot, therefore, be regarded as quite necessary from the point of view of crime prevention. Continued detention in jail of the persons so arrested has also meant avoidable expenditure on their maintenance. In the above period it was estimated that 43.2% of the expenditure in the connected jails was over such prisoners only who in the ultimate analysis need not have been arrested at all.

11. As on today, arrest with or without warrant depending upon the circumstances of a particular case is governed by the Code of Criminal Procedure.

12. Whenever a public servant is arrested that matter should be intimated to the superior officers, if possible, before the arrest and in any case, immediately after the arrest. In cases of members of Armed Forces, Army, Navy or Air Force, intimation should be sent to the Officer commanding the unit to which the member belongs. It should be done immediately after the arrest is effected.

13. Under Rule 229 of the Procedure and Conduct of Business in Lok Sobha, when a Member is arrested on a criminal charge or is detained under an executive order of the Magistrate, the executive authority must inform without delay such fact to the Speaker. As soon as any arrest, detention, conviction or release is effected intimation should invariably be sent to the Government concerned concurrently with the intimation sent to the Speaker/Chairman of the Legislative Assembly/Council/Lok Sabha Rajya Sabha. This should be sent through telegrams and also by post and the intimation should not be on the ground of holiday.

14. With regard to the apprehension of juvenile offenders Section 58 of the Criminal Procedure lays down as under:

Officers in charge of police Stations shall report to the District Magistrate or, if he so directs, to the Sub- Divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations whether such persons have been admitted to bail or otherwise.

Section 19(a) of the Children Act makes the following provision:

the parent or guardian of the child, if he can be found, of such arrest and direct him to be present at the children's court before which the child will appear;

15. In England, the police powers of Arrest Detention and interrogation have been streamlined by the Police and Criminal Evidence Act, 1984 based on the report of Sir Cyril Philips Committee ("Report of a Royal Commission on Criminal Procedure. Command - papers 8092 19811).

16. It is worth quoting the following passage from Police Powers and Accountability by John L. Lambert, page 93:

More recently, the Royal Commission on Criminal Procedure recognised that "there is a critically important relationship between the police and the public in the detection and investigation of crime" and suggested that public confidence in police powers required that these conform to three principal standards: fairness, openness and workability.

(Emphasis supplied)

17. The Royal Commission suggested restrictions on the power of arrest on the basis of the 'necessity of principle'. The two main objectives of this principle are that police can exercise powers only in those cases in which it was genuinely necessary to enable them to execute their duty to prevent the Commission of offences, to investigate crime. The Royal Commission was of the view that such restrictions would diminish the use of arrest and produce more uniform use of powers. The Royal Commission Report on Criminal Procedure - Sir Cyril Philips at page 45 said:

...We recommend that detention upon arrest for an offence should continue only on one or more of the following criteria:

(a) the person's unwillingness to identify himself so that a summons may be served upon him;

(b) the need to prevent the continuation or repetition of that offence;

(c) the need to protect the arrested person himself or other persons or property;

(d) the need to secure or preserve evidence of or relating to that offence or to obtain such evidence from the suspect by questioning him; and

(e) the likelihood of the person failing to appear at court to answer any charge made against him.

The Royal Commission in the above said Report at page 46 also suggested:

To help to reduce the use of arrest we would also propose the introduction here of a scheme that is used in Ontario enabling a police officer to issue what is called an appearance notice. That procedure can be used to obtain attendance at the police station without resorting to arrest

provided a power to arrest exists, for example to be fingerprinted or to participate in an identification parade. It could also be extended to attendance for interview at a time convenient both to the suspect and to the police officer investigating the case....

In India, Third Report of the National Police Commission at page 32 also suggested:

....An arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances:

(i) The case involves a grave offence like murder; dacoity, robbery, rape, etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror stricken victims.

(ii) The accused is likely to abscond and evade the processes of law

(iii) The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint.

(iv) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.

It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines....

18. The above guidelines are merely incidents of personal liberty guaranteed under the Constitution of India. No arrest can be made because it is lawful for the Police Officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another.

The Police Officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock- up of a person can cause incalculable harm to the reputation and self esteem of a person.

No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a Police Officer in the interest of protection of the constitutional rights of a citizen" and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bonafides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest.

Denying a person of his liberty is a serious matter,

The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the

opinion of the Officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a Police Officer issues notice to person to attend the Station House and not to leave Station without permission would do.

19. Then, there is the right to have someone informed. That right of the arrested person, upon request, to have someone informed and to consult privately with a lawyer was recognised by Section 56(1) of the Police and Criminal Evidence Act, 1984 in England. (Civil Actions Against the Police - Richard Clayton and Hugh Tomlinson; page 313). That Section provides:

Where a person has been arrested and is being held in custody in a police station or other premises, he shall be entitled, if he so requests, to have one friend or relative or other person who is known to him or who is likely to take an interest in his welfare told, as soon as is practicable except to the extent that delay is permitted by this section, that he has been arrested and is being detained there.

These rights are inherent in Articles 21 and 22(1) of the Constitution and require to be recognised and scrupulously protected. For effective enforcement of these fundamental rights, we issue the following requirements:

1. An arrested person being held in custody is entitled, if he so requests to have one friend, relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where is being detained.

2. The Police Officer shall inform the arrested person when he is brought to the police station of this right.

3. An entry shall be required to be made in the Diary as to who was informed of the arrest. These protections from power must be held to flow from Articles 21 and 22(1) and enforced strictly.

It shall be the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that these requirements have been complied with.

20. The above requirements shall be followed in all cases of arrest till legal provisions are made in this behalf. These requirements shall be in addition to the right of the' arrested persons found in the various Police Manuals. These requirements are not exhaustive. The Directors General of Police of all the Suites in India shall issue necessary instructions requiring due observance of these requirements. In addition, departmental instruction shall also be issued that a police officer making an arrest should also record in the case diary, the reasons for making the arrest.

MANU/SC/0307/1993

Back to Section 57 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Writ Petn. No. 488 of 1988

Decided On: 24.03.1993

Nilabati Behera Vs. State of Orissa and Ors.

Hon'ble Judges/Coram:

J.S. Verma, Dr. A.S. Anand and N.G. Venkatachala, JJ.

ORDER

Authored By : J.S. Verma, A.S. Anand

J.S. Verma, J.

1. A letter dated 14.9.1988 sent to this Court by Smt. Nilabati Behera alias Lalita Behera, was treated as a Writ Petition under Article 32 of the Constitution for determining the claim of compensation made therein consequent upon the death of petitioner's son Suman Behera, aged about 22 years, in police custody. The said Suman Behera was taken from his home in police custody at about 8 a.m. on 1.12.1987 by respondent No. 6, Sarat Chandra Barik, Assistant Sub-Inspector of Police of Jaraikela Police Outpost under Police Station Bisra, Distt. Sundergarh in Orissa, in connection with the investigation of an offence of theft and detained at the Police Outpost. At about 2 p.m. the next day on 2.12.1987, the petitioner came to know that the dead body of her son Suman Behera was found on the railway track near a bridge at some distance from the Jaraikela railway station. There were multiple injuries on the body of Suman Behera when it was found and obviously his death was unnatural, caused by those injuries. The allegation made is that it is a case of custodial death since Suman Behera died as a result of the multiple injuries inflicted to him while he was in police custody; and thereafter his dead body was thrown on the railway track. The prayer made in the petition is for award of compensation to the petitioner, the mother of Suman Behera, for contravention of the fundamental right to life guaranteed under Article 21 of the Constitution.

2. The State of Orissa and its police officers, including Sarat Chandra Barik, Assistant Sub-Inspector of Police and Constable No. 127, Chhabil Kujur of Police Outpost Jeraikela, Police Station Bisra, are impleaded as respondents in this petition. The defence of the respondents is that Suman Behera managed to escape from police custody at about 3 a.m. on the night between the 1st and 2nd December, 1987 from the Police Outpost Jeraikela, where he was detained and guarded by Police Constable Chhabil Kujur; he could not be apprehended thereafter in spite of a search; and the dead body of Suman Behera was found on the railway track the next day with multiple injuries which indicated that he was run over by a passing train after he had escaped

from police custody. In short, on this basis the allegation of custodial death was denied and consequently the respondents' responsibility for the unnatural death of Suman Behera.

3. In view of the controversy relating to the cause of death of Suman Behera, a direction was given by this Court on 4.3.1991 to the District Judge, Sundergarh in Orissa, to hold an inquiry into the matter and submit a report. The parties were directed to appear before the District Judge and lead the evidence on which they rely. Accordingly, evidence was led by the parties and the District Judge has submitted the Inquiry Report dated 4.9.1991 containing his finding based on that evidence that Suman Behera had died on account of multiple injuries inflicted to him while he was in police custody at the Police Outpost Jeraikela. The correctness of this finding and Report of the District Judge, being disputed by the respondents, the matter was examined afresh by us in the light of the objections raised to the Inquiry Report.

4. The admitted facts are, that Suman Behera was taken in police custody on 1.12.1987 at 8 a.m. and he was found dead the next day on the railway track near the Police Outpost Jeraikela, without being released from custody, and his death was unnatural, caused by multiple injuries sustained by him. The burden is, therefore, clearly on the respondents to explain how Suman Behera sustained those injuries which caused his death. Unless a plausible explanation is given by the respondents which is consistent with their innocence, the obvious inference is that the fatal injuries were inflicted to Suman Behera in police custody resulting in his death, for which the respondents are responsible and liable.

5. To avoid this obvious and logical inference of custodial death, the learned Additional Solicitor General relied on the respondent's defence that Suman Behera had managed to escape from police custody at about 3 a.m. on the night between the 1st and 2nd December, 1987 and it was likely that he was run over by a passing train when he sustained the fatal injuries. The evidence adduced by the respondents is relied on by the learned Additional Solicitor General to support this defence and to contend that the responsibility of the respondents for the safety of Suman Behera came to an end the moment Suman Behera escaped from police custody. The learned Additional Solicitor General, however, rightly does not dispute the liability of the State for payment of compensation in this proceeding for violation of the fundamental right to life under Article 21, in case it is found to be a custodial death. The argument is that the factual foundation for such a liability of the State is absent. Shri M.S. Ganesh, who appeared as amicus curiae for the petitioner, however, contended that the evidence adduced during the inquiry does not support the defence of respondents and there is no reason to reject the finding of the learned District Judge that Suman Behera died in police custody as a result of injuries inflicted to him.

6. The first question is: Whether it is a case of custodial death as alleged by the petitioner? The admitted facts are: Suman Behera was taken in police custody at about 8 a.m. on 1.12.1987 by Sarat Chandra Barik, Asstt. Sub- Inspector of Police, during investigation of an offence of theft in the village and was detained at Police Outpost Jeraikela; Suman Behera and Mahi Sethi, another accused, were handcuffed, tied together and kept in custody at the police station; Suman Behera's

mother, the petitioner, and grand- mother went to the Police Outpost at about 8 p.m. with food for Suman Behera which he ate and thereafter these women came away while Suman Behera continued to remain in police custody, Police Constable Chhabil Kujur and some other persons were present at the Police Outpost that night; and the dead body of Suman Behera with a handcuff and multiple injuries was found lying on the railway track at Kilometer No. 385/29 between Jeraikela and Bhalulata railway stations on the morning of 2.12.1987. It is significant that there is no cogent independent evidence of any search made by the police to apprehend Suman Behera, if the defence of his escape from police custody be true. On the contrary, after discovery of the dead body on the railway track in the morning by some railwaymen, 'it was much later in the day that the police reached the spot to take charge of the dead body. This conduct of the concerned police officers is also a significant circumstance to assess credibility of the defence version.

7. Before discussing the other evidence adduced by the parties during the inquiry, reference may be made to the injuries found on the dead body of Suman Behera during post- mortem. These injuries were the following: -

External injuries

(1) Laceration over with margin of damaged face.

(2) Laceration of size - 3" x 2" over the left temporal region upto bone.

(3) Laceration 2" above mastoid process on the right- side of size 1 1/2" x 1/4" bone exposed.

(4) Laceration on the forehead left side of size 1 1/2" x 1/4" upto bone in the mid- line on the forehead 1/2" x 1/4" bone deep on the left lateral to it 1" x 1/4" bone exposed.

(5) Laceration 1" x 1/2" on the anterior aspect of middle of left arm, fractured bone protruding.

(6) Laceration 1" x 1/2" x 1/2" on medial aspect of left thigh 4" above the knee joint.

(7) Laceration 1/2" x 1/2" x 1/2" over left knee joint.

(8) Laceration 1" x 1/2" x 1/2" on the medial aspect of right knee joint.

(9) Laceration 1" x 1/2" x 1/2" on the posterior aspect of left leg 4" below knee joint.

(10) Laceration 1" x 1/4" x 1/2" on the plantar aspect of 3rd and 4th toe of right side.

(11) Laceration of 1" x 1/4" x 1/2" on the dorsum of left foot.

Injury on the neck

(1) Bruises of size 3" x 1" obliquely alongwith sternocleidomastoid muscle 1" above the clavicle left side (2) lateral to this 2" x 1" bruise (3) and 1" x 1" above the clavicle left side (4) postural aspect of the neck 1" x 1" obliquely placed right to mid line.

Right shoulder

(a) Bruise 2" x 2", 1" above the right scapula.

(b) Bruise 1" x 1" on the tip of right shoulder.

(c) Bruise on the dorsum of right, palm 2" x 1".

(d) Bruise extensors surface of forearm left side 4" x 1".

(e) Bruise on right elbow 4" x 1"

(f) Bruise on the dorsum of left palm 2" x 1".

(g) Bruise over left patella 2" x 1".

(h) Bruise 1" above left patel 1" x 1".

(i) Bruise on the right iliac spine 1" x 1/2".

(j) Bruise over left scapula 4" x 1".

(k) Bruise 1" below right scapula 5" x 1".

(1) Bruise 3" medial to inferior angle of right scapula 2" x 1".

(m) Bruise 2" below left scapula of size 4" x 2".

(n) Bruise 2" x 6" below 12th rib left side.

(o) Bruise 4" x 2" on the left lumber region.

(p) Bruise on the buttock of left side 3" x 2".

(q) On dissection found -

(1) Fracture of skull on right side parietal and occipital bone 6" length.

(2) Fracture of frontal bone below laceration 2" depressed fracture.

(3) Fracture of left temporal bone 2" in length below external injury No. 2 i.e. laceration 2" above left mastoid process.

(4) Membrane ruptured below depressed fracture, brain matter protruding through the membrane.

(5) Intracraneal haemorrhage present.

(6) Brain lacerated below external injury No. 3, 1" x 1/2" x 1/2".

(7) Bone chips present on temporal surface of both sides.

(8) Fracture of left humorous 3" above elbow.

(9) Fracture of left femur 3" above knee joint.

(10) Fracture of mandible at the angle mendible both sides.

(11) Fracture of maxillary.

8. The face was completely damaged, eye ball present, nose lips, cheeks absent. Maxilla and a portion of mendible absent.

9. No injury was present on the front side of body trunk. There is rupture and laceration of brain."

10. The doctor deposed that all the, injuries were caused by hard and blunt object; the injuries on the face and left temporal region were postmortem while the rest were ante- mortem. The doctor excluded the possibility of the injuries resulting from dragging of the body by a running train and stated that all the ante- mortem injuries could be caused by lathi blows. It was further stated by the doctor that while all the injuries could not be caused in a train accident, it was possible to cause all the injuries by lathi blows. Thus, the medical evidence comprising the testimony of the doctor, who conducted the post- mortem, excludes the possibility of all the injuries to Suman Behera being caused in a train accident while indicating that all of them could result form the merciless beating given to him. The learned Additional Solicitor General placed strong reliance on. the written opinion of Dr. K.K. Mishra, Professor & Head of the Department of Forensic Medicine, Medical College, Cuttack, given on 15.2.1988 on a reference made to him wherein he stated on the basis of the documents that the injuries found on the dead body of Suman Behera could have been caused by rolling on the railway track in- between the rail and by coming into forceful contact with projecting part of the moving train/engine. While adding that it did not appear to be a case of suicide, he indicated that there was more likelihood of accidental fall on the railway track followed by the running engine/train. In our view, the opinion of Dr. K.K. Mishra, not examined as a witness, is not of much assistance and does not reduce the weight of the testimony of the doctor who conducted the post- mortem and deposed as a witness during the inquiry. The opinion of Dr. K.K. Mishra is cryptic, based on conjectures for which there is no basis, and says nothing about the injuries being both anti- mortem and post- mortem. We have no hesitation in reaching this conclusion and preferring the testimony of the doctor who conducted the post- mortem.

11. We may also refer to the Report dated 19.12.1988 containing the findings in a joint inquiry conducted by the Executive Magistrate and the Circle Inspector of Police. This Report is stated to have been made under Section 176 Cr.P.C. and was strongly relied on by the learned Additional Solicitor General as a statutory report relating to the cause of death. In the first place, an inquiry under Section 176 Cr.P.C. is contemplated independently by a Magistrate and not jointly with a police officer when the role of the police officers itself is a matter of inquiry. The joint finding recorded is that Suman Behera escaped from police custody at about 3 a.m. on 2.12.1987 and died in a train accident as a result of injuries sustained therein. There was hand- cuff on the hands of the deceased when his body was found on the railway track with rope around it. It is significant that the Report dated 11.3.1988 of the Regional Forensic Science Laboratory (Annexure 'R- 8', at p.108 of the paper book) mentions that the two cut ends of the two pieces of rope which were sent for examination do not match with each other in respect of physical appearance. This finding

about the rope negatives the respondents' suggestion that Suman Behera managed to escape from police custody by chewing off the rope with which he was tied. It is no necessary for us to refer to the other evidence including the oral evidence adduced during the inquiry, from which the learned District Judge reached the conclusion that it is a case of custodial death and Suman Behera died as a result of the injuries inflicted to him voluntarily while he was in police custody at the Police Outpost Jeraikela. We have reached the same conclusion on a reappraisal of the evidence adduced at the inquiry taking into account the circumstances, which also support that conclusion. This was done in view of the vehemence with which the learned Additional Solicitor General urged that it is not a case of custodial death but of death of Suman Behera caused by injuries sustained by him in a train accident, after he had managed to escape from police custody by chewing off the rope with which he had been tied for being detained at the Police Outpost. On this conclusion, the question now is of the liability of the respondents for compensation to Suman Behera's mother, the petitioner, for Suman Behera's custodial death.

12. In view of the decisions of this Court in Rudul Sah v. State of Bihar and Anr. MANU/SC/0380/1983 : 1983CriLJ1644 , Sebastian M. Hongray v. Union of India and Ors. MANU/SC/0381/1983 : [1984]1SCR904 , Bhim Singh v. State of J&K MANU/SC/0064/1985 : 1986CriLJ192 , Saheli, A Women's Resources center and Ors. v. Commissioner of Police, Delhi Police Headquarters and Ors. MANU/SC/0478/1989 : AIR1990SC513 and State of Maharashtra and Ors. v. Ravikant S.Patil MANU/SC/0561/1991 : (1991)2SCC373 , the liability of the State of Orissa in the present case to pay the compensation cannot be doubted and was rightly not disputed by the learned Additional Solicitor General. It would, however, be appropriate to spell out clearly the principle on which the liability of the State arises in such cases for payment of compensation and the distinction between this liability and the liability in private law for payment of compensation in an action on tort. It may be mentioned straightway that award of compensation in a proceeding under Article 32 by this court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort.

This is a distinction between the two remedies to be borne in mind which also indicates the basis on which compensation is awarded in such proceedings. We shall now refer to the earlier decisions of this Court as well as some other decisions before further discussion of this principle.

13. In Rudul Sah (supra), it was held that in a petition under Article 32 of the Constitution, this Court can grant compensation for deprivation of a fundamental right. That was a case of violation of the petitioner's right to personal liberty under Article 21 of the Constitution. Chandrachud, C.J., dealing with this aspect, stated as under:

It is true that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of Courts, Civil and Criminal. A money claim has therefore to be agitated in and adjudicated upon in a suit instituted in a court of lowest grade competent to try it. But the important question for our consideration is whether in the exercise of its jurisdiction under Article 32, this Court can pass an order for the payment of

money if such an order is in the nature of compensation consequential upon the deprivation of a fundamental right. The instant case is illustrative of such cases....

...The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip- service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders to release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the state as shield. If Civilisation is not to perish in this country as it has perished in some others too well- known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers

(emphasis supplied)

14. It does appear from the above extract that even though it was held that compensation could be awarded under Article 32 for contravention of a fundamental right, yet it was also stated that 'the petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial' and 'Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes'. These observation may tend to raise a doubt that the remedy under Article 32 could be denied 'if the claim to compensation was factually controversial' and, therefore, optional, not being a distinct remedy available to the petitioner in addition to the ordinary processes. The later decisions of this Court proceed on the assumption that monetary compensation can be awarded for violation of constitutional rights under Article 32 or Article 226 of the Constitution, but this aspect has not been adverted to. It is, therefore, necessary to clear this doubt and to indicate the precise nature of this remedy which is distinct and in addition to the available ordinary processes, in case of violation of the fundamental rights.

15. Reference may also be made to the other decisions of this Court after Rudul Sah. In Sebastian M. Hongray v. Union of India and Ors. (I) MANU/SC/0381/1983 : [1984]1SCR904 , it was

indicated that in a petition for writ of habeas corpus, the burden was obviously on the respondents to make good the positive stand of the respondents in response to the notice issued by the court by offering proof of the stand taken, when it is shown that the person detained was last seen alive under the surveillance, control, and command of the detaining authority. In Sebastian M. Hongray v. Union of India and Ors. (II) MANU/SC/0080/1984 : 1984CriLJ830 , in such a writ petition, exemplary costs were awarded on failure of the detaining authority to produce the missing persons, on the conclusion that they were not alive and had met an unnatural death. The award was made in Sebastian M. Hongray- II apparently following Rudul Sah, but without indicating anything more. In Bhim Singh v. State of J&K and Ors. MANU/SC/0064/1985 : 1986CriLJ192 , illegal detention in police custody of the petitioner Bhim Singh was held to constitute violation of his rights under Articles 21 and 22(2) and this Court exercising its power to award compensation under Article 32 directed the State to pay monetary compensation to the petitioner for violation of his constitutional right by way of exemplary costs or otherwise, taking this power to be settled by the decisions in Rudul San and Sebastian M. Hongray. In Saheli MANU/SC/0478/1989 : AIR1990SC513 , the State was held liable to pay compensation payable to the mother of the deceased who died as a result of beating and assault by the police. However, the principle indicated therein was that the State is responsible for the tortious acts of its employees. In State of Maharashtra and Ors. v. Ravikant S. Patil MANU/SC/0561/1991 : (1991)2SCC373 , the award of compensation by the High Court for violation of the fundamental right under Article 21 of an undertrial prisoner, who was handcuffed and taken through the streets in a procession by the police during investigation, was upheld. However, in none of these cases, except Rudul San, anything more was said. In Saheli, reference was made to the State's liability for tortious acts of its servants without any reference being made to the decision of this Court in Kasturilal Ralia Ram Jain v. The State of Uttar Pradesh MANU/SC/0086/1964 : (1966)IILLJ583SC , wherein sovereign immunity was upheld in the case of vicarious liability of the State for the tort of its employees. The decision in Saheli is, therefore, more in accord with the principle indicated in Rudul Sah.

16. In this context, it is sufficient to say that the decision of this Court in Kasturilal upholding the State's plea of sovereign immunity for tortious acts of its servants is confined to the sphere of liability in tort, which is distinct from the State's liability for contravention of fundamental rights to which the doctrine of sovereign immunity has no application in the constitutional scheme, and is no defence to the constitutional remedy under Articles 32 and 226 of the Constitution which enables award of compensation for contravention of fundamental rights, when the only practicable mode of enforcement of the fundamental rights can be the award of compensation. The decisions of this Court in Rudul Sah and others in that line relate to award of compensation for contravention of fundamental rights, in the constitutional remedy under Articles 32 and 226 of the Constitution. On the other hand, Kasturilal related to value of goods seized and not returned to the owner due to the fault of Government servants, the claim being of damages for the tort of conversion under the ordinary process, and not a claim for compensation for violation of fundamental rights. Kasturilal is, therefore, inapplicable in this context and distinguishable.

17. The decision of Privy Council in Maharaj v. Attorney- General of Trinidad and Tobago (No. 2) [1978] 3 All ER 670, is useful in this context. That case related to Section 6 of the Constitution of Trinidad and Tobago 1962, in the chapter pertaining to human rights and fundamental

freedoms, wherein Section 6 provided for an application to the High Court for redress. The question was, whether the provision permitted an order for monetary compensation. The contention of the Attorney- General therein, that an order for payment of compensation did not amount to the enforcement of the rights that had been contravened, was expressly rejected. It was held, that an order for payment of compensation, when a right protected had been contravened, is clearly a form of 'redress' which a person is entitled to claim under Section 6, and may well be the 'only practicable form of redress'. Lord Diplock who delivered the majority opinion, at page 679, stated.:

It was argued on behalf of the Attorney- General that Section 6(2) does not permit of an order for monetary compensation despite the fact that this kind of redress was ordered in Jaundoo v. Attorney- General of Guyana [1971] SC 972. Reliance was placed on the reference in the Sub-section to 'enforcing, or securing the enforcement of, any of the provisions of the said foregoing sections' as the purpose for which orders etc. could be made. An order for payment of compensation, it was submitted, did not amount to the enforcement of the rights that had been contravened. In their Lordships' view an order for payment of compensation when a right protected under Section 1 'has been' contravened is clearly a form of 'redress' which a person is entitled to claim under Section 6(1) and may well be the only practicable form of redress, as by now it is in the instant case. The jurisdiction to make such an order is conferred on the High Court by para (a) of Section 6(2), viz. jurisdiction 'to hear and determine any application made by any person in pursuance of Sub- section (1) of this section'. The very wide powers to make orders, issue writs and give directions are ancillary to this.

Lord Diplock further stated at page 680, as under:

Finally, their Lordships would say something about the measure of monetary compensation recoverable under Section 6 where the contravention of the claimant's constitutional rights consists of deprivation of liberty otherwise than by due process of law. The claim is not a claim in private law for damages for the tort of false imprisonment, under which the damages recoverable are at large and would include damages for loss of reputation. It is a claim in public law for compensation for deprivation of liberty alone....

(emphasis supplied)

18. Lord Hailsham while dissenting from the majority regarding the liability for compensation in that case, concurred with the majority opinion on this principle and stated at page 687, thus:

...I am simply saying that, on the view I take, the expression 'redress' in Sub- section (1) of Section 6 and the expression 'enforcement' in Sub- section (2), although capable of embracing damages where damages are available as part of the legal consequences of contravention, do not confer and are not in the context capable of being construed so as to confer a right of damages where

they have not hitherto been available, in this case against the state for the judicial errors of a judge....

Thus, on this principle, the view was unanimous, that enforcement of the constitutional right and grant of redress embraces award of compensation as part of the legal consequences of its contravention.

19. It follows that 'a claim in public law for compensation' for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution, This is what was indicated in Rudul Sah and is the basis of the subsequent decisions in which compensation was awarded Under Articles 32 and 226 of the Constitution, for contravention of fundamental rights.

20. A useful discussion on this topic which brings out the distinction between the remedy in public law based on strict liability for violation of a fundamental right enabling award of compensation, to which the defence of sovereign immunity is inapplicable, and the private law remedy, wherein vicarious liability of the State in tort may arise, is to be found in Ratanlal & Dhirajlal's Law of Torts, 22nd Edition, 1992, by Justice G.P. Singh, at pages 44 to 48.

21. This view finds support from the decisions of this Court in the Bhagalpur blinding cases: Khatri and Ors. (II) v. State of Bihar and Ors. MANU/SC/0518/1981 : 1981CriLJ597 and Khatri and Ors. (IV) v. State of Bihar and Ors. MANU/SC/0163/1981 : [1981]3SCR145 , wherein it was said that the court is not helpless to grant relief in a case of violation of the right to life and personal liberty, and it should be prepared to forge new tools and devise new remedies' for the purpose of vindicating these precious fundamental rights. It was also indicated that the procedure suitable in the facts of the case must be adopted for conducting the inquiry, needed to ascertain the necessary facts, for granting the relief, as the available mode of redress, for enforcement of the guaranteed fundamental rights. More recently in Union Carbide Corporation and Ors. v. Union of India and Ors. MANU/SC/0058/1992 : AIR1992SC248 , Misra, C.J. stated that 'we have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future...there is no reason why we should hesitate to evolve such principle of liability....To the same effect are the observations of Venkatachaliah, J. (as he then was), who rendered the leading judgment in the Bhopal gas case, with regard to the court's power to grant relief.

22. We respectfully concur with the view that the court is not helpless and the wide powers given to this Court by Article 32, which itself is a fundamental right, imposes a constitutional obligation on this Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to this Court under Article 142 is also an enabling provision in this behalf. The contrary view would not merely render the court powerless and the constitutional guarantee a mirage, but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. It the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate.

23. We may also refer to Article 9(5) of the International Covenant on Civil and Political Rights, 1966 which indicates that an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right. Article 9(5) reads as under:

Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

24. The above discussion indicates the principles on which the Court's power under Articles 32 and 226 of the Constitution is exercised to award monetary compensation for contravention of a fundamental right. This was indicated in Rudul Sah and certain further observations therein adverted to earlier, which may tend to minimise the effect of the principle indicated therein, do not really detract from that principle. This is how the decisions of this Court in Rudul Sah and others in that line have to be understood and Kasturilal distinguished therefrom. We have considered this question at some length in view of the doubt raised, at times, about the propriety of awarding compensation in such proceedings, instead of directing the claimant to resort to the ordinary process of recovery of damages by recourse to an action in tort. In the present case, on the finding reached, it is a clear case for award of compensation to the petitioner for the custodial death of her son.

25. The question now, is of the quantum of compensation. The deceased Suman Behera was aged about 22 years and had a monthly income between Rs. 1200 to Rs. 1500. This is the finding based on evidence recorded by the District Judge, and there is no reason to doubt its correctness. In our opinion, a total amount of Rs. 1,50,000 would be appropriate as compensation, to be awarded to the petitioner in the present case. We may, however, observe that the award of compensation in

this proceeding would be taken into account for adjustment, in the event of any other proceeding taken by the petitioner for recovery of compensation on the same ground, so that the amount to this extent is not recovered by the petitioner twice over. Apart from the fact that such an order is just, it is also in consonance with the statutory recognition of this principle of adjustment provided in Section 357(5) Cr.P.C. and Section 141(3) of the Motor Vehicles Act, 1988.

26. Accordingly, we direct the respondent- State of Orissa to pay the sum of Rs. 1,50,000 to the petitioner and a further sum of Rs. 10,000 as costs to be paid to the Supreme Court Legal Aid Committee. The mode of payment of Rs. 1,50,000 to the petitioner would be, by making a term deposit of that amount in a scheduled bank in the petitioner's name for a period of three years, during which she would receive only the interest payable thereon, the principal amount being payable to her on expiry of the term. The Collector of the District will take the necessary steps in this behalf, and report compliance to the Registrar (Judicial) of this Court within three months.

27. We clarify that the award of this compensation, apart from the direction for adjustment of the amount as indicated, will not affect any other liability of the respondents or any other person flowing from the custodial death of petitioner's son Suman Behera. We also expect that the State of Orissa would take the necessary further action in this behalf, to ascertain and fix the responsibility of the individuals responsible for the custodial death of Suman Behera, and also take all available appropriate actions against each of them, including their prosecution for the offence committed thereby.

28. The writ petition is allowed in these terms.

A.S. Anand, J. (CONCURRING)

29. The lucid and elaborate judgment recorded by my learned brother Verma J. obviates the necessity of noticing facts or reviewing the case law referred to by him. I would, however, like to record a few observations of my own while concurring with his Lordship's judgment.

30. This Court was bestirred by the unfortunate mother of deceased Suman Behera through a letter dated 14.9.1988, bringing to the notice of the Court the death of her son while in police custody. The letter was treated as a Writ- Petition under Article 32 of the Constitution. As noticed by Brother Verma J., an inquiry was got conducted by this Court through the District Judge Sundergarh who, after recording the evidence, submitted his inquiry report containing the finding that the deceased Suman Behera had died on account of multiple injuries inflicted on him while in police custody. Considering, that it was alleged to be a case of custodial death, at the hands of those who are supposed to protect the life and liberty of the citizen, and which if established was enough to lower the flag of civilization to fly half- mast, the report of the District Judge was scrutinized and analysed by us with the assistance of Mr. M.S. Ganesh, appearing

amicus curiae for the Supreme Court Legal Aid Committee and Mr. Altaf Ahmad, the learned Additional Solicitor General carefully. :

31. Verma J., while dealing with the first question i.e. whether it was a case of custodial death, has referred to the evidence and the circumstances of the case as also the stand taken by the State about the manner in which injuries were caused and has come to the conclusion that the case put up by the police of the alleged escape of Suman Behera from police custody and his sustaining the injuries in a train accident was not acceptable. I respectfully agree. A strenuous effort was made by the learned Additional Solicitor General by reference to the injuries on the head and the face of the deceased to urge that those injuries could not be possible by the alleged police torture and the finding recorded by the District Judge in his report to the contrary was erroneous. It was urged on behalf of the State that the medical evidence did establish that the injuries had been caused to the deceased by lathi blows but it was asserted that the nature of injuries on the face and left temporal region could not have been caused by the lathis and, therefore, the death had occurred in the manner suggested by the police in a train accident and that it was not caused by the police while the deceased was in their custody. In this connection, it would suffice to notice that the Doctor, who conducted the post- mortem examination, excluded the possibility of the injuries to Suman Behera being caused in a train accident. The injuries on the face and the left temporal region were found to be post- mortem injuries while the rest were ante- mortem. This aspect of the medical evidence would go to show that after inflicting other injuries, which resulted in the death of Suman Behera, the police with a view to cover up their crime threw the body on the rail- track and the injuries on the face and left temporal region were received by the deceased after he had died. This aspect further exposes not only the barbaric attitude of the police but also its crude attempt to fabricate false clues and create false evidence with a view to screen its offence. The falsity of the claim of escape stands also exposed by the report from the Regional Forensic Science Laboratory dated 11.3.1988 (Annexure R- 8) which mentions that the two pieces of rope sent for examination to it, did not tally in respect of physical appearance, thereby belying the police case that the deceased escaped from the police custody by chewing the rope. The theory of escape has, thus, been rightly disbelieved and I agree with the view of Brother Verma J. that the death of Suman Behera was caused while he was in custody of the police by police torture. A custodial death is perhaps one of the worst crimes in a civilised society governed by the Rule of Law. It is not our concern at this stage, however, to determine as to which police officer or officers were responsible for the torture and ultimately the death of Suman Behera. That is a matter which shall have to be decided by the competent court. I respectfully agree with the directions given to the State by Brother Verma, J. in this behalf.

32. On basis of the above conclusion, we have now to examine whether to seek the right of redressal under Article 32 of the Constitution, which is without prejudice to any other action with respect to the same matter which way be lawfully available, extends merely to a declaration that there has been contravention and infringement of the guaranteed fundamental rights and rest content at that by relegating the party to seek relief through civil and criminal proceedings or can it go further and grant redress also by the only practicable form of redress by awarding monetary damages for the infraction of the right to life.

33. It is axiomatic that convicts, prisoners or under- trials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of the State, to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law while the citizen is in its custody. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, under trials or other prisoners in custody, except according to procedure established by law. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions. The wrongdoer is accountable and the State is responsible if the person in custody of the police is deprived of his life except according to the procedure established by law. I agree with Brother Verma, J. that the defence of "sovereign immunity" in such cases is not available to the State and in fairness to Mr. Altaf Ahmed it may be recorded that he raised no such defence either.

34. Adverting to the grant of relief to the heirs of a victim of custodial death for the infraction or invasion of his rights guaranteed under Article 21 of the Constitution of India, it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortious act of the State as that remedy in private law indeed is available to the aggrieved party. The citizen complaining of the infringement of the indefeasible right under Article 21 of the Constitution cannot be told that for the established violation of the fundamental right to life, he cannot get any relief under the public law by the courts exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writs and the courts have, therefore, to evolve 'new tools' to give relief in public law by moulding it according to the situation with a view to preserve and protect the Rule of Law. While concluding his first Hamlyn Lecture in 1949 under the title "Freedom under the Law" Lord Denning in his own style warned:

No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do: and will not do things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power is not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up to date machinery, by declarations, injunctions and actions for negligence.... This is not the task for Parliament...the courts must do this. Of all the great tasks that lie ahead this is the greatest. Properly exercised the new powers of the executive lead to the welfare state; but abused they lead to a totalitarian state. None such must ever be allowed in this Country.

35. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much as protector and guarantor of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations.

36. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights.

Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exempellary damages' awarded against the wrong doer for the breach of its public law duty

and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.

37. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings.

The State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law - through appropriate proceedings. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case, is possible. The decisions of this Court in the line of cases starting with Rudul Sah v. State of Bihar and Anr. MANU/SC/0380/1983 : 1983CriLJ1644 granted monetary relief to the victims for deprivation of their fundamental rights in proceedings through petitions filed under Article 32 or 226 of the Constitution of India, notwithstanding the rights available under the civil law to the aggrieved party where the courts found that grant of such relief was warranted. It is a sound policy to punish the wrongdoer and it is in that spirit that the Courts have moulded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the courts take into account not only the interest of the applicant and the respondent but also the interests of the

public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental rights of a citizen under Article 21 is concerned. Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles. It may be necessary to identify the situations to which separate proceedings and principles apply and the courts have to act firmly but with certain amount of circumspection and self restraint, lest proceedings under Article 32 or 226 are misused as a disguised substitute for civil action in private law. Some of those situations have been identified by this Court in the cases referred to by Brother Verma, J.

38. In the facts of the present case on the findings already recorded, the mode of redress which commends appropriate is to make an order of monetary amend in favour of the petitioner for the custodial death of her son by ordering payment of compensation by way of exemplary damages. For the reasons recorded by Brother Verma, J., I agree that the State of Orissa should pay a sum of Rs. 1,50,000 to the petitioner and a sum of Rs. 10,000 by way of costs to the Supreme Court Legal Aid Committee Board. I concur with the view expressed by Brother Verma, J. and the directions given by him in the judgment in all respects.

MANU/SC/0643/1997

Back to Section 73 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal Nos. 157 - 159 of 1997

Decided On: 07.05.1997

State through C.B.I. Vs. Dawood Ibrahim Kaskar and Ors.

Hon'ble Judges/Coram:

M.K. Mukherjee, G.T. Nanavati and B.N. Kirpal, JJ.

ORDER

M.K. Mukherjee, J.

1. The principal question that is required to be answered in these appeals is when and under what circumstances a Court can invoke the provisions of Section 73 of the CrPC, 1973 ('Code' for short). The question arises in this way.

2. On March 12, 1993 a series of bomb explosions took place in and around the city of Bombay which resulted in the death of 237 persons, injuries to 713 persons and damage to properties worth Rs, 27 crores (approximately). Over the explosions 27 criminal cases were registered and on completion of investigation a composite charge- sheet was forwarded to the Designated Court, Greater Bombay on November 4, 1993 against 198 accused persons, showing 45 of them absconders, for commission of various offences punishable under the Indian Penal Code, the Terrorist and Disruptive Activities (Prevention) Act, 1987 ('TADA' for short), Arms Act, 1959, Explosives Substances Act, 1908 and other Acts. On that charge- sheet the Designated Court took cognizance and the case registered thereon was numbered as B.B.C. (Bomb Blast Case) No. 1 of 1993.

3. A few days thereafter - on November 11, 1993 to be precise - the Government of India, with the consent of the Government of Maharashtra, issued a notification entrusting further investigation in the above cases to Delhi Special Police Establishment (CBI) under the provisions of Section 5 of the Delhi Special Police Establishment Act, 1946. Pursuant thereto CBI registered a case being No. R.C. 1 (5)/93/S.T.F. Bombay on November 19, 1993 and took up further investigation with permission of the Designated Court.

4. In course of such investigation CBI apprehended Mohd. Salim Mira Moiuddin Shaikh @ Salim Kutta, one of the absconders mentioned in the charge- sheet, on July 24, 1995. He made a

confessional statement before Shri S.K. Saikia, Deputy Inspector General of Police, CID, Ahmedabad, which was recorded by him on August 18 and 19, 1995 under Section 15 of TADA. In that confession he disclosed that the respondent Nos. 2 to 7 herein (hereinafter referred to as the 'respondents') had taken active part in the criminal conspiracy which was the subject matter of B.B.C. No. 1 of 1993. Thereafter on May 22, 1996, the CBI moved an application before the Designated Court (Misc. Application No. 201 of 1996) wherein it stated that following the disclosure of the involvement of the respondents in the offences in question, raids had been conducted at their known hideouts to arrest them but none could be apprehended in spite of best efforts as they were deliberately evading their arrest to escape the clutches of law and, accordingly, prayed for issuance of non- bailable warrants of arrest against them to initiate further proceedings in the matter to apprehend them and/or to take further action to declare them as proclaimed offenders. Two other applications (Misc. Application Nos. 210 and 211 of 1996) were thereafter moved on June 3, 1996 for publication of written proclamations under Section 8(3)(a) of TADA as also for issuance of open dated non- bailable warrants of arrest so that 'Red Corner Notices' might be issued against them. According to CBI such notices are required to be got issued by INTERPOL to seek police assistance in a foreign country to locate and apprehend fugitives.

5. When the three applications came up for hearing a learned Advocate who was appearing for some of the persons arraigned in B.B.C. No. 1 of 1993 submitted before the Designated Court that they were entitled to copies of the applications and a right of hearing on their merits, in the matter. The Designated Court accepted his submissions; and on receipt of the copies of the application the learned Advocate filed a rejoinder thereto. After hearing the parties the Designated Court, by its order dated August 1, 1996, rejected the applications. The above order is under challenge in these appeals preferred at the instance of CBI.

6. From the impugned order we find that before the Designated Court it was submitted on behalf of CBI that since it was making further investigation into the offences in respect of which chargesheet had earlier been submitted and since the presence of the respondents, who were absconding, was absolutely necessary for ascertainment of their roles, if any, in commission of the offences, it was felt necessary to file the applications. It was further submitted that only after warrants and/or proclamations as prayed for were issued, that it (CBI) would be able to take further coercive measures to compel them to appear before the Investigating Agency for the purpose of intended further investigation. According to CBI under Section 73 of the Code and Section 8(3)(a) of TADA the Designated Court was fully empowered to issue warrants of arrest and proclamations. In rejecting the above contentions the Designated Court held that after cognizance was taken in respect of an offence process could be issued to the persons accused thereof only to compel them to face the trial but no such process could be issued by the Court in aid of investigation under Section 73 of the Code. According to the Designated Court, though under the Code further investigation was not barred there was no provision therein which entitled the Investigating Agency to seek for and obtain aid from the Court for the same. Since the above findings were recorded by the Designated Court relying solely upon the judgment of the Bombay High Court in Mohammad Yasin Mansuri v. State of Maharashtra MANU/MH/0130/1994, it will be necessary to refer to the same in some details. In that case investigation into an offence of murder and other related offences was taken up initially by the Officer- in- Charge of Byculla Police Station and thereafter by a Deputy Commissioner of Police

(DCP) of C.I.D. During the investigation the Designated Court, on the prayer of the DCP, issued non- bailable warrants for apprehension of some of the accused involved in those offences. Thereafter a charge- sheet came to be filed against several accused, some of whom were before the Court and some others including Mansuri (the petitioner before the High Court) were shown as absconding. On the very day the charge- sheet was filed Designated Court took cognizance of the offences mentioned therein. Few months later Mansuri came to be arrested by the CBI, Delhi in connection with some other offence. On receipt of that information the DCP filed an application before the Designated Court for warrants of arrest and production of Mansuri before it. The prayer was allowed and in due course Mansuri was brought to Bombay and handed over to DCP. On the following day Mansuri was produced before the Designated Court; and on such production the prosecution prayed for remand of Mansuri to police custody. The prayer was allowed and the Designated Court remanded him to police custody, but kept the order in abeyance for a few days to enable Mansuri to challenge the same in a superior court. Assailing the above order of the Designated Court, Mansuri moved the Bombay High Court. Before the High Court it was submitted on behalf of Mansuri that once investigation into an offence was complete and a charge- sheet was filed, the provisions of Section 309 of the Code came into operation and sub- section (2) of the said Section left no discretion to a Court. The only course open to the Court then was to remand the accused to judicial custody. It was further submitted that whereas Section 167 conferred a discretion upon the Court of authorising detention of an accused either in judicial custody or police custody such a discretion was completely absent in Section 309 of the Code. Accordingly, it was submitted that the order passed by the Designated Court granting Mansuri to Police custody was without jurisdiction and liable to be set aside. In accepting the above contention and quashing the impugned order the High Court firstly observed :

It would, therefore, follow that the warrants which were issued by the Designated Court for production of the petitioner could not have been in aid of investigation but could only have been by way of a process issued under Section 204 of the CrPC, Issue of warrants after cognizance of an offence is taken would be a process contemplated under Section 204(1)(b) of the Code, i.e. it would be a process to face trial. Indeed, we do not find any provision contained in the code for issue of warrants of arrest and custody of accused for the purpose of, or in aid of, investigation. The process contemplated is a process to face trial.

(emphasis supplied)

7. The High Court further observed :

We are conscious that the view we are taking is likely, in certain cases such as the present one, to hamper investigation. However, this is not a matter for us. We have construed the provisions of the Code and have found that no power is conferred for providing for police custody after cognizance of an offence is taken.

(emphasis supplied)

8. In view of the provisions of Chapter XII and those of Section 309(2) of the Code we are constrained to say that the above quoted observations have been made too sweepingly. Chapter XII relates to information to the police and their powers to investigate. Under Section 154 thereof whenever an Officer- in- Charge of a police station receives an information relating to the commission of a cognizable offence he is required to reduce the same in writing and enter the substance thereof in a prescribed book. Section 156 Invests the Officer- in- charge of a police station with the power to investigate into cognizable offences without the order of a Magistrate and Section 157 lays down the procedure for such investigation. In respect of an information given of the commission of a non- cognizable offence, the Officer- in- Charge is required under Section 155(1) to enter the substance thereof in the book so prescribed but he has no power to investigate into the same without an order of the competent Magistrate. Armed with such an order the Officer- in- Charge can however exercise all the powers of investigation he has in respect of a cognizable offence except that he cannot arrest without a warrant. The manner in which a person arrested during investigation has to be dealt with by the Investigating Agency, and by the Magistrate on his production before him, is provided is Section 167 of the Code. The said Section contemplates that when the investigation cannot be completed within 24 hours fixed by Section 57 and there are grounds to believe that the charge leveled against the person arrested is well founded it is obligatory on the part of the Investigation Officer to produce the accused before the nearest Magistrate. On such production the Magistrate may authorise the detention of the accused initially for a term not exceeding 15 days either in police custody, or in judicial custody. On expiry of the said period of 15 days the Magistrate may also authorise his further detention otherwise than in police custody if he is satisfied that adequate grounds exist for such detention. However, the total period of detention during investigation cannot be more than 90 days or 60 days, depending upon the nature of offences mentioned in the said Section. Under Sub- section (i) of Section 173 the Officer- in- Charge is to complete the investigation without unnecessary delay and as soon as it is completed to forward, under Sub- section (2) thereof, to the competent Magistrate a report in the form prescribed setting forth the names of the parties, the nature of the information and the names of the persons who appears to be acquainted with the circumstances of the case. Sub- Section (8) entitles the Officer- in- Charge to make further investigation and it reads as under :

Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub- section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed, and the provisions of sub- section (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub- section (2).

9. In H.N Rishbud v. State of Delhi MANU/SC/0049/1954 : 1955CriLJ526 , this Court dealt with the definition of 'investigation' under the CrPC, 1898 (hereinafter referred to as the 'old Code'), which is same under the new Code and after analysing the provisions of Chapter XIV of that Code (which corresponds to Chapter XII of the Code) stated :

Thus under the Code investigation consists generally of the following steps : (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge- sheet under Section 173.

10. Though under the old Code there was no express provision - like sub- section (8) of Section 173 of the Code - statutorily empowering the police to further investigate into an offence in respect of which a charge- sheet has already been filed and cognizance taken under Section 190(1)(b), such a power was recognised by this Court in Ram Lal Narang v. State MANU/SC/0216/1979 : 1979CriLJ1346 . In exemplifying the situations which may prevail upon the police to take up further investigation and the procedure the Court may have to follow on receipt of the supplemental report of such investigation, this Court observed :

It is easy to visualise a case where fresh material may come to light which would implicate persons not previously accused or absolve persons already accused. When it comes to the notice of the investigating agency that a person already accused of an offence has a good alibi, is it not the duty of that agency to investigate the genuineness of the plea of alibi and submit a report to the Magistrate? After all the investigating agency has greater resources at its command than a private individual. Similarly, where the involvement of persons who are not already accused comes to the notice of the investigating agency, the investigating agency cannot keep quite and refuse to investigate the fresh information. It is their duty to investigate and submit a report to the Magistrate upon the involvement of the other persons. In either case, it is for the Magistrate to decide upon his future course of action depending upon the stage at which the case is before him. If he has already taken cognizance of the offence, but has not proceeded with the enquiry of trial, he may direct the issue of process to persons freshly discovered to be involved and deal with all the accused, in a single enquiry or trial. If the case of which he has previously taken cognizance has already proceeded to some extent, he may take fresh cognizance of the offence disclosed against the newly involved accused and proceed with the case as a separate case. What action a Magistrate is to take in accordance with the provisions of the CrPC in such situations is a matter best left to the discretion of the Magistrate.

11. In keeping with the provisions of Section 173(8) and the above quoted observations, it has now to be seen whether Section 309(2) of the Code stands in the way of a Court, which has taken cognizance of an offence, to authorise detention of a person, who is subsequently brought before it by the police under arrest during further investigation, in police custody in exercise of its power under Section 167 of the Code. Section 309 relates to the power of the Court to postpone the commencement of or adjournment of any inquiry or trial and sub- section (2) thereof reads as follows :

If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it considers reasonable, and may be a warrant remand the accused if in custody.

Provided that no Magistrate shall remand an accused person to custody under this Section for a term exceeding fifteen days at a time;

x x x

12. There cannot be any manner of doubt that the remand and the custody referred to in the first proviso to the above sub- section are different from detention in custody under Section 167. While remand under the former relates to a stage after cognizance and can only be to judicial custody, detention under the latter relates to the stage of investigation and can initially be either in police custody or judicial custody. Since, however, even after cognizance is taken of an offence the police has a power to investigate into it further, which can be exercised only in accordance with Chapter XII, we see no reason whatsoever why the provisions of Section 167 thereof would not apply to a person who comes to be later arrested by the police in course of such investigation. If Section 309(2) is to be interpreted - as has been interpreted by the Bombay High Court in Mansuri (supra) - to mean that after the Court takes cognizance of an offence it cannot exercise its power of detention in police custody under Section 167 of the Code, the Investigating Agency would be deprived of an opportunity to interrogate a person arrested during further investigation, even if it can on production of sufficient materials, convince the Court that his detention in its (police) custody was essential for that purpose. We are therefore of the opinion that the words "accused if in custody" appearing in Section 309(2) refer and relate to an accused who was before the Court when cognizance was taken or when enquiry or trial was being held in respect of him and not to an accused who is subsequently arrested in course of further investigation. So far as the accused in the first category is concerned he can be remanded to judicial custody only in view of Section 309(2), but he who comes under the second category will be governed by Section 167 so long as further investigation continues. That necessarily means that in respect of the latter the Court which had taken cognizance of the offence may exercise its power to detain him in police custody, subject to the fulfilment of the requirements and the limitation of Section 167.

13. The moot question that now requires to be answered is whether a Court can issue a warrant to apprehend a person during investigation for his production before police in aid of the Investigating Agency. While Mr. Ashok Desai, the learned Attorney General who appeared on behalf of CBI, submitted that Section 73 coupled with Section 167 of the Code bestowed upon the Court such power, Mr. Kapil Sibal, who appeared as amicus curie (the respondents did not appear inspite of publication of notice in newspaper) submitted that Court had no such power. To appreciate the steps of reasoning of the learned counsel for their respective stands it will be necessary to refer to the relevant provisions of the Code and TADA relating to issuance of processes.

14. Chapter VI of the Code, which is captioned as 'processes to compel appearance' consists of four parts : part A relates to Summons; part B to warrant of arrest; part C to proclamation and attachment and part D to other rules regarding processes. Part B, with which we are primarily concerned in these appeals, has in its fold Section 70 to 81. Section 70 speaks of the form in which the warrant to arrest a person is to be issued by the Court and of its durational validity. Sections 71 empowers the Court issuing the warrant to direct the officer who is to execute the warrant, to release that person on terms and conditions as provided therein. Section 72 provides that a warrant shall ordinarily be directed to one or more police officers but if its immediate execution is necessary and no police officer is immediately available it may be directed to any other person for execution. Section 73, which is required to be interpreted in these appeals, reads as under :

73(1) The Chief Judicial Magistrate or a Magistrate of the first class may direct a warrant to any person within his local jurisdiction for the arrest of any escaped convict, proclaimed offender or of any person who is accused of a non- bailable offence and is evading arrest.

(2) Such person shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is in, or enters on, any land on other property under his charge.

15. Section 76 requires the police officer or other person, who executes the warrant to bring the person arrested before the Court (unless he is released in terms of Section 71), within twenty four hours.

16. Section 82, appearing in part C empowers the Court to issue proclamation; and so far as it is relevant for our present purposes, reads as under :

82(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(emphasis supplied)

x x x

(2) x x x

(3) x x x

After issuing a proclamation in terms of the above provision, the Court may also order attachment of the property of the proclaimed person under Section 83; and even deprive him of such property if he does not appear within the time prescribed under Section 85.

17. Chapter XVI relates to commencement of proceedings before Magistrates and Section 204 appearing therein enables a Magistrate, who takes cognizance of an offence, to issue process (summons/warrant) against the accused if he finds sufficient grounds to proceed against him.

18. Coming now to the relevant provisions of TADA we may first refer to sub- section (3) of Section 8 relating to proclamation for the attachment of the property of a person accused of an offence punishable under TADA. Clause (a) of the above sub- section lays down that if upon a report in writing made by a police officer or an officer referred to in sub- section (1) of Section 7, any Designated Court has reason to believe that any person, who has committed an offence punishable under the Act or any rule made thereunder, has absconded or is concealing himself so that he may not be apprehended, such Court may, notwithstanding anything contained in Section 82 of the Code, publish a written proclamation requiring him to appear at a specified place and at a specified time not less than fifteen days but not more than thirty days from the date of publication of such proclamation; and sub- section (3)(b) thereof entitles the Court issuing the proclamation to order attachment of property belonging to the proclaimed offender and then proceed in accordance with Section 83 to 85 of the Code. For all intents and purposes, therefore, Sub- section 8(3) of TADA seeks to achieve the same object as part C of Chapter VI does, namely to compel appearance of the accused. The other Section to which reference need be made is Section 20 which makes the provisions of the Code applicable to the proceedings under TADA, subject to the modification envisaged therein.

19. The contention of Mr. Desai was that though in exercise of its power under Section 41 of the Code a police officer may without an order from a Magistrate and without a warrant arrest a person who is concerned in any cognizable offence or against whom a reasonable complaint has been made, or a credible information has been received or a reasonable suspicion exists, of his having been so concerned, under the Code the police has no power of its own to compel his appearance if he evades the arrest. It is in that context, Mr. Desai argued, that the Court has been given the power under Section 73 to issue warrant of arrest for apprehension of such a person; and, thereafter, if need be, to issue proclamation and pass order for attachment of his properties. In joining issue, Mr. Sibal urged that the scheme of the Code is that the police has complete control of the investigation and is not aided by any judicial authority. Once the investigation culminates in the police report under Section 173(2) that the Court steps in by taking cognizance thereupon and issuing summons or warrant under Section 204 against the person arraigned. According to

Mr. Sibal, in the scheme of the Code it is unthinkable that the police, while investigating under Chapter XII is entitled to seek the help of a Magistrate for the purposes of issuance of a warrant of arrest in aid of investigation. As regards Section 73, Mr. Sibal's argument was that in the scheme of part B of Chapter VI that section only lays down a procedure to enable a Court to execute a warrant already issued under Section 204 but does not confer any right to issue a warrant, much less during investigation.

20. At this stage it is pertinent to mention that under the old Code the corresponding provision was Section 78; and while recommending its amendment the Law Commission in its 41st report stated, inter alia :

6.8 Section 78 at present confers a power on the District Magistrate or Sub- Divisional Magistrate to issue a special type of "warrant to a land- holder, farmer or manager of land within the district of sub- division for the arrest of an escaped convict, proclaimed offender or person who has been accused of a non- bailable offence and who has eluded pursuit". Although the power is infrequently exercised, there appears to be no objection to conferring it on all Magistrates of the first class and all....

(emphasis supplied)

21. Apart from the above observations of the Law Commission, from a bare perusal of the Section (quoted earlier) it is manifest that it confers a power upon the class of Magistrates mentioned therein to issue warrant for arrest of three classes of person, namely, (i) escaped convict, (ii) a proclaimed offender and (iii) a person who is accused of a non- bailable offence and is evading arrest. If the contention of Mr. Sibal that Section 204 of the Code is the sole repository of the Magistrate's power to issue warrant and the various Section of part 'B' of Chapter VI including Section 73 only lay down the mode and manner of execution of such warrant a Magistrate referred to under Section 73 could not - and would not - have been empowered to issue warrant of arrest for apprehension of an escaped convict, for such a person can not come within the purview of Section 204 as it relates to the initiation of the proceeding and not to a stage after a person has been convicted on conclusion thereof.

22. That Section 73 confers a power upon a Magistrate to issue a warrant and that it can be exercised by him during investigation also, can be best understood with reference to Section 155 of the Code. As already noticed under this Section a police officer can investigate into a non cognizable case with the order of a Magistrate and may exercise the same powers in respect of the investigation which he may exercise in a cognizable case, except that he cannot arrest without warrant. If with the order of a Magistrate the police starts investigation into a non- cognizable and non- bailable offence, (like Sections 466 or 467 (Part I) of the Indian Penal Code) and if during investigation the Investigating Officer intends to arrest the person accused of the offence he has to seek for and obtain a warrant of arrest from the Magistrate. If the accused evade the arrest, the

only course left open to the Investigating Officer to ensure his presence would be to ask the Magistrate to invoke his powers under Section 73 and thereafter those relating to proclamation and attachment. In such an eventuality, the Magistrate can legitimately exercise his powers under Section 73, for the person to be apprehended is 'accused of a non- bailable offence and is evading arrest.'

23. Another factor which clearly indicates that Section 73 of the Code gives a power to the Magistrate to issue warrant of arrest and that too during investigation is evident from the provisions of part 'C of Chapter VI of the Code, which we have earlier adverted to. Needless to say the provisions of proclamation and attachment as envisaged therein is to compel the appearance of a person who is evading arrest. Now, the power of issuing a proclamation under Section 82 (quoted earlier) can be exercised by a Court only in respect of a person 'against whom a warrant has been issued by it'. In other words, unless the Court issues a warrant the provisions of Section 82, and the other Sections that follow in that part, cannot be invoked in a situation where inspite of its best efforts the police cannot arrest a person under Section 41. Resultantly, if it has to take the coercive measures for the apprehension of such a person it has to approach the Court to issue warrant of arrest under Section 73; and if need be to invoke the provisions of part 'C' of Chapter VI. [(Section 8(3) in case the person is accused of an offence under TADA)].

24. Lastly, we may refer to Section 90, which appears in part 'D' of Chapter VI of the Code and expressly states that the provisions contained in the Chapter relating to a summon and warrant, and their issue, service and execution shall, so far as may be, apply to every summons and every warrants of arrest issued under the Code. Therefore, when a Court issues a warrant of arrest, say under Section 155 of the Code, any steps that it may have to subsequently take relating to that warrant of arrest can only be under Chapter VI.

25. Now that we have found that Section 73 of the Code is of general application and that in course of the investigation a Court can issue a warrant in exercise of power thereunder to apprehend, inter alia, a person who is accused of a non- bailable offence and is evading arrest, we need answer the related question as to whether such issuance of warrant can be for his production before the police in aid of investigation. It cannot be gainsaid that a Magistrate plays, not infrequently, a role during investigation, in that, on the prayer of the Investigating Agency he holds a test identification parade, records the confession of an accused or the statement of a witness, or takes or witnesses the taking of specimen handwritings etc. However, in performing such or similar functions the Magistrate does not exercise judicial discretion like while dealing with an accused of a non- bailable offence who is produced before him pursuant to a warrant of arrest issued under Section 73. On such production, the Court may either release him on bail under Section 439 or authorise his detention in custody (either police or judicial) under Section 167 of the Code. Whether the Magistrate, on being moved by the Investigating Agency, will entertain its prayer for police custody will be at his sole discretion which has to be judicially exercised in accordance with Section 167(3) of the Code. Since warrant is and can be issued for appearance before the Court only and not before the police and since authorisation for detention in police custody is neither to be given as a matter of course nor on the mere asking of the police,

but only after exercise of judicial discretion based on materials placed before him, Mr. Desai was not absolutely right in his submission that warrant of arrest under Section 73 of the Code could be issued by the Courts solely for the production of the accused before the police in aid of investigation.

26. On the conclusions as above we allow these appeals, set aside the impugned order and direct the Designated Court to dispose of the three miscellaneous applications filed by C.B.I. in accordance with law and in the light of the observations made herein before.

27. Before parting with this judgment we place on record our deep appreciation for the valuable assistance rendered by Mr. Desai and Mr. Sibal in deciding the issues involved in these appeals.

MANU/SC/0114/1973

IN THE SUPREME COURT OF INDIA

Writ Petition No. 557 of 1972

Decided On: 13.02.1973

Indradeo Mahato Vs. The State of West Bengal

Back to Section 87 of Code of Criminal Procedure, 1973

Back to Section 88 of Code of Criminal Procedure, 1973

Hon'ble Judges/Coram:

A. Alagiriswami, C.A. Vaidialingam and I.D. Dua, JJ.

JUDGMENT

I.D. Dua, J.

1. The petitioner in this case is being detained in Dum Dum Central Jail, pursuant to an order of detention dated August 18, 1971 made by the District Magistrate, Howrah in exercise of the powers conferred on him by Section 3(1) and (2) of the Maintenance of Internal Security ACT, 26 of 1971 (hereinafter called the Act). The District Magistrate duly reported to the State Government the fact of having made the order together with the grounds of detention and all other particulars having a bearing on the matter. The State Government considered this report and approved the detention order on August 26, 1971 when it also submitted to the Central Government the necessary report as required by Section 3(4) of the Act. The petitioner could, however, be arrested only on June 16, 1972 as, according to the return "soon after the said order the detenu- petitioner was found to be absconding". The grounds on which the detention was ordered read:

1. On 20- 4- 71 at 02.00 hrs. you and your associates being armed with daggers, iron rods, bombs etc., trespassed into Shalimar Yard by scaling over the boundary wall and started looting railway materials stacked in front of D. S. P. Store, Shalimar. When resisted by the on duty R.P.F. Rakshak, you and your associates attacked him by throwing ballasts and hurling bombs at him with a view to scare him away and thus escaped with the looted railway property by terrorising him. Thus you acted in a manner prejudicial to the maintenance of public order.

2. On 21- 6- 71 at 03.30 hrs. you and your associates being armed with daggers, bombs etc., trespassed into Shalimar yard and committed theft of 7 bundles of Tarpauline valued Rupees 700/- from delivery shed. When resisted by the on duty R.P.F. Rakshaks, you and your associates attacked them and hurled bombs at them with a view to scare them away and escaped with the stolen property by terrorising them. As a result of your action panic prevailed in the area which was prejudicial to the maintenance of public order.

3. On 22- 7- 71 at 02.30 hrs. you and your associates being armed with iron rods, daggers, bombs etc., and rushed towards the loaded wagons stabled on Shalimar- Ramkrishnapore side line with a view to loot commodities by breaking open wagons. When resisted by the on duty R. "P. F. Rakshaks, you and your associates attacked them by throwing ballasts and hurling bombs with a view to scare them away by terrorising them. As a result of your action panic prevailed in the area which was prejudicial to the maintenance of public order.

The order of detention as also the grounds of detention with a translation thereof in Indian language, were duly served on the petitioner on the day of his arrest. On June 29, 1972 the State Government received a representation from the petitioner which was considered and rejected on July 3, 1972. On July 5, 1972 the State Government placed the petitioner's case before the Advisory Board as required by Section 10 of the Act. The Board submitted its report on August 17, 1972 expressing its opinion that there was sufficient cause for the petitioner's detention. On August 26, 1972 the State Government confirmed the detention order as required by Section 12(1) of the Act and duly communicated its decision to the petitioner.

2. Shri V. C. Parashar, learned Counsel appearing as amicus curiae to assist this Court, submitted in the first instance that the gap of about 10 months between the order of detention and the arrest suggests that there was no real and genuine apprehension that the petitioner was likely to act in a manner prejudicial to the maintenance of public order. According to the submission, had the matter been grave and serious enough, the State would have taken adequate steps under Sections 87 and 88, Cr.P.C. for the purpose of securing the petitioner's early arrest. On this reasoning it was contended that the District Magistrate was in reality not satisfied that it was necessary to detain the petitioner with a view to preventing him from acting in any manner prejudicial to the maintenance of public order and the case, therefore, does not fall within the purview of Section 3 of the Act. The petitioner's detention must accordingly be held to be contrary to law. We are unable to accept this contention.

3. Section 87, Cr.P.C. which occurs in Part C of Chapter VI of that Code merely empowers a court issuing a warrant of arrest to publish a written proclamation requiring the person concerned to appear at a specified place and time as required by that section, if the court has reason to believe that the said person has absconded or is concealing himself to evade execution of the warrant. Section 88 empowers the said court to attach the property belonging to the proclaimed person. In the case in hand no warrant was issued by any court as indeed Section 3 of the Act does not contemplate the authorities empowered to make orders of detention to function as courts. In terms, therefore, these sections may not be attracted. But even assuming it is permissible to have resort to such procedure the mere omission to do so could not, in our opinion, render the order of detention either illegal or mala fide as the suggestion connoted. The petitioner's detention cannot, therefore, be considered illegal on this ground.

4. The next point raised by Shri Parashar questioned the relevance of ground No. 1. According to the counsel this ground only suggests commission of an ordinary offence of theft, which could

legitimately form the subject of a regular criminal trial in the ordinary criminal courts. He contended that it does not raise a problem of public order but only an ordinary law and order problem. Reliance for this submission was placed on the decision of this Court in Kishori Mohan Bera v. State of W.B. MANU/SC/0408/1972 : AIR1972SC1749 . This submission is equally unacceptable. It may be recalled that according to the first ground at 2 O'clock in the midnight of April 20, 1971 the petitioner, along with his associates being armed with daggers, iron rods, bombs etc., had trespassed into Shalimar Yard by scaling over the boundary wall and had started looting railway materials stacked in front of D. S. K. Store, Shalimar. When they were resisted by the Railway Protection Force Rakshak on duty the petitioner and his associates attacked him by throwing ballast and hurling bombs at him with a view to scare him away and terrorise him and thus escaped with the plundered or looted railway property This ground, even though when taken in isolation, would clearly bring the petitioner's case within the ambit of Section 3 of the Act, has, in our opinion, to be read and considered along with the other two grounds, because all of them clearly appear to us to be founded on acts committed in the course of an organised plan to plunder or loot public property by terrorising and scaring away the Rakshaks of the Railway Protection Force. Acts of this nature which partake of the character of robbery by using deadly weapons like bombs against the R.P. Force discharging the duty of protecting the railway property have a far deeper impact on the peaceful pursuit of the normal avocations of life of the community than a simple case of stealing private or even public property. It is, in our opinion, misleading to equate such acts of robbery with the common cases of ordinary theft for the purpose of determining the applicability of Section 3 of the Act. Difference between an ordinary law and order problem and that of public order has been explained by this Court on several occasions and the legal position is by now fairly crystallised. In Dr. Ram Manohar Lohia v. State of Bihar MANU/SC/0054/1965 : 1966CriLJ608 this Court dealt with the question at length and illustrated the difference by fictionally drawing three concentric circles, the largest representing law and order, the next representing public order and the innermost representing security of State. Every violation or breach of law would no doubt necessarily affect order and the frequency of such infraction may pose a problem of law and order, but it need not necessarily affect public order just as every act affecting public order may ,not automatically affect security of the State. In Pushkar v. State of W.B. MANU/SC/0027/1968 : 1970CriLJ852 the difference between the concept of "public order" and "law and order" was stated to be similar to the distinction between "public" and "private" crimes in the realm of jurisprudence. The real test seems to us to depend on the degree and extent of the disturbance an act causes to the normal balanced peaceful tempo of civil life of the community and not on the mere definition of crime given to such acts in the law of crimes. Similar acts in different situations may give rise to different problems: in one set of circumstances an act may pose only a law and order problem whereas in another it may generate deep and widespread vibrations having serious enough impact on the civilised peace- abiding society so as to affect public order. One has to weigh the degree and sweep of the harm the act in question is capable of in its context Every case has, therefore, to be considered on its own facts and circumstances. In the present case the acts cannot but shake the public confidence in the efficacy of the Railway Protection Force in effectively safeguarding and protecting the railway property. This may also tend to dissuade people from transporting their goods through the railway carrier which in an orderly civilised society is as a rule considered quite safe. In addition, such acts may also create a feeling of panic amongst the people resorting to the railway yards for loading and unloading wagons. It is futile to contend that the acts in question in their context are not grave and serious enough in their potentiality for disturbing the even tempo of the life of the community. In somewhat similar cases this Court has regarded similar acts as justifying the

orders of detention. See Sk. Kader v. State of W. B. MANU/SC/0221/1972 : [1973]1SCR488 , Netaipada Saha v. State of W.B. MANU/SC/0192/1972 : 1972CriLJ1000 and Kishori Mohan Bera MANU/SC/0408/1972 : AIR1972SC1749 (supra)).

5. The fact that the petitioner could be tried for the commission of offences disclosed in these grounds is also immaterial because his liability to be tried in a court of law cannot debar the authority concerned from detaining him if his acts bring his case within the purview of Section 3 of the Act. In Borjaban Gorey v. State of W.B. MANU/SC/0096/1972 : [1973]1SCR751 it was ruled that the liability of the detenu to be tried in courts of law for being punished for the commission of an offence does not impinge upon the operation of the Act. The respective fields of operation of the law providing for trial and punishment for the commission of offences and of the Act are not co- extensive. One is meant to punish for past offences while the other is designed to prevent the person concerned from future mischief irrespective of his liability to be punished in a court of law on the basis of the same acts. Their operation is not alternative, the detenu's liability to be tried not invalidating his detention. This challenge is thus equally devoid of merit.

6. The petition accordingly fails and is dismissed.

MANU/SC/0249/1979

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 42 of 1973

Decided On: 24.04.1979

Somappa Vamanappa Madar and Ors. Vs. State of Mysore

Back to Section 87 of Code of Criminal Procedure, 1973

Back to Section 88 of Code of Criminal Procedure, 1973

Hon'ble Judges/Coram:

P.S. Kailasam and R.S. Sarkaria, JJ.

JUDGMENT

P.S. Kailasam, J.

1. This appeal is preferred by accused Nos. 1 and 2 in the trial court by certificate granted by the Mysore High Court against its judgment reversing the order of acquittal passed by the Sessions Judge, Bijapur and convicting them of an offence under Section 302 read with Section 34 of the Indian Penal Code and sentencing them to imprisonment for life.

2. The two appellants and Ningappa Hanmantappa Polici, the third accused, were charged for the offence of murder of one Basangouda Gurappagouda Biradar alias Patil said to have been committed by them at about 7- 45 p.m. on 29th May, 1970 at Bijapur town by cutting him with axe and sickle.

3. The trial court found that the prosecution had failed to establish the guilt of the accused beyond reasonable doubt and acquitted all the three accused of the offences with which they were charged. The State of Mysore preferred an appeal against the judgment of acquittal passed by the Sessions Judge to the High Court of Mysore. By its judgment dated 20th October, 1972 in Criminal Appeal No. 219 of 1971 the High Court allowed the appeal of the State so far as the appellants are concerned, found them guilty of an offence under Section 302 read with Section 34 of Indian Penal Code and sentenced each of them to rigorous imprisonment for life. It dismissed the appeal of the State so far as the third accused is concerned. Leave to appeal having been granted to the appellants by the High Court this appeal is before us.

4. The case for the prosecution may be briefly stated. One Shivappa, a resident of Ingalgeri had two daughters and extensive landed property, about 72 acres in extent. He transferred the lands to his son- in- law P.W. 17, Siddappa Dhari, who had married his first daughter Somawa, P.W. 17 undertook to transfer half the extent of land to the person who would marry the younger

daughter Sangavva, P.W. 16. Shivappa wanted to give his younger daughter in marriage to Shivappa Irappa Gureddi of Ingalgeri. Irappa Gureddi refused to marry her but he suggested that the girl may be given in marriage to his friend, the deceased Basangouda Gurappagouda Biradar alias Patil. Accordingly, P.W. 16 was married to the deceased and P.W. 17 Siddappa Dhari transferred half of the lands gifted to him by his father- in- law Shivappa. It is the case of the prosecution that Shivappa Gureddi demanded transfer of one of the lands to him by the deceased on the ground that he brought about the marriage. The deceased refused to oblige and on that account there was enmity between the deceased Basangouda Patil and Shivappa Irappa Gureddi. Shivappa Gureddi became a leader of a party to which A- 1 to A- 3 and others belonged and started threatening the deceased. Basangouda Patil left, the village afraid of the threat and started living with his wife P.W. 16 at Bijapur for about 6 years. While at Bijapur he joined the party of one Basavantaraya Nadagouda of Ingalgeri who was inimically disposed towards Shivappa Gureddi for 20 years. The father- in- law of Baswanataraya Nadagouda was murdered in 1956-57 and Shivappa Gureddi and the third accused Ningappa Polici's father Hanmanthappa Polici and others were tried for the murder and were convicted and sentenced to 4 years' rigorous imprisonment. After the conviction the deceased Basangouda Patil went back to his village Ingalgeri and started living there. After serving their term Shivappa Gareddi and others came back to the village and the trouble again started. The deceased leased his lands and again left the village and came to Bijapur with his wife and children. About 2 years prior to the incident on 12th December, 1968, Shivappa Gureddi was murdered and the deceased' Basangouda Patil and 8 others were charged for the murder. They were acquitted but the trouble did not end. The three accused and another started giving trouble to the deceased by looting his crop and burning the hay- stack. Police started proceedings against the two parties for keep- tog peace. The existence of faction and bitter enmity between the deceased on one side and A- 1 to A- 3 on the other is not seriously challenged. In fact, the trial court which acquitted the accused accepted the prosecution case and found that there was bitter enmity between the parties. The High Court has also agreed with the finding of the trial court regarding the existence of enmity.

5. Regarding the occurrence the case for the prosecution is that on the morn- tog of the day of the occurrence i.e. 29th May, 1970, when the deceased Basangouda Patil went into the Bazar at Bijapur he met A- 3 Ningappa Polici and one another person from Jammaladinni village in a tea shop. The latter went out of the tea shop looking at the deceased. A- 3 noticed the presence of the deceased. The deceased got suspicious and when he returned to his house he informed his wife P.W. 16 about the presence of the third accused. In spite of protestations by his wife in the afternoon he went out of his house towards the bus stand saying that his Mama Mallangouda of Yakkundi was expected to come from his village. When the deceased was returning back to his house at about 7- 45 p.m. by the road passing from the side of the court of the Judicial Magistrate II, the three accused started chasing him armed with axe and sickle in their hands. The deceased ran and was finally caught hold of by Somya Madar A- 1 and Shankarappa Kaddi A- 2 in front of the house of Lalseb Ukkali P.W. 15. The accused started cutting him with the axe and sickle in their hands. The third accused Ningappa (sic) was standing on the road side with a sickle in. his hand. The deceased again escaped from their (sic) and ran into the house of P.W. 15 but the first two accused chased him inside the house. Brought him out and started cutting him with weapons in their hands. The incident is claimed to have been witnessed by eye- witnesses, P.Ws. 4 to 7 and 11 to 14. The witnesses rushed towards the accused, surrounded A- 1 and A- 2 and caught hold of them with weapons in their hands. P.W. 7 Nazeer Ahmed Maniyar snatched the sickle from

the hands of A- 2 Shankarappa. P.W. 5 Sahablal snatched the axe from the hands of A- 1 Somya. A- 2 who was being held by P.W. 7 and P.W. 14 managed to escape from their grip and ran away. A- 3 also escaped Thereafter P.W. 5 Sahablal went (sic) the deceased who was lying in front of the house of P.W. 15 and questioned him in the presence of other witnesses. The deceased gave out his name and told him the names of the two assailants and stated that all of them be- longed to Ingalgeri village. Thereafter P.W. - 5 went to Khadi Gramodyoga building which is at a distance of one furlong and telephoned to the police station Gandhi Chowk about the incident. While under their custody witnesses also questioned the first accused and he told the witnesses that the person who was standing on the road was Ningappa Polici A- 3 and also gave particulars about himself and the second accused. On receipt of the telephonic message P.W. 38 the P.S.I. came to the site, found the deceased Basangouda Patil lying there with bleeding injuries on his person and had him sent to the Civil Hospital, Bijapur, in a jeep. P.W. 38 thereafter took charge of A- 1 in his custody and took him along with P.W. 5 to the police station. The weapons the axe and the sickle which had been seized from the accused by the witnesses were taken by P.W. 5 to the police station. At the police station P.W. 38 seized the two weapons from P.W. 5. The weapons were found to be stained with blood and on examination by the Chemical Examiner they were found to have been stained with human blood. P.W. 38 made a personal search of the first accused and seized his clothing which be found to be stained with blood. The seizure memo is Ex. P- 4 but due to some inept handling by the police constable the clothing seized from the accused were not sent to the Chemical Examiner. P.W. 38 immediately thereafter went to the scene at about 10.30 p.m. and recorded statements from all the eye- witnesses. In the meanwhile, the deceased who was taken in the jeep to the hospital was produced before Dr. Vasudeviah P.W. 32 at about 8 p.m. The doctor examined the deceased and found on him as many as 15 injuries. The deceased was not in a position to talk and at about 2.35 a.m. the next morning on 30th May, 1970 the deceased died.

6. The police officer proceeded with the investigation. A- 2 and A- 3 were absconding and proceedings were taken against them under Section 87 and Section 88, Criminal Procedure Code. Ultimately they surrendered before the Magistrate on 26th October, 1970. An identification parade was held in respect of A- 2 and A- 3 on 10th November, 1970. Due to the absconding of A- 2 and A- 3 the case against them was filed later and two sessions cases at the request of the prosecution were tried together. Before the trial court the accused pleaded not guilty and submitted that they were falsely implicated due to enmity and the witnesses were falsely deposing at the instance of Mallanagouda Patil, the brother- in- law of the deceased.

7. The prosecution relies on the evidence of the eye- witnesses and their speaking to the dying declaration alleged to have been made by the deceased implicating the appellants in the crime, the apprehension of the two appellants red- handed at the spot, the prompt information to the police, the production of the first accused by the witnesses before the police officer and his arrest, the recovery of the two bloodstained weapons MOs. 1 and 2 which were found to be stained with human blood, and the evidence of the Taluka Magistrate who conducted the identification parade in which the two appellants were identified by the witnesses.

8. The trial court on a scrutiny of the evidence of eye- witnesses found that the witnesses who spoke of the incident were strangers to the accused and they neither knew the deceased Basangouda Patil nor the accused before the incident. It also found that the place where the incident took place is surrounded by residential houses and that the witnesses who spoke of the occurrence had their houses in the vicinity. The trial court found that the eye- witnesses were independent witnesses and as they were living in the close proximity of the place where the incident took place they are natural witnesses to the occurrence. Having found so much in favour of the prosecution regarding the eye- witnesses, the trial court observed that the circumstances by themselves would not he sufficient to hold that the story of the incident as told by them is true. The High Court on a consideration of the evidence of the eye- witnesses came to a different conclusion and found their evidence as acceptable. It is therefore necessary for us to consider at some length the various factors taken note of by the trial Judge and the High Court and determine whether the evidence of the eye- witnesses could be accepted.

9. The trial court rejected the evidence of the eye- witnesses on several grounds. Firstly, it found there is material discrepancy about the time of the occurrence. It found that according to the evidence of P.W. 38 P.S.I. at the police station he got the telephonic message at 8- 10 p.m. from P.W. 8 that A- 1 and A- 2 had caused injuries to the deceased and that immediately he made entry in the station diary about the information received and thereafter proceeded to the scene and reached there at 8.15 p.m. After reaching the scene he sent a Yadi Ex. P- 20. at 8 p.m. along Basangouda Patil who reached the Civil Hospital and was examined by P.W. 32 Dr. Vasudeviah' at 8 p.m. The trial court noting that the doctor examined Basangouda Patil at the hospital at 8 p.m. came to the conclusion that the prosecution case that the information would have been received much earlier than 8 p.m. and that the prosecution version that the telephone message was received at 8- 10 p.m. and the police officer reached the scene a 8- 15 p.m. is not acceptable. The High Court dealing with the discrepancy in the time given regarding the receipt of the message at the police station, the visit of the police officer to the scene and the production of the injured at the hospital came to the conclusion that the time element should not be taken literally. The High Court observed that it is idle to expect that the two watches worn by P.Ws. 32 and 38 would have shown identical time and that a variation of about 10 or 15 minutes between the time of the receipt of the information at the police station and the production of the injured person before the doctor is not a sufficient ground for rejecting the testimony of the eye- witnesses. Regarding the discrepancy about the time we are inclined to agree with the view taken by the High Court. Though the report is said to have been received at the police station at 8- 10 p.m. in the Yadi Ex. P- 20 which was sent in the jeep along with the injured person the time is noted as 8 p.m. and according to the doctor the injured was received at the hospital at 8 p.m. There is certainly some discrepancy but even on the internal evidence it is obvious that the time noted at different places cannot be said to be accurate. Obviously, if the injured was sent from the place of occurrence at 8 p.m. as noted in Ex. P- 20 he would not have been at the hospital at 8 p.m. itself. Taking all the circumstances into account we agree with the High Court that the evidence of the eye- witnesses cannot be rejected on the sole ground of discrepancy in the timings noted at various places. The trial court was in error in [holding that the discrepancy in the timings has rendered false or shaky and doubtful the evidence of the witnesses and that the very foundation is removed and as the very foundation is removed, the superstructure built on such shaky foundation must also collapse. Equally unacceptable is the conclusion of the trial court that it is

easy to secure witnesses who speak about the incident and repeat it like a parrot as they have done in this case.

10. The trial court also found that though the two appellants were caught hold of red- handed by the witnesses no trace of blood was found either on the person or on the clothing of the witnesses especially on those of the 3 witnesses who have claimed to have snatched the weapons or held them. The trial court proceeded to observe that the two weapons were fully stained with blood and one could expect blood from the weapons staining the hands of at least those 3 witnesses who either snatched the weapons or held them even though no blood fell on their clothes. We do not feel that the trial judge was justified in rejecting the evidence of the eye- witnesses because of the absence of blood stains in their clothing or in their hands. It is no doubt true that several cuts with sharp- edged weapons were inflicted on the deceased and the deceased has profusely bled but there is hardly any material to come to the conclusion that during the incident the accused also were stained with blood. The weapons were no doubt bloodstained but from the circumstances it can not be stated that the clothing of the witnesses should also have been bloodstained. It may be that when the weapons were seized the hands of the witnesses might have got stained but the absence of proof of such bloodstains cannot disprove the prosecution case.

11. Before we leave this aspect of the case we must take note of the fact that the investigation in the case has been most unsatisfactory. The case for the prosecution is that a telephone book is kept at the police station. There was some attempt on the part of the prosecution to make out that only local messages were recorded in the telephone book. It was further stated that the telephone book message was entered in the general diary. When this Appeal was taken up on an earlier occasion this Court directed the State to produce the records of the police station relating to the entry made at the police station on receipt of the telephone message. When this appeal again came up before us we asked the State to produce the documents. Though sufficient time was given the Public Prosecutor informed us that the records could not be produced. One other disturbing feature in the case is that even according to the prosecution the bloodstained clothing that were seized from the first accused and which were sent through the police constable never reached the Chemical Examiner. According to the prosecution this laps- was due to the negligence of the police constable and departmental action is being taken against him. The failure of the production of the station records, and the story of the loss of bloodstained clothes make us feel that all is not well with the investigation and the affairs of the police station. It is up to the authorities to probe the matter further.

12. Added to these infirmities the learned Counsel appearing for the appellant Mr. Jhavali, pointed out that the (sic) cannot rely on Ex. P9 25 F.I.R. as the statement of P.W. 5 was recorded at the police station at shout 9 p.m. long after the investigation commenced. It is common ground that on receipt of information regarding the occurrence at about 8 p.m. P.W. 33 the Police Officer went to the scene, saw the injured, sent him to the hospital and also arrested the accused and seized his clothes long before the statement was recorded from P.W. S. The statement recorded from P W. 5 will therefore be statement recorded during investigation and no reliance can be

placed on it except as a statement recorded by the police during investigation. The learned Counsel also read to us the extracts from Ex. P- 9 and pointed out the meticulous manner in which the particulars of the accused and the deceased are given with their names, surnames, fathers' names and the names of the villages and submitted that the entire document is suspicious leading to the conclusion that the document was prepared after considerable deliberation. We agree with the learned Counsel that the statement recorded from P.W. 5 cannot be used as F.I.R. So far as his comment on the particulars given regarding the deceased and the accused is concerned we feel that as they were recorded during investigation, it is probable that the particulars were obtained when the accused who was in custody was questioned. The rejection of Ex. P- 9 as F.I.R. would not detract the testimony of the eye- witnesses which will have to be assessed on its own merits. The learned Counsel submitted that it is evident that the eye- witnesses were too anxious to exaggerate. When they speak of the dying declaration as having been given by the injured person when they saw him after the attack by the accused. According to the learned Counsel the deceased was so badly injured that he could not have been in a position to speak. He further relied on the circumstances that the police officer did not question the injured and when the injured was produced before the doctor the, doctor is very clear that he (the injured) was not in a position to speak. He also relied on the conclusion arrived at by the trial court on this aspect. The trial court observed that P.W. 32 stated that when he was brought to the dispensary his power of speech was affected. The doctor also stated that his sensory area of the brain which is at the parietal region was affected. We have gone through the testimony of the doctor and we are not satisfied that his evidence is sufficient to come to the conclusion that the deceased would not have been in a position to talk immediately after the occurrence. No doubt, the doctor would state that there would have been instantaneous shock but that would not rule out the possibility of the deceased speaking for a while. P.W. 18 Madanappa, the doctor, who conducted the post- mortem was of the view that the deceased might have been conscious and might have been able to speak for some time even though he was not able to say how long he would have been conscious. According to P.W. 18 the center of speech was not affected. In the cross- examination of P.W. 32, questions of general nature were put to the doctor and the doctor expressed his view generally in the following manner:

The speech depends upon the coordinate activities of the sensory and cystic motor area.

Apart from the statement that power of speech of the deceased was affected, he stated that the patient was under shock and looking at the injuries it must have been instantaneous shock. The evidence of P.W. 32 which is at variance with the evidence of P.W. 18 who conducted the post-mortem is not sufficient to rule out the possibility of the deceased having made the dying declaration to the eye- witnesses. The High Court rightly commented on the evidence of the experts and expressed its view that whether the shock had actually set in on Basangouda Patil when he sustained injuries could be narrated by the persons who had seen him at that point of time and the doctor who examines an injured later would not be in a position to provide a satisfactory answer to such a question. The opinion of the doctor that looking to the injuries he was of the view that the shock would have been instantaneous cannot be conclusive on a question of the ability of the deceased to talk. We agree with the conclusion arrived at by the High Court.

13. The learned Counsel challenged the identification parade held by P.W. 31, Taluka Magistrate, as being unreliable. The trial court was of the view that it cannot be said from the evidence on record that the witnesses had no opportunity to see the accused till they identified them in the identification parade held in the jail. There is no evidence worth the name adduced by the prosecution to show that precautions were taken and if at all any precaution was taken to see that the witnesses either did not see the accused or they had no opportunity to see them before the identification parade. The learned Counsel was justified in his comment that the second accused was arrested a few days earlier and that he was in police custody and that he was produced before the Magistrate for remand and that there is nothing in the Panchnama prepared by the Taluka Magistrate to show that either he questioned the accused if he was shown to the witnesses or he himself questioned the witnesses if they had seen the accused. The High Court rejected the evidence regarding identification of A- 3. Considering all the circumstances we think much reliance cannot be placed on the identification parade regarding the establishment of the identity of the third accused. As far as A- 1 and A- 2 are concerned it is clear that both of them were apprehended and the witnesses had ample opportunity to note their features at that time and identify them. The proceeding in the identification parade discloses that A- 2 was identified by most of the eye- witnesses. Because of some defects in proceedings relating to the identification parade, we will not be justified in rejecting the evidence of the witnesses regarding the participation of A- 2.

14. Having in mind the various aspects of the case which we have discussed we now proceed to assess the evidence of the eye- witnesses. It is not in dispute that the eye- witnesses are living in the close vicinity to the scene where the incident took place and as such are natural witnesses. It is also admitted that both the deceased and the accused belonged to a different village and are total strangers to them. It was not suggested that the witnesses had any enmity or ill- feeling against the accused or the deceased. The trial court rejected their testimony on the ground that the brother- in- law of the deceased i.e. Mallanagouda is the mastermind behind the prosecution case. The trial court found that Malanagouda Patil and two retired police Sub- Inspectors were watching the proceedings and were present in the court when P.W. 1 Sangayya was examined and they continued to be present and watched the proceedings till all the eye- witnesses were examined and the moment the examination of the eyewitnesses was over they disappeared. From this circumstance the trial court came to the conclusion that there is nothing improbable in Mallanagouda having had a hand in the preparation of the detailed complaint Ex. P- 9. The High Court disagreed with this view and found that the time available was hardly sufficient to maneuver and manipulate and get ready with the material and found that there is no evidence to show that Mallanagouda had come to Bijapur by that time. The High Court observed that if Mallanagouda had a hand in the framing of the F.I.R. he would have utilised the opportunity to project himself as an eye- witness. The High Court also found that in the cross- examination of P.W. 38 the P.S.I., there is no suggestion that he was approached by any retired police officer on Mallanagouda's behalf for help to manipulate Ex. P- 9. We agree with the High Court that the trial Judge was not justified in coming to the conclusion that Mallanagouda and his two friends, the two retired police officers, were instrumental in framing the F.I.R. Ex. P- 9.

15. Apart from the fact that eyewitnesses are independent and natural witnesses their evidence is reinforced by the fact of recovery of the two bloodstained weapons MOs. 1 and 2, the axe and the

sickle, which are found to be stained with human blood. The High Court rightly placed considerable reliance on the presence of bloodstains on the weapons. The evidence of the prosecution witnesses is that they surrounded the accused and caught hold of them and snatched their weapons. The first accused was caught red- handed and was kept by the witnesses and handed over to the police. The second accused managed to escape. It was submitted that evidence as to recovery of weapons cannot be acted upon as the police officer did not seize the weapons immediately but allowed P.W. 5 to have them till they were seized at the police station. We do not think that this circumstance would affect the prosecution case in any way. It is not disputed that the two weapons were carried by P.W. 5 and handed over to the police officer. The fact of the seizure or the time and the place of the seizure is not questioned. In fact, the trial Court has not made any adverse comment on this aspect of the case. Apart from these facts, the panchnama relating to seizure of the clothes of the first accused clearly shows that the accused was at the station soon after the incident and the case of the witnesses that he was apprehended at the scene and produced before the police officer stands amply corroborated. We have been taken through the relevant portion of the evidence of the eye- witnesses and see no reason for rejecting their evidence. As observed by the High Court the recovery of the bloodstained weapons corroborates the evidence of the eye- witnesses. We might add that the production of the first accused at the police station immediately after the occurrence is an equally strong circumstance which proves the truth of the prosecution case.

16. On a consideration of the entire evidence and appreciation of the testimony of the witnesses we have no hesitation in "accepting the testimony of the eye- witnesses. The dying declaration of the deceased immediately after the occurrence in the presence of the eyewitnesses in which he mentioned the two accused as assailants, the recovery of the bloodstained weapons, MOs. 1 and 2, and the production of the first accused at the police station prove beyond all doubt the complicity of the two appellants. We have no hesitation in agreeing with the reasoning and conclusion arrived at by the High Court and confirm the conviction and sentence imposed on them. In the result we dismiss the appeal.

MANU/SC/0285/1979

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 178 of 1979

Decided On: 18.09.1979

V.S. Kuttan Pillai Vs. Ramakrishnan and Ors.

Back to Section 91 of Code of Criminal Procedure, 1973

Back to Section 92 of Code of Criminal Procedure, 1973

Back to Section 93 of Code of Criminal Procedure, 1973

Hon'ble Judges/Coram:

D.A. Desai and O. Chinnappa Reddy, JJ.

JUDGMENT

D.A. Desai, J.

1. Nemo tenetu prodere- no man is bound to accuse himself- which finds constitutional recognition in Article 20(3) of the Constitution, conferring immunity from compelling an accused person to be a witness against himself by giving self- incriminating evidence, has been put into forefront to support a prayer for quashing the search warrant issued by the Sub- Divisional Magistrate, Alwaye, on 4th January 1977 directing the Deputy Superintendent of Police, Alwaye, to search the premises styled as the Office of H.M.D.P. Sabha ('Sabha' for short), Moothakunam, and to seize the books, documents and papers as set out in the application for issuance of search warrant. The Magistrate had before him a complaint filed by the first respondent Ramakrishnan against the petitioner and 5 others for having committed offences under Sections 403, 409, 420 and 477A read with Section 34, Indian Penal Code. Original accused 1, and accused 2 the present petitioner, were respectively President and Secretary of the Sabha and original accused 3 to 6 were described as Managers of the Institution. The complainant made an application on 4th January 1977 requesting the learned Magistrate to issue a search warrant to search the office premises of the Sabha and seize the- books, documents, etc. described in the application, if found therein. On the very day the Magistrate issued a search warrant and in fact it was executed and certain books, vouchers and papers were produced before the Court. The present petitioner (original accused 2) requested the learned Magistrate to recall the warrant and to return the books and documents seized under the authority of the search warrant. The learned Magistrate was of the opinion that in view of the decision of this Court in Shyamlal Mohanlal v. State of Gujarat MANU/SC/0092/1964 : 1965CriLJ256 , and an earlier decision of V. Khalid, J. of Kerala High Court, no search warrant could be issued under Section 91 of the CrPC, 1973 ('new Code' for short), and accordingly directed that anything recovered pursuant to the search warrant issued by him be returned to the person from whom the same were recovered. The order was, however, to take effect after the decision on the requisition which was by then received from the Income-Tax Officer under Section 132A of the Income Tax Act. First respondent (original complainant) preferred a revision application to the High Court of Kerala questioning the correctness of the decision of the learned Magistrate and the claim to constitutional immunity of the accused from search and seizure of books, documents, etc. directed with a view to collecting evidence against

him, being violative of Article 20(3) of the Constitution was canvassed before the Court. The High Court after an exhaustive review of the decisions of this Court as well as those bearing on the Fifth Amendment to the American Constitution held that the provisions relating to search contained in Section 93(1) of the Criminal Procedure Code, 1973, are not hit by Article 20(3) of the Constitution.

2. Section 91 confers power on the Court or an officer in charge of a police station to issue a summons or written order as the case may be, to any person in whose possession or power a document, the production of which the Court or the officer considers necessary or desirable for the purposes of any investigation , inquiry, trial or other proceeding under the Code, Section 93 confers power on the Court to issue search warrant under three different situations.

3. Sections 91 and 93, so for as they are relevant, read as under :

91. (1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in Whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order."

93. (1) (a) Where any Court has reason to believe that a person to whom a summons or order under Section 91 or a requisition under Sub- section (1) of Section 92 has been, or might, be, addressed, will not or would not produce the document or thing as required by such summons or requisition, or

(b)where such document or thing is not known to the Court to be in the possession of any person, or

(c) where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection, it may issue a search- warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained.

4. In exercise of the power conferred by Section 91 a summons can be issued by the Court to a person in whose possession or power any document or other thing considered necessary or desirable for the purpose of any investigation, inquiry, trial or other proceeding under the Code calling upon him to produce the document or thing at the time and place to be mentioned in the summons. On the advent of the Constitution, and especially in view of the provision contained in Article 20(3), Courts were faced with a problem whether the person referred to in Section 91(1) of the Code (Section 94 of old Code) would include an accused. In other words, the question was whether a summons can be addressed to the accused calling upon him to produce any document

which may be in his possession or power and which is necessary or desirable for the purpose of an investigation, inquiry, trial, etc. in which such person was an accused person. The wider question that was raised soon after the enforcement of the Constitution was whether search of the premises occupied or in possession of a person accused of an offence or seizure of anything therefrom would violate the immunity from self- incrimination enacted in Article 20(3). In M.P. Sharma and Ors. v. Statish Chandra, District Magistrate, Delhi and Ors. MANU/SC/0018/1954 : 1978(2)ELT287(SC) the contention put forth was that a search to obtain document for investigation into an offence is a compulsory procuring of incriminatory evidence from the accused himself and is, therefore, hit by Article 20(3) as unconstitutional and illegal. A specific reference was made to Section 94 and 96 of the Criminal Procedure Code, 1898 ('old Code' (for short), both of which are re- enacted in almost identical language as Sections 91 and 93 in the new Code, in support of the submission that a seizure of documents on search is in the contemplation of law a compelled production of documents. A Constitution Bench of 8 judges of this Court unanimously negatived this contention observing :

A power of search and seizure is in any system of jurisprudence an overriding power of the State for the protection of social security and that power is necessarily regulated by law. When the Constitution makers have thought fit not to subject such regulation to constitutional limitations by recognition of a fundamental right to privacy, analogous to the American Fourth Amendment, we have no justification to import it, into a totally different fundamental right, by some process of strained construction. Nor is it legitimate to assume that the constitutional protection under Article 20(3) would be defeated by the statutory provisions for searches.

It was concluded that a search under the enabling provisions of the Criminal Procedure Code cannot be challenged as illegal on the ground of violation of Article 20(3). It must be made clear that the question whether there is any demerit of compulsion in issuing a summons to a person accused of an offence under Section 94 (old) Section 91 (new) to produce a document or thing in his possession Or power considered necessary or desirable for any inquiry, investigation or trial under the CrPC was kept open. In other words, the question whether the expression 'person' in Section 94 (old) Section 91 (new) would comprehend a person accused of an offence was left open.

5. Following the decision in M.P. Sharma's case, a Division Bench of the Madras High Court in Swarnalingam Chettiar v. Assistant Labour Inspector, Karaikudi MANU/TN/0506/1954 : A.I.R. 1956 Mad 165, held that a summons could not be issued under Section 94 of the old Code to the accused for production of certain documents in his possession irrespective of the fact whether those documents contained some statement of the accused made of his personal knowledge and accordingly the summons issued to the accused to produce certain documents was quashed. After the matter went back to the trial court, on an application of the Sub- Inspector investigating the case, for a search warrant to be issued to obtain documents mentioned in the list attached to the petition and likely to be found upon a search of the premises of Karaikudi Railway Out Agency, the Magistrate issued a notice to the accused to show cause why a general search warrant as asked for should not be issued. Again the accused moved the High Court in revision and in Swarnalingam Chettiar v. Assistant Inspector of Labour, Karaikudi MANU/TN/0287/1955 : AIR1955Mad716 the High Court quashed the notice holding that such notice practically amounts to stating that either he produces the document or else the premises will be searched and this will

amount to testimonial compulsion held impermissible by the decision of the Supreme Court in M. P. Sharma's case (supra). This view of the Madras High Court is no more good law in view of the later decisions of this Court.

6. In The State of Bombay v. Kathi Kalu Oghad and Ors. MANU/SC/0134/1961 : 1961CriLJ856 a question arose whether obtaining specimen hand writing or thumb impression of the accused would contravene the constitutional guarantee in Article 20(3). In this case there was some controversy about certain observations in M.P. Sharma's case (supra) and, therefore, the matter was heard by a Bench of 11 Judges. Two opinions were handed down, one by Chief Justice Sinha for himself and 7 brother judges, and another by Das Gupta, J. for himself and 2 other colleague. In Sinha, CJ's opinion, the observation in M.P. Sharma's case (supra) that Section 139 of the Evidence Act has no bearing on the connotation of the word 'witness' is not entirely well- founded in law. Immunity from self- incrimination as re- enacted in Article 20(3) was held to mean conveying information based upon the personal knowledge of the person giving the information and could not include merely the mechanical process of producing documents in court which may throw a light on any of the points in controversy, but which do not contain any statement of the accused based on his personal knowledge. It was concluded that to be a witness is not equivalent to furnishing evidence in its widest significance; that is to say, as including not merely making of oral or written statement but also production of document or giving materials which may be relevant at trial to determine the innocence or guilt of the accused.

7. What was kept open in Sharma's case (supra) whether a person accused of an offence could be served with a summons to produce documents' was decided when it was observed that immunity from self- incrimination would not comprehend the mechanical process of producing documents in court which may throw a light on any of the points in controversy but which do not contain a statement of the accused based on his personal knowledge.

8. The matter again came up before a Constitution Bench of this Court in Shyamlal Mohanlal v. State of Gujarat MANU/SC/0092/1964 : 1965CriLJ256 .In that case appellant Shyamlal Mohanlal was a licensed money- lender and according to the provisions of the relevant Money Lending Act and Rules he was under an obligation to maintain books. He was prosecuted for failing to maintain books in accordance with the provisions of the Act and the Rules. The police prosecutor incharge of the case on behalf of the prosecution presented an application requesting the Court to order the appellant Shyamlal Mohanlal to produce daily book and ledger for a certain year. Presumably it was a request to issue summons as contemplated by Section 94 of the old Code. The learned Magistrate rejected the request on the ground that in so doing the guarantee of immunity from self- incrimination would be violated. The matter ultimately came to this Court and the question that was pat in forefront before the Court was whether the expression 'person' in Section 94(1) which is the same as Section 91(1) of the new Code, comprehends within its sweep a person accused of an offence and if it does, whether an issue of summons to produce a document in his possession or power would violate the immunity against self- incrimination guaranteed by Article 20(3). The majority opinion handed down by Sikri, J. ruled that Section 94(1) upon its true construction does not apply to an accused person. While recording this opinion there is no

reference to the decision of the larger Bench in Kathi Kalu Oghad's case (supra). Shah, J. in his dissenting judgment referred to the observation that the accused may have documentary evidence in his possession which may throw Some light on the controversy and if it is a document which is not his statement conveying his personal knowledge relating to the charge against him, he may be called upon to produce it. Proceeding further it was observed that Article 20(3) would be no bar to the summons being issued to a person accused of an offence to produce a thing or document except in the circumstances herein above mentioned. Whatever that may be, it is indisputable that according to the majority opinion the expression 'person' in Section 91(1) (new Code) does not take within its sweep a person accused of an offence which would mean that a summons issued to an accused person to produce a thing or document considered necessary or desirable for the purpose of an investigation, inquiry or trial would imply compulsion and the document or thing so produced would be compelled testimony and would be violative of the constitutional immunity against self- incrimination.

9. There appears to be some conflict between the observations in M. P. Sharma's case (supra) as reconsidered in Kothi Kala Oghad's case (supra) and the one in the case of Shyamlal Mohanlal (supra). However, as this case is not directly relatable to a summons issued under Section 91(1), we do not consider it necessary to refer the matter to a larger Bench to resolve the conflict.

10. In view of the decision in Shyamlal Mohanlal's case (supra) one must proceed on the basis that a summons to produce a thing or document as contemplated by Section 91(1) cannot be issued to a person accused of an offence calling upon him to produce document of thing considered necessary or desirable for the purpose of an investigation, inquiry, trial or other proceeding under the CrPC'

11. If summons as hereinbefore discussed cannot be issued to an accused person under Section 91(1), ipso facto a search warrant contemplated by Section 93(1)(a) cannot be issued by the Court for the obvious reason that it can only be issued where the Court could have issued a summons but would not issue the same under the apprehension that the person to whom Such summons is issued Will not or would not produce the thing as required by such summons or requisition. A search warrant under Section 93(1)(a) could only be issued where a Summons could have been issued under Section 91(1) but the same would not be issued oh an apprehension that the person) to whom the summons is directed would not comply with the same and, therefore, in order to obtain the document or thing to produce which the summons was to be issued, a search warrant may be issued under Section 93(1)(a).

12. Section 93, however, also envisages situations other than one contemplated by Section 93(1)(a) for issuance of a search warrant It must be made distinctly clear that the present search warrant is not issued under Section 93(1)(a).

13. Section 93(1)(b) comprehends a situation where a search warrant may be issued to procure a document or thing not known to the Court to be in the possession of any person. In other words, a general search warrant may be issued to procure the document or thing and it can be recovered from any person who may be ultimately found in possession of it and it was not known to the Court that the person from whose possession it was found was in possession of it. In the present case the search warrant was to be executed at the office of the Sabha and it can be said that office bearers of the Sabha were the persons who were in possession of the documents in respect of which the search warrant was issued. Therefore, Clause (b) of Section 93(1) would not be attracted.

14. Section 93(1)(c) of the new Code comprehends a situation where the Court may issue a search warrant when it considers that the purpose of an inquiry, trial or other proceeding under the Code will be served by a general search or inspection to search, seize and produce the documents mentioned in the list. When such a general search warrant is issued, in execution of it the premises even in possession of the accused can be searched and documents found therein can be seized irrespective of the fact that the documents may contain some statement made by the accused upon his personal knowledge and which when proved may have the tendency to incriminate the accused. However, such a search and seizure pursuant to a search warrant issued under Section 93(1)(c) will not have even the remotest tendency to compel the accused to incriminate himself. He is expected to do nothing. He is not required to participate in the search. He may remain a passive spectator. He may even remain absent Search can be conducted under the authority of such warrant in the presence of the accused. Merely because he is occupying the premises which is to be searched under the authority of the search warrant it cannot even remotely be said that by such search and consequent seizure of documents including the documents which may contain statements attributable to the personal knowledge of the accused and which may have tendency to incriminate him, would violate the constitutional guarantee against self-incrimination because he is not compelled to do anything. A passive submission to search cannot be styled as a compulsion on the accuses to submit to search and if anything is recovered during search which may provide incriminating evidence against the accused it cannot be styled as compelled testimony, This is too obvious to need any precedent in support. The immunity against self- crimination extends to any incriminating evidence which the accused may be compelled to give. It does not extend to cover I such situation as where evidence which may have tendency to incriminate the accused is being collected without in any manner compelling him or asking him to be a party to the collection of the evidence. Search of the premises occupied by the accused without the accused being compelled to be a party to such search would not be violative of the constitutional guarantee enshrined in Article 20(3).

15. It was, however, urged that Section 93(1)(c) must be read in the context of Section 93(1)(b) and it would mean that where documents are known to be at 4 certain, place; and in possession, of a certain person any general search warrant as contemplated by Section 93(1)(c) will have to be ruled out because in such a situation Section 93(1)(a) alone would be attracted. Section 93(1)(b) comprehends a situation where the Court issues a search warrant in respect of a document or a thing to be recovered from a certain place but it is not known to the Court whether that document or thing is, in possession of any particular; person. Under Clause (b) there is a definite allegation to recover certain document or thing from a certain specific place but the Court is unaware of the

fact whether that document or thing or the place is in possession of a particular person. Section 93(1)(c) comprehends a situation where a search warrant can be issued as the Court is unaware of not only the person but even the place where the documents may be found and that a general search is necessary. One cannot, therefore, cut down the power of the Court under Section 93(1)(c) by importing into it some of the requirements of Section 93(1)(b). No canon of construction would permit such an erosion of power of the Court to issue a general search warrant. It also comprehends not merely a general search but even an inspection meaning thereby inspection of a place and a general search thereof and seizure of documents or things which the Court considers necessary Or desirable for the purpose of an investigation, inquiry, trial or other proceeding under the Code. The High Court accordingly sustained the general search warrant in, this case under Section 93(1)(c).

16. Turning to the facts of this case it was contended that the order of the Magistrate clearly disclosed an utter non- application of mind and a mere mechanical disposal of the application before the Court. Undoubtedly the order is of a laconic nature. But then there are certain aspects of the case which cannot be overlooked before this Court would interfere in such an interlocutory order.

17. The appellant and his co- accused are office bearers of a public institution styled as H.M.D.P. Sabha. We were informed at the hearing of this petition that this Sabha is a public institution engaged in the activity of running educational institutions and supporting objects or activities of a general charitable nature. When the first complaint was filed, the allegation therein was that criminal breach of trust in respect of funds of the public institution has been committed by the office bearers thereof. A search warrant was issued but it was quashed by the Kerala High Court. Thereafter another complaint was filed making sortie more serious allegations and a search warrant was sought. Now, this search warrant was being issued to conduct search of the premises used as office of an institution. The place will be in possession of the institution. The office bearers of the Sabha are accused of an offence. Documents and books of accounts of the institution are required for the purpose of the trial against the office bearers of the institution. The office premises could not be said to be in possession of any individual accused but stricto sensu it would be in possession of the institution. Books of accounts and other documents of the institution could not be said to be in personal custody or possession of the office bearers of the institution but they are in possession of the institution and are lying in the office of the institution. A search of such a public place under the authority of a general search warrant can easily be sustained under Section 93(1)(c). If the order of the learned Magistrate is construed to mean this, there is no illegality committed in issuing a search warrant. Of course, issuance of a search warrant is a serious matter and it would be advisable not to dispose of an application for search warrant in a mechanical way by a laconic order. Issue of search warrant being in the discretion of the Magistrate it would be reasonable to expect of the Magistrate to give reasons which swayed his discretion in favour of granting the request. A clear application of mind by the learned Magistrate must be discernible in the order granting the search warrant. Having said this, we see no justification for interfering with the order of the High Court in this case.

MANU/SC/0092/1964

Back to Section 94 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 135- 139 of 1963

Decided On: 14.12.1964

Shyamlal Mohanlal Vs. State of Gujarat

Hon'ble Judges/Coram:

P.B. Gajendragadkar, C.J., J.C. Shah, M. Hidayatullah, R.S. Bachawat and S.M. Sikri, JJ.

JUDGMENT

Authored By : S.M. Sikri, J.C. Shah

S.M. Sikri, J.

1. These are appeals by the State of Gujarat against the judgment of the High Court of Gujarat in Criminal References Nos. 106 - 110 of 1961 (in Criminal Appeals Nos. 135 - 139 of 1963) and Criminal References Nos. 111 - 113 of 1961 (in Criminal Appeals Nos. 140 - 142 of 1963) on a certificate granted by the High Court under Art. 134(1)(c) of the Constitution of India. These raise a common question of law, namely, whether section 94 of the Criminal Procedure Code applies to an accused person. Facts in one appeal need only be set out to appreciate how the question arose.

2. The respondent in Criminal Appeal No. 135 of 1963, Shyamlal Mohanlal, is a registered moneylender doing business as moneylender at Umreth. He is required to maintain books according to the provisions of the Moneylenders' Act and the Rules made thereunder. He was prosecuted for failing to maintain the books in accordance with the provisions of the Act and the Rules, in the Court of the Judicial First Class Magistrate, Umreth. The Police Prosecutor in charge of the prosecution presented an application on July 20, 1961, praying that the Court be pleased to order the respondent to produce daily account book and ledger for the Samvat year 2013- 2014. It was alleged in the application that the prosecution had already taken inspection of the said books and made copies from them, and that the original books were returned to the accused, and they were in his possession. The learned Magistrate, relying on Art. 20(3) of the Constitution, refused to accede to the prayer on the ground that the accused could not be compelled to produce any document. He followed the decision in Ranchhoddas Khimji Ashere v. Tempton Jehangir 2 Guj. L.R. 415..

3. The State filed a revision before the learned Sessions Judge of Kaira at Nadiad. Basing himself on the decision of this Court in State of Bombay v. Kathi Kalu Oghad MANU/SC/0134/1961 :

1961CriLJ856 he held "that the documents which are sought to be got produced by the prosecution in the case under my consideration can be allowed to be produced by compulsion if they do not contain any personal knowledge of the accused concerned." He felt that it was first necessary to ascertain whether the documents contained any personal statement of the accused person. He concluded that the matter will have to be referred back to the learned Magistrate to ascertain this first and then to decide the matter in the light of the observations made by the majority in Kalu Oghad's case MANU/SC/0134/1961 : 1961CriLJ856. Accordingly, a reference was made to the High Court with the recommendation that the matter be referred back to the learned Magistrate with suitable directions. The High Court, agreeing with the Sessions Judge, held that it was clear from the decision of this Court in Kalu Oghad's case MANU/SC/0134/1961 : 1961CriLJ856 "that if an accused produces a document that would not offend Art. 20(3) of the Constitution unless the document contains statements based on the personal knowledge of the accused." But the High Court went on to consider another question, that being whether the Court had power to compel an accused person to produce a document. The High Court, after reviewing the authorities bearing on this point, came to the conclusion that section 94 of the Criminal Procedure Code did not apply to an accused person. It accordingly agreed with the Magistrate that the application of the Police Prosecutor be rejected.

4. Sections 94 and 96 of the Code of Criminal Procedure read as follows :

"94(1). Whenever any Court, or, in any place beyond the limits of the towns of Calcutta and Bombay, any officer in charge of a police- station, considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition, if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872, sections 123 and 124, or to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the Postal or Telegraph authorities.

96. (1) Where any Court has reason to believe that a person to whom a summons or order under section 94 or a requisition under section 95, sub- section (1), has been or might be addressed, will not or would not produce the document or thing as required by such summons or requisition,

or where such document or thing is not known to the Court to be in the possession of any person, or where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection,

it may issue a search- warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained.

(2) Nothing herein contained shall authorise any Magistrate other than a District Magistrate or Chief Presidency Magistrate to grant a warrant to search for a document, parcel or other thing in the custody of the Postal or Telegraph authorities."

5. Before construing section 94, it is necessary to recall the back- ground of Art. 20(3) of the Constitution. One of the fundamental canons of the British system of Criminal Jurisprudence and the American Jurisprudence has been that the accused should not be compelled to incriminate himself. This principle "resulted from a feeling of revulsion against the inquisitorial methods adopted and the barbarous sentences imposed, by the Court of Star Chamber, in the exercise of its criminal jurisdiction. This came to a head in the case of John Lilburn (3 State Trials 1315.) which brought about the abolition of the Star Chamber and the firm recognition of the principle that the accused should not be put on oath and that no evidence should be taken from him. This principle, in course of time, developed into its logical extensions, by way of privilege of witnesses against self- incrimination, when called for giving oral testimony or for production of documents." (M. P. Sharma v. Satish Chandra, District Magistrate, Delhi) MANU/SC/0018/1954 : 1978(2)ELT287(SC) .

6. One of the early extensions of the doctrine was with regard to the production of documents or chattel by an accused in response to a subpoena or other form of legal process. In 1749, Lee, C.J., observed in R. v. Purnell (1 W.Bl. 37.) : "We know of no instance wherein this Court has granted a rule to inspect books in a criminal prosecution nakedly considered." In Roe v. Harvey (4 Burr. 2484.), Lord Mansfield observed "that in civil causes the Court will force parties to produce evidence which may prove against themselves or leave the refusal to do it (after proper notice) as a strong presumption to the jury.... But in a criminal or penal cause the defendant is never forced to produce any evidence though he should hold it in his hands in Court." In Redfern v. Redfern [1891] p. 139.) Bowen, L.J., state : "It is one of the inveterate principles of English Law that a party cannot be compelled to discover that which, if answered, would tend to subject him to any punishment, penalty, forfeiture or ecclesiastical censure."

7. The Indian Legislature was aware of the above fundamental canon of criminal jurisprudence because in various sections of the Criminal Procedure Code it gives effect to it. For example, in section 175 it is provided that every person summoned by a Police Officer in a proceeding under section 174 shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or

forfeiture. Section 343 provides that except as provided in sections 337 and 338, no influence by means of any promise or threat or otherwise shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge. Again, when the accused is examined under section 342, the accused does not render himself liable to punishment if he refuses to answer any questions put to him. Further, now although the accused is a competent witness, he cannot be called as a witness except on his own request in writing. It is further provided in section 342A that his failure to give evidence shall not be made the subject of any comment by any parties or the court or give rise to any presumption against himself or any person charged together with him at the same trial.

8. It seems to us that in view of this background the Legislature, if it were minded to make section 94 applicable to an accused person, would have said so in specific words. It is true that the words of section 94 are wide enough to include an accused person but it is well- recognised that in some cases a limitation may be put on the construction of the wide terms of a statute (vide Craies on Statute Law, p. 177). Again it is a rule as to the limitation of the meaning of general words used in a statute that they are to be, if possible, construed as not to alter the common law (vide Craies on Statute Law, p. 187).

9. There is one other consideration which is important. Art. 20(3) has been construed by this Court in Kalu Oghad's [1969] 3 S.C.R. 10. case to mean that an accused person cannot be compelled to disclose documents which are incriminatory and based on his knowledge. Section 94, Criminal Procedure Code, permits the production of all documents including the above- mentioned class of documents. If section 94 is construed to include an accused person, some unfortunate consequences follow. Suppose a police officer - and here it is necessary to emphasize that the police officer has the same powers as a Court - directs an accused to attend and produce or produce a document. According to the accused, he cannot be compelled to produce this document under Art. 20(3) of the Constitution. What is he to do ? If he refuses to produce it before the Police Officer, he would be faced with a prosecution under section 175, Indian Penal Code, and in this prosecution he could not contend that he was not legally bound to produce it because the order to produce is valid order if section 94 applies to an accused person. This becomes clearer if the language of section 175 is compared with the language employed in section 485, Cr.P.C. Under the latter section a reasonable excuse for refusing to produce is a good defence. If he takes the document and objects to its production, there is no machinery provided for the police officer to hold a preliminary enquiry. The Police Officer could well say that on the terms of the section he was not bound to listen to the accused or his counsel. Even if he were minded to listen, would he take evidence and hear arguments to determine whether the production of the document is prohibited by Art. 20(3). At any rate, his decision would be final under the Code for no appeal or revision would be against his order. Thus it seems to us that if we construe section 94 to include an accused person, this construction is likely to lead to grave hardship for the accused and make investigation unfair to him.

10. We may mention that the question about the constitutionality of section 94(1), Cr.P.C., was not argued before us, because at the end of the hearing on the construction of section 94(1), we

indicated to the counsel that we were inclined to put a narrow construction on the said section, and so the question about its constitutionality did not arise. In the course of arguments, however, it was suggested by Mr. Bindra that even if section 94(1) received a broad construction, it would be open to the Court to take the view that the document or thing required to be produced by the accused would not be admitted in evidence if it was found to incriminate him, and in that sense section 94(1) would not contravene Art. 20(3). Even so, since we thought that section 94(1) should receive a narrow construction, we did not require the advocates to pursue the constitutional point any further.

11. Keeping the above considerations in mind, let us look at the terms of the section. It will be noticed that the language is general, and prima facie apt to include an accused person. But there are indications that the Legislature did not intend to include an accused person. The words "attend and produce" are rather inept to cover the case of an accused person. It would be an odd procedure for a court to issue a summons to an accused person present in court "to attend and produce" a document. It would be still more odd for a police officer to issue a written order to an accused person in his custody to "attend and produce" a document.

12. The argument pressed on us that the "person" referred to in the latter part of section 94(1) is broad enough to include an accused person does not take into account the fact that the person in the latter part must be identical with the person who can be directed to produce the thing or document, and if the production of the thing or document cannot be ordered against an accused person having regard to the general scheme of the Code and the basic concept of Criminal Law, the generality of the word "the person" is of no significance.

13. Mr. Bindra invited our intention to section 139 of the Evidence Act, which provides that a person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross- examined unless and until he is called as a witness. But this section has no application to the police officer and it will be noticed that section 94 provides for two alternative directions; the first is 'attend and produce' and the second 'produce' a document. If a police officer directs him to attend and produce he cannot comply with the direction by causing a document to be produced.

14. If, after a thing or a document is produced, its admissibility is going to be examined and the document or thing in question is not going to be admitted in evidence if it incriminates the accused person, the order to produce the thing or document would seem to serve no purpose; it cannot be overlooked that it is because the document or thing is likely to be relevant and material in supporting the prosecution case that on most occasions the power under section 94(1) would be resorted to, so that on the alternative view which seeks to exclude incriminating documents or things, the working of section 94(1) would yield no useful result.

15. It is urged by Mr. Bindra that this construction of section 94 would render section 96 useless for no search warrant could be issued to search for documents known to be in the possession of the accused. This may be so, but a general search or inspection can still be ordered. As far as the police officer is concerned, he can use section 165, Criminal Procedure Code.

16. It is not necessary to review all the cases cited before us. It will be sufficient if we deal with the Full Bench decision of the Calcutta High Court in Satya Kinkar Ray v. Nikhil Chandra Jyotishopadhya MANU/WB/0018/1951 : [1952] I.L.R. 2 Cal. 106., for the earlier cases are reviewed in it. Three main considerations prevailed with the High Court : First, that giving section 94 its ordinary grammatical construction it must be held that it applies to accused persons as well as to others; secondly, that there is no inconsistency between section 94 and other provisions of the Code, and thirdly, that this construction would not make the section ultra vires because calling upon an accused person to produce a document is not compelling the accused to give evidence against himself. Regarding the first two reasons, we may point out that these reasons do not conclude the matter. The High Court did not advert to the importance of the words "attend and produce" in section 94, or the background of Art. 20(3). The third reason is inconsistent with the decision of this Court in M. P. Sharma v. Satish Chandra MANU/SC/0018/1954 : 1978(2)ELT287(SC) , and the learned Chief Justice might well have arrived at a different result if he had come to the conclusion that to call an accused person to produce a document does amount to compelling him to give evidence against himself.

17. We may mention that the construction which we have put on section 94 was also placed in Ishwar Chandra Ghoshal v. The Emperor (12 C.W.N. 1016.), Bajrangi Gope v. Emperor I.L.R. 38 Cal. 304., and Raj Chandra Chakravati v. Hare Kishore Chakravarti.

18. Therefore, agreeing with the High Court, we hold that section 94, on its true construction, does not apply to an accused person. The result is that the appeal is dismissed.

19. It is not necessary to give facts in the other appeals because nothing turns on them. As stated above, the same question arises in them. The other appeals also fail and are dismissed.

20. We would like to express our appreciation of the assistance which Mr. Tatachari gave us in this case as amicus curiae.

J.C. Shah, J.

21. The question which falls to be determined in these appeals is whether in exercise of the power under section 94(1) of the Code of Criminal Procedure a Court has authority to summon a person accused of an offence before it to produce a document or a thing in his possession. The words of

the clause are general : they contain no express limitation, nor do they imply any restriction excluding the person accused of an offence from its operation. In terms the section authorises any Court, or any officer in charge of a police- station, to issue a summons or written order to the person in whose possession or power such document or thing is believed to be, requiring such person to attend and produce it, at the time and place indicated in the summons or order. The scheme of the Code also appears to be consistent with that interpretation. Chapter VI of the Code deals with process to compel appearance. A Court may under section 68 issue a summons for the attendance of any person, whether a witness or accused of an offence (vide Forms Nos. 1 and 3 : Sch. V). Section 75 and the succeeding sections deal with the issue of warrants of arrest of witnesses and persons accused of offences. Chapter VII of the Code deals with process to compel the production of documents and other movable property and to compel appearance of the persons wrongfully confined, and general provisions relating to searches. Section 94 confers on a Court power to issue summons and on a police officer to make an order to any person demanding production of a document or thing believed to be in the possession of that person. Indisputably the person referred to in sub- section (2) of section 94 is the same person who is summoned or ordered to produce a document or thing. Sections 96 to 99 deal with warrants to search for documents or things. The first paragraph of section 96 authorises the issue of a search warrant in respect of a place belonging to any person whether he be a witness or an accused person. The inter- relation between section 94 and the first paragraph of section 96(1) strongly indicates that the power to issue a search warrant under paragraph one of section 96(1) is conditional upon the person, who it is apprehended will not or would not produce a thing or document, being compellable to produce it in pursuance of a summons under section 94(1). If under section 94(1) a summons cannot be issued against a person accused of an offence, a search warrant under section 96(1) paragraph 1 can evidently not be issued in respect of a document or thing in his possession. The second and the third paragraphs of section 96(1) confer power to issue general warrants. The generality of the terms of section 98 which enable specified Magistrates to issue warrants to search places used for certain purposes also indicates that the power may be exercised in respect of any place whether it is occupied by an accused person or not. The terms of section 103 which provide for the procedure for search of any place apply to the search of the house of a person accused of an offence or any other person.

Raju, J.,

22. against whose judgment these appeals are filed, opined that section 94(1) confers no power to issue a summons against an accused person to produce a document or thing in his possession principally on two grounds : (i) that Chapters XX to XXIII of the Code do not authorise the issue of a summons or a warrant against a person accused of an offence, and (ii) that a direction to attend and produce a document or thing cannot appropriately be made against the person accused. The first ground has no validity and has not been relied upon before us for good reasons.

23. The scheme of the Code clearly discloses that the provisions of Chapters VI and VII which fall in Part III entitled "General provisions" are applicable to the trial of cases under Chapters XX to XXIII. Specific provisions with regard to the issue of a summons or warrant to secure attendance

of witnesses and accused and production of documents and things are not found in Chapters XX to XXIII because they are already made in Chapters VI & VII. Again the use of the words "requiring him to attend and produce it" indicates the nature of the command to be contained in the summons and does not imply that the person to whom the summons is directed must necessarily be possessed of unrestricted freedom to physically attend and produce the document or thing demanded.

24. In cases decided by the High Courts of Calcutta and Madras, it appears to have been uniformly held that the word "person" in section 94(1) includes a person accused of an offence : vide S. Kondareddi and another v. Emperor I.L.R. 37 Mad. 112.; Bissar Misser v. Emperor I.L.R. 41 Cal. 261.; and Satya Kinkar Ray v. Nikhil Chandra Jyotishopadhaya MANU/WB/0018/1951 : I.L.R. [1951] 2 Cal. 106.. The observations in Ishwar Chandra Ghoshal v. The Emperor MANU/WB/0345/1908 : 12 C.W.N. 1016. to the contrary in dealing with a conviction for an offence under section 175 Indian Penal Code for failing to comply with an order under section 94(1) suffer from the infirmity that the Court had not the assistance of counsel for the State. This Court also has expressed the same view in The State of Bombay v. Kathi Kulu Oghad and others MANU/SC/0134/1961 : 1961CriLJ856 . Sinha, C.J., delivering the judgment of the majority of the Court observed :

"The accused may have documentary evidence in his possession which may throw some light on the controversy. If it is a document which is not his statement conveying his personal knowledge relating to the charge against him, he may be called upon by the Court to produce that document in accordance with the provisions of section 139 of the Evidence Act."

25. The learned Chief Justice did not expressly refer to the source of the power, but apart from section 94(1) of the Code of Criminal Procedure there is no other provision which enables a Magistrate to summon a person to produce a document or thing in his possession. The observations made by the Court therefore only relate to the power exercisable under section 94(1).

26. Mr. Tatachari says that since it is a fundamental principle of the common law of England which has been adopted in our Criminal jurisprudence, that a person accused of an offence shall not be compelled to discover documents or objects which incriminate himself, a reservation that the expression "person" does not include a person charged with the commission i.e., of an offence though not expressed is implicit in section 94(1). But the hypothesis that our Legislature has accepted wholly or even partially the rule of protection against self- incrimination is based on no solid foundation.

27. In 'Phipson on Evidence', 10th Edn. p. 264 Paragraph 611, the limit of the principle of protection against self- incrimination as applicable in the United Kingdom and the policy thereof are set out thus :

"No witness, whether party or stranger is, except in the cases hereinafter mentioned, compellable to answer any question or to produce any document the tendency of which is to expose the witness (or the wife or husband of the witness), to any criminal charge, penalty or forfeiture."

28. In Paragraph 612 it is stated :

"The privilege is based on the policy of encouraging persons to come forward with evidence in courts of justice, by protecting them, as far as possible, from injury, or needless annoyance, in consequence of so doing."

29. At common law a person accused of an offence enjoyed in general no immunity from answering upon oath as to charges made against him, on the contrary such answers formed an essential feature of all the older modes of trial, from the Saxon ordeal, Norman combat, compurgation or wager of law. Later on, a reaction against the tyranny of the Star Chamber and High Commission Courts set in and the rule became general that no one shall be bound to criminate himself in any court or at any stage of any trial. The privilege was initially claimed only by the defendants, but was later conceded to witnesses also. The witness was thereby protected both from answering questions, and producing documents. In the case of crimes, protection was accorded to questions as to the witness's presence at a duel, or his commission of bigamy, libel, or maintenance; in the case of penalties, as to pound- breach, or fraudulent removal of goods by a tenant : and in the case of forfeiture, as to breach of covenant to take beer from a particular brewery or to insure against fire or not to sub- let without licence. (See Phipson Paragraph 613).

30. In the United States of America where the immunity against self- incrimination is constitutional, the Fifth Amendment provides :

"No person.... shall be compelled in any criminal case, to be a witness against himself."

31. By judicial interpretation the rule has received a much wider application. The privilege is held to apply to witnesses as well as parties in proceedings civil and criminal : it covers documentary evidence and oral evidence, and extends to all disclosures including answers which by themselves support a criminal conviction, or furnish a link in the chain of evidence, and to production of chattel sought by legal process.

32. The rule of protection against self- incrimination prevailing in the United Kingdom, or as interpreted by Courts in the United States of America has never been accepted in India. Scattered through the main body of the statute law of India are provisions which establish beyond doubt that the rule has received no countenance in India. Section 132 of the Evidence Act enacts in no uncertain terms that a witness shall not be excused from answering any questions as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend or indirectly to expose, such witness to a penalty or

forfeiture of any kind. This provision runs directly contrary to the protection against self-incrimination as understood in the common law in the United Kingdom.

33. Statutory provisions have also been made which compel a person to produce information or evidence in proceedings which may involve imposition of penalties against him, e.g., under section 45- G & section 45- L of the Banking Companies Act, 1949 as amended by Act 52 of 1953 provision has been made for public examination of persons against whom an inquiry is made. Provisions are also made under section 140 of the Indian Companies Act, 1913, section 240 of the Companies Act, 1956, section 19(2) of the Foreign Exchange Regulations, section 171- A of the Sea Customs Act 8 of 1878, section 54- A of the Calcutta Police Act, section 10 of the Medicinal & Toilet Preparation Act 11 of the 1955, section 8 of the Official Secrets Act 19 of 1923, section 27 of the Petroleum Act 30 of 1934, section 7 of the Public Gambling Act 3 of 1867, section 95(1) of the Representation of the People Act 43 of 1951 - to mention only a few - compelling persons to furnish information which may be incriminatory or expose them to penalties. Provision have also been made under diverse statutes compelling a person including an accused to supply evidence against himself. For instance, by section 73 of the Evidence Act, the Court is authorised in order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, to direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person. It has been held that this power extends to calling upon an accused person to give his writing in Court and make it available for comparison by an expert : King Emperor v. Tun Hlaing [1923] 1 Ran. 759, F.B. and Zahuri Sahu v. King Emperor ([1927] 6 Pat. 623.).

34. Section 4 of the Identification of Prisoners Act, 1920, obliges a person arrested in connection with an offence punishable with rigorous imprisonment, if so required by a police officer to give his measurements. Section 5 of the Act authorises a Magistrate for the purposes of any investigation or proceeding under the Code of Criminal Procedure, 1898, to order any person to be produced or to attend at any time for his measurements or photograph to be taken, by a police officer. Similarly under section 129- A of the Bombay Prohibition Act, 1949, the Prohibition Officer is authorised to have a person suspected to be intoxicated, medically examined and have his blood tested for determining the percentage of alcohol therein. Offer of resistance to production of his body or the collection of blood may be overcome by all means reasonably necessary to secure the production of such person or the examination of his body or the collection of blood necessary for the test. Section 16 of the Arms Act 11 of 1878 requires a person possessing arms, ammunition or military stores, when such possession has become unlawful to deposit the same at the nearest police station, and section 32 of that Act requires all person possessing arms of which a census is directed by the Central Government to furnish to the person empowered such information as he requires. There are also provisions in the Motor Vehicles Act 4 of 1939 like sections 87(1) & (2), 88 and 89 which require a person to furnish information even about his own complicity in the commission of an offence. It is unnecessary to multiply instances of statutory provisions which impose a duty to give information even if the giving of information may involve the person giving information to incriminate himself. These provisions are, prima facie, inconsistent with the protection against self- incrimination as recognised under the common law

of the United Kingdom or in the constitutional protection conferred by the Fifth Amendment of the American Constitution.

35. The Evidence Act and the Code of Criminal Procedure were enacted at a time when the primary aim of the Government was to maintain law and order. The Legislature was merely a branch of the executive government, and was not in the very nature of things concerned with the liberty of the individual. It would therefore be difficult to assume that the rulers of the time incorporated in the Indian system of law every principle of the English common law concerning individual liberties which was developed after a grim fight in the United Kingdom. In the matter of incorporation of the rule of protection against self- incrimination, both authority and legislative practice appear to be against such incorporation.

36. In this connection it is pertinent to point out that the provisions relating to the production of documents were for the first time introduced in the Code of Criminal Procedure by Act 10 of 1872. These special provisions were presumably thought necessary to be introduced because of the severe criticism made by the Calcutta High Court of the Collector and Magistrate of a District in Bengal in Queen v. Syud Hossain Ali Chowdry I.L.R. 15 Cal. 110.. It was intended thereby to state in words which were clear the extent of powers which were conferred upon criminal courts and police officers in respect of search of documents or other things. The history of the provisions relating to orders for production and searches is set out in In re Ahmed Mahomed [1927] 6 Pat. 623. by Ghose, J., at pp. 137- 138. After observing that the "party referred to in section 365 (which invested a Magistrate with power to issue a summons to produce documents) "might be, as it is obvious, either the accused himself, or a third party and the Legislature in 1872, thought it right to lay it down in clear terms that any party may be compelled to produce documents for the purpose of any investigation or Judicial proceeding", the learned Judge quoted from the record of the speech of the Lieutenant Governor a passage, of which the following is material :

"The prevailing ideas on the subject of criminal law had been somewhat affected by the English law; and the departures from the rules of the English law which the Committee recommended were founded on this ground, that many of the prominent parts of the English law were based on political considerations, the object of those familiar rules of criminal law being not to bring the criminal to justice, but to protect the people from a tyrannical Government. Not only were those provisions now unnecessary in England, but they were especially out of place in a country where it was not pretended that the subject enjoyed liberty, and it was not intended to introduce rules into the criminal law which were designed with the object of securing the liberties of the people. That being so they might fairly get rid of some of the rules, the "object of which was to secure for the people that jealous protection which the English law gave to the accused. It seemed that they were not bound to protect the criminal according to any Code of fair play, but that their object should be to get at the truth, and anything which would tend to elicit the truth was regarded by the Committee to be desirable for the interests of the accused if he was innocent, for those of the public if he was guilty. for instance, did not see why they should not get a man to criminate himself if they could; why they should not do all which they could to get the truth from him; why they should not cross- question him, and adopt every other means, short of absolute torture to get at the truth."

37. In construing the words used by the Legislature, speeches on the floor of the Legislature are inadmissible. I do not refer to the speech for the purpose of interpreting the words used by the Legislature, but to ascertain the historical setting in which the statute which is parent to section 94(1) came to be enacted. The judgment of the High Court of Calcutta, was followed by the somewhat violent reaction of the executive expressed through the head of the Government, and enactment of the statute which prima facie reflected the sentiments expressed. It appears that the Legislature of the time, which was nothing but the executive sitting in a solemn chamber - set its face against the rule against self - incrimination being introduced in the law of India.

38. Opinion has for a long time been divided on the question whether the principle of self-incrimination which prevailed in the United Kingdom the reason of the original source of the rule having disappeared tends of defeat justice. On the one hand it is claimed that the protection of an accused against self- incrimination promotes active investigation from external sources to find out the truth and proof of alleged or suspected crime. It is claimed that the privilege in its application to witnesses as regards oral testimony and production of documents affords to them in general a freedom to come forward to furnish evidence in courts and be of help in elucidating the truth in a case, with materials known to them or in their possession. On the one hand, there are strong advocates of the view that this rule has an undesirable effect on the larger social interest of detection of crime, and a doctrinaire adherence thereto confronts the State with overwhelming difficulties. It is said that it is a protector only of the criminal. I am not concerned to enter upon a discussion of the relative merits of these competing theories. The Court's function is strictly to ascertain the law and to administer it. A rule continuing to remain on the statute book whatever the reason, which induced the Legislature to introduce it at the inception, may not be discarded by the Courts, even if it be inconsistent with notions of a later date : the remedy lies with the Legislature to modify it and not with the Courts.

39. There is one more ground which must be taken into consideration. The interpretation suggested by Mr. Tatachari interferes with the smooth working of the scheme of the related provisions of the Code of Criminal Procedure. Section 94, prima facie, authorises a Magistrate or a police officer for the purposes of any investigation, inquiry, trial or other proceeding to call upon any person in whose possession or power a document or thing is believed to be, to direct him to attend and produce it at the time and place stated in the summons or order. Paragraph 1 of section 96(1) provides that where any Court has reason to believe that a person to whom a summons or order under section 94 has been or might be addressed, will not produce the document or thing as required by such summons or requisition, the Court may issue a search Warrant. It section 94(1) does not authorise a Magistrate to issue a summons to a person accused of an offence for the production of document or thing in his possession, evidently in exercise of the powers under section 96(1) no warrant may be issued to search for a document or thing in his possession. Paragraphs 2 and 3 are undoubtedly not related to section 94(1). But under paragraph 2 a Court may issue a search warrant where the document or thing is not known to the Court to be in the possession of any person; if it is known to be in the possession of any person paragraph 2 cannot be resorted to. Again, if the interpretation of the first paragraph that a search warrant cannot issue for a thing or document in the possession of a person accused be correct, issue of a general warrant under the third paragraph which may authorise the search of a place occupied

by the accused or to which be had access would in substance amount to circumventing the restriction implicit in paragraph one.

40. Nature of the power reserved to investigating officers by section 165 of the Code of Criminal Procedure must also be considered. That section authorises a police officer in charge of an investigation having reasonable grounds for believing that anything necessary for purposes of an investigation into any offence which he is authorised to investigate may be found in any place within the a limits of the police station, and that such thing cannot be otherwise obtained without undue delay, to record in writing the grounds of his belief and specify in such writing, the thing for which search is to be made, and to search, or cause search to be made, for such thing in any place within the limits of such station. Section 94(1) authorises a police officer to pass a written order for the production of any document or thing from any person in whose possession or power the document or thing is believed to be. It section 94(1) does not extend to the issue of an order against an accused person by a police officer, would the police officer in charge of the investigation, be entitled to search for a thing or document in any place occupied by the accused or to which he has access for such document or thing ? To assume that the police officer in charge of the investigation may in the course of investigation exercise power which cannot be exercised when the Court issues a search warrant would be wholly illogical. To deny to the investigating officer the power to search for a document or thing in the possession of a person accused is to make the investigation in many cases a farce. Again, if it be held that a Court has under the third paragraph of section 96(1) power to issue a general search warrant, exercise of the power would make a violent infringement of the protection against self- incrimination, as understood in the United Kingdom, because the Courts in that country frowned upon the issue of a general warrant for search of a document or thing : Entick v. Carrington 19 Howell, St. Tr. 1029..

41. On a review of these considerations, in my view the rule of protection against self-incrimination as understood in the United Kingdom has not been accepted in India. It does not apply to civil proceedings or to proceedings which involve imposition of penalties or forfeitures. By express enactments witnesses at trials are not to be excused from answering question as to any relevant matter in issue on the ground that the answer may incriminate such witness of expose him to a penalty. It is open to the State to call for information which may incriminate the person giving information and under certain statutes an obligation is imposed upon a person even if he stands in danger of being subsequently arraigned as accused, to give information in respect of a transaction with which he is concerned. Provision has been made requiring a person accused of an offence to give his handwriting, thumb marks, finger impressions, to allow measurements and photographs to be taken, and to be compelled to submit himself to examination by experts in medical science. To hold, notwithstanding the apparently wide power conferred, that a person accused of an offence may not in exercise of the power under section 94(1) be called upon to produce documents or things in his possession, on the assumption that the rule of protection against self- incrimination has been introduced in our country, is to ignore the history of legislation and judicial interpretation for upwards of eighty years.

42. It was for the first time by the Constitution under Art. 20(3), that a limited protection has been conferred upon a person charged with the commission of an offence against self- incrimination by affording him protection against testimonial compulsion. The fact that in certain provisions

like sections 161, 175, 342 and 343 of the Code of Criminal Procedure limited protection in the matter of answering questions which might tend to incriminate or expose him to a criminal charge or to penalty or forfeiture has been granted. May indicate that in the interpretation of other provisions of the Code, an assumption that the protection against self- incrimination was implicit has no place.

43. Failure to comply with an order under section 94 of the Code of Criminal Procedure may undoubtedly expose a person to penal action under section 485 of the Code, and he may be prosecuted under section 175 of the Indian Penal Code. In my judgment, refusal to produce a document or thing on the ground that the protection guaranteed by Art. 20(3) would since the enactment of the Constitution be infringed thereby would be a reasonable excuse for non-production within the meaning of section 485 of the Code of Criminal Procedure, and an order which is in violation of Art. 20(3) requiring the person to produce a document would not be regarded as lawful within the meaning of section 175 of the Indian Penal Code. But, apart from the protection conferred by Art. 20(3), there is no reservation which has to be implied in the application of section 94(1).

44. I must mention that in this case, we are not invited to decide whether section 94(1) infringes the guarantee of Art. 20(3) of the Constitution. That question has not been argued before us, and I express no opinion thereon. Whether in a given case the guarantee of protection against testimonial compulsion under Art. 20(3) is infringed by an order of a Court acting in exercise of power conferred by section 94(1) must depend upon the nature of the document ordered to be produced. If by summoning a person who is accused before the Court to produce documents or things he is compelled to be a witness against himself, the summons and all proceedings taken thereon by order of the Court will be void. This protection must undoubtedly be made effective, but within the sphere delimited by the judgment of this Court in Kathi Kalu Oghad's case MANU/SC/0134/1961 : 1961CriLJ856 . It needs however to be affirmed that the protection against what is called testimonial compulsion under Art. 20(3) is against proceedings in Court : it does not apply to orders which may be made by a police officer in the course of investigation. The Court cannot therefore be called upon to consider whether the action of a police officer calling upon a person charged with the commission of an offence to produce a document or thing in his possession infringes the guarantee under Art. 20(3) of the Constitution.

45. In my view the appeals should be allowed and the reference made by the Sessions Judge should be accepted.

ORDER

46. In accordance with the Opinion of the Majority these Appeals are dismissed.

MANU/SC/0575/2017

Neutral Citation: 2017/INSC/448

Back to Section 100 of Code of Criminal Procedure, 1973

IN THE SUPREME COURT OF INDIA

Criminal Appeal Nos. 607- 608 of 2017 (Arising out of SLP (Crl.) Nos. 3119- 3120 of 2014) and Criminal Appeal Nos. 609- 610 of 2017 (Arising out of SLP (Crl.) Nos. 5027- 5028 of 2014)

Decided On: 05.05.2017

Back to Section 354 of Code of Criminal Procedure, 1973

Mukesh and Ors. Vs. State for NCT of Delhi and Ors.

Hon'ble Judges/Coram:

Dipak Misra, Ashok Bhushan and R. Banumathi, JJ.

JUDGMENT

Authored By : Dipak Misra, R. Banumathi

Dipak Misra, J.

1. The cold evening of Delhi on 16th December, 2012 could not have even remotely planted the feeling in the twenty- three year old lady, a para- medical student, who had gone with her friend to watch a film at PVR Select City Walk Mall, Saket, that in the next few hours, the shattering cold night that was gradually stepping in would bring with it the devastating hour of darkness when she, alongwith her friend, would get into a bus at Munirka bus stand to be dropped at a particular place; and possibly could not have imagined that she would be a prey to the savage lust of a gang of six, face brutal assault and become a playful thing that could be tossed around at their wild whim and her private parts would be ruptured to give vent to their pervert sexual appetite, unthinkable and sadistic pleasure. What the victims had not conceived of, it all happened, as the chronology of events would unroll. The attitude, perception, the beastial proclivity, inconceivable self- obsession and individual centralism of the six made the young lady to suffer immense trauma and, in the ultimate eventuate, the life- spark that moves the bodily frame got extinguished in spite of availing of all the possible treatment that the medical world could provide. The death took place at a hospital in Singapore where she had been taken to with the hope that her life could be saved.

2. The friend of the girl survived in spite of being thrown outside the bus along with the girl and the attempt of the accused- Appellants to run over them became futile as they, by their slight movement, could escape from being crushed under the bus, and the Appellants left them thinking that they were no more alive. Lying naked, as the clothes were removed from their bodies, they shouted for help and as good fortune would have it, the night patrolling vehicle, a motor cycle,

arrived and the said man, Raj Kumar, P.W. 72, gave the shirt to the boy and contacted the control room from which a Bolero patrol van came and they brought a bed sheet and tore it into two parts and gave a piece to each of the victims so that they could cover themselves and feel civil. The PCR van took the victims to the Safdarjung Hospital where treatment commenced.

3. The present case is one where there can be no denial that the narrative is long, the investigation has been cautious and to bring home the charge, modern and progressive scientific methods have been adopted. Mr. Siddharth Luthra, learned Senior Counsel for the Respondent- State, has made indefatigable endeavour to project that the investigation is flawless and exemplary; and Mr. M.L. Sharma and Mr. A.P. Singh, learned Counsel for the Appellants, have severely criticized it as faulty on many a score and that it is completely biased; and Mr. Sanjay R. Hegde, learned Senior Counsel, the friend of the Court, in his own way, has highlighted that the investigation is not only flawed but also unreliable which deserves chastisement and warrants rejection. Many facets of the investigation that pertain to recording of dying declaration, recording of statements of witnesses Under Section 161 of the Code of Criminal Procedure, the medical examination, holding of the test identification parade, the manner and method of search and seizure and the procedure of arrest have been seriously commented upon. That apart, criticism is advanced from many a spectrum to strengthen the stance that it does not meet the standard and test determined by law. Needless to say, the factual score and the investigation have to withstand the test of reliability and acceptability. The appreciation of evidence brought on record requires to be appositely scrutinized to adjudge the fact whether the Appellants are guilty of their culpability or there has been public pressure, as alleged, to falsely implicate the Appellants or to treat them as guinea pigs to save others and accept the hypothesis that the prosecution has booked them at the instance of some political executives or to save a situation which a disturbed society perceives as a collective catastrophe on the paradigm of social stability and to sustain its faith in the investigation to keep the precept of rule of law alive. In essence, the submission is that the whole exercise, namely, investigation and trial, has been carried out with the sole purpose for the survival of the prosecuting agency. We have stated in the beginning that Mr. Sharma and Mr. Singh appearing for the Appellants commenced their submission with all the vehemence and sensitivity at their command to strike at the root of the prosecution branding it as suspicious, absolutely unreliable, apathetic to the concept of individual dignity and engaged in maladroit effort to book the vulnerable and the innocent so as to disguise and cover their inefficiency to catch the real culprits. In the course of our deliberation, we shall dwell upon the same and keenly scrutinize the justifiability of the aforesaid criticism.

The Prosecution Narrative

4. Presently, we shall advert to the exposition of facts. The prosecution case, as projected, is that on 16.12.2012, the deceased, 'Nirbhaya' (not her real name), had gone with her friend, the informant, P.W. 1, to the PVR situated in Select City Walk Mall, Saket to watch a movie. After the show was over, about 8:30 p.m., they took an auto and reached Munirka bus stand wherefrom they boarded a white coloured chartered bus [DL- 1P- C- 0149, Ext. P1] which was bound to Dwarka/Palam Road, as a boy in the bus was calling for commuters for the said destination. As

per the version of the informant, P.W. 1, the friend of the prosecutrix, the bus had yellow and green lines/stripes and the word "Yadav" was written on it. After both of them had entered the bus, they noticed that six persons were already inside the bus, four in the cabin of the driver and two behind the driver's cabin. The deceased and the informant sat on the left side in the row of two- seaters and paid the fare of twenty rupees as demanded. Before they could get the feeling of a safe journey (though not a time- consuming journey), a feeling of lonely suffocation and a sense of danger barged in, for the accused persons did not allow anyone else to board and the bus moved and the lights inside the bus were put off. With the lights being put off, the darkness and the fear of the unexpected darkness ruled. A few minutes later, three persons (who have been identified as accused Ram Singh, Akshay and a young boy, who has been treated as a juvenile in conflict with law) came out of the driver's cabin and started to abuse P.W. 1. The young companion of the deceased raised opposition to the abuse that led to an altercation which invited the other two who were sitting outside the driver's cabin to join. The spirit to oppose and the duty to save the prosecutrix had to die down and perilously succumb to the assault by the accused persons with the iron rods that caused injuries to his head, both the legs and other parts of the body and the consequence was that he fell on the floor of the bus to hear the painful cries of the lady who, he knew, was being treated as an object, an article for experimentation and prey to the pervert proclivity of the six but could do nothing except to hear unbearable cries made in agony and pain. His spirit was dead, and bound to.

5. As the prosecution story further unfurls, the two accused persons, namely, Pawan and Vinay, pinned the young man down and robbed the victims of their mobiles besides robbing the informant of his purse carrying a Citi Bank credit card, ICICI Bank Debit Card, his identity card issued by his employer- company, metro card, a sum of rupees one thousand, his Titan Watch, a golden ring studded with jewels and a silver ring studded with pearl, black colour Hush Puppies shoes, black colour Numero Uno jeans, a grey colour pullover and a brown colour blazer. As per the version of the prosecution, P.W. 1 was carrying two mobiles and the prosecutrix was carrying only one, and the accused snatched away all the three mobiles.

6. The overpowering was not meant to satisfy the avarice. As the accusations proceed, after the informant was overpowered, as it could only have a singular result, the accused persons, namely, Ram Singh, Akshay and the Juvenile in Conflict with Law (JCL) took the prosecutrix to the rear side of the bus and she was raped by them, one after the other.

7. After committing rape, the accused Ram Singh (since deceased), accused Akshay and the JCL came towards the informant, P.W. 1, and nailed him down; then the accused Vinay and accused Pawan went to the rear side of the bus and committed rape on the prosecutrix, one by one. P.W. 1 noticed that earlier the bus was moving at fast speed but after sometime, he felt that the speed of the bus was reduced and he saw that the accused Mukesh, who was driving the bus, came near him and hit him with the rod and he also went to the rear side of the bus and raped the prosecutrix. The prosecutrix was brutally gang raped by the accused one after the other and she was also subjected to unnatural sex. Her private parts and her internal organs were seriously injured by inserting iron rod and hand in the rectal and vaginal region. As per P.W. 1, he had

heard the cries of the prosecutrix like "chod do, bachao". P.W. 1 could hear the prosecutrix shouting in a loud oscillating voice. The prosecutrix was carrying a grey colour purse having an Axis Bank ATM card and other belongings. The accused persons robbed her of her belongings and stripped her. They also took away the clothes of the informant while beating him with iron rods. The accused were exhorting that both the victims be not left alive. The accused then tried to throw both the informant and the prosecutrix out of the moving bus from its rear door but could not open it and so, they brought them to the front door and threw them out of the moving bus at National Highway No. 8, Hotel Delhi 37, Mahipalpur flyover by the side of the road.

8. As indicated earlier, the prosecutrix and P.W. 1 were noticed by P.W. 72, Raj Kumar, who heard the voice of 'bachao, bachao' from the left side of the road near a milestone opposite to Hotel Delhi 37. P.W. 72 saw P.W. 1 and the prosecutrix sitting naked having blood all around. Immediately thereafter, P.W. 72, Raj Kumar, informed P.W. 70, Ram Pal, who was in the Control Room, requesting him to call PCR. P.W. 70, Ram Pal, of EGIS Infra Management India (P) Limited, dialed 100 No. and even asked his other patrolling staff to reach the spot.

9. About 10:24 p.m., P.W. 73, H.C. Ram Chander, who was in charge of PCR van Zebra 54, received information about the incident and the lying of victims in a naked condition near the foot of Mahipalpur fly over towards Dhaula Kuan opposite GMR Gate. P.W. 73 reached the spot and found the victims. He got the crowd dispersed and brought a bottle of water and a bedsheet from the nearby hotel and tore the same into two parts and gave it to both the victims to cover themselves.

Travel to the Safdarjung Hospital

10. About 11:00 p.m., P.W. 73 took the victims to Safdarjung Hospital, New Delhi. On the way to the hospital, the victims gave their names to him and informed that they had boarded a bus from Munirka and that after some time the occupants had started misbehaving and had beaten the boy and taken the girl (prosecutrix) to the rear side of the bus and committed rape on her. Thereafter, they had taken off the clothes of the victims and thrown them naked on the road. While leaving the informant, P.W. 1, in the casualty where he was examined by P.W. 51, Dr. Sachin Bajaj, and his MLC, Ext. P.W. 51/A, was drawn up, P.W. 73 took the prosecutrix to the Gynae ward and got her admitted there. The MLC of the prosecutrix, P.W. 49/B, was prepared by P.W. 49, Dr. Rashmi Ahuja.

11. P.W. 49, Dr. Rashmi Ahuja, recorded the history of the incident as told to her by the prosecutrix and noted the same in Exhibit P.W. 49/A. As per the version narrated by the prosecutrix to her, it was a case of gang rape in a moving bus by 4- 5 persons when the prosecutrix was returning after watching a movie with the informant. She was slapped on her face, kicked on her abdomen and bitten over lips, cheek, breast and vulval region. The prosecutrix remembered intercourse two times and rectal penetration also. She was also forced to have unnatural oral sex

but she refused. All this continued for half an hour and then she was thrown off from the moving bus along with her friend.

12. The following external injuries were noted by Dr. Rashmi Ahuja in Ex. P.W. 49/A:

a) Bruise over left eye covering whole of the eye

b) Injury mark (abrasion) at right angle of eye

c) Bruise over left nostril involving upper lip

d) Both lips edematous

e) Bleeding from upper lip present

f) Bite mark over right cheek

g) Left angle of mouth injured (small laceration)

h) Bite mark over left cheek

i) Right breast bite marks below areola present

j) Left breast bruise over right lower quadrant, bite mark in inferior left quadrant

Per abdomen:

i) Guarding & rigidity present

Local examination:

a) Cut mark (sharp) over right labia present

b) A tag of vagina (6 cm in length) hanging outside the introitus

c) There was profuse bleeding from vagina

Per vaginal examination:

i) A posterior vaginal wall tear of about 7 to 8 cm

Per rectal examination:

i) Rectal tear of about 4 to 5 cm., communicating with the vaginal tear.

13. As the evidence brought on record would show, 20 samples of the prosecutrix were taken and sealed with the seal of the hospital and handed over to P.W. 59, Inspector Raj Kumari.

Registration of FIR and the progress thereon

14. At this juncture, it is necessary to state that after the victims were rescued, the informant, P.W. 1, Awninder Pratap, gave his first statement to the police at 3:45 a.m. on 17.12.2012 which culminated into the recording of the FIR at 5:40 a.m. being FIR No. 413/2012 dated 17.12.2012, PS Vasant Vihar Under Section 120B Indian Penal Code and Sections 365/366/376(2)(g)/377/307/302 Indian Penal Code and/or Sections 396/395 Indian Penal Code read with Sections 397/201/412 Indian Penal Code. It was thereafter handed over to S.I. Pratibha Sharma, P.W. 80, for investigation.

15. On the same night, i.e., 16/17.12.2012, the prosecutrix underwent first surgery around 4:00 a.m. The prosecutrix was operated by P.W. 50, Dr. Raj Kumar Chejara, Safdarjung Hospital, New Delhi and his surgery team comprised of Dr. Gaurav and Dr. Piyush. OT notes have been exhibited as Ex. P.W. 50/A and Ex. P.W. 50/B. The second and third surgeries were performed on 19.12.2012 and 23.12.2012 respectively.

16. During the period the prosecutrix was undergoing surgeries one after the other, and when all were concerned about her progress of recovery, the prosecution was carrying out its investigation in a manner that it thought systematic. The first and foremost responsibility of the prosecution was to find out, on the basis of the information given, about the accused persons. That is how the prosecution story un- curtains.

17. On 17.12.2012, supplementary statements of P.W. 1 were recorded by P.W. 80, SI Pratibha Sharma. Based on the description of the bus given by P.W. 1, the offending bus bearing No. DL-1PC- 0149 was found parked in Ravi Das Jhuggi Camp, R.K. Puram, New Delhi. P.W. 80 along with P.W. 74, SI Subhash Chand, and P.W. 65, Ct. Kripal Singh, went to the spot and found accused Ram Singh sitting in the bus. On seeing the police, Ram Singh got down from the bus and started running. The police intercepted Ram Singh and he was arrested and interrogated.

18. Personal search was conducted on Ram Singh and his disclosure statement, Ex. P- 74/F, was recorded by P.W. 74 and his team. Based on his disclosure statement, P.W. 74, Investigating Officer, SI Subhash Chand, seized the bus, Ex. P1, vide Seizure Memo Ex. P.W. 74/K. P.W. 74

seized the seat cover of the bus of red colour and its curtains of yellow colour. On the bus, 'Yadav' was found written on its body with green and yellow stripes on it. The Investigating Officer also seized the key of the bus, Ex. P- 74/2, vide Seizure Memo Ex. P.W. 74/J. The documents of the bus were also seized. The disclosure statement of Ram Singh, Ex. P.W. 74/F, led to the recovery of his bloodstained clothes, iron rods and debit card of Asha Devi, the mother of the prosecutrix. P.W. 74, Investigating Officer, also recovered ashes and the partly unburnt clothes lying near the bus which was seized vide Memo Exhibit No. P.W. 74/M and Unix Mobile Phone with MTNL Sim, Ex. P- 74/5, vide Memo Ex. P/74E. The Investigating Officer prepared the site plan of the place where the bus was parked and from where the ashes were found.

The arrest of the accused persons and seizure of articles

19. The arrest of accused, Ram Singh, also led to the arrest of two other accused persons, namely, accused Vinay Sharma and accused Pawan @ Kaalu. On 18.12.2012, accused Mukesh was apprehended from village Karoli by P.W. 58, SI Arvind Kumar, and was produced before P.W. 80, SI Pratibha Sharma. At the instance of accused Mukesh Singh, a Samsung Galaxy Trend DUOS Blue Black mobile belonging to the informant was recovered. On 23.12.2012, at his instance, P.W. 80 prepared the route chart of the route where Mukesh drove the bus at the time of the incident, Ex. P.W. 80/H. Besides that, he got recovered his bloodstained clothes from the garage of his brother at Anupam Apartment, Saidulajab, Saket, New Delhi. He opted to undergo Test Identification Parade. In the Test Identification Parade conducted by P.W. 17, Sandeep Garg, Metropolitan Magistrate, P.W. 1, identified accused- Mukesh.

20. Accused Pawan was apprehended and arrested about 1:15 p.m. on 18.12.2012 vide memo Ex. P.W. 60/A; his disclosure, Ex. P.W. 60/G, was recorded and his personal search was conducted vide memo Ex. P.W. 60/C. In his disclosure statement, Pawan pointed out Munirka bus stand where the prosecutrix and P.W. 1 boarded the bus and memo Ex. P.W. 68/I was prepared. He also pointed at the spot where P.W. 1 and the prosecutrix were thrown out of the bus and memo Ex. P.W. 68/J was prepared in this regard.

21. Accused Vinay Sharma got recovered his bloodstained clothes, P.W. 1's Hush Puppies leather shoes and the prosecutrix's mobile phone, Nokia Model 3110 of black grey colour. Further recoveries were made pursuant to his supplementary disclosure. Similarly, accused Pawan Kumar got recovered from his jhuggi his bloodstained clothes, shoes and also a wrist watch make Sonata and Rs. 1000/- robbed from P.W. 1.

22. On 21.12.2012, accused Akshay was also arrested from Village Karmalahang, P.S. Tandwa, Aurangabad, Bihar. His disclosure statement was recorded. He led to his brother's house in village Naharpur, Gurgaon, Haryana and got recovered his bloodstained clothes. A ring belonging to P.W. 1, two metro cards and a Nokia phone with SIM of Vodafone Company was also recovered from Akshay. Akshay also opted to undergo TIP and was positively identified by

P.W. 1. The mobile phones of the accused persons were seized and call details records with requisite certificates Under Section 65- B of Indian Evidence Act were obtained by the police.

23. After getting arrested, all the accused were medically examined. The MLCs of all the accused persons show various injuries on their person; viz., in the MLC, Ex. P.W. 2/A, of accused Ram Singh, P.W. 2, Dr. Akhilesh Raj, has opined that the injuries mentioned at point Q to P- 1 could possibly be struggle marks. Similar opinions were received in respect of other accused persons. P.W. 7, Dr. Shashank Pooniya, has opined that the injuries present on the body of accused Akshay were a week old and were suggestive of struggle as per MLC, Ex. P.W. 7/A. MLC, Ex. P.W. 7/B, pertaining to accused Pawan shows that he had suffered injuries on his body which were simple in nature. The MLC, Ex. P.W. 7/C, of accused Vinay Sharma proved that he too suffered injuries, simple in nature, 2 to 3 days old, though injury No. 8 was claimed to be self inflicted by the accused himself.

Further treatment of the victim and filing of chargesheet

24. While the arrest took place, as indicated earlier, the victim underwent second and third surgeries on 19.12.2012 and 23.12.2012 respectively. The second surgery was performed on the prosecutrix on 19.12.2012 by P.W. 50, Dr. Raj Kumar Chejara, along with his operating team consisting of Prof. Sunil Kumar, Dr. Pintu and Dr. Siddharth. Dr. Aruna Batra and Dr. Rekha Bharti were present along with the anaesthetic team. The clinical notes, Ex. P.W. 50/C, and notes prepared by the Gynaecology team, Ex. P.W. 50/D, can be referred to in this regard. The prosecutrix was re- operated on 23.12.2012 for peritoneal lavage and placement of drain under general anaesthesia and the notes are exhibited as Ex. P.W. 50/E.

25. As the condition of the prosecutrix did not improve much, the prosecution thought it appropriate to record the statements of the prosecutrix. The said statements have been conferred the status of dying declaration. As is noticeable from the evidence, P.W. 49 also deposed that certain exhibits were collected for examination such as outer clothes, i.e., sweater, sheet covering the patient; inner clothes, i.e., Sameej torned; dust; grass present in hairs, dust in clothes; debris from in between fingers; debris from nails; nail clippings; nail scrapings; breast swab; body fluid collection (swab from saliva); combing of pubic hair; matted pubic hair, clipping of pubic hair; cervical mucus collection; vaginal secretions; vaginal culture; washing from vaginal; rectal swab; oral swab; urine and oxalate blood vial; blood samples, etc.

26. On 21.12.2012, on being declared fit, the second dying declaration was recorded by P.W. 27, Smt. Usha Chaturvedi, Sub- Divisional Magistrate. This dying declaration is an elaborate one where the prosecutrix has described the incident in detail including the insertion of rods in her private parts. She also stated that the accused were addressing each other with names like, "Ram Singh, Thakur, Raju, Mukesh, Pawan and Vinay".

27. On 25th December, 2012, at 1:00 p.m., P.W. 30, Shri Pawan Kumar, Metropolitan Magistrate, went to the hospital to record the dying declaration of the prosecutrix. The attending doctors opined that the prosecutrix was not in a position to speak but she was otherwise conscious and responded by way of gestures. Accordingly, P.W. 30 put questions in such a manner as to enable her to narrate the incident by way of gestures or writing. Her statement, Ex. P.W. 30/D, was recorded by P.W. 30 in the form of dying declaration by putting her questions in the nature of multiple choice questions. The prosecutrix gave her statement/dying declaration through gestures and writings, Exhibit P.W. 30/D, the contents of which will be discussed later.

28. At this juncture, the cure looked quite distant. The health condition was examined on 26th December 2012 by a team of doctors comprising of Dr. Sandeep Bansal, Cardiologist, Dr. Raj Kumar Chejara, Dr. Sunil Kumar, Dr. Arun Batra and Dr. P.K. Verma and since the condition of the prosecutrix was critical, it was decided that she be shifted abroad for further treatment and fostering oasis of hope on 27th December, 2012, she was shifted to Mt. Elizabeth Hospital, Singapore, for her further treatment. The hope and expiration became a visible mirage as the prosecutrix died on 29th December, 2012 at Mt. Elizabeth Hospital, Singapore. Dr. Paul Chui, P.W. 34, Forensic Pathologist, Health Sciences Authority, Singapore, deposed that her exact time of death was 4:45 a.m. on 29th December, 2012. The death occurred at Mt. Elizabeth Hospital and the cause of her death was sepsis with multiple organ failure following multiple injuries. The original post mortem report is Ex. P.W. 34/A and its scanned copy is Ex. P.W. 34/B; the Toxicology Report dated 4th January, 2013 is Exhibit P.W. 34/C. In the post- mortem report, Ex. P.W. 34/A, besides other serious injuries, various bite marks have been observed on her face, lips, jaw, rear ear, on the right and left breasts, left upper arm, right lower limb, right upper inner thigh (groin), right lower thigh, left thigh lateral and left leg lower anterior.

29. It is apt to note here that during the course of investigation (keeping in mind that the vehicle was identified), the investigating agency went around to collect the electronic evidence. A CCTV footage produced by P.W. 25, Rajender Singh Bisht, in a CD, Ex. P.W. 25/C- 1 and P.W. 25/C- 2, and the photographs, Ex. P.W. 25/B- 1 to Ex. P.W. 25/B- 7, were collected from the Mall, Select City Walk, Saket to ascertain the presence of P.W. 1 and the prosecutrix at the Mall. The certificate Under Section 65- B of the Indian Evidence Act, 1872 (for short, "Evidence Act") with respect to the said footage is proved by P.W. 26, Shri Sandeep Singh, vide Ex. P.W. 26/A. Another important evidence is the CCTV footage of Hotel Delhi 37 situated near the dumping spot. The said footage showed a bus matching the description given by the informant at 9:34 p.m. and again at 9:53 p.m. The said bus had the word "Yadav" written on one side. Its exterior was of white colour having yellow and green stripes and its front tyre on the left side did not have a wheel cap. The description of the bus was affirmed by P.W. 1's statement. The CCTV footage stored in the pen drive, Ex. P- 67/1, and the CD, Ex. P- 67/2, were seized by the I.O. vide seizure memo Ex. P.W. 67/A from P.W. 67, Pramod Kumar Jha, the owner of Hotel Delhi 37. The same were identified by P.W. 67, Pramod Jha, P.W. 74, SI Subhash, and P.W. 76, Gautam Roy, from CFSL during their examination in Court. P.W. 78, SHO, Inspector Anil Sharma, had testified that the said CCTV footage seized vide seizure memo Ex. P.W. 67/A was sent to the CFSL through S.I. Sushil Sawaria and P.W. 77, the MHC(M). Thereafter, on 01.01.2013, the report of the CFSL was received.

30. As the prosecution story would further undrape, in the course of investigation, the test identification parade was carried out. We shall advert to the same at a later stage.

31. We had indicated in the beginning that the investigating team had taken aid of modern methods to strengthen its case. The process undertaken, the method adopted and the results are severely criticized by the learned Counsel for the Appellants to which we shall later on revert to but presently to the steps taken by the investigating agency during investigation. With the intention to cover the case from all possible spheres and to establish the allegations with the proof of conclusivity and not to give any chance of doubt, the prosecution thought that it was its primary duty to ascertain the identity of the accused persons; and for the said purpose, it carried out DNA analysis and fingerprint and bite mark analysis.

Collection of samples and identity of accused persons

32. The blood sample of the informant was collected by Dr. Kamran Faisal, P.W. 15, Safdarjung Hospital, on 25.12.2012 and was handed over to SI Pratibha Sharma, P.W. 80, vide seizure memo Ex. P.W. 15/A by Constable Suresh Kumar, P.W. 42. Similarly, as mentioned earlier, P.W. 49, Dr. Rashmi Ahuja, had collected certain samples from the person of the prosecutrix which are reflected in Ex. P.W. 49/A from point B to B. All the samples were collected by Inspector Raj Kumari, P.W. 59, vide seizure memo Ex. P.W. 59/A and were handed over to P.W. 80, SI Pratibha Sharma, at Safdarjung Hospital in the morning of 17.12.2012. Also the samples of gangrenous bowels of the prosecutrix were taken on 24.12.2012 and were handed over to SI Gajender Singh, P.W. 55, who seized the same vide seizure memo Ex. P.W. 11/A. All the samples were deposited with the MHC(M) and were not tampered with in any manner. A specimen of scalp hair of the prosecutrix was also taken on 24.12.2012 by Dr. Ranju Gandhi, P.W. 29, and was handed over to P.W. 80, SI Pratibha Sharma, vide seizure memo Ex. P.W. 29/A.

33. The accused were also subjected to medical examination and samples were taken from their person which were sent for DNA analysis.

34. DNA analysis was done at the behest of P.W. 45, Dr. B.K. Mohapatra, Sr. Scientific Officer, Biology, CFSL, CBI, and Biological Examination and DNA profiling reports were prepared which are exhibited as Ex. P.W. 45/A- C. The report, after analysing the DNA profiles generated from the known samples of the prosecutrix, the informant, and each of the accused, concluded that:

An analysis of the above shows that the samples were authentic and established the identities of the persons mentioned above beyond reasonable doubt.

35. On 17.12.2012 and 18.12.2012, a team of experts from the CFSL went to Thyagraj Stadium and lifted chance prints from the bus in question, Ex. P- 1. On 28.12.2012, P.W. 78, Inspector Anil Sharma of P.S. Vasant Vihar, the then S.H.O. of Police Station Vasant Vihar, requested the Director, CFSL, for taking digital palm prints and foot prints of all the accused persons vide his letter Ex. P.W. 46/C. Pursuant to the said request made by P.W. 78, Inspector Anil Sharma, the CFSL, on 31.12.2012, took the finger/palm prints and foot prints of the accused persons at Tihar Jail. After comparing the chance prints lifted from the bus with the finger prints/palm prints and foot prints of all the accused persons, P.W. 46, Shri A.D. Shah, Senior Scientific Officer (Finger Prints), CFSL, CBI submitted his report Ex. P.W. 46/D. In the report, the chance prints of accused Vinay Sharma were found to have matched with those on the bus in question.

36. Bite mark analysis was also undertaken by the investigative team to establish the identity and involvement of the accused persons. P.W. 66, Asghar Hussain, on the instructions of the I.O., S.I. Pratibha Sharma, had taken 10 photographs of different parts of the body of the prosecutrix at SJ Hospital on 20.12.2012 between 4:30 p.m. and 5:00 p.m. which were marked as Ex. P.W. 66/B (Colly.) [10 photographs of 5" x 7" each] and Ex. P.W. 66/C (Colly.) [10 photographs of 8" x 12" each]. P.W. 66 also proved in Court the certificate provided by him in terms of Section 65- B of the Evidence Act in respect of the photographs, Ex. P.W. 66/A. Thereafter, P.W. 18, SI Vishal Choudhary, collected the photographs and the dental models from Safdarjung Hospital on 01.01.2013 and duly deposited the same in the malkhana after he, P.W. 18, had handed them over to the S.H.O. Anil Sharma, P.W. 78. The same were later entrusted to S.I. Vishal Choudhary, P.W. 18 on 02.01.2013, which is proved vide RC No. 183/21/12 and exhibited as Ex. P.W. 77/V. P.W. 71, Dr. Ashith B. Acharya, submitted the final report in this regard which is exhibited as Ex. P.W. 71/C. In the said report, he has concluded that at least three bite marks were caused by accused Ram Singh whereas one bite mark has been identified to have been most likely caused by accused Akshay.

37. It is seemly to note here that on completion of the investigation, the chargesheet came to be filed on 03.01.2013 Under Section 365/376(2)(g)/377/307/395/397/302/396/412/201/120/34 Indian Penal Code and supplementary chargesheet was filed on 04.02.2013.

Charge and examination of witnesses, conviction and awarding of sentence by the trial court

38. After the case was committed to the Court of Session, all the accused were charged for the following offences:

1. Under Section 120B Indian Penal Code;

2. Under Sections 365/366/307/376(2)(g) Indian Penal Code/377 Indian Penal Code read with Section 120- B Indian Penal Code;

3. Under Section 396 Indian Penal Code read with Section 120- B Indian Penal Code and/or;

4. Under Section 302 Indian Penal Code read with Section 120- B Indian Penal Code;

5. Under Section 395 Indian Penal Code read with Section 397 Indian Penal Code read with 120-B Indian Penal Code;

6. Under Section 201 Indian Penal Code read with Section 120- B Indian Penal Code and;

7. Under Section 412 Indian Penal Code.

During the course of trial, accused Ram Singh committed suicide and the proceedings qua him stood abated vide order dated 12.10.2013.

39. It is worthy to mention here that in order to bring home the charge, the prosecution initially examined 82 witnesses and thereafter, the statements of the accused persons were recorded and they abjured their guilt. Accused Pawan Gupta @ Kaalu examined Lal Chand, DW- 1, Heera Lal, DW- 2, Ram Charan, DW- 3, Gyan Chand, DW- 4, and Hari Kishan Sharma, DW- 16, in support of his plea. Accused Vinay Sharma examined Smt. Champa Devi, DW- 5, Hari Ram Sharma, DW- 6, Kishore Kumar Bhat, DW- 7, Sri Kant, DW- 8, Manu Sharma, DW- 9, Ram Babu, DW- 10, and Dinesh, DW- 17, to establish his stand. Accused Akshay Kumar Singh @ Thakur examined Chavinder, DW- 11, Sarju Singh, DW- 12, Raj Mohan Singh, DW- 13, Punita Devi, DW- 14, and Sarita Devi, DW- 15. As the factual matrix would reveal, subsequently three more prosecution witnesses were examined and on behalf of the defence, two witnesses were examined.

40. Learned Sessions Judge, vide judgment dated 10.09.2013, convicted all the accused persons, namely, Akshay Kumar Singh @ Thakur, Vinay Sharma, Mukesh and Pawan Gupta @ Kaalu Under Section 120B Indian Penal Code for the offence of criminal conspiracy; Under Section 365/366 Indian Penal Code read with Section 120B Indian Penal Code for abducting the victims with an intention to force the prosecutrix to illicit intercourse; Under Section 307 Indian Penal Code read with Section 120B Indian Penal Code for attempting to kill P.W. 1, the informant; Under Section 376(2)(g) Indian Penal Code for committing gang rape with the prosecutrix in pursuance of their conspiracy; Under Section 377 Indian Penal Code read with Section 120B Indian Penal Code for committing unnatural offence with the prosecutrix; Under Section 302 Indian Penal Code read with Section 120B Indian Penal Code for committing murder of the helpless prosecutrix; Under Section 395 Indian Penal Code for conjointly committing dacoity in pursuance of the aforesaid conspiracy; Under Section 397 Indian Penal Code read with Section

120B Indian Penal Code for the use of iron rods and for attempting to kill P.W. 1 at the time of committing robbery; Under Section 201 Indian Penal Code read with Section 120B Indian Penal Code for destroying of evidence and Under Section 412 Indian Penal Code for the offence of being individually found in possession of the stolen property which they all knew was a stolen booty of dacoity committed by them.

41. After recording the conviction, as aforesaid, the learned trial Judge imposed the sentence, which we reproduce:

(a) The convicts, namely, convict Akshay Kumar Singh @ Thakur, convict Mukesh, convict Vinay Sharma and convict Pawan Gupta @ Kaalu are sentenced to death for offence punishable Under Section 302 Indian Penal Code. Accordingly, the convicts to be hanged by neck till they are dead. Fine of Rs. 10,000/- to each of the convict is also imposed and in default of payment of fine such convict shall undergo simple imprisonment for a period of one month.

(b) for the offence Under Section 120- B Indian Penal Code I award the punishment of life imprisonment to each of the convict and fine of Rs. 5000/- to each of them. In default of payment of fine simple imprisonment for one month to such convict;

(c) for the offence Under Section 365 Indian Penal Code I award the punishment of seven years to each of the convict and fine of Rs. 5000/- to each of them. In default of payment of fine simple imprisonment for one month to such convict;

(d) for the offence Under Section 366 Indian Penal Code I award the punishment of seven years to each of the convict person and fine of Rs. 5000/- to each of them. In default of payment of fine simple imprisonment for one month to such convict;

(e) for the offence Under Section 376(2)(g) Indian Penal Code I award the punishment of life imprisonment to each of the convict person with fine of Rs. 5000/- to each of them. In default of payment of fine simple imprisonment for one month to such convict;

(f) for the offence Under Section 377 Indian Penal Code I award the punishment of ten years to each of the convict person and fine of Rs. 5000/- to each of them. In default of payment of fine simple imprisonment for one month to such convict;

(g) for the offence Under Section 307 Indian Penal Code I award the punishment of seven years to each of the convict person and fine of Rs. 5000/- to each of them. In default of payment of fine simple imprisonment for one month to such convict;

(h) for the offence Under Section 201 Indian Penal Code I award the punishment of seven years to each of the convict person and fine of Rs. 5000/- to each of them. In default of payment of fine simple imprisonment for one month to such convict;

(i) for the offence Under Section 395 read with Section 397 Indian Penal Code I award the punishment of ten years to each of the convict person and fine of Rs. 5000/- to each of them. In default of payment of fine simple imprisonment for one month to such convict;

(j) for the offence Under Section 412 Indian Penal Code I award the punishment of ten years to each of the convict person and fine of Rs. 5000/- to each of them. In default of payment of fine simple imprisonment for one month to such convict;

42. Be it noted, the learned trial Judge directed the sentences Under Sections 120B/365/366/376(2)(g)/377/201/395/397/412 Indian Penal Code to run concurrently and that the benefit Under Section 428 Code of Criminal Procedure would be given wherever applicable. He further recommended that appropriate compensation Under Section 357A Code of Criminal Procedure be awarded to the legal heirs of the prosecutrix and, accordingly, sent a copy of the order to the Secretary, Delhi Legal Services Authority, New Delhi, for deciding the quantum of compensation to be awarded under the scheme referred to in Sub- section (1) of Section 357A Code of Criminal Procedure. That apart, as death penalty was imposed, he referred the matter to the High Court for confirmation Under Section 366 Code of Criminal Procedure.

The view of the High court

43. The High Court, vide judgment dated 13.03.2014, affirmed the conviction and confirmed the death penalty imposed upon the accused by expressing the opinion that under the facts and circumstances of the case, imposition of death penalty awarded by the trial court deserved to be confirmed in respect of all the four convicts. As the death penalty was confirmed, the appeals preferred by the accused faced the inevitable result, that is, dismissal.

Commencement of hearing and delineation of contentions

44. As we had stated earlier, the grievance relating to the lodging of FIR and the manner in which it has been registered has been seriously commented upon and criticized by the learned Counsel for the Appellants. Mr. Sharma, learned Counsel for the Appellants - Mukesh and Pawan Kumar Gupta, and Mr. Singh, learned Counsel for the Appellants - Vinay Sharma and Akshay Kumar Singh, have stressed with all the conviction at their command that when a matter of confirmation

of death penalty is assailed before this Court, it is the duty of this Court to see every aspect in detail and not to treat it as an ordinary appeal.

45. As the argument commenced with the said note, we thought it appropriate to grant liberty to the learned Counsel for the Appellants to challenge the conviction and the imposition of death sentence from all aspects and counts and to dissect the evidence and project the irregularities in arrest and investigation. Learned Counsel for the parties argued the matter for considerable length of time and hence, we shall deal with every aspect in detail.

Delayed registration of FIR

46. The attack commences with the registration of FIR and, therefore, we shall delve into the same in detail. P.W. 57, ASI Kapil Singh, the Duty Officer at P.S. Vasant Vihar, New Delhi, on the intervening night of 16/17.12.2012, received information about the incident. He lodged DD No. 6- A, Ex. P.W. 57/A, and passed on the said DD to P.W. 74, SI Subhash Chand, who was on emergency duty that night at P.S. Vasant Vihar. Immediately thereafter, P.W. 57, ASI Kapil Singh, received yet another information qua admission of the prosecutrix and of the informant in Safdarjung Hospital and he lodged DD No. 7- A, Ex. P.W. 57/B, and also passed on the said DD to SI Subhash Chand.

47. P.W. 74, SI Subhash Chand, then left for Safdarjung Hospital where he met P.W. 59, Inspector Raj Kumari, and P.W. 62, SI Mahesh Bhargava. P.W. 59, Inspector Raj Kumari, handed over to him the MLC and the exhibits concerning the prosecutrix as given to her by the treating doctor and P.W. 62, SI Mahesh Bhargava, handed over to him the MLC of the informant. P.W. 74, SI Subhash Chand, then recorded the statement, Ex. P.W. 1/A, of the informant at 1:30 a.m. on 17.12.2012 and made his endorsement, Ex. P.W. 74/A, on it and he gave the rukka to P.W. 65, Ct. Kripal Singh, for being taken to P.S. Vasant Vihar, New Delhi and to get the FIR registered. P.W. 65, Ct. Kripal Singh, then went to P.S. Vasant Vihar, New Delhi and at 5:40 a.m. and gave the rukka to P.W. 57, ASI Kapil Singh, the Duty Officer, who, in turn, recorded the FIR, Ex. P.W. 57/D, made endorsement, Ex. P.W. 57/E, on the rukka and returned it to P.W. 65, Ct. Kripal Singh, who then handed it to P.W. 80, SI Pratibha Sharma, at P.S. Vasant Vihar to whom the investigation was entrusted.

48. SI Subhash Chand, P.W. 74, deposed that the statement of the informant might have been recorded around 3:45 a.m. although P.W. 1 deposed that his statement was recorded at 5:30 a.m. It was submitted that the original statement was recorded by HC Ram Chander, P.W. 73, and the investigation process had already begun around 1:15 a.m. and the subsequent information from the informant which is stated to be the first information was, in fact, crafted after the investigating agency decided on a course of action. It is submitted by the learned Counsel for the Appellants that the delay in the FIR raises serious doubts.

49. Delay in setting the law into motion by lodging of complaint in court or FIR at police station is normally viewed by courts with suspicion because there is possibility of concoction of evidence against an accused. Therefore, it becomes necessary for the prosecution to satisfactorily explain the delay. Whether the delay is so long as to throw a cloud of suspicion on the case of the prosecution would depend upon a variety of factors. Even a long delay can be condoned if the informant has no motive for implicating the accused.

50. In the present case, after the occurrence, the prosecutrix and P.W. 1 were admitted to the hospital at 11:05 p.m.; the victim was admitted in the Gynaecology Ward and P.W. 1, the informant, in the casualty ward. P.W. 74, SI Subhash Chand, recorded the statement of P.W. 1 at 3:45 a.m. After P.W. 1 and the prosecutrix were taken to the hospital for treatment, the statement of P.W. 1 was recorded by P.W. 74, SI Subhash Chand, at 1:37 a.m. and the same was handed over to P.W. 65, Constable Kripal Singh, to P.W. 57, Kapil Singh. In the initial stages, the intention of all concerned must have been to save the victim by giving her proper medical treatment. Even assuming for the sake of argument that there is delay, the same is in consonance with natural human conduct.

51. In this case, there is no delay in the registration of FIR. The sequence of events are natural and in the present case, after the occurrence, the victim and P.W. 1 were thrown out of the bus at Mahipalpur in semi- naked condition and were rescued by P.W. 72, Raj Kumar, and P.W. 70, Ram Pal, both EGIS Infra Management India (P) Limited employees. The victim was seriously injured and was in a critical condition and it has to be treated as a natural conduct that giving medical treatment to her was of prime importance. The admission of P.W. 1 and the victim in the hospital and the completion of procedure must have taken some time. P.W. 1 himself was injured and was admitted to the hospital at 11:05 p.m. No delay can be said to have been caused in examining P.W. 1, the informant.

52. In the context of belated FIR, we may usefully refer to certain authorities in the field. In Ram Jag and Ors. v. State of U.P. MANU/SC/0150/1973 : (1974) 4 SCC 201 : AIR 1974 SC 606, it was held as that witnesses cannot be called upon to explain every hour's delay and a commonsense view has to be taken in ascertaining whether the first information report was lodged after an undue delay so as to afford enough scope for manipulating evidence. Whether the delay is so long as to throw a cloud of suspicion on the seeds of the prosecution case must depend upon a variety of factors which would vary from case to case. Even a long delay in filing report of an occurrence can be condoned if the witnesses on whose evidence the prosecution relies have no motive for implicating the accused. On the other hand, prompt filing of the report is not an unmistakable guarantee of the truthfulness of the version of the prosecution.

53. In State of Himachal Pradesh v. Rakesh Kumar MANU/SC/0901/2009 : (2009) 6 SCC 308, the Court repelled the submission pertaining to delay in lodging of the FIR on the ground that the first endeavour is always to take the person to the hospital immediately so as to provide him

medical treatment and only thereafter report the incident to the police. The Court in the said case further held that every minute was precious and, therefore, it is natural that the witnesses accompanying the deceased first tried to take him to the hospital so as to enable him to get immediate medical treatment. Such action was definitely in accordance with normal human conduct and psychology. When their efforts failed and the deceased died they immediately reported the incident to the police. The Court, under the said circumstances ruled that in fact, it was a case of quick reporting to the police.

Judged on the anvil of the aforesaid decisions, we have no hesitation in arriving at the conclusion that there was no delay in lodging of the FIR.

Non- mentioning of assailants in the FIR

54. An argument was advanced assailing the FIR to the effect that the FIR does not contain: (i) the names of the assailants either in the MLC, Ex. P.W. 51/A, or in the complaint, Ex. P.W. 1/A, (ii) the description of the bus and (iii) the use of iron rods.

55. As far as the argument that the FIR does not contain the names of all the accused persons is concerned, it has to be kept in mind that it is settled law that FIR is not an encyclopedia of facts and it is not expected from a victim to give details of the incident either in the FIR or in the brief history given to the doctors. FIR is not an encyclopedia which is expected to contain all the details of the prosecution case; it may be sufficient if the broad facts of the prosecution case alone appear. If any overt act is attributed to a particular accused among the assailants, it must be given greater assurance. In this context, reference to certain authorities would be fruitful.

56. In Rattan Singh v. State of H.P. MANU/SC/0177/1997 : (1997) 4 SCC 161, the Court, while repelling the submission for accepting the view of the trial court took note of the fact that there had been omission of the details and observed that the criminal courts should not be fastidious with mere omissions in the first information statement since such statements can neither be expected to be a chronicle of every detail of what happened nor expected to contain an exhaustive catalogue of the events which took place. The person who furnishes the first information to the authorities might be fresh with the facts but he need not necessarily have the skill or ability to reproduce details of the entire story without anything missing therefrom. Some may miss even important details in a narration. Quite often, the police officer, who takes down the first information, would record what the informant conveys to him without resorting to any elicitatory exercise. It is voluntary narrative of the informant without interrogation which usually goes into such statement and hence, any omission therein has to be considered along with the other evidence to determine whether the fact so omitted never happened at all. The Court also referred to the principles stated in Pedda Narayana v. State of A.P. MANU/SC/0182/1975 : (1975) 4 SCC 153; Sone Lal v. State of U.P. MANU/SC/0170/1978 : (1978) 4 SCC 302; Gurnam Kaur v. Bakshish Singh MANU/SC/0125/1980 : 1980 Supp SCC 567.

57. In State of Uttar Pradesh v. Naresh and Ors. MANU/SC/0228/2011 : (2011) 4 SCC 324, reiterating the principle, the Court opined that it is settled legal proposition that FIR is not an encyclopedia of the entire case. It may not and need not contain all the details. Naming of the accused therein may be important but not naming of the accused in FIR may not be a ground to doubt the contents thereof in case the statement of the witness is found to be trustworthy. The court has to determine after examining the entire factual scenario whether a person has participated in the crime or has been falsely implicated. The informant fully acquainted with the facts may lack necessary skill or ability to reproduce details of the entire incident without anything missing from the same. Some people may miss even the most important details in narration. Therefore, in case the informant fails to name a particular accused in the FIR, this ground alone cannot tilt the balance of the case in favour of the accused. For the aforesaid purpose reliance was placed upon Rotash v. State of Rajasthan MANU/SC/8747/2006 : (2006) 12 SCC 64 and Ranjit Singh v. State of M.P. MANU/SC/0924/2010 : (2011) 4 SCC 336.

58. In Rotash (supra) this Court while dealing with the omission of naming an accused in the FIR opined that:

14. ...We, however, although did not intend to ignore the importance of naming of an accused in the first information report, but herein we have seen that he had been named in the earliest possible opportunity. Even assuming that PW 1 did not name him in the first information report, we do not find any reason to disbelieve the statement of Mooli Devi, PW 6. The question is as to whether a person was implicated by way of an afterthought or not must be judged having regard to the entire factual scenario obtaining in the case. PW 6 received as many as four injuries.

59. While dealing with a similar issue in Animireddy Venkata Ramana v. Public Prosecutor MANU/SC/7294/2008 : (2008) 5 SCC 368, the Court held as under:

13. ...While considering the effect of some omissions in the first information report on the part of the informant, a court cannot fail to take into consideration the probable physical and mental condition of the first informant. One of the important factors which may weigh with the court is as to whether there was a possibility of false implication of the Appellants. Only with a view to test the veracity of the correctness of the contents of the report, the court applies certain well-known principles of caution.

Thus, apart from other aspects what is required to be scrutinized is that there is no attempt for false implication, application of principle of caution and evaluation of the testimonies of the witnesses as regards their trustworthiness.

60. In view of the aforesaid settled position of law, we are not disposed to accept the contention that omission in the first statement of the informant is fatal to the case. We are disposed to think so, for the omission has to be considered in the backdrop of the entire factual scenario, the

materials brought on record and objective weighing of the circumstances. The impact of the omission, as is discernible from the authorities, has to be adjudged in the totality of the circumstances and the veracity of the evidence. The involvement of the accused persons cannot be determined solely on the basis of what has been mentioned in the FIR.

61. In his statement recorded in the early hours of 17.12.2012, P.W. 1 stated about going to the Select City Walk Mall, Saket alongwith the prosecutrix and boarding the bus. He has also stated about the presence of four persons sitting in the cabin of the bus and two boys sitting behind the cabin and clearly stated about the overt act. He has broadly made reference to the accused persons and also to the overt acts. There are no indications of fabrication in Ex. P.W. 1/A.

62. The victim and P.W. 1 were thrown out of the bus and after some time they were admitted to the hospital. Both the injuries on P.W. 1's person and the gruesome acts against the victim must have put him in a traumatic condition and it would not have been possible for him to recall and narrate the entire incident to the police at one instance. It cannot be said that merely because the names of the accused persons are not mentioned in the FIR, it raises serious doubts about the prosecution case.

Appreciation of the evidence of P.W. 1

63. Having dealt with the contention of delay in lodging of the FIR and omission of names in the FIR on the basis of the first statement of P.W. 1, we may now proceed to appreciate the evidentiary value to be attached to the testimony of P.W. 1 and the contentions advanced in this regard.

64. As per the evidence of P.W. 1, he alongwith the prosecutrix, on the fateful day about 3:30 p.m., took an auto from Dwarka, New Delhi to Select City Walk Mall, Saket, New Delhi, where they watched a movie till about 8:30 p.m. and, thereafter, left the Mall. As they could not get an auto for Dwarka, they hired an auto for Munirka intending to take a bus (route No. 764) thereon. About 9:00 p.m. when they reached Munirka bus stand they boarded a white colour chartered bus and JCL was calling for commuters to Dwarka/Palam Mod. While boarding the bus, P.W. 1 noted that the bus had "Yadav" written on its side; had yellow and green lines/stripes; the entry gate was ahead of its front left tyre; and its front tyre was without a wheel cover. After boarding, he saw that besides the boy (JCL) who was calling for passengers and the driver, two other persons were sitting in the driver's cabin and two persons were seated inside the bus on either side of the aisle. After the bus left the Munirka bus stand, the lights inside the bus were turned off. Then accused Ram Singh, accused Akshay Thakur and the JCL (all three identified later) came towards P.W. 1 and verbally and physically assaulted him. When P.W. 1 resisted them, accused Vinay and accused Pawan were called along with iron rods and all the accused persons started hitting P.W. 1 with the iron rods. When the prosecutrix attempted to call for help, P.W. 1 and the prosecutrix were robbed of their possessions.

65. P.W. 1 was immobilized by accused Vinay and accused Pawan Kumar; while others, viz., accused Ram Singh, Akshay and the JCL took the prosecutrix to the rear side of the bus whereafter P.W. 1 heard the prosecutrix shout out "chod do, bachao" and her cry. After the above, three accused committed the heinous act of raping the prosecutrix, accused Vinay and Pawan then went to the rear side of the bus while the other three pinned down P.W. 1. Thereafter, accused Mukesh (originally driving the bus) hit P.W. 1 with the rod and went to the rear side of the bus. P.W. 1 also heard one of the accused saying "mar gayee, mar gayee". After the incident, P.W. 1 and the prosecutrix were dragged to the front door (because the rear door was jammed) and were pushed out of the moving bus opposite Hotel Delhi 37. After being thrown outside, the bus was turned in such a manner as to crush both of them but P.W. 1 pulled the prosecutrix and himself out of the reach of the wheels of the bus and saved their lives.

66. The statement of the informant, P.W. 1, was recorded by P.W. 74 in the early hours of 17.12.12 and Ex. P.W. 1/A is the complaint. In his chief examination, P.W. 74 deposes that he had given the complaint (rukka) to Ct. Kripal Singh and sent him to the police station at 5:10 a.m. which thereby leaves the time of recording the informant's statement inconclusive. Even if the version of P.W. 74 was to be relied upon and the informant's statement had been recorded by 5:10 a.m., DD entry which forms Ex. P.W. 57/C records that till 5:30 a.m., no punishable offence has been reported to have occurred and information of well- being had been recorded despite the fact that previous DD entries had been recorded on the basis of telephonic conversations between police officers at the hospital, the scene of crime and the control room (both DD entries 6A and 7A had been recorded on the basis of phone conversations). The first supplementary statement was recorded around 7:30 a.m., on 17.12.2012 specifically with respect to the bus in question. In this statement, Ex. P.W. 80/D1, P.W. 1 merely gives a generic description of the bus. However, unlike in Ex. P.W. 1/A, in his supplementary statement, the informant states that the bus was white in colour with stripes of yellow and green, that there were 3 x 2 seats and that if he remembered anything else, he would reveal the same. At this time, the investigating agency had neither seized the bus nor arrested the accused; the statement of the informant is, therefore, silent on specific details about the same. PW's second supplementary statement, Ex. P.W. 80/D3, was recorded around noon on 17.12.2012 in which the informant, for the first time since the time of the incident, revealed details about the bus in which the crime allegedly occurred (that there was the word "Yadav" written on the side, that the front wheel cover was missing), and also revealed the names of the accused (Ram Singh, one Thakur, one Mukesh/Ramesh, Vinay and Pawan).

67. The learned amicus curiae, Mr. Hegde, submitted that at every stage, P.W. 1 made improvement in his statements. It was submitted that when P.W. 1 was confronted with the omissions Ex. P.W. 1/A, Ex. P.W. 8/D1 and Ex. P.W. 80/D3, he stated that he was unable to talk at the time of recording of his statement due to injury to the tongue. It was submitted that as per Ex. P.W. 51/A, he sustained only simple injury and it does not state that P.W. 1 suffered injury to his tongue. It was further contended that the process of improving and embellishing the informant's statement did not end with recording his statement Under Section 161 Code of Criminal Procedure. On 19.12.2012, the informant made a statement Under Section 164 Code of Criminal Procedure before the Metropolitan Magistrate, Saket Courts. This statement is the most

comprehensive and contains details which had been discovered by the prosecution by then such as the names of all the accused (including the name of the JCL for the first time) and details from inside the bus (colour of the seats and curtains). It was contended that the improved version of P.W. 1 renders his evidence unreliable and merely because he is an injured witness, his evidence cannot be accepted.

68. It is urged by Mr. Hegde, learned amicus curiae, that inconsistencies and omissions amounting to contradiction in the testimony of P.W. 1 make him an untrustworthy and unreliable witness. The inconsistencies pointed out by the learned amicus curiae pertain to the number of assailants, the description of the bus and the identity of the accused. As regards the omission, it is contended by him that the said witness had not mentioned about the alleged use of rod in the FIR. He has further submitted that though he has stated that he had been assaulted by the iron rods as per his subsequent statement, yet the said statement is wholly unacceptable since he had sustained only simple injuries.

69. Mr. Hegde, in his further criticism of the evidence of P.W. 1, has put forth that the effort of the prosecution had been to highlight the consistencies instead of explaining the inconsistencies. That apart, submits Mr. Hegde, that the witness has revealed the story step by step including the gradual recognition of the identity of the accused in tandem with the process of investigation and in such a situation, his testimony has to be looked with suspicion.

70. Mr. Sharma, learned Counsel for the Appellants- Mukesh and Pawan Kumar Gupta, and Mr. Singh, learned Counsel for the Appellants - Vinay Sharma and Akshay Kumar Singh, submit that the omissions in the statement of P.W. 1 amount to contradictions in material particulars and such contradictions go to the root of the case and, in fact, materially affect the trial or the very case of the prosecution. Therefore, they submit that the testimony of P.W. 1, who is treated as a star witness, is liable to be discredited. Reliance has been placed on the authorities in State Represented by Inspector of Police v. Saravanan and Anr. MANU/SC/8113/2008 : (2008) 17 SCC 587 : AIR 2009 SC 152, Arumugam v. State Represented by Inspector of Police, Tamil Nadu MANU/SC/8108/2008 : (2008) 15 SCC 590 : AIR 2009 SC 331, Mahendra Pratap Singh v. State of Uttar Pradesh MANU/SC/0279/2009 : (2009) 11 SCC 334 and Sunil Kumar Sambhudayal Gupta (Dr.) and Ors. v. State of Maharashtra MANU/SC/0947/2010 : (2010) 13 SCC 657 : JT 2010 (12) SC 287.

71. The authorities that have been commended by Mr. Sharma need to be appositely understood. In Arumugam (supra), the Court was dealing with the issue of acceptance of the version of interested witnesses. It has referred to Dalip Singh v. State of Punjab MANU/SC/0031/1953 : AIR 1953 SC 364, State of Punjab v. Jagir Singh, Baljit Singh and Karam Singh MANU/SC/0193/1973 : (1974) 3 SCC 277, Lehna v. State of Haryana MANU/SC/0075/2002 : (2002) 3 SCC 76, Gangadhar Behera and Ors. v. State of Orissa MANU/SC/0875/2002 : (2002) 8 SCC 381 and State of Rajasthan v. Kalki and Anr. MANU/SC/0254/1981 : (1981) 2 SCC 752 and

opined that while normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so.

72. In Saravanan (supra), reiterating the principle, the Court held:

18. ...it has been said time and again by this Court that while appreciating the evidence of a witness, minor discrepancies on trivial matters without affecting the core of the prosecution case, ought not to prompt the court to reject evidence in its entirety. Further, on the general tenor of the evidence given by the witness, the trial court upon appreciation of evidence forms an opinion about the credibility thereof, in the normal circumstances the appellate court would not be justified to review it once again without justifiable reasons. It is the totality of the situation, which has to be taken note of. Difference in some minor detail, which does not otherwise affect the core of the prosecution case, even if present, that itself would not prompt the court to reject the evidence on minor variations and discrepancies.

73. In Mahendra Pratap Singh (supra), the Court referred to the authority in Inder Singh and Anr. v. State (Delhi Administration) MANU/SC/0093/1978 : (1978) 4 SCC 161 wherein it has been held thus:

2. Credibility of testimony, oral and circumstantial, depends considerably on a judicial evaluation of the totality, not isolated scrutiny. While it is necessary that proof beyond reasonable doubt should be adduced in all criminal cases, it is not necessary that it should be perfect.

In the circumstance of the case, the Court, analyzing the evidence, opined:

62. From the above discussion of the evidence of the eyewitnesses including injured witnesses, their evidence does not at all inspire confidence and their evidence is running in conflict and contradiction with the medical evidence and ballistic expert's report in regard to the weapon of offence, which was different from the one sealed in the police station. The High Court has, in our opinion, disregarded the rule of judicial prudence in converting the order of acquittal to conviction.

74. In Sunil Kumar Sambhudayal Gupta (supra), while dealing with the issue of material contradictions, the Court held:

30. While appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially after the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The trial court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate court in normal course would not be justified in reviewing the same again without justifiable reasons. (Vide State v. Saravanan)

31. Where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a witness and the other witness also makes material improvements before the court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence. (Vide State of Rajasthan v. Rajendra Singh MANU/SC/0446/1998 : (2009) 11 SCC 106.)

32. The discrepancies in the evidence of eyewitnesses, if found to be not minor in nature, may be a ground for disbelieving and discrediting their evidence. In such circumstances, witnesses may not inspire confidence and if their evidence is found to be in conflict and contradiction with other evidence or with the statement already recorded, in such a case it cannot be held that the prosecution proved its case beyond reasonable doubt." (Vide Mahendra Pratap Singh v. State of U.P.)

And again:

35. The courts have to label the category to which a discrepancy belongs. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so." (See Syed Ibrahim v. State of A.P. MANU/SC/8237/2006 : (2006) 10 SCC 601 and Arumugam v. State)

75. Mr. Luthra, learned Senior Counsel appearing for the Respondent- State, on the other hand, has disputed the stand of the Appellants as regards the discrepancies in the statement of P.W. 1. According to him, the evidence of P.W. 1 cannot be discarded on grounds which are quite specious. The circumstances in entirety are to be appreciated. He has placed reliance on the appreciation of the trial court and contended that the appreciation and analysis are absolutely impeccable. The relied upon paragraph is as follows:

The complainant P.W. 1 in his deposition had corroborated his complaint Ex. P.W. 1/A; his statement Ex. P.W. 80/D- 1 recorded Under Section 161 Code of Criminal Procedure; his supplementary statement Ex. P.W. 80/D- 3 and his statement Ex. P.W. 1/B recorded Under Section 164 Code of Criminal Procedure; qua his visit to Select City Mall, Saket; then moving to Munirka in an auto; boarding the bus Ex. P1; the incident; throwing them out of the moving bus and attempt of accused to overrun the victims by their bus.

It was argued by the Ld. Defence Counsel that during his cross examination P.W. 1 was confronted with his statement Ex. P.W. 1/A qua the factum of not disclosing in it the user of iron rods; the description of bus, the name of the assailants either in MLC Ex. P.W. 51/A or in his complaint Ex. P.W. 1/A. However, I do not consider such omissions as fatal as it is a settled law that FIR is not an encyclopedia of facts. The victim is not precluded from explaining the facts in his subsequent statements. It is not expected of a victim to disclose all the finer aspects of the incident in the FIR or in the brief history given to the doctor; as doctor(s) are more concerned with treatment of the victims. More so the victim who suffers from an incident, obviously, is in a state

of shock and it is only when we moves in his comfort zone, he starts recollecting the events one by one and thus to stop the victim from elaborating the facts to describe the finer details, if left out earlier, would be too much.

Thus if P.W. 1 had failed to give the description of the bus or of iron rods to the doctor in his MLC Ex. P.W. 51/A or in his complaint Ex. P.W. 1/A it shall not have any fatal effect on the prosecution case. What is fatal is the material omissions, if any.

76. The evidence of P.W. 1 is assailed contending that he is not a reliable witness. During the cross- examination, his evidence was assailed contending that Ex. P.W. 1/A is replete with contradictions and inconsistencies. Taking us through the evidence, Mr. Singh has submitted that in his first statement, Ex. P.W. 1/A, there were lot of omissions and contradictions and the improvements in his subsequent statements render the evidence wholly untrustworthy. The Appellants, in an attempt to assail the credibility of the testimony of P.W. 1, inter alia, raised the contentions: (i) Non- disclosure of the use of iron rod and (ii) the names of the assailants in the MLC in Ex. P.W. 51/A or in Ex. P.W. 1/A. However, the trial court held these assertions as non-fatal to P.W. 1's testimony:

... It is not expected of a victim to disclose all the finer aspects of the incident in the FIR or in the brief history given to the doctor; as doctor(s) are more concerned with treatment of the victims. More so the victim who suffers from an incident, obviously, is in a state of shock and it is only when we move in his comfort zone, he starts recollecting the events one by one and thus to stop the victim from elaborating the facts to describe the finer details, if left out earlier, would be too much.

77. The contentions assailing the evidence of P.W. 1 does not merit acceptance, for at the time when he was first examined his friend (the prosecutrix) was critically injured and he was in a shocked mental condition. The evidence of a witness is not to be disbelieved simply because he is a partisan witness or related to the prosecution. It is to be weighed whether he was present or not and whether he is telling the truth or not.

78. The informant, P.W. 1, in his deposition, has clearly spoken about the occurrence and also corroborated his complaint, Ex. P.W. 1/A. The evidence of P.W. 1 is unimpeachable in character and the roving cross- examination has not eroded his credibility. It is necessary to mention here that P.W. 1 was admitted in the casualty ward of Safdarjung Hospital. As he was injured, he was medically examined by Dr. Sachin Bajaj, P.W. 51, and as per the evidence, Ext. P.W. 51/A, the following injuries were found on his body:

(a) 1 c.m. X 1 c.m. size clean lacerated wound over the vertex of scalp (head injury);

(b) 0.5 X 1 cm size clean lacerated wound over left upper leg;

(c) 1 X 0.2 cm size abrasion over right knee.

79. The injuries found on the person of P.W. 1 and the fact that P.W. 1 was injured in the same occurrence lends assurance to his testimony that he was present at the time of the occurrence along with the prosecutrix. The evidence of an injured witness is entitled to a greater weight and the testimony of such a witness is considered to be beyond reproach and reliable. Firm, cogent and convincing ground is required to discard the evidence of an injured witness. It is to be kept in mind that the evidentiary value of an injured witness carries great weight. In Mano Dutt and Anr. v. State of Uttar Pradesh MANU/SC/0159/2012 : (2012) 4 SCC 79, it was held as under:

31. We may merely refer to Abdul Sayeed v. State of M.P. MANU/SC/0702/2010 : (2010) 10 SCC 259 where this Court held as under:

28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built- in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. 'Convincing evidence is required to discredit an injured witness.' [Vide Ramlagan Singh v. State of Bihar MANU/SC/0216/1972 : (1973) 3 SCC 881, Malkhan Singh v. State of U.P. MANU/SC/0164/1974 : (1975) 3 SCC 311, Machhi Singh v. State of Punjab MANU/SC/0211/1983 : (1983) 3 SCC 470, Appabhai v. State of Gujarat 1988 Supp SCC 241, Bonkya v. State of Maharashtra MANU/SC/0066/1996 : (1995) 6 SCC 447, Bhag Singh v. State of Punjab MANU/SC/1308/1997 : (1997) 7 SCC 712, Mohar v. State of U.P. MANU/SC/0808/2002 : (2002) 7 SCC 606, Dinesh Kumar v. State of Rajasthan MANU/SC/7910/2008 : (2008) 8 SCC 270, Vishnu v. State of Rajasthan (2009) 10 SCC 477, Annareddy Sambasiva Reddy v. State of A.P. MANU/SC/0640/2009 : (2009) 12 SCC 546 and Balraje v. State of Maharashtra MANU/SC/0352/2010 : (2010) 6 SCC 673.]

29. While deciding this issue, a similar view was taken in Jarnail Singh v. State of Punjab MANU/SC/1584/2009 : (2009) 9 SCC 719 where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under:

'28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In Shivalingappa Kallayanappa v. State of Karnataka MANU/SC/0053/1995 : 1994 Supp (3) SCC 235 this Court has held that the

deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. In State of U.P. v. Kishan Chand MANU/SC/0652/2004 : (2004) 7 SCC 629 a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross- examination and nothing can be elicited to discard his testimony, it should be relied upon (vide Krishan v. State of Haryana (2006) 12 SCC 459. Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below.'

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.

To the similar effect is the judgment of this Court in Balraje (supra).

80. As is manifest from the evidence, S.I. Pratibha Sharma, P.W. 80, recorded the First Supplementary Statement Under Section 161 Code of Criminal Procedure of the informant, P.W. 1, Awninder Pratap Singh about 7:30 a.m. on 17.12.2012. Thereafter, P.W. 1, the informant, took P.W. 80, S.I. Pratibha Sharma, to the spot from where he and the prosecutrix had boarded the bus.

81. Apart from the injuries sustained, the presence of P.W. 1 is further confirmed by the DNA analysis of:

1. the bloodstained mulberry leaves and grass that were collected from the spot in Mahipalpur where they were thrown off the bus; (Ex. 74/C)

2. the blood stains on Vinay's jacket (Ex. 68/2) (as per Seizure Memo Ex. 68/3), Pawan's sweater (Ex. P.68/6) (as per Ex. P.W. 68/F) and Akshay's jeans (Ex P.68/6) tying them to the incident; (from the trial court judgment); and

3. the unburnt cloth pieces belonging to P.W. 1 that were recovered alongwith the ashes of the prosecutrix's clothing (Ex. PW 74/M).

82. The trial court judgment was fortified by the decisions of this Court in Pudhu Raja and Anr. v. State Represented by Inspector of Police MANU/SC/0761/2012 : (2012) 11 SCC 196, Jaswant Singh v. State of Haryana MANU/SC/0236/2000 : (2000) 4 SCC 484 and Akhtar and Ors. v. State of Uttaranchal MANU/SC/0556/2009 : (2009) 13 SCC 722 on the law of material omissions and contradictions. Concurringly, the High Court too observed that the defence had failed to demonstrate from the informant's testimony such discrepancies, omissions and improvements that would have caused the High Court to reject such testimony after testing it on the anvil of the law laid down by this Court:

325. ...Their throbbing injuries and the rigors of the weather coupled with the state of their minds must have at that point of time brought forth their instinct of survival and self preservation. The desire to have apprehended their assailants and to mete out just desserts to them could not have been their priority. ...

83. In this context, we may fruitfully reproduce a passage from State of U.P. v. M.K. Anthony MANU/SC/0123/1984 : (1985) 1 SCC 505:

10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper- technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. ...

84. In Harijana Thirupala v. Public Prosecutor, High Court of A.P. MANU/SC/0629/2002 : (2002) 6 SCC 470, it has been ruled that:

11. ...In appreciating the evidence the approach of the court must be integrated not truncated or isolated. In other words, the impact of the evidence in totality on the prosecution case or innocence of the accused has to be kept in mind in coming to the conclusion as to the guilt or otherwise of the accused. In reaching a conclusion about the guilt of the accused, the court has to appreciate, analyse and assess the evidence placed before it by the yardstick of probabilities, its intrinsic value and the animus of witnesses.

85. In Ugar Ahir v. State of Bihar MANU/SC/0333/1964 : AIR 1965 SC 277, a three- Judge Bench held:

7. The maxim falsus in uno, falsu in omnibus (false in one thing, false in everything) is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. It is, therefore, the duty of the court to scrutinise the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff. But, it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest.

86. In Krishna Mochi v. State of Bihar MANU/SC/0327/2002 : (2002) 6 SCC 81, the Court ruled that:

32. ...The court while appreciating the evidence should not lose sight of these realities of life and cannot afford to take an unrealistic approach by sitting in an ivory tower. I find that in recent times the tendency to acquit an accused easily is galloping fast. It is very easy to pass an order of acquittal on the basis of minor points raised in the case by a short judgment so as to achieve the yardstick of disposal. Some discrepancy is bound to be there in each and every case which should not weigh with the court so long it does not materially affect the prosecution case. In case discrepancies pointed out are in the realm of pebbles, the court should tread upon it, but if the same are boulders, the court should not make an attempt to jump over the same. These days when crime is looming large and humanity is suffering and the society is so much affected thereby, duties and responsibilities of the courts have become much more. Now the maxim "let hundred guilty persons be acquitted, but not a single innocent be convicted" is, in practice, changing the world over and courts have been compelled to accept that "society suffers by wrong convictions and it equally suffers by wrong acquittals". I find that this Court in recent times has conscientiously taken notice of these facts from time to time".

87. In Inder Singh (supra), Krishna Iyer, J. laid down that:

Proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot get away with it because truth suffers some infirmity when projected through human processes.

88. In the case of State of U.P. v. Anil Singh MANU/SC/0503/1988 : 1988 (Supp.) SCC 686, it was held that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform.

89. In Mohan Singh and Anr. v. State of M.P. MANU/SC/0035/1999 : (1999) 2 SCC 428, this Court has held:

11. The question is how to test the veracity of the prosecution story especially when it is with some variance with the medical evidence. Mere variance of the prosecution story with the medical evidence, in all cases, should not lead to the conclusion, inevitably to reject the prosecution story. Efforts should be made to find the truth, this is the very object for which courts are created. To search it out, the courts have been removing the chaff from the grain. It has to disperse the suspicious cloud and dust out the smear of dust as all these things clog the very truth. So long as chaff, cloud and dust remain, the criminals are clothed with this protective layer to receive the benefit of doubt. So it is a solemn duty of the courts, not to merely conclude and leave the case the moment suspicions are created. It is the onerous duty of the court, within permissible limit, to find out the truth. It means on one hand, no innocent man should be punished but on the other hand, to see no person committing an offence should get scot- free. If in spite of such effort, suspicion is not dissolved, it remains writ at large, benefit of doubt has to be credited to the accused. For this, one has to comprehend the totality of the facts and the circumstances as spelled out through the evidence, depending on the facts of each case by testing the credibility of eyewitnesses including the medical evidence, of course, after excluding those parts of the evidence which are vague and uncertain. There is no mathematical formula through which the truthfulness of a prosecution or a defence case could be concretised. It would depend on the evidence of each case including the manner of deposition and his demeans (sic), clarity, corroboration of witnesses and overall, the conscience of a judge evoked by the evidence on record. So courts have to proceed further and make genuine efforts within the judicial sphere to search out the truth and not stop at the threshold of creation of doubt to confer benefit of doubt.

90. Keeping the aforesaid aspects in view, we shall now proceed to test the submission of the learned Counsel for the Appellants and the learned amicus curiae on the issue whether the testimony of P.W. 1 deserves acceptance being reliable or not. It is no doubt true that in the earlier statement of P.W. 1, that is, Ex. P.W. 1/A, there are certain omissions; but the main thing to be seen is whether the omissions go to the root of the matter or pertain to insignificant aspects. The evidence of P.W. 1 is not to be disbelieved simply because there were certain omissions. The trial Court as well as the High Court found his evidence credible and trustworthy and we find no reason to take a different view.

91. The case of the prosecution is attacked contending that P.W. 1 is a planted witness and that he keeps on improving his version. It is submitted that P.W. 1 is not reliable as had he been present at the time of occurrence, he would have endeavoured to save the victim and the nature of injuries as mentioned in Ex. P.W. 51/A on the person of P.W. 1 raises serious doubt about his presence at the time of occurrence.

92. The prosecutrix and P.W. 1 were surrounded and attacked by at least six accused persons. As narrated by P.W. 1, he was pinned down by two of the assailants while the others committed rape on the prosecutrix on the rear side of the bus. The accused persons were in a group and were also armed with iron rods. P.W. 1 was held by them. It would not have been possible for P.W. 1 to resist the number of accused persons and save the prosecutrix. The evidence of P.W. 1 cannot be doubted on the ground that he had not interfered with the occurrence. The improvements made

in the supplementary statement need not necessarily render P.W. 1's evidence untrustworthy more so when P.W. 1 has no reason to falsely implicate the accused.

93. Learned Counsel for the State has highlighted that the version of P.W. 1 is absolutely consistent and the trial court as well as the High Court has correctly relied upon his testimony. He has drawn our attention to the version of P.W. 1 in the FIR, the statement recorded Under Section 164 Code of Criminal Procedure and his testimony before the trial court. We have given anxious consideration and perused the FIR, supplementary statements recorded Under Section 164 Code of Criminal Procedure and appreciated the evidence in court and we find that there is no justification or warrant to treat the version of the witness as inconsistent. The consistency is writ large and the witness, as we perceive, is credible.

94. Mr. Luthra, learned Senior Counsel, further contested the argument advanced on behalf of the Appellants as regards the discrepancies so far as P.W. 1 is concerned. As regards the items stolen, it is recorded in the FIR that the accused persons stole the informant's Samsung Galaxy Mobile phone bearing 7827917720 and 9540034561 and his wallet containing Rs. 1000, ICICI debit card, Citi Bank Credit Card, ID Card, one silver ring, one gold ring and took off all his clothes, i.e., khakhi coloured blazer, grey sweater, black jeans, black Hush Puppies shoes and they also stole the prosecutrix's mobile phone with number 9818358144. His statement recorded Under Section 164 Code of Criminal Procedure states that the accused snatched the Samsung Galaxy S- Duos Mobile, one more mobile phone of Samsung, one purse with Rs. 1000, one Citibank credit card, ICICI Debit Card, Company I- Card, Delhi Metro Card and also snatched black jeans, one silver ring, one gold ring, Hush Puppies shoes. They also snatched the prosecutrix's Nokia mobile phone and grey colour purse and both the wrist watches. Before the trial court, he deposed that they snatched both the rings, shoes, purse containing cards and cash, socks and belt; they took off all his clothes and left him in an underwear; the accused had also taken off all the prosecutrix's clothes and snatched all her belongings including grey purse containing Axis bank card. P.W. 1 also identified Hush Puppies shoes, Ex. P- 2, Sonata watch, Ex. P- 3, metro card, Ex. P- 5, Samsung Galaxy Duos, Ex. P- 6, and currency notes, Ex. P- 7. As regards the weapon of assault, in the FIR and in the Section 164 statement, "rod" was recorded as weapon of assault and in his testimony before the trial court, P.W. 1 deposed that the weapon of assault was "iron rods". So far as throwing from the bus is concerned, it is recorded in the FIR that the other accused persons told the driver to drive the bus at a fast speed and then tried to throw the informant from the back door of the bus, however, the back door of the bus did not open. Then they threw both the informant and the prosecutrix from the moving bus near NH 8 Mahipalpur on the side of the road. His statement recorded Under Section 164 Code of Criminal Procedure states that the bus driver was driving the bus at a fast speed on being told by the other accused and he heard them saying that the girl had died and to throw her off the bus. They then took the informant and the prosecutrix to the rear door of the bus but could not open the door and, therefore, dragged them to the front door of the bus and threw them out. The bus driver turned the bus in such a manner after throwing them, that if the informant had not pulled the prosecutrix, then the bus would have run over her. P.W. 1 has deposed before the trial court that he heard one of the accused saying "mar gayee, mar gayee"; the accused were exhorting that the informant and the prosecutrix should not be left alive; the accused persons pulled the informant near the rear door and put the prosecutrix on him. The rear door was closed, so they dragged both the informant and the

prosecutrix to the front door; they were thrown off opposite Hotel Delhi 37; after they were thrown, the accused persons turned the bus and tried to crush them under the wheels. As regards the naming/description of the accused, the FIR recorded that the accused were aged between 25-30 years; one of them had a flat nose and was the youngest; one of them wore a red banian and they were wearing pant and shirt; and the accused were named as Ram Singh, Thakur, Mukesh, Vinay and Pawan. In the statement, it was recorded that he saw a dark coloured man who was being called "Mukesh, Mukesh"; he over- heard them calling each other as Ram Singh, Thakur; and the other three were addressing each other Pawan and Vinay and taking the name of JCL. In his testimony, it is recorded that he identified A- 2, Mukesh, as Driver, A- 1, Ram Singh, and A- 3, Akshay, as persons sitting in the driver's cabin and identified A- 4, Vinay, and A- 5, Pawan, as persons sitting in the bus.

95. As regards the minor contradictions/omissions, the trial court has placed reliance upon Pudhu Raja (supra) and Jaswant Singh (supra) and treated the version of P.W. 1 as reliable. The testimony of P.W. 1 has been placed reliance upon by both the Courts and on an anxious and careful scrutiny of the same, we do not perceive any reason to differ with the said view.

96. As we find, the trial court has come to the conclusion that the incident has been aptly described by P.W. 1, the injured. The injuries on his person do show that he was present in the bus at the time of the incident. His presence is further confirmed by the DNA analysis. Suffice it to say for the present, the contradictions in the statement, Ex. P.W. 1/A, are not material enough to destroy the substratum of the prosecution case. From the studied analysis of the evidence of P.W. 1, it is the only inevitable conclusion because the appreciation is founded on yardstick of consideration of totality of evidence and its intrinsic value on proper assessment.

Recovery of the bus and the CCTV footage

97. The endeavour of the prosecution was to first check the route and get a clue of the bus. For the aforesaid purpose, the CCTV footage becomes quite relevant. The story starts from the Select City Walk Mall, Saket and hence, we have to start from there. As per the case of the prosecution, the informant and the prosecutrix had gone to Select City Walk Mall, Saket to see a film. The CCTV footage produced by P.W. 25, Rajender Singh Bisht, in a CD, Ex. P.W. 25/C- 1 and P.W. 25/C- 2, and the photographs, Ex. P.W. 25/B- 1 to Ex. P.W. 25/B- 7, are evident of the fact that the informant and the prosecutrix were present at Saket till 8:57 p.m. The certificate Under Section 65B of the Evidence Act with respect to the said footage is proved by P.W. 26, Shri Sandeep Singh, vide Ex. P.W. 26/A. The informant as well as the prosecutrix gave brief description of the entire incident in their MLCs which led the investigating team to the Hotel near Delhi Airport where the prosecutrix and the informant were dumped after the incident. P.W. 67, Pramod Kumar Jha, the owner of the Hotel at Delhi Airport, was examined by the investigating officers regarding the present incident. He handed over the pen drive containing the CCTV footage, Ex. P- 67/1, and the CD, Ex. P- 67/2 to the I.O. which were seized vide seizure memo Ex. P.W. 67/A. The CCTV footage and the photographs were identified by P.W. 67, Pramod Jha, P.W. 74. SI Subhash Chand,

and Gautam Roy, P.W. 76, from CFSL during their examination in Court. The CCTV footage twice showed a white coloured bus having yellow and green stripes at 9:34 p.m. and again at 9:53 p.m. The bus exactly matched the description of the offending bus given by the informant. It had the word "Yadav" written on one of its sides and its front tyre on the left side did not have a wheel cap. P.W. 78, the S.H.O., Inspector Anil Sharma, has further deposed that the said CCTV footage seized vide seizure memo Ex. P.W. 67/A was sent to the CFSL through SI Sushil Sawariya, P.W. 54, on 02.01.2013, and this part of the testimony of P.W. 78 is corroborated by the testimony of P.W. 54, SI Sushil Sawaria, and P.W. 77, the MHC(M). Thereafter, on 03.01.2013, the report of the CFSL was received. In fact, the trial court had assured itself of the correct identification of the bus by playing the said CCTV footage shown in the pen drive, Ex. P.W. 67/1, and the CD, Ex. P.W. 67/2, during the cross- examination of P.W. 67, Pramod Jha.

98. Learned Counsel Mr. Singh has asserted that bus, Ex. P- 1, has been falsely implicated in the present case as is evidenced from the recovery of the CCTV footage. In an attempt to discredit the CCTV footage, he pointed out that only the CCTV recording alleged to be of this bus was recorded and not of all other white buses that had 'Yadav' written on them. The learned Counsel for the defence subsequently maintained that the CCTV footage cannot be relied upon as the same has been tampered with by the investigating officers.

99. P.W. 76, Gautam Roy, HOD, Computer Cell, Forensic Division, has testified that on 02.01.2013, he had received two sealed parcels sealed with the seal of PS and the seals tallied with the specimen seals provided. He marked the blue coloured pen drive found in parcel No. 1 as Ex. 1 and the Moser Baer CD found in the second parcel as Ex. 2. He further testified that both the exhibits were played by him in the computer and the bus was seen twice, at 9:34 p.m. and 9:54 p.m. He had photographed all these three by freezing the pen drive and the CD and these photographs were compared by him with the photographs taken by the photographer, P.W. 79, P.K. Gottam, which he had summoned. The witness testified that he had prepared the three comparison charts in this regard as Ex. P.W. 76/B, P.W. 76/C and P.W. 76/D, and his detailed report as Ex. P.W. 76/E. The footage taken in a CD and pen drive was sealed in P.W. 67's presence and as the recording was automatic data being fed on regular basis into the hard disk, the question of tampering with the same could not arise. P.W. 79, P.K. Gottam, from CFSL, CBI, has stated in his examination that he took photographs of the bus bearing No. DL- 1P- C- 0149 parked at Thyagraj Stadium, INA, New Delhi from different angles on 17.12.2012 and 18.12.2012 and handed over the same to P.W. 76. The said photographs were marked as B1 in Ex. P.W. 76/B; as C1 and C2 in Ex. P.W. 76/C; and as D1 in Ex. P.W. 76/D. He has deposed as to the genuineness of the photographs by deposing that the software used for developing the photographs was tamper proof.

100. Once it is proved before the court through the testimony of the experts that the photographs and the CCTV footage are not tampered with, there is no reason or justification to perceive the same with the lens of doubt. The opinion of the CFSL expert contained in the CFSL report marked as Ex. P.W. 76/E authenticates that there was no tampering or editing in both the exhibits, Ex. P- 67/1 and Ex. P- 67/2, and that a bus having identical patterns as the one parked at Thyagraj

Stadium is seen in the CCTV footage, which includes the word "Yadav" written on one side, "back side dent (left)" and absence of wheel cover on the front left side. The contents of the report is also admitted to be true by its author, P.W. 76, Gautam Roy. Quite apart from that, it is perceptible that the High Court, in order to satisfy itself, had got the CCTV footage played during the hearing and found the same to be creditworthy and acceptable.

101. As the narrative proceeds, the next step was to find out the bus. The identity of the bus in the CCTV footage was known and the said knowledge could propel the prosecution to move for recovery. We may start from the beginning. The bus, Ex. P- 1, bearing registration No. DL- 1P- C- 0149, is the vehicle alleged to have been involved in the incident. P.W. 74, SI Subhash Chand, on 17.12.2012, along with P.W. 1, the informant, and P.W. 80, WSI Pratibha Singh, went to Munirka bus stand from where the victims had boarded the alleged bus, Ex. P- 1, and then to Mahipalpur to the spot where both the victims were thrown off the bus on 16.12.2012. After the collection of exhibits from the spot, P.W. 74 and P.W. 80 went to the hotels opposite the spot having CCTV cameras installed and amongst those was Hotel Delhi 37. At the said hotel, the informant/P.W. 1 identified the bus they had boarded in the CCTV footage of the road and the relevant footage of the recording was taken in a pen drive and CD and was handed over to the Investigating Officer as Ex. P.W. 67/A. Later in the day, secret information was received by P.W. 80 that the alleged bus was parked at Sector 3, R.K. Puram. P.W. 74 accompanied P.W. 80 and P.W. 65, Ct. Kripal Singh, to Ravidass Camp where a bus matching the description given by P.W. 1 was parked near the Gurudwara. It was white in colour with 'Yadav' written on the side. When the police approached the bus, A- 1, Ram Singh, got down from it and started to run; he was later apprehended in a chase by P.W. 74 and P.W. 65. From A- 1, the fitness certificate, PUC and other documents regarding the registration of the vehicle DL- 1PC- 0149 were seized as Ex. P.W. 74/I, P.W. 74/J and P.W. 74/K. The entry door of the bus was ahead of the front wheel and the wheel cap was missing from the front tyre. After recovery of the burnt clothes at the behest of A1, he was sent to the police station with P.W. 65. P.W. 42, Ct. Suresh Kumar, was called to the spot and he drove the bus to Thyagraj Stadium around 5:45 p.m. on the same day. An inspection of the bus was conducted inside the stadium and the CFSL team lifted Ex. P.W. 74/P. Thereafter, P.W. 32, SI Vishal Chaudhary, and P.W. 33, SI Vikas Rana, were called from police station Kotla Mubarakpur to guard the bus.

102. Mr. Singh has raised the following issues with respect to the identification and recovery of the alleged bus:

1. CCTV footage was not properly examined to check all possible buses plying on the said route;

2. The bus was taken to Thyagraj Stadium instead of the Police Station to avoid the media and to better facilitate the planting of evidence; and

3. P.W. 81, Dinesh Yadav, owner of the Bus was in judicial custody for 6 months before his examination in the Court and he was so detained in custody to bring pressure upon him.

103. Mr. Singh has made bald allegation that the bus, Ex. P- 1, was falsely implicated and that all the DNA evidence recovered therefrom was actually planted. He contends that the bus, Ex. P- 1, was sent to Thyagraj Stadium instead of the concerned Police Station, PS Vasant Vihar, with the deliberate intention of avoiding the media attention so that the evidence could be planted easily. This argument is in furtherance of his false implication theory. He has, however, provided no further specific assertions to cast a doubt in our mind that the police has planted the evidence in the bus.

104. Mr. Luthra, in his turn, relying on the decision of the Delhi High Court in Manjit Singh v. State MANU/DE/2131/2014 : 214 (2014) DLT 646, has placed statistics before us pointing to the paucity of physical space in police stations across the city. In Manjit Singh (supra), the High Court had ordered the Delhi Police to furnish data regarding case properties with the Police. The High Court noted that there was an accumulation of "2,86,741 case properties including 25,547 vehicles, out of which as many as 2,479 properties are lying in public places outside the police stations". Given the state of affairs, the submission put forth by Mr. Luthra is acceptable. There is dearth of space inside the police stations in Delhi and the use of Thyagraj Stadium as parking lot in the present case does not necessarily mean that there was any mala fide intention on the part of the investigating agency without any specific assertion to advance the said bald allegation.

105. It may also be noted that on 17.12.2012, P.W. 42, Ct. Suresh Kumar, drove the bus from Ravidass Camp to Thyagraj Stadium around 5:45 p.m. along with P.W. 74 and P.W. 80. About 6:15 p.m., P.W. 32, SI Vishal Chaudhary, along with Ct. Amit, both of PS Kotla Mubarakpur, were sent to Thyagraj Stadium where on the instructions of P.W. 80, SI Pratibha, P.W. 32, guarded the bus till 8:00 a.m. the next day. On 18.12.2012, he handed over the charge of guarding the bus to P.W. 33, SI Vikas Rana, PS Kotla Mubarakpur, and he guarded the bus till 8:30 p.m., until after the CFSL team left. Thus, the criticism as regards the parking of the bus at Thyagraj Stadium and not at the Police Station pales into insignificance.

Reliability of the testimony of P.W. 81 (the owner of the bus)

106. Having dealt with the recovery of the bus, it is necessary to dwell upon the contention put forth by the learned Counsel for the Appellants which pertains to the acceptability and reliability of the testimony of P.W. 81, Dinesh Yadav. The principal contention in this regard is that P.W. 81, Dinesh Yadav, the owner of the bus, was in judicial custody and, therefore, his version in the court is under tremendous pressure as he was desirous of getting a bail order to enjoy his liberty. Highlighting this aspect, it is urged by Mr. Sharma and Mr. Singh, learned Counsel for the Appellants, that the testimony of the said witness deserves to be totally discarded.

107. P.W. 81, Dinesh Yadav, is a transporter and owns 8 to 10 buses including Ex. P- 1. He runs the buses under the name 'Yadav Travels'. He was examined by the prosecution to prove that A- 1, A- 2 and A- 3 are connected with the bus, Ex. P- 1. In his examination, P.W. 81 admitted that the word 'Yadav' is written across Ex. P- 1 and that it is white in colour with yellow stripes. P.W. 81 stated that A- 1, Ram Singh (since deceased), was the driver of the said bus in December 2012, A- 3, Akshay Kumar Singh, was his helper and the bus was usually parked by A- 1, Ram Singh, in R.K. Puram, near his residence. The bus was attached to Birla Vidya Niketan School, Pushp Vihar, New Delhi to ferry students in the morning and also to a Company, M/s. Net Ambit, Sector 132, Noida, to take its employees from Delhi to Noida. On 17.12.2012, the bus went from Delhi to Sector 132, Noida to take the staff of M/s. Net Ambit to their office and P.W. 81 was informed by A- 1, Ram Singh, or A- 2, Mukesh, that the bus was checked at the DND toll plaza on their route to Noida.

108. Learned Counsel Mr. Singh has asserted that P.W. 81 was kept in judicial custody to obtain a statement favourable to the prosecution in the present case. In this aspect, it is noted that P.W. 81 also stated that he was kept in judicial custody. The arrest was, however, not made in the present case; it was in connection with another case in relation to providing incorrect address to the Transport Authority. He was lodged in jail in case FIR No. 02/2013 of PS Civil Lines Under Sections 420, 468, 471 Indian Penal Code. P.W. 81 had provided his friend's address as his own at the time of registration and was arrested on a complaint made by the Transport Authority. He was named in the charge- sheet in the present case and was cited as a witness at serial No. 36 but was dropped by the prosecution on 28.05.2013. Later on, his examination was sought by way of an application Under Section 311 Code of Criminal Procedure. The application was allowed by the trial court order dated 03.07.2013 on the ground that he was the owner of the bus and his examination was necessary to prove as to whom he had handed over the custody of the bus on the night of the incident, i.e., 16.12.2012. It is limpid from the deposition of P.W. 81 that he was in judicial custody for a separate offence and, therefore, it is difficult to accede to the argument advanced by Mr. Singh that he was under pressure to support the version of the prosecution.

109. Apart from the above, the prosecution, in order to place A- 1 as the driver of the bus, Ex. P- 1, has examined P.W. 16, Rajeev Jakhmola. P.W. 16, Manager (Admn) of Birla Vidya Niketan School, Pushp Vihar, handled their transport. In his examination, he stated that P.W. 81, Dinesh Yadav, had provided the school with 7 buses on contract basis including Ex. P- 1 and that A- 1, Ram Singh, was its driver. He also submitted a copy of Ram Singh's Driving Licence to the Police along with the copy of the agreement of the school with the owner of the bus, copy of the RC, copy of the fitness certificate, certificate of third party technical inspection, pollution certificate, two copies of certificate- cum- policy schedule (Insurance), copy of certificate of training undergone by accused Ram Singh, copy of permit and list of the transporters, collectively as Ex. P.W. 16/A.

110. Thus, according to the prosecution, from the evidence of P.W. 16, Rajeev Jakhmola, and P.W. 81, Dinesh Yadav, it stands proved that the bus in question was routinely driven by Ram Singh.

When an argument was raised before the High Court over the veracity of P.W. 81's testimony, it recorded as under:

270. We are constrained to say that there is no substance in the aforesaid contention of Mr. Sharma for the reason that P.W. 81 Dinesh Yadav, the owner of the bus bearing registration No. DL1PC-0149, in which the offence was committed, has categorically stated in his cross- examination that bus Ex. P- 1 was being used for ferrying the students in the morning and thereafter as a chartered bus for taking the officials of M/s. Net Ambit from Delhi to Noida. He further stated in cross-examination that on 17.12.2012, the bus took the staff of M/s. Net Ambit from Delhi to Sector 132, Noida, UP. Quite apparently, therefore, accused Ram Singh as disclosed by him had thrown the SIM card near about the bus stand of Sector 37, where according to P.W. 44 Mohd. Zeeshan, it was found at the noon hour. Since it is not in dispute that accused Ram Singh was the driver of the bus and this fact stands fully established by the evidence on record, Noida was possibly found by him to be the safest destination to dispose of the SIM card.

111. The aforesaid analysis commends our approval because we, having analysed the said aspect on our own, have arrived at the same conclusion. There is no trace of doubt that the testimony of the said witness withstands close scrutiny and there is no reason to treat it with any kind of disapproval. That apart, the evidence of P.W. 16 corroborates the testimony of the owner of the bus.

Personal search and statements of disclosure leading to recovery

112. Learned Counsel for the Appellants have seriously questioned the arrest of the accused persons and the recoveries made pursuant to the said arrest. It is the stand of the prosecution that pursuant to the arrest of all the accused A- 1 to A- 5, there were disclosure statements recorded Under Section 27 of the Evidence Act which led to recoveries of incriminating articles such as objects belonging to the victims as also objects which have been linked orally or scientifically (such as through DNA profiling) to the prosecutrix and P.W. 1. These material objects recovered are used to link the convicts with the crime and corroborate the version of the eye witness P.W. 1 and the dying declaration of the deceased victim.

113. First, we shall refer to the arrest of Ram Singh and the recoveries made at his instance. As already stated, on 17.12.2012, P.W. 80, SI Pratibha Sharma, had spotted accused Ram Singh sitting in the offending bus, Ex. P1, which was parked at Ravidass Camp, R.K. Puram, New Delhi. On seeing the police, Ram Singh got down from the bus and started running. He was chased and instantly arrested at 4:15 p.m. vide memo Ex. P.W. 74/D and subsequently, his personal search was conducted vide memo Ex. P.W. 74/E and his disclosure Ex. P.W. 74/F was recorded. Notably, Ram Singh has led to several important discoveries and seizures from inside the bus.

114. Accused Mukesh was apprehended on 18.12.2012 from village Karoli, Rajasthan, by a team headed by P.W. 58, SI Arvind. He produced accused Mukesh before P.W. 80, SI Pratibha Sharma, the Investigating Officer, at Safdarjung Hospital in muffled face alongwith a mobile, Samsung Galaxy Duos, Ex. P- 6, seized by her vide memo Ex. P.W. 58/A. The accused was arrested at 6:30 p.m. on 18- 12- 2012 by her vide memo Ex. P.W. 58/B and his personal search was conducted vide memo Ex. P.W. 58/C. The accused pointed the Munirka bus stand vide memo Ex. P.W. 68/K and the dumping spot vide memo Ex. P.W. 68/L. This Samsung Galaxy phone was identified to be that of P.W. 1, the informant.

115. On 23.12.2012, accused Mukesh led the police to Anupam Apartment, garage No. 2, Saidulajab, Saket, New Delhi, and got recovered a green colour T- shirt, Ex. P- 48/1, on which the word "play boy" was printed; a grey colour pant, Ex. P- 48/2, and a jacket, Ex. P- 48/3, of bluish grey colour, all seized vide memo Ex. P.W. 48/B. The Investigating Officer also prepared the site plan, Ex. P.W. 80/I, of the place of recovery. On 24.12.2012, accused Mukesh also got prepared a route chart Ex. P.W. 80/H.

116. On 18.12.2012, accused Ram Singh led the Investigating Officer to Ravidass Camp and pointed towards his associates, namely, accused Vinay and accused Pawan. Accused Pawan was apprehended and arrested about 1:15 p.m. vide memo Ex. P.W. 60/A; his disclosure, Ex. P.W. 60/G, was recorded and his personal search was conducted vide memo Ex. P.W. 60/C. Accused Pawan Gupta pointed out the Munirka bus stand and a pointing out memo Ex. P.W. 68/I was prepared. He also pointed the dumping spot and memo Ex. P.W. 68/J was prepared in this regard.

117. On 19.12.2012, from accused Pawan Gupta, P.W. 80, got effected the following recoveries:

(a) Wrist watch Ex. P3 seized vide memo Ex. P.W. 68/G;

(b) Two currency notes of denomination of Rs. 500/- Ex. P- 7 colly were seized vide memo Ex. P.W. 68/G;

(c) Clothes worn by the accused at the time of the incident seized vide memo Ex. P.W. 68/F; and

(d) Black coloured sweater having grey stripes with label Abercrombie and Fitch Ex. P- 68/6 and a pair of coca- cola colour pants Ex. P- 68/7 colly; underwear having elastic labeled Redzone Ex. P- 68/8 and a pair of sports shoes with Columbus inscribed on them as Ex. P- 68/9.

It may be stated here that Sonata wrist watch, Ex. P3, was identified as that of P.W. 1.

118. On 18.12.2012, about 1:30 p.m., accused Vinay Sharma was arrested in front of Ravidass Mandir, Main Road, Sector- 3, R.K. Puram, New Delhi vide arrest memo Ex. P.W. 60/B; and his disclosure Ex. P.W. 60/H was also recorded. He pointed out the Munirka bus stand from where the victims were picked up vide memo Ex. P.W. 68/I and he also pointed out Mahipalpur Flyover, the place where the victims were thrown out of the moving bus vide pointing out memo Ex. P.W. 68/J. On 19.12.2012, he led to the following recoveries:

(a) Hush Puppies shoes Ex. P- 2 seized vide memo Ex. P.W. 68/C; and

(b) Nokia mobile phone Ex. P- 68/5 of the prosecutrix seized vide memo Ex. P.W. 68/D.

Hush Puppies shoes, Ex. P2, were identified to be that of P.W. 1, the informant. Nokia Mobile Phone, Ex. P- 68/5, was identified to be that of the prosecutrix.

119. On 19.12.2012, pursuant to his supplementary disclosure statement Ex. P.W. 68/A, the following recoveries were made by the accused vide seizure memo Ex. P.W. 68/B:

(a) One blue coloured jeans having monogram of Expert Ex. P- 68/1;

(b) A black coloured sports jacket with white stripes and a monogram of moments as Ex. P- 68/3 and a pair of rubber slippers as Ex. P- 68/4.

120. During the personal search of Vinay Sharma, the following article was recovered:

(a) Nokia mobile phone with IMEI No. 35413805830821418 belonging to the accused, which was returned to him on superdari vide order dated 4- 4- 2013

121. On 21.12.2012, about 9:15 p.m., accused Akshay Kumar Singh @ Thakur was arrested from village Karmalahang, P.S. Tandwa, District Aurangabad, Bihar vide memo Ex. P.W. 53/A and on 21.12.2012 and 22.12.2012, his disclosures, Ex. P.W. 53/I and Ex. P.W. 53/D, respectively were recorded. On 22.12.2012, he got effected the following recoveries from the residence of his brother, Abhay, from the rented house of one Tara Chand, village Naharpur, Gurgaon, viz;

i. Blood stained jeans (Ex. P- 53/3) worn by the accused at the time of the incident, recovered from a black bag (Ex. P- 53/2)

ii. A blue black coloured Nokia mobile phone (Ex. P- 53/1)

iii. Blood- stained red coloured banian (vest).

122. On 27.12.2012, he got recovered the informant's Metro card Ex. P- 5 and the informant's silver ring, Ex. P- 4, from House No. 1943, 3rd Floor, Gali No. 3, Rajiv Nagar, Sector- 14, Gurgaon, Haryana.

123. Learned Counsel for the Appellants and learned amicus, Mr. Hegde, have vehemently criticized the arrest and recoveries that have been made or effected. It is urged by Mr. Sharma that the Appellant Mukesh was not in custody when the recovery took place and additionally, he was not produced before the nearest Magistrate within twenty- four hours from the time of detention. Mr. Luthra, in his turn, would submit that the said accused was formally arrested at Delhi and, thereafter, the recovery on the basis of his disclosure took place. Mr. Singh, learned Counsel, contended that the disclosure statements which have been recorded by the police do tantamount to confessional statements relating to the involvement and commission of the crime. This argument requires to be squarely dealt with. For appreciating the said submission, it is necessary to appreciate the inter- se relationship between the accused persons and thereafter dwell upon the process of the arrest and judge the acceptability on the anvil of the precedents in the field.

124. As the evidence brought on record would show, the accused persons were known to each other. Mukesh, A- 2, and deceased Ram Singh, A- 1, were brothers. According to the testimony of Dinesh Yadav, P.W. 81, Ram Singh was the driver of the bus and A- 3, Akshay, was working as a helper in the bus. The same is manifest from the Attendance Register, Ex. P- 81/2, seized vide Ex. P.W. 80/K and the Driving License of A- 1, Ram Singh, Ex. P- 74/4, seized vide Ex. P.W. 74/1. From the testimony of P.W. 13, Brijesh Gupta, and P.W. 14, Jiwant Shah, it is evident that Ram Singh and Mukesh were brothers. From the evidence of Champa Devi, DW- 5, mother of Vinay, A- 4, it is quite clear that Vinay, Pawan, A- 5, and Ram Singh, A- 1, were known to each other. Mukesh, in his statement Under Section 313 Code of Criminal Procedure, has admitted that he and Ram Singh are brothers. A- 3, Akshay, in his statement Under Section 313 Code of Criminal Procedure, has admitted that he was working with Ram Singh in the bus, Ex. P- 1, as a helper. He has also admitted that he knew Ram Singh and there had been altercation on 16.12.2012 with A- 1, Ram Singh. A- 5, Pawan, in his statement Under Section 313 Code of Criminal Procedure, admitted that he was a witness to the quarrel between A- 4, Vinay, and A- 1, Ram Singh. From the aforesaid evidence, it is luminous that all the accused persons were closely associated with each other.

125. Having dealt with this facet, we shall now proceed to meet the criticism advanced by the learned Counsel for the Appellants with regard to the recoveries and the disclosure statements that led to the discoveries.

126. Assailing the acceptability of the arrest and the disclosure statements leading to the recoveries, Mr. Sharma and Mr. Singh have contended that the materials brought on record cannot be taken aid of for any purpose since the items seized have been planted at the places of recovery and a contrived version has been projected in court. That apart, it is submitted that the recoveries are gravely doubtful inasmuch as the prosecution has not seized all the articles from one accused on one occasion but on various dates. We have cleared the maze as regards the arrest and copiously noted the manner of arrest of the accused persons and their leading to recoveries. Be it noted, recovery is a part of investigation and permissible Under Section 27 of the Evidence Act. However, Mr. Sharma has raised a contention that this Court should take note of the fact that Section 27 of the Evidence Act has become a powerful weapon in the hands of the prosecution to rope in any citizen. The said submission, as we perceive, is quite broad and specious. It is open to the defence to find fault with recovery and the manner in which it is done and its relevance. It is not permissible to advance an argument that Section 27 of the Evidence Act is constantly abused by the prosecution or that it uses the said provision as a lethal weapon against anyone it likes. In the instant case, we have noted how the recoveries have been made and how they have been proved by the unimpeachable testimony of the prosecution witnesses.

127. Mr. Luthra, learned Senior Counsel appearing for the State, would submit that in the present case, the material objects recovered serve as links to corroborate and they have been used as the law permits. In this regard, he has filed a chart which we think it appropriate to reproduce for better appreciation of the said aspect. It is as follows:

128. Having reproduced the chart, now we shall refer to certain authorities on how a statement of disclosure is to be appreciated. In Pulukuri Kottaya v. Emperor MANU/PR/0049/1946 : AIR 1947 PC 67, it has been observed:

It is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed A', these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.

129. In Delhi Administration v. Bal Krishan and Ors. MANU/SC/0093/1971 : (1972) 4 SCC 659, the Court, analyzing the concept, use and evidentiary value of recovered articles, expressed thus:

7. ... Section 27 of the Evidence Act permits proof of so much of the information which is given by persons accused of an offence when in the custody of a police officer as relates distinctly to the fact thereby discovered, irrespective of whether such information amounts to a confession or not. Under Sections 25 and 26 of the Evidence Act, no confession made to a police officer whether in custody or not can be proved as against the accused. But Section 27 is by way of a proviso to these sections and a statement, even by way of confession, which distinctly relates to the fact discovered is admissible as evidence against the accused in the circumstances stated in Section 27....

130. In Mohd. Inayatullah v. State of Maharashtra MANU/SC/0166/1975 : (1976) 1 SCC 828, dealing with the scope and object of Section 27 of the Evidence Act, the Court held:

12. The expression "provided that" together with the phrase "whether it amounts to a confession or not" show that the section is in the nature of an exception to the preceding provisions particularly Sections 25 and 26. It is not necessary in this case to consider if this section qualifies, to any extent, Section 24, also. It will be seen that the first condition necessary for bringing this section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only "so much of the information" as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The word "distinctly" means "directly", "indubitably", "strictly", "unmistakably". The word has been advisedly used to limit and define the scope of the provable information. The phrase "distinctly relates to the fact thereby discovered" is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery. The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered.

13. At one time it was held that the expression "fact discovered" in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact (see Sukhan v. Crown MANU/LA/0128/1929 : AIR 1929 Lah 344; Rex v. Ganee AIR 1932 Bom 286). Now it is fairly settled that the expression "fact discovered" includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this (see Palukuri Kotayya v. Emperor; Udai Bhan v. State of Uttar Pradesh MANU/SC/0144/1962 : AIR 1962 SC 1116).

131. Analysing the earlier decisions, in Anter Singh v. State of Rajasthan MANU/SC/0096/2004 : (2004) 10 SCC 657, the Court summed up the various requirements of Section 27 as follows:

(1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with the question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.

(2) The fact must have been discovered.

(3) The discovery must have been in consequence of some information received from the accused and not by the accused's own act.

(4) The person giving the information must be accused of any offence.

(5) He must be in the custody of a police officer.

(6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

(7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible.

132. In State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru MANU/SC/0465/2005 : (2005) 11 SCC 600, the Court referred to the initial prevalence of divergent views and approaches and the same being put to rest in Pulukuri Kottaya case (supra) which has been described as locus classicus, relying on the said authority, observed:

120. To a great extent the legal position has got crystallised with the rendering of this decision. The authority of the Privy Council's decision has not been questioned in any of the decisions of the highest court either in the pre- or post- independence era. Right from the 1950s, till the advent of the new century and till date, the passages in this famous decision are being approvingly quoted and reiterated by the Judges of this Apex Court. Yet, there remain certain grey areas as demonstrated by the arguments advanced on behalf of the State.

133. Explaining the said facet, the Court proceeded to state thus:

121. The first requisite condition for utilising Section 27 in support of the prosecution case is that the investigating police officer should depose that he discovered a fact in consequence of the information received from an accused person in police custody. Thus, there must be a discovery of fact not within the knowledge of police officer as a consequence of information received. Of course, it is axiomatic that the information or disclosure should be free from any element of compulsion. The next component of Section 27 relates to the nature and extent of information that can be proved. It is only so much of the information as relates distinctly to the fact thereby discovered that can be proved and nothing more. It is explicitly clarified in the section that there is no taboo against receiving such information in evidence merely because it amounts to a confession. At the same time, the last clause makes it clear that it is not the confessional part that is admissible but it is only such information or part of it, which relates distinctly to the fact discovered by means of the information furnished. Thus, the information conveyed in the statement to the police ought to be dissected if necessary so as to admit only the information of the nature mentioned in the section. The rationale behind this provision is that, if a fact is actually discovered in consequence of the information supplied, it affords some guarantee that the information is true and can therefore be safely allowed to be admitted in evidence as an incriminating factor against the accused. As pointed out by the Privy Council in Kottaya case:

clearly the extent of the information admissible must depend on the exact nature of the fact discovered

and the information must distinctly relate to that fact.

Elucidating the scope of this section, the Privy Council speaking through Sir John Beaumont said:

Normally the section 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.

134. Expatriating the idea further, the Court proceeded to lay down:

121. ...We have emphasised the word "normally" because the illustrations given by the learned Judge are not exhaustive. The next point to be noted is that the Privy Council rejected the argument of the counsel appearing for the Crown that the fact discovered is the physical object produced and that any and every information which relates distinctly to that object can be proved. Upon this view, the information given by a person that the weapon produced is the one used by him in the commission of the murder will be admissible in its entirety. Such contention of the Crown's counsel was emphatically rejected with the following words:

If this be the effect of Section 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect.

Then, Their Lordships proceeded to give a lucid exposition of the expression "fact discovered" in the following passage, which is quoted time and again by this Court:

In Their Lordships' view it is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed A' these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.

(Emphasis supplied)

122. The approach of the Privy Council in the light of the above exposition of law can best be understood by referring to the statement made by one of the accused to the police officer. It reads thus:

...About 14 days ago, I, Kottaya and people of my party lay in wait for Sivayya and others at about sunset time at the corner of Pulipad tank. We, all beat Beddupati China Sivayya and Subayya, to death. The remaining persons, Pullayya, Kottaya and Narayana ran away. Dondapati Ramayya who was in our party received blows on his hands. He had a spear in his hands. He gave it to me then. I hid it and my stick in the rick of Venkatanarasu in the village. I will show if you come. We did all this at the instigation of Pulukuri Kottaya.

The Privy Council held that:

14. The whole of that statement except the passage 'I hid it (a spear) and my stick in the rick of Venkatanarasu in the village. I will show if you come' is inadmissible.

(Emphasis supplied)

There is another important observation at para 11 which needs to be noticed. The Privy Council explained the probative force of the information made admissible Under Section 27 in the following words:

Except in cases in which the possession, or concealment, of an object constitutes the gist of the offence charged, it can seldom happen that information relating to the discovery of a fact forms the foundation of the prosecution case. It is only one link in the chain of proof, and the other links must be forged in manner allowed by law.

135. In the instant case, the recoveries made when the accused persons were in custody have been established with certainty. The witnesses who have deposed with regard to the recoveries have remained absolutely unshaken and, in fact, nothing has been elicited from them to disprove their creditworthiness. Mr. Luthra, learned Senior Counsel for the State, has not placed reliance on any kind of confessional statement made by the accused persons. He has only taken us through the statement to show how the recoveries have taken place and how they are connected or linked with the further investigation which matches the investigation as is reflected from the DNA profiling and other scientific evidence. The High Court, while analyzing the facet of Section 27 of the Evidence Act, upheld the argument of the prosecution relying on State, Govt. of NCT of Delhi v. Sunil and Anr. MANU/SC/0735/2000 : (2001) 1 SCC 652, Sunil Clifford Daniel v. State of Punjab MANU/SC/0740/2012 : (2012) 11 SCC 205, Ashok Kumar Chaudhary and Ors. v. State of Bihar MANU/SC/7611/2008 : (2008) 12 SCC 173, and Pramod Kumar v. State (Government of NCT of Delhi) MANU/SC/0624/2013 : (2013) 6 SCC 588.

136. On a studied scrutiny of the arrest memo, statements recorded Under Section 27 and the disclosure made in pursuance thereof, we find that the recoveries of articles belonging to the informant and the victim from the custody of the accused persons cannot be discarded. The recovery is founded on the statements of disclosure. The items that have been seized and the places from where they have been seized, as is limpid, are within the special knowledge of the accused persons. No explanation has come on record from the accused persons explaining as to how they had got into possession of the said articles. What is argued before us is that the said recoveries have really not been made from the accused persons but have been planted by the investigating agency with them. On a reading of the evidence of the witnesses who constituted the investigating team, we do not notice anything in this regard. The submission, if we allow ourselves to say so, is wholly untenable and a futile attempt to avoid the incriminating circumstance that is against the accused persons.

Test Identification Parade and the identification in Court

137. Now, we shall deal with the various facets of test identification parade. Upon application moved by P.W. 80, SI Pratibha Sharma, Investigating Officer, P.W. 17, Sandeep Garg, Metropolitan Magistrate, conducted the Test Identification Parade (TIP) for the accused Ram Singh (since deceased), who refused to participate in the TIP proceedings on the ground that he was shown to the witnesses in the police station. Since accused Ram Singh died during the trial, neither the trial court nor the High Court delved into this aspect regarding the refusal of accused Ram Singh to participate in the TIP proceedings.

138. On 19.12.2012, P.W. 17, Sandeep Garg, Metropolitan Magistrate initiated TIP proceedings for accused Vinay and Pawan, but they refused to participate in the TIP. In the TIP proceedings, the Metropolitan Magistrate has recorded the following:

.....accused Pawan Kumar @ Kalu and accused Vinay, both refused to participate in the TIP proceedings and stated that they had committed a horrible crime. I recorded their refusal and gave certificate.

139. Vinay and Pawan refused to participate in the TIP proceedings without giving any reason whatsoever. TIP of accused Mukesh was conducted on 20.12.2012 at Tihar Jail by P.W. 17, Sandeep Garg, in which P.W. 1, Awninder Pratap, identified accused Mukesh. In his testimony, the informant, P.W. 1, has identified his signature at point 'A' in TIP proceedings with respect to the accused Mukesh, Ex. P.W. 1/E. The High Court has pointed out that there was no serious challenge to the TIP proceedings of accused Mukesh in the cross- examination of the Metropolitan Magistrate, P.W. 17, or even the Investigating Officer, P.W. 80. TIP of accused Akshay was conducted on 26.12.2012 at Central Jail No. 4, Tihar Jail, where the informant, P.W. 1, identified accused Akshay. P.W. 1 identified his signature at point 'A' in the TIP proceedings of accused Akshay marked as Ex. P.W. 1/F. The accused Mukesh and Akshay were already identified in the TIP proceedings by the informant. Test Identification Proceedings corroborate and lend assurance to the dock identification of accused Mukesh and Akshay by the informant, P.W. 1.

140. Criticizing the TIP, it is urged by the learned Counsel for the Appellants and Mr. Hegde, learned amicus curiae, that refusal to participate may be considered as circumstance but it cannot by itself lead to an inference of guilt. It is also argued that there is material on record to show that the informant had the opportunity to see the accused persons after they were arrested. It is necessary to state here that TIP does not constitute substantive evidence. It has been held in Matru alias Girish Chandra v. State of Uttar Pradesh MANU/SC/0141/1971 : (1971) 2 SCC 75 that identification test is primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation of an offence is proceeding on the right lines.

141. In Santokh Singh v. Izhar Hussain and Anr. MANU/SC/0165/1973 : (1973) 2 SCC 406, it has been observed that the identification can only be used as corroborative of the statement in court.

142. In Malkhansingh v. State of M.P. MANU/SC/0445/2003 : (2003) 5 SCC 746, it has been held thus:

7. ...The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. ...

And again:

16. It is well settled that the substantive evidence is the evidence of identification in court and the test identification parade provides corroboration to the identification of the witness in court, if required. However, what weight must be attached to the evidence of identification in court, which is not preceded by a test identification parade, is a matter for the courts of fact to examine. ...

143. In this context, reference to a passage from Visveswaran v. State represented by S.D.M. MANU/SC/0352/2003 : (2003) 6 SCC 73 would be apt. It is as follows:

11. ...The identification of the accused either in test identification parade or in Court is not a sine qua non in every case if from the circumstances the guilt is otherwise established. Many a time, crimes are committed under the cover of darkness when none is able to identify the accused. The commission of a crime can be proved also by circumstantial evidence. ...

144. In Sidhartha Vashisht alias Manu Sharma v. State (NCT of Delhi) MANU/SC/0268/2010 : (2010) 6 SCC 1, the Court, after referring to Munshi Singh Gautam v. State of M.P. MANU/SC/0964/2004 : (2005) 9 SCC 631, Harbhajan Singh v. State of J & K MANU/SC/0127/1975 : (1975) 4 SCC 480 and Malkhansingh (supra), came to hold that the proposition of law is quite clear that even if there is no previous TIP, the court may appreciate the dock identification as being above board and more than conclusive.

145. In the case at hand, the informant, apart from identifying the accused who had made themselves available in the TIP, has also identified all of them in Court. On a careful scrutiny of the evidence on record, we are of the convinced opinion that it deserves acceptance. Therefore, we hold that TIP is not dented.

Admissibility and acceptability of the dying declaration of the prosecutrix:

146. At this stage, it would be immensely seemly to appreciate the acceptability and reliability of the dying declaration made by the prosecutrix.

147. The circumstances in this case, as is noticeable, makes the prosecution bring in three dying declarations. Mr. Sharma and Mr. Singh have been extremely critical about the manner in which they have been recorded and have highlighted the irreconcilable facets. In quintessence, their submission is that the three dying declarations have been contrived and deserve to be kept out of consideration. Mr. Hegde, learned friend of the Court, contends that the dying declarations do not inspire confidence, for variations in them relate to the number of assailants, the description of the bus, the identity of the accused and the overt acts committed by them. It is contended that the three dying declarations made by the prosecutrix vary from each other and the said variations clearly reveal the inconsistencies and the improvements in the dying declarations mirror the improvements that are brought about in P.W. 1's statements and the progress of the investigation.

148. The sudden appearance of the name 'Vipin' in the third dying declaration after the recording of Akshay's disclosure statement where he mentions a person named Vipin is alleged to be indicative of the fact that the dying declaration is, in fact, doubtful. It is contended that the prosecution has failed to explain 'Vipin', his connection with the crime and his elimination from the case. The vapourisation of Vipin has to be considered against the backdrop of repeated assertions by the prosecution that every word of the three dying declarations is correct, consciously made and worthy of implicit belief. Learned Senior Counsel has also submitted that apart from the inconsistencies, the numerous procedural irregularities in the recording of the declarations make it suspicious. In this regard, lack of an independent assessment of the mental fitness of the prosecutrix, while recording the second dying declaration, has been highlighted. The multiple choice questions in the third and final dying declaration are being nomenclatured as leading questions and it is asserted that they have not been satisfactorily explained by the prosecution. Further, the evidence by the doctors does not cure the impropriety of lack of an independent assessment by the SDM while recording her second dying declaration.

149. It is submitted that if at all any dying declaration is to be relied on, it should only be the first dying declaration made on 16.12.2012 and recorded by P.W. 49, Dr. Rashmi Ahuja, and the said dying declaration only states that there were 4 to 5 persons on the bus. It is further stated that the prosecutrix was raped by a minimum of 2 men and that she does not remember intercourse after that. It is, therefore, unsafe to proceed on the assumption that all six persons on the bus committed rape upon the prosecutrix within a span of 21 minutes.

150. Keeping the aforesaid criticism in view, we proceed to analyse the acceptability and reliability of the dying declarations. Firstly, when the prosecutrix was brought to the Gynae Casualty about 11:15 p.m., she gave a brief account of the incident to P.W. 49, Dr. Rashmi Ahuja,

in her MLC on 16.12.2012. P.W. 49, Dr. Rashmi Ahuja, has deposed that on the night of 16.12.2012 about 11:15 p.m., the prosecutrix was brought to the casualty by a PCR constable and that she gave a brief history of the incident. P.W. 49, Dr. Rashmi Ahuja, recorded the same in her writing in the Casualty/GRR paper, i.e., Ex. P.W. 49/A.

151. In the instant case, as per the history told by the prosecutrix to Dr. Rashmi Ahuja, it was a case of gang rape in a moving bus by 4- 5 persons when the prosecutrix was returning after watching a film with her friend. She was slapped on her face, kicked on her abdomen and bitten over lips, cheek, breast and vulval region. She remembers intercourse two times and rectal penetration also. She was also forced to suck their penis but she refused. All this continued for half an hour and then she was thrown off from the moving bus with her friend. We have already stated about the injuries which were noted by Dr. Rashmi Ahuja in Ex. P.W. 49/A.

152. The relevant statement of the prosecutrix in the Medico Legal Expert, Ex. P.W. 49/A, reads as under:

...she went to watch movie with her boyfriend, Awnidra: she left the movie at 8:45 PM and was waiting for bus at Munirka Bus stop where a bus going to Bahadurgarh, stopped and both climbed the bus at around 9 PM. At around 9:05- 9:10 PM, around 4- 5 people in the bus started misbehaving with the girl, took her to the rear side of bus while her boyfriend was taken to the front of bus, where both were beaten up badly. Her clothes were torn over and she was beaten up, slapped repeatedly over her face, bitten over lips, cheeks, breast and Mons veneris. She was also kicked over her abdomen again and again. She was raped by at least minimum of two men, she does not remember intercourse after that. She had rectal penetration. They also forced their penis into her mouth and forced her to suck which she refused and was beaten up instead. This continued for half hour and she was then thrown away from the moving bus with her boyfriend. She was taken up by PCR Van and brought to GRR. She has history of intercourse with her boyfriend about two months back. (willfully)

153. P.W. 49, Dr. Rashmi Ahuja, had noticed number of injuries on the person of the prosecutrix and the same were noted in Ex. P.W. 49/B as under:

154. P.W. 50, Dr. Raj Kumar Chejara, and the surgery team operated the prosecutrix in the intervening night of 16/17.12.2012 and the operative findings have also been earlier noted.

155. P.W. 50, Dr. Raj Kumar Chejara, has proved the OT notes as Ex. P.W. 50/A bearing the signature of Dr. Gaurav and his own note in this regard is Ex. P.W. 50/B. As per his opinion, the condition of the small and large bowels were extremely bad for any definitive repair. After performing the operation, the patient was shifted to ICU. The first surgery was damage control surgery and it was expected that unhealthy bowel would be there.

156. The second surgery was performed on 19.12.2012 by him along with his operating team consisting of Prof. Sunil Kumar, Dr. Pintu and Dr. Siddharth. From the gynaecological side, Dr. Aruna Batra and Dr. Rekha Bharti were present along with anaesthetic team. The findings were as under:

Abdominal findings:

1. Rectum was longtitudinally torn on anterior aspect in continuation with perineal tear. This tear was continuing upward involving sigmoid colon, descending colon which was splayed open. The margin were edematous. There were multiple longitudinal tear in the mucosa of recto sigmoid area. Transverse colon was also torn and gangrenous. Hepatic flexure , ascending colon & caecum were gangrenous with multiple perforations at many places. Terminal ileum approximately one and a half feet loosely hanging in the abdominal cavity, it was avulsed from its mesentery and was non- viable. Rest of the small bowel was non- existent with only patches of mucosa at places and borders of the mesentery was contused. The contused mesentery borders initially appeared (during 1st surgery) as contused small bowel.

2. Jejunostomy stoma was gangrenous for approximately 2cm.

3. Stomach and duodenum was distended but healthy.

157. Dying Declaration was recorded by SDM, Smt. Usha Chaturvedi, P.W. 27, on 21.12.2012. The medical record of the prosecutrix shows that the prosecutrix was not found fit for recording of her statement until 21st December, 2012 about 6:00 p.m. when the prosecutrix was declared fit for recording statement by P.W. 52, Dr. P.K. Verma. P.W. 52 had examined the prosecutrix and found her to be fit, conscious, oriented and meaningfully communicative for making statement vide his endorsement at point 'A' on application, Ex. P.W. 27/DB. The second dying declaration, Ex. P.W. 27/A, was recorded by P.W. 27, Smt. Usha Chaturvedi, SDM. This dying declaration is an elaborate one where the prosecutrix has described the incident in detail including the act of insertion of rod in her private parts. She also stated that the accused were addressing each other with names like, "Ram Singh, Thakur, Raju, Mukesh, Pawan and Vinay".

158. The relevant portion of the dying declaration Ex. P.W. 27/A recorded by P.W. 27, SDM, is extracted below:

Q.1. What is your name, your father's name and your residential address?

Ans. My name is prosecutrix and my father name is Sh. ..... and we reside at .....

Q.2 Do you study or work somewhere?

Ans. I have completed my BPT (Bachelor of Physiotherapy).

Q.3 On which date and place, the incident occurred?

Ans. This happened on 16.12.12 in the midst of at about 9:00- 9:15 p.m.

Q.4 Where had you gone on that day and how did you reach the place of occurrence?

Ans. I had gone to watch the movie i.e. "Life of Pi" 6.40- 8.30 p.m. to Select City Mall, Saket on the day of incident along with my friend Sh. Awninder S/o. Sh. Bhanu Pratap, R/o House No. 14, Bair Sarai, New Delhi- 16. We took an Auto Rikshaw from there and reached Munirka.

Q.5 How did you go further?

Ans. After that, I saw white colored bus whose conductor had been calling the passengers of Palam Mor and Dwarka. I had to go to Dwarka, Sec- 1. That is why both of us, I and my friend boarded the bus and gave twenty rupees (Rs. 20/-) at the fare of Rs. 10/- per passenger.

Q.6. Were there passengers inside the bus?

Ans. When I entered the bus there were 6- 7 passengers. Assuming them to be passenger, we sat outside the cabin of the bus.

Q.7 Provide the detailed information about the bus?

Ans. The bus was of the white colour and the seats were of the red colour. Yellow coloured curtains were fixed. The glasses of the bus were black and were closed. I could see outside from inside but nothing could be seen inside from outside. In one row of the bus there were two seats and in the other row, there were three seats.

Q.8 After entering the bus, did you suspect anything seeing the people occupying the seats there?

Ans. I had suspected (something amiss) but the conductor had already taken the (fare) money and the bus had started. So, I kept sitting there.

Q.9 What did happen afterwards? Please inform in detail.

Ans. After five minutes when the bus climbed the bridge of Malai Mandir, the Conductor closed the door of the bus and switched off the light inside the bus. And they came to my friend and started hitting and beating him. Three four (3- 4) people caught hold of him and the remaining people dragged me to the rear portion of the bus and tore off my clothes and took turns to rape me. They hit me on my stomach with an iron rod and bit me on my whole body. Prior to that, they snatched from me and my friend all our articles i.e. mobile phone, purse, credit card, debit card, watches, etc. All six of the persons committed oral, vaginal, anal rape on me. These people inserted the iron rod into my body through my vagina and rectum and also pulled it out. They extracted the internal private part of my body through inserting hand and iron rod into my private parts and caused hurt to me. Six persons kept committing rape on me for approximately one hour by turns. The drivers kept changing in the moving bus so that they can rape me. .....

P.W. 27 Usha Chaturvedi, SDM, when examined and recorded the dying declaration of prosecutrix come off in her dying declaration she state as under:

159. The clinical notes, Ex. P.W. 50/C, and notes prepared by the gynaecology team were proved as Ex. P.W. 50/D. The gynaecological notes were prepared on actual examination of the patient on the operation table during the surgery. P.W. 50 further operated the prosecutrix on 23.12.2012 for peritoneal lavage and placement of drain under general anaesthesia and his notes are Ex. P.W. 50/E.

160. Statement of the prosecutrix was recorded by P.W. 30, Pawan Kumar, Metropolitan Magistrate, vide Ex. P.W. 30/D. On 24.12.2012, an application for recording the statement of the prosecutrix Under Section 164 Code of Criminal Procedure was moved by the Investigating Officer, which is exhibited as Ex. P.W. 30/A and, thereafter, the learned Metropolitan Magistrate fixed the date for recording of the statement as 25.12.2012 at 9:00 a.m. at Safdarjung Hospital vide his endorsement at Point "P" to "P- 1" on Ex. P.W. 30/A. On 25.12.2012, P.W. 28, Dr. Rajesh Rastogi, at 12:40 p.m., declared the prosecutrix fit for recording statement through gestures. She was found conscious, oriented, co- operative, comfortable and meaningfully communicative to make a statement through non- verbal gestures.

161. On 25.12.2012, the prosecutrix's statement, Ex. P.W. 30/D, Under Section 164 Code of Criminal Procedure was recorded by P.W. 30, Pawan Kumar, Metropolitan Magistrate, in the form of questions by putting her multiple choice questions. This statement was made through gestures and writings. The statement recorded by P.W. 30 which ultimately became another dying declaration reads as under:

25/12/2012 at 01.00 p.m. at ICU Safdarjung Hospital. Statement of Prosecutrix (Name and Particulars withheld) As opined by the attending doctors the Prosecutrix is not in position to speak but she is otherwise conscious and oriented and responding by way of gestures, so I am putting question in such a manner so as to enable to narrate the incident by way of gesture or writing.

Ques. : When and at what time the incident happened?

1. 20/12/2012 2. 13/12/2012 3. 16/12/2012

Ans : 16/12/12 (by writing after taking time)

Ques.: Have you seen the staff of the bus? 1. Yes 2. No

Ans.: 1 yes by gesture (nodding her head)

Ques.: Have you seen those people at that time? 1. Yes 2. No

Ans.: 1

Ques.: By which article they have given beatings? (answer by writing)

Ans.: By iron rod which was long.

Ques.: What happened of your belongings means mobile etc.?

1. Fell down 2. Snatched by them 3. Don't know

Ans.: 2

Ques.: Besides rape where and how did you get the injuries? (tried to answer by writing)

Ans.: Head, face, back, whole body including genital parts (by gesture indication)

Ques.: By which names they were addressing to each other? (tried answer by writing)

Ans.: 1. Ram Singh, Mukesh, Vinay, Akshay, Vipin, Raju.

Ques.: What did they do after rape? 1. Left at home 2. Threw at unknown place 3. Got down at some other bus stop.

Ans: 2

As per Ex. P.W. 30/D, this answer was written by the prosecutrix in her own hand.

162. On 26.12.2012, the condition of the prosecutrix was examined and it was decided to shift her abroad for further treatment. Notes in this regard are Ex. P.W. 50/F bearing the signatures of Dr. Raj Kumar, Dr. Sunil Kumar, Dr. Aruna Batra and Dr. P.K. Verma.

163. The prosecutrix died at Mount Elizabeth Hospital, Singapore on 29.12.2012 at 4:45 a.m. The cause of death is stated as sepsis with multi organ failure following multiple injuries, as is evincible from Ex. P.W. 34/A.

164. Learned Counsel for the Appellants have objected to the admissibility of the dying declarations available on record mainly on the ground that they are not voluntary but tutored. It is argued that the second and third dying declarations are nothing but a product of tutoring and are non- voluntary and the only statement recorded is the MLC, Ex. P.W. 49/A and Ex. P.W. 49/B, prepared immediately after the incident, wherein the prosecutrix has neither named any of the accused nor mentioned the factum of iron rod being used by the accused persons and the act of the accused in committing unnatural offence. It is further alleged that the prosecutrix could not have given such a lengthy dying declaration running upto four pages on 21.12.2012 as she was on oxygen support. P.W. 27 has deposed that the prosecutrix was on oxygen support at the time

of recording the second dying declaration. It is further contended that it must be taken into account that ever since the prosecutrix was admitted to the hospital, she was continuously on morphine and, thus, she could not have gained consciousness. The second dying declaration has been further assailed on the ground of being recorded at the behest of SDM, P.W. 27, instead of a Magistrate and that too after a delay of nearly four days. The third dying declaration, Ex. P.W. 30/D, recorded by the Metropolitan Magistrate, P.W. 30, on 25.12.2012 through gestures and writings is controverted by putting forth the allegations of false medical fitness certificate and absence of videography.

165. Another argument advanced by the learned Counsel raising suspicion on the genuineness of the second and third dying declarations is that the dates on which the dying declarations were recorded have been manipulated. The counsel asseverated that the second dying declaration, i.e., Ex. P.W. 27/A, purported to have been recorded by P.W. 27 on 21.12.2012 was, in fact, recorded on the previous day as evidenced from the overwriting of the date in Ex. P.W. 27/B. The counsel also pointed to the overwriting of the date in the third dying declaration, i.e., Ex. P.W. 30/C, recorded by P.W. 30. It is propounded by them that the date was modified thrice in order to fit in the fake chain of circumstances contrived by the prosecution.

166. Resisting the said submissions, Mr. Luthra, learned Senior Counsel for the State, astutely contended that all the three dying declarations recorded at the instance of the prosecutrix are consistent and well corroborated by medical evidence as well as by P.W. 1's testimony, and other scientific evidence. The prosecutrix's first statement, Ex. P.W. 49/A, given to P.W. 49 was only a brief account of the heinous act committed on her and in that state of shock, nothing more could be legitimately expected of her. Only after receiving medical attention, she was declared fit to record statement and on 21.12.2012, P.W. 52 had examined the prosecutrix and found her to be fit, conscious, oriented and meaningfully communicative for making statement vide his endorsement at point 'A' on application Ex. P.W. 27/DB. P.W. 27, Smt. Usha Chaturvedi, SDM, recorded her statement in which the prosecutrix described the incident in detail and also named the accused persons. In fact, P.W. 27 has also deposed before the court that the prosecutrix was in a fit mental condition to give the statement on 21.12.2012. Moreover, the prosecutrix's third statement, Ex. P.W. 30/D, which was recorded in question- answer form through gestures and writings by P.W. 30, Pawan Kumar, Metropolitan Magistrate, is consistent with the earlier two dying declarations and that adds to the credibility and conclusively establishes reliability.

167. In the first dying declaration made to P.W. 49, Dr. Rashmi Ahuja, recorded in Ex. P.W. 49/A and in MLC, Ex. P.W. 49/B, due to her medical condition, though the prosecutrix broadly described the incident of gang rape committed on her and injuries caused to her and P.W. 1, yet she failed to vividly describe the incident of inserting iron rod, etc. As soon as the prosecutrix was brought to the hospital, she gave a brief description of the incident to P.W. 49, Dr. Rashmi Ahuja. As it appears from the record, the prosecutrix had lost sufficient quantity of blood due to which she was drowsy and could only give a brief account of the incident and injuries caused to her and the informant. Even though the prosecutrix has given only a brief account of the

occurrence, yet she was responding to verbal command and hence, the same is natural and trustworthy and furthermore, Ex. P.W. 49/A is also consistent with the other dying declarations.

168. By virtue of the second dying declaration recorded as Ex. P.W. 27/A on 21.12.2012 about 9:10 p.m. by the SDM, Smt. Usha Chaturvedi, the exact details of the incident and the injuries caused to the prosecutrix have come on record. The learned SDM has satisfied herself that the prosecutrix was fit to make the statement. While recording the dying declaration of the prosecutrix, Ex. P.W. 27/A, Dr. P.K. Verma, P.W. 52, had found her conscious, oriented and meaningfully communicative vide his endorsement at point 'A' on the application, Ex. P.W. 27/DB. It was only thereafter that P.W. 27, Smt. Usha Chaturvedi, SDM, recorded the statement, Ex. P.W. 27/A, of the prosecutrix. The prosecutrix not only signed it but even wrote the date and time in this statement. She narrated the entire incident specifying the role of each accused; gang rape/unnatural sex committed upon her; the injuries caused in her vagina and rectum by use of iron rod and by inserting of hands by the accused; description of the bus, robbery and lastly throwing of both the victims out of the moving bus, Ex. P1, in naked condition at the footfall of Mahipalpur flyover.

169. As it appears from the record, P.W. 27, after recording the statement of the prosecutrix, as contained in Ex. P.W. 27/A, forwarded the statement alongwith the forwarding letter, Ex. P.W. 27/B, to the ACP, Vasant Vihar undersigned by herself. Ex. P.W. 27/A, which contains the statement of the prosecutrix, is duly signed by the prosecutrix on all the pages and also signed by P.W. 27, SDM. P.W. 27 has certified in Ex. P.W. 27/A that the signature of the prosecutrix was obtained in her presence at 9:00 p.m. on 21.12.2012 after which she has signed the same. No overwriting of date is evidenced in Ex. P.W. 27/A. However, so far as the forwarding letter, i.e., Ex. P.W. 27/B, is concerned, the date mentioned by P.W. 27 after putting her signature is overwritten as 21.12.2012. When cross- examined on this aspect, P.W. 27 has stated that she had herself overwritten the date and, thus, overruled the possibility of any falsification of the document at the behest of the investigating team. P.W. 27 explained the overwriting of date as a 'human error' and the same has been rightly construed by the trial court and accepted by the High Court as a complete explanation. The relevant statement of P.W. 27 is as under:

It is correct that in Ex. P.W. 27/B there is an over writing on the date under my signature. VOL: It was a human error. The statement was recorded on 21- 12- 2012, so for all purpose this date will be 21- 12- 2012.

170. Agian on 25.12.2012 on an application, Ex. P.W. 28/A, though Dr. P.K. Verma, P.W. 52, opined that the prosecutrix was unable to speak as she was having endotracheal tube, i.e., in larynx and trachea and was on ventilator, yet P.W. 28, Dr. Rajesh Rastogi, declared her to be conscious, oriented and meaningfully communicative through non- verbal gestures and fit to give statement. P.W. 30, Pawan Kumar, Metropolitan Magistrate, also satisfied himself qua fitness and ability of the prosecutrix to give rational answers by gestures to his multiple choice questions. The opinion of the doctors obtained prior to recording of the statements, Ex. P.W. 27/A and Ex. P.W. 30/D- 1, as also the observations made by the SDM and Metropolitan Magistrate qua her

fitness cannot be disregarded completely on the basis of surmises of the learned Counsel for the Appellants.

171. Adverting to the third dying declaration, Ex. P.W. 30/C, we are able to appreciate that P.W. 30, after recording the statement of the prosecutrix, has signed the document. The date mentioned therein is overwritten as 25.12.2012. However, in the forwarding note to the investigating officer which is contained in continuation of the prosecutrix's statement annexed as Ex. P.W. 30/C, the signature and date mentioned by P.W. 30 is very clear and no overwriting is visible. Be it noted, P.W. 30 was never cross- examined on the aspect of overwriting of the date in Ex. P.W. 30/C. The learned Counsel has, for the first time, raised this issue before us merely to substantiate his suspicion of manipulation on the part of the prosecution. We hold that pointing at insignificant errors is inconsequential so far as cogent evidence produced by the prosecution stand on a terra firma. It is beyond human prudence to discard the detailed and well signed statements of the prosecutrix, in spite of clear date put by herself, merely because P.W. 30 erred at one point of time in correctly recording the date. Moreover, the testimony of P.W. 52, Dr. P.K. Verma, who was incharge of the ICU and in whose supervision the entire treatment and recording of statements by the prosecutrix was done, cannot be discarded on account of meagre technical errors.

172. Another line of argument developed by the learned Counsel is that there has been failure on the part of the prosecutrix to disclose the names of any of the accused persons in the brief history given by her to the doctor in MLC, Ex. P.W. 49/A, and so, her dying declarations, Ex. P.W. 27/A and Ex. P.W. 30/D- 1, where she had given the names of the accused persons, are tutored versions and cannot form the basis of conviction. This argument, however, is completely unjustified in the light of the medical condition of the prosecutrix when she was brought to the hospital. As per the records, the prosecutrix was brought to the hospital in a state of sub- consciousness and sheer trauma. In her MLC, Ex. P.W. 49/B, her condition is described as drowsy responding only to verbal commands and hence, not completely alert due to the shock and excessive loss of blood. The prosecutrix was declared fit to make statements, Ex. P.W. 27/A and Ex. P.W. 30/D- 1, only when she was operated thrice. Her dying declarations, Ex. P.W. 27/A and Ex. P.W. 30/D- 1, also stand corroborated by the medical evidence as well as the testimony of P.W. 1.

173. A dying declaration is an important piece of evidence which, if found veracious and voluntary by the court, could be the sole basis for conviction. If a dying declaration is found to be voluntary and made in fit mental condition, it can be relied upon even without any corroboration. However, the court, while admitting a dying declaration, must be vigilant towards the need for 'Compos Mentis Certificate' from a doctor as well as the absence of any kind of tutoring. In Laxman v. State of Maharashtra MANU/SC/0707/2002 : (2002) 6 SCC 710, the law relating to dying declaration was succinctly put in the following words:

3. ... A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is

reduced to writing by someone like a Magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a Magistrate absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.

174. The legal position regarding the admissibility of a dying declaration is settled by this Court in several judgments. This Court, in Atbir v. Government of NCT of Delhi MANU/SC/0576/2010 : (2010) 9 SCC 1, taking into consideration the earlier judgment of this Court in Paniben v. State of Gujarat MANU/SC/0346/1992 : (1992) 2 SCC 474 and another judgment of this Court in Panneerselvam v. State of Tamil Nadu MANU/SC/7726/2008 : (2008) 17 SCC 190, has exhaustively laid down the following guidelines with respect to the admissibility of dying declaration:

22. (i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.

(ii) The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.

(iii) Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.

(iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.

(v) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.

(vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.

(vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.

(viii) Even if it is a brief statement, it is not to be discarded.

(ix) When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.

(x) If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration.

175. It is well settled that dying declaration can form the sole basis of conviction provided that it is free from infirmities and satisfies various other tests. In a case where there are more than one dying declaration, if some inconsistencies are noticed between one and the other, the court has to examine the nature of inconsistencies as to whether they are material or not. The court has to examine the contents of the dying declarations in the light of the various surrounding facts and circumstances. In Shudhakar v. State of Madhya Pradesh MANU/SC/0590/2012 : (2012) 7 SCC 569, this Court, after referring to the landmark decisions in Laxman (supra) and Chirra Shivraj v. State of Andhra Pradesh MANU/SC/0992/2010 : (2010) 14 SCC 444, has dealt with the issues arising out of multiple dying declarations and has gone to the extent of declining the first dying declaration and accepting the subsequent dying declarations. The Court found that the first dying declaration was not voluntary and not made by free will of the deceased; and the second and third dying declarations were voluntary and duly corroborated by other prosecution witnesses and medical evidence. In the said case, the accused was married to the deceased whom he set ablaze by pouring kerosene in the matrimonial house itself. The smoke arising from the house attracted the neighbours who rushed the victim to the hospital where she recorded three statements before dying. In her first statement given to the Naib Tehsildar, she did not implicate her husband, but in the second and third statements, which were also recorded on the same day, she clearly stated that the accused poured kerosene on her and set her on fire. The accused was convicted Under Section 302 Indian Penal Code. In this regard, the Court made the following observations:

21. Having referred to the law relating to dying declaration, now we may examine the issue that in cases involving multiple dying declarations made by the deceased, which of the various dying declarations should be believed by the court and what are the principles governing such determination. This becomes important where the multiple dying declarations made by the deceased are either contradictory or are at variance with each other to a large extent. The test of common prudence would be to first examine which of the dying declarations is corroborated by other prosecution evidence. Further, the attendant circumstances, the condition of the deceased at the relevant time, the medical evidence, the voluntariness and genuineness of the statement

made by the deceased, physical and mental fitness of the deceased and possibility of the deceased being tutored are some of the factors which would guide the exercise of judicial discretion by the court in such matters.

176. Recently, a two- Judge Bench of this Court in Sandeep and Anr. v. State of Haryana MANU/SC/0654/2015 : (2015) 11 SCC 154 : (2015) 2 SCR 1999 SC was faced with a similar situation where the first dying declaration given to a police officer was more elaborate and the subsequent dying declaration recorded by the Judicial Magistrate lacked certain information given earlier. After referring to the two dying declarations, this Court examined whether there was any inconsistency between the two dying declarations. After examining the contents of the two dying declarations, this Court held that there was no inconsistency between the two dying declarations and non- mention of certain features in the dying declaration recorded by the Judicial Magistrate does not make both the dying declarations incompatible.

177. In this regard, it will be useful to reproduce a passage from Babulal and Ors. v. State of M.P. MANU/SC/0855/2003 : (2003) 12 SCC 490 wherein the value of dying declaration in evidence has been stated:

7. ... A person who is facing imminent death, with even a shadow of continuing in this world practically non- existent, every motive of falsehood is obliterated. The mind gets altered by most powerful ethical reasons to speak only the truth. Great solemnity and sanctity is attached to the words of a dying person because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person. The maxim is "a man will not meet his Maker with a lie in his mouth" (nemo moriturus praesumitur mentire). Mathew Arnold said, "truth sits on the lips of a dying man". The general principle on which the species of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death, and when every hope of this world is gone, when every motive to falsehood is silenced and mind induced by the most powerful consideration to speak the truth; situation so solemn that law considers the same as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice. ...

178. Dealing with oral dying declaration, a two- Judge Bench in Prakash and Anr. v. State of Madhya Pradesh MANU/SC/0005/1993 : (1992) 4 SCC 225 has ruled thus:

11. ... In the ordinary course, the members of the family including the father were expected to ask the victim the names of the assailants at the first opportunity and if the victim was in a position to communicate, it is reasonably expected that he would give the names of the assailants if he had recognised the assailants. In the instant case there is no occasion to hold that the deceased was not in a position to identify the assailants because it is nobody's case that the deceased did not know the accused persons. It is therefore quite likely that on being asked the deceased would name the assailants. In the facts and circumstances of the case the High Court has accepted the dying declaration and we do not think that such a finding is perverse and requires to be interfered with. ...

179. In Vijay Pal v. State (Government of NCT of Delhi) MANU/SC/0230/2015 : (2015) 4 SCC 749, after referring to the Constitution Bench decision in Laxman (supra) and the two- Judge Bench decisions in Babulal (supra) and Prakash (supra), the Court held:

22. Thus, the law is quite clear that if the dying declaration is absolutely credible and nothing is brought on record that the deceased was in such a condition, he or she could not have made a dying declaration to a witness, there is no justification to discard the same. In the instant case, PW 1 had immediately rushed to the house of the deceased and she had told him that her husband had poured kerosene on her. The plea taken by the Appellant that he has been falsely implicated because his money was deposited with the in- laws and they were not inclined to return, does not also really breathe the truth, for there is even no suggestion to that effect.

23. It is contended by the learned Counsel for the Appellant that when the deceased sustained 100% burn injuries, she could not have made any statement to her brother. In this regard, we may profitably refer to the decision in Mafabhai Nagarbhai Raval v. State of Gujarat MANU/SC/0425/1992 : (1992) 4 SCC 69 wherein it has been held that a person suffering 99% burn injuries could be deemed capable enough for the purpose of making a dying declaration. The Court in the said case opined that unless there existed some inherent and apparent defect, the trial court should not have substituted its opinion for that of the doctor. In the light of the facts of the case, the dying declaration was found to be worthy of reliance.

24. In State of M.P. v. Dal Singh MANU/SC/0550/2013 : (2013) 14 SCC 159, a two- Judge Bench placed reliance on the dying declaration of the deceased who had suffered 100% burn injuries on the ground that the dying declaration was found to be credible.

180. In the case at hand, the first statement of the prosecutrix was recorded by P.W. 49, Dr. Rashmi Ahuja, on the night of 16.12.2012 and the second statement was recorded by the SDM on 21.12.2012 after a delay of five days. In the present facts and circumstances of the case, we do not find that there is any inconsistency in the dying declarations to raise suspicion as to the genuinity and voluntariness of the subsequent dying declarations. The prosecutrix had been under constant medical attention and was reported to be fit for giving a statement on 21.12.2012 only. On the night of the incident itself, she underwent first surgery conducted by P.W. 50, Dr. Raj Kumar Chejara, Surgical Specialist, Department of Surgery, Safdarjung Hospital, New Delhi and his surgery team comprising of himself, Dr. Gaurav and Dr. Piyush, and the prosecutrix was shifted to ICU. The second surgery was performed on her on 19.12.2012. Ex. P.W. 50/C, OT notes dated 19.12.2012 show that the prosecutrix was put on ventilation after the surgery. Considering the facts and circumstances and the law laid down above, a mere omission on the part of the prosecutrix to state the entire factual details of the incident in her very first statement does not make her subsequent statements unworthy, especially when her statements are duly corroborated by other prosecution witnesses including the medical evidence.

181. The contention that no dying declaration could have been recorded on 21.12.2012 as the prosecutrix was administered morphine does not hold good as P.W. 52, Dr. P.K. Verma, has deposed that morphine was injected at 6:00 p.m. on 20.12.2012 and its effect would have lasted for only 3- 4 hours. P.W. 52 has denied that the prosecutrix was unconscious and had difficulty in breathing at the time when she made the statement to P.W. 27, SDM, on 21.12.2012.

182. Yet another objection raised by the learned Counsel for the Appellants concerning the medical fitness of the prosecutrix, while recording the third dying declaration is that when P.W. 30, Metropolitan Magistrate, Pawan Kumar, recorded the dying declaration of the prosecutrix, she was not in a position to speak as per the endorsement made by P.W. 52, Dr. P.K. Verma, and, therefore, no weight could be attached to the dying declaration recorded by P.W. 30. In this regard, reliance is placed upon Ex. P.W. 30/B1. This contention was raised before the High Court as well as the trial court and while considering the contention, we find that:

On 25.12.2012, application [Ex. P.W. 30/B] moved by P.W. 80 S.I. Pratibha Sharma between 9:30 a.m. to 10:00 a.m. seeking opinion regarding fitness of prosecutrix to get statement recorded. P.W. 52 Dr. P.K. Verma examined the prosecutrix and opined at 12:35 p.m. that "patient has endotracheal tube in place (i.e. in her larynx and trachea) and was on ventilator and hence she could not speak.

183. P.W. 28, Dr. Rajesh Rastogi, opined vide Ex. P.W. 28/A at 12:40 p.m. on 25.12.2012 that the prosecutrix was conscious, cooperative, meaningfully communicative through non- verbal gestures, oriented and fit to give statement. P.W. 28, Dr. Rajesh Rastogi, examined the prosecutrix around 12 noon and finished it by 12:00- 12:30 p.m. On 25.12.2012 at 12:35 p.m., Dr. P.K. Verma had endorsed on the document Exhibit P.W. 30/B that the victim could not speak as she had endotracheal tube in place (that is, in larynx and trachea) and was on ventilator. However, subsequently, at 12:40 p.m. on the same day, P.W. 28, Dr. Rajesh Rastogi, had endorsed on the said document, Ex. P.W. 30/B, to the effect that the victim was conscious, cooperative, meaningfully communicative, oriented, responding through non- verbal gestures and fit to give statement. The learned Counsel contended that it is inconceivable that the prosecutrix who was on life support system at 12:35 p.m. could be opined to be conscious, cooperative and fit to give statement within five minutes, i.e., at 12:40 p.m.

184. The said contention, as we find, has been appropriately dealt with by both courts below by adverting to the depositions of P.W. 52, Dr. P.K. Verma, and P.W. 28, Dr. Rajesh Rastogi. Regarding the fit mental condition of the prosecutrix and as to the different endorsements made by P.W. 52, Dr. P.K. Verma, and P.W. 28, Rajesh Rastogi, P.W. 52 was questioned suggesting that the prosecutrix was not in a fit mental condition to give the dying declaration. P.W. 52 has clearly deposed in his cross- examination that he had never endorsed that the victim was unfit to give statement at 12:35 p.m., rather he had said that she was on ventilator and hence, could not speak. The aforesaid explanation of P.W. 52, Dr. P.K. Verma, who was incharge of the ICU in Safdarjung Hospital at the relevant time makes it limpid that even though the prosecutrix was not able to speak, yet she was conscious and oriented and was in a position to make the statement by gestures.

185. The contention that the third dying declaration made through gestures lacks credibility and that the same ought to have been videographed, in our view, is totally sans substance. The dying declaration recorded on the basis of nods and gestures is not only admissible but also possesses evidentiary value, the extent of which shall depend upon who recorded the statement. In the instant case, the dying declaration was recorded by P.W. 30, Mr. Pawan Kumar, Metropolitan Magistrate. A perusal of the questions and the simple answers by way of multiple choice put to the prosecutrix is manifest of the fact that those questions and answers were absolutely simple, effective and indispensable. The dying declaration recorded by P.W. 30, Ex. P.W. 30/D, though by nods and gestures and writings, inspires confidence and has been rightly relied upon by the trial Court as well as the High Court. Videography of the dying declaration is only a measure of caution and in case it is not taken care of, the effect of it would not be fatal for the case and does not, in any circumstance, compel the court to completely discard that particular dying declaration.

186. In Meesala Ramakrishan v. State of A.P. MANU/SC/0709/1994 : (1994) 4 SCC 182, this Court, while admitting the dying declaration made through gestures, made the following observations:

20. ... that dying declaration recorded on the basis of nods and gestures is not only admissible but possesses evidentiary value, the extent of which shall depend upon who recorded the statement, what is his educational attainment, what gestures and nods were made, what were the questions asked - - whether they were simple or complicated - - and how effective or understandable the nods and gestures were.

187. In B. Shashikala v. State of A.P. MANU/SC/0052/2004 : (2004) 13 SCC 249, it was observed that:

13. The evidence of PW 8 is absolutely clear and unambiguous as regards the manner in which he recorded the statement of the deceased with the help of PW 4. It is also evident that he also has knowledge of Hindi although he may not be able to read and write or speak in the said language. His evidence also shows that he has taken all precautions and care while recording the statement. Furthermore, he had the opportunity of recording the statement of the deceased upon noticing her gesture. The court in a situation of this nature is also entitled to take into consideration the circumstances which were prevailing at the time of recording the statement of the deceased.

188. Appreciating the third dying declaration recorded on the basis of gestures, nods and writings on the base of aforesaid pronouncements, we have no hesitation in holding that the dying declaration made through signs, gestures or by nods are admissible as evidence, if proper care was taken at the time of recording the statement. The only caution the court ought to take is that the person recording the dying declaration is able to notice correctly as to what the declarant means by answering by gestures or nods. In the present case, this caution was aptly taken, as the person who recorded the prosecutrix's dying declaration was the Metropolitan Magistrate and

he was satisfied himself as regards the mental alertness and fitness of the prosecutrix, and recorded the dying declaration of the prosecutrix by noticing her gestures and by her own writings.

189. Considering the facts and circumstances of the present case and upon appreciation of the evidence and the material on record, in our view, all the three dying declarations are consistent with each other and well corroborated with other evidence and the trial court as well as the High Court has correctly placed reliance upon the dying declarations of the prosecutrix to record the conviction.

Insertion of the iron rod:

190. Presently, we shall advert to the contentions raised as regards the use of iron rod for causing recto- vaginal injury. The case of the prosecution is that the accused, in most inhumane and unfeeling manner, inserted iron rod in the rectum and vagina of the prosecutrix and took out the internal organs of the prosecutrix from the vaginal and anal opening while pulling out the said iron rod. They also took out the internal organs of the prosecutrix by inserting iron rod in the vagina of the prosecutrix thereby causing dangerous injuries. Two iron rods, Ex. P- 49/1 and Ex. P- 49/2, were recovered vide seizure memo Ex. P.W. 74/G by the Investigating Officer, P.W. 80, at the instance of accused Ram Singh (since deceased). As per Ex. P.W. 49/A, the internal injuries sustained by the victim were like vaginal tear, profused bleeding from vagina, rectal tear communicating with vaginal tear and other injuries.

191. P.W. 50, Dr. Raj Kumar Chejara, and the surgery team operated the prosecutrix in the intervening night of 16/17.12.2012 and the operative findings are as under:

a. collection of around 500ml of blood in peritoneal cavity

b. stomach pale,

c. duodenum contused

d. jejunum contused & bruised at whole of the length and lacerated & transected at many places. First transaction was 5cm away from DJ junction. Second one was 2 feet from the DJ, after that there was transaction and laceration at many places. Jejunal loop was of doubtful viability. Lieum - whole lieum was totally contused and it was of doubtful viability. Distal ileum was completely detached from the mesentery till ICJ (ileocaecal junction). It was completely devascularized.

e. Large bowel was also contused, bruised and of doubtful viability. Descending colon was lacerated vertically downward in such a manner that it was completely opened.

f. Sigmoid colon & rectum was lacerated at many places. Linearlyu, mucosa was detached completely at places, a portion of it around 10cm was prolapsing through perineal wound.

g. Liver and spleen was normal.

h. Both sides retro peritoneal (posterior wall of the abdomen) haematoma present.

i. Mesentery and omentum was totally contused and bruised.

j. Vaginal tear present, recto vaginal septum was completely torn.

192. P.W. 80, SI Pratibha Sharma, the Investigating Officer, deposed before the trial court that accused Ram Singh had led her inside the bus, Ex. P1 and had taken out two iron rods from the shelf of the driver's cabin. One of the rods, 59 cm in length, was primarily used for changing punctured tyres; it was hooked from one end and chiseled from the other. It also had multiple serrations on both the ends. The other rod was of silver colour, hollow and 70 cm long. This rod formed part of a hydraulic jack and was used as its lever, Ex. P.W. 49/G. The rods were blood stained and the recovered rods were sealed with the seal of PS and were deposited in the Malkhana. On 24.12.2012, the said iron rods along with the sample seal were sent to CFSL, CBI for examination through SI Subhash, P.W. 74, vide RC No. 178/21/12, proved as Ex. P.W. 77/R. The DNA report prepared by Dr. B.K. Mohapatra, P.W. 45, suggests that the DNA profile developed from the bloodstains from both the iron rods is consistent with the DNA profile of the prosecutrix.

193. Mr. Sharma, learned Counsel for the Appellants, has countered the prosecution case on the use of iron rods. He has drawn support from the medical records and the testimony of the witnesses as also the prosecutrix to assert the aforesaid submission. He submits that the prosecution has fabricated the story as regards the use of iron rods only to falsely implicate all the accused in the death of the prosecutrix. The defence has refuted the use of iron rods by the accused on the ground that the informant as well as the prosecutrix did not mention about the use of iron rods in their first statements. The main contention of the accused is that the prosecutrix herself, in her first statement given to Dr. Rashmi Ahuja, P.W. 49, Ex. P.W. 49/A, failed to disclose the use of iron rods. He relies on the absence of the words 'iron rods' in Ex. P.W. 49/A to fortify this submission. He contends that as recorded by P.W. 49, the prosecutrix was in a fit state of

mind for she even gave her residential address after undergoing the traumatic experience, but she failed to mention that the accused persons also used the iron rods on her, a fact that would have had a bearing on her treatment.

194. The aforesaid proponement is not sustainable as MLC, Ex. P.W. 49/A, of the prosecutrix suggests that she was brought to the hospital in a traumatized state with grievous injuries and she was cold and clammy, i.e., whitish (due to vasoconstriction) and had lost a lot of blood. As per Ex. P.W. 49/A, the prosecutrix was sure of intercourse to have been committed twice along with rectal penetration whereafter she did not remember intercourse. It is worthy to note that she was oscillating between consciousness and unconsciousness at the time of the incident and there was loss of lot of blood by the time she had reached the hospital which is evident from Ex. P.W. 49/B- MLC. A victim who has just suffered a ghastly and extremely frightening incident cannot be expected to immediately come out of the state of shock and state the finest details of the incident. The subsequent dying declarations of the prosecutrix corroborated by the medical evidence cannot be disregarded merely on the ground that the use of iron rods is not substantiated by the prosecutrix's first statement.

195. The gravity and hideousness of the injuries caused to the prosecutrix, as has already been discussed above, clearly shows the use of iron rods by the accused. The injuries caused to the prosecutrix by incessantly and abominably injuring her private parts using the concerned iron rods were so grave that death was the inevitable consequence. As already noted, both the iron rods, Ex. P- 49/1 and Ex. P- 49/2, were recovered at the instance of accused Ram Singh from inside the concerned bus. The DNA profile developed from the blood stains obtained from the iron rods is also consistent with the DNA profile of the prosecutrix. In such circumstances, merely because the finger prints of the accused were not obtained from the iron rods, it cannot be concluded that the accused were not linked with the concerned iron rods. Accused Ram Singh himself had the iron rods recovered to the Investigating Officer. Furthermore, the dying declaration of the prosecutrix, which is highly reliable, clearly establishes the horrendous use of iron rods by the accused persons.

196. The iron rods were sent for forensic examination to the CFSL. The DNA profile developed from the blood stains obtained from the iron rods recovered at the instance of accused Ram Singh was found to be of female origin and were found to be consistent with the DNA profile of the prosecutrix. Hence, the factum of insertion of iron rods in the private parts of the prosecutrix is also fortified by the scientific evidence.

197. P.W. 1, in his chief examination, deposed that he was severely assaulted by the accused with iron rods on his head and the rest of his body. It is submitted that as per MLC of P.W. 1, Ex. P.W. 51/A, the nature of injuries sustained by P.W. 1 were simple. It is contended that if P.W. 1 was beaten with the iron rod in the manner alleged by him, he would have sustained more serious injuries. It is canvassed that P.W. 1 sustained only simple injuries which leads to an inference that the iron rod was not used in the manner stated by the prosecution. Of course, as per Ex. P.W.

51/A, P.W. 1 sustained simple injuries but as seen from Ex. P.W. 51/A, there was also nasal bleeding from his nose and P.W. 1 was also vomiting. Merely because the injuries sustained by P.W. 1 were opined to be of simple nature, the use of iron rods cannot be doubted.

198. Learned Counsel for the Appellants further stressed on the point that P.W. 1 neither in his MLC, Ex. P.W. 51/A, nor in his complaint, Ex. P.W. 1/A, mentioned the use of iron rod; the description of bus or the names of the accused. In this regard, it has to be kept in mind that the purpose of FIR is mainly to set the criminal law in motion and not to lay down every minute detail and the entire gamut of the evidence relating to the case and, therefore, non- mention of use of iron rods in the FIR does not remotely create a dent in the case of the prosecution. When the subsequent statements of the prosecutrix well corroborated by the medical evidence are available, it is completely immaterial that the statement of P.W. 1 does not mention the use of iron rods. Thus, P.W. 1's omission to state the factum of use of iron rods in his complaint or MLC is not fatal to the case of the prosecution.

199. It is apposite to state here that non- mention of the use of iron rods in P.W. 1's statement has been a ground for giving rise to suspicion of his testimony. We find it difficult to comprehend as to how P.W. 1 could have been aware of any use of iron rods against the prosecutrix. P.W. 1 was being held by the accused towards the front of the bus, while the prosecutrix was being raped at the rear side of the bus and the lights of the bus also had been turned off. His statement in his complaint, Ex. P.W. 1/A, that he heard the prosecutrix shouting and crying and that her voice was oscillating is consistent with the narration of facts as also the medical records.

200. The second statement of the prosecutrix recorded in Ex. P.W. 27/A by P.W. 27, Smt. Usha Chaturvedi, has detailed the account of the entire incident specifying the role of each accused; gang rape/unnatural sex committed upon her; and the injuries caused in her vagina and rectum by use of iron rod and by inserting of hands by the accused are mentioned. This statement, in fact, bears the date and signature of the prosecutrix and records that the accused committed gang rape on her, inserted iron rod in the vagina and through anal opening causing injuries to the internal organs of the prosecutrix. The subsequent statement of the prosecutrix also affirms the above facts. That apart, as per the medical opinion Ex. P.W. 49/G given by P.W. 49, the recto-vaginal injury of the prosecutrix could be caused by the rods recovered from the bus.

Anatomy argument

201. Learned Counsel for the Appellants also submitted that if the rods purported to be used had actually been inserted through the vagina, it would have first destroyed the uterus before the intestines were pulled out. It was submitted that there were no rods related injuries in her uterus and medical science too does not assist the prosecution in their claim that the iron rods were used as a weapon for penetration. Mr. Sharma placed reliance on:

1. the first OT notes, Ex. P.W. 50/A that were made following the first operation of the prosecutrix on 17.12.2012 and where the following was recorded:

uterus, B/L tubes and ovaries seen and healthy

2. the case sheet of the operation conducted on 19.12.2012, presented as Ex. P.W. 50/D, wherein the following was recorded:

Gynae findings

... Cx, vaginal vault and ant vaginal wall (H)...

3. the post- mortem report, Ex. P.W. 34/A, that was prepared in Mount Elizabeth Hospital, Health Science Authority, Singapore, by the Autopsy doctor, Dr. Paul Chui on 29.12.2012 and where the following was recorded:

Uterus, Tubes and Ovaries

Uterus, tubes and ovaries were present in their normal anatomical positions. The uterus measured 8 cm x 5 cm x 3.5 cm. Thin fibrinopurulent adhesions were present on the serosal surfaces of the uterus and the adnexae. Cervix appeared normal and the os was closed. There were no cervical erosions and no haemorrhages on the intra- vaginal aspect of the cervix. Cut sections showed thin endometrium and normal myometrium. Tubes were normal. Both ovaries were normal in size. Cut sections of both ovaries showed corpus lutea, the largest of which was present in the right ovary.

The learned Counsel for the Appellants submit that that if the doctors in the surgery team did not find the uterus damaged, then it cannot be claimed that the rod was inserted in her private parts and intestines were pulled out.

202. The aforesaid submission can be singularly rejected without much discussion on the foundation that a question to that effect was not put to the doctors in their respective cross-examinations. However, instead of summary rejection, we shall deal with it for the sake of our satisfaction and also to meet the contention. While it may be so that the uterus, tubes and the cervix were not damaged, that does not mean that the intestines could not have been damaged

as they have been. It stands to reason based on common understanding and medical science to allay this contention. First, it is nowhere the stance that the rod was inserted only through the vagina. The prosecutrix herself had stated in her dying declarations that she was raped through the vagina as also the anus, Ex. P.W. 27/A. The anus is directly connected to the intestines via the rectum and, thus, deep penetration by use of a rod or other long object could have caused injuries to the bowels/intestines.

203. To appreciate the above contention, it is necessary to understand the anatomy and position of the uterus. We may profitably refer to the following excerpts from 'Gray's Anatomy: Descriptive and Applied', 34th Edn. [Orient Longman Publication] at pages 1572 and 1579:

THE UTERUS: The uterus, or womb, is a hollow, thick- walled, muscular organ situated in the lesser pelvis between the urinary bladder in front and the rectum behind. Into its upper part the uterine tubes open one on each side, while below, its cavity communicates with that of the vagina. When the ova are discharged from the ovaries, they are carried to the uterine cavity through the uterine tubes. If an ovum be fertilized it embeds itself in the uterine wall and is normally retained in the uterus until prenatal development is completed, the uterus undergoing changes in size and structure to accommodate itself to the needs of the growing embryo. After parturition the uterus returns almost to its former condition, though it is somewhat larger than in the virgin state. For general descriptive purposes the adult virgin uterus is taken as the type form.

In the virgin state the uterus is flattened from before backwards and is pear- shaped, with the narrow end directed downwards and backwards. It lies between the bladder below and in front, and the sigmoid colon and rectum above and behind, and is completely below the level of the pelvic inlet.

The long axis of the uterus usually lies approximately in the axis of the pelvic inlet (p. 440), but as the organ is freely movable its position varies with the state of distension of the bladder and rectum. Except when much displaced by a distended bladder, it forms almost a right angle with the vagina, since the axis of the vagina correspond to the axes of the cavity and outlet of the lesser pelvis (p. 440)" (at page 1572)

THE VAGINA: The vagina is a canal which extends from the vestibule, or cleft between the labia minora, to the uterus, and is situated, behind the bladder and urethra, and in front of the rectum and anal canal; it is directed upwards and backwards, its axis forming with that of the uterus an angle of over ninety degrees, opening forwards..." (at page 1579)

And 'A Fascimile: Gray's Anatomy' (at page 723) [Black Rose Publications]

THE VAGINA

.....

Relations: Its anterior surface is concave, and in relation with the base of the bladder, and with the urethra. Its posterior surface is convex, and connected to the anterior wall of the rectum, for the lower three- fourths of its extent....

The aforesaid excerpts establish that the vagina and uterus are almost at right angles to each other and the rectum is only separated by a wall of tissue. The pelvic cavity as set forth in the diagram in the book supports the same.

204. The exhibits relating to injuries may be noted. OT notes from 17.12.2012 and 19.12.2012 read as under:

OT Notes:

PW 50/B: Call received from Dr. Gaurav and Dr. Piyush at approx. 4.00 a.m. from noty OT.

Immediately reached OT and reviewed the details of internal injury (as mentioned in OT notes) the condition of the small and large bowel extremely bad for any definitive repair. The condition explained to the mother of the patient and the police officials present. Case discussed with Dr. S.K. Jain. Int. I/C telephonically.

205. The operative findings which are seen from the examination done by the Gynaecologist and the Surgeons are:

Perineal

• Abdominal findings: Rectum is longitudinally torn on anterior aspect in continuation with tear. This tear is continuing upward involving sigmoid colon descending colon which is splayed open. The margins are edematous.

• There are multiple longitudinal tear in the mucosa of rectosigmoid area.

• Transverse colon was also torn and gangrenous.

• Hepatic flexure ascending colon and caecum were gangrenous and multiple perforation at many places.

• Terminal item approximately 1 1/2 feet loosely hanging in the abdominal cavity. It was avulsed from its mesentery and was nonviable.

• Rest of small bowel was nonenlistend with only patens of mucosa at places and border of the mesentery was contused. This contused mesentery border initially appeared (during first surgery) as contused small bowel.

• Jejunostomy stoma was gangrenous for approximately 2 cm.

• Stomach and duodenum was distended but healthy.

Surgical Procedure:

• Resection of gangrenous terminal ileum, caecum, appendix, ascending colon, hepatic flexure and transverse colon was done.

• Resection of necrotic jejunal stoma with closure of duodenojejunal flexure in two layers by 3- 0 viaeny.

• Diverting lateral tube dudoenostomy (with 18F Folley's catheter) brought through right flank.

• Tube gastrostomy was added as another decompressive measures (28 size apotere tube was used) Tube gastrostomy was brought and from previous jejunostomy site.

• Abdominal drain placed in pelvis.

- Rectal sheath closed by using No. 1 prolene interrupted sutures.
- Skin closed by using 1- 0 nylon.
- Perineal wound packed with Betadine soaked gauze piece.
- T- Bandage applied
- ASD done for abdominal wound.
- Patient tolerated procedure and was shifted back to ICU- I.

Post OP Advise

1. NPO
2. CRTA
3. IVF as per CVP and output by ICU team.
4. Injection menopenum Limezolid to be continued as before.
5. Injection metronidazole 100ml IV TDS.
6. Injection Pantoprozole 20 mg IV OD
7. Strict I/O charting.
8. Rest of the treatment as advised by ICU team.

206. From the nature of the injuries noted in the OT Notes, the rectum was longitudinally torn and transverse colon was torn. From the Post- Mortem Certificate, the uterus was found in position (no injuries to uterus). If the rod was inserted in the vagina, having regard to the fact that the injury within the vagina was only in the posterior surface, it indicates that the rod was pushed inside with a downward force and not upward (which could have resulted in injury to the uterus) and it perhaps tunneled its way through the vagina into the rectal cavity and the bowels. Therefore, merely because no injuries to the uterus of the victim were noticed, that does not lead to the conclusion that iron rod was not used. Thus, the submission that has been raised with immense enthusiasm and ambition to create a concavity in the case of the prosecution on this score deserves to be repelled and we do so.

Analysis of evidence pertaining to DNA

207. Having dealt with the aspect pertaining to insertion of rod, it is apposite to advert to the medical evidence and post mortem report. We have, while dealing with other aspects, referred to certain aspects including DNA analysis of medical evidence but the same requires to be critically dealt with as the prosecution has placed heavy reliance upon it.

208. DNA is the abbreviation of Deoxyribo Nucleic Acid. It is the basic genetic material in all human body cells. It is not contained in red blood corpuscles. It is, however, present in white corpuscles. It carries the genetic code. DNA structure determines human character, behavior and body characteristics. DNA profiles are encrypted sets of numbers that reflect a person's DNA makeup which, in forensics, is used to identify human beings. DNA is a complex molecule. It has a double helix structure which can be compared with a twisted rope 'ladder'.

209. The nature and characteristics of DNA had been succinctly explained by Lord Justice Phillips in Regina v. Alan James Doheny & Gary Adams 1997 (1) Criminal Appeal Reports 369. In the above case, the accused were convicted relying on results obtained by comparing DNA profiles obtained from a stain left at the scene of the crime with DNA profiles obtained from a sample of blood provided by the Appellant. In the above context, with regard to DNA, the following was stated by Lord Justice Phillips:

Deoxyribonucleic acid, or DNA, consists of long ribbon- like molecules, the chromosomes, 46 of which lie tightly coiled in nearly every cell of the body. These chromosomes - 23 provided from the mother and 23 from the father at conception, form the genetic blueprint of the body. Different sections of DNA have different identifiable and discrete characteristics. When a criminal leaves a stain of blood or semen at the scene of the crime it may prove possible to extract from that crime stain sufficient sections of DNA to enable a comparison to be made with the same sections extracted from a sample of blood provided by the suspect. This process is complex and we could not hope to describe it more clearly or succinctly than did Lord Taylor C.J. in the case of Deen (transcript:December 21, 1993), so we shall gratefully adopt his description.

The process of DNA profiling starts with DNA being extracted from the crime stain and also from a sample taken from the suspect. In each case the DNA is cut into smaller lengths by specific enzymes. The fragments produced are sorted according to size by a process of electrophoresis. This involves placing the fragments in a gel and drawing them electromagnetically along a track through the gel. The fragments with smaller molecular weight travel further than the heavier ones. The pattern thus created is transferred from the gel onto a membrane. Radioactive DNA probes, taken from elsewhere, which bind with the sequences of most interest in the sample DNA are then applied. After the excess of the DNA probe is washed off, an X- ray film is placed over the membrane to record the band pattern. This produces an auto radiograph which can be photographed. When the crime stain DNA and the sample DNA from the suspect have been run in separate tracks through the gel, the resultant auto- radiographs can be compared. The two DNA profiles can then be said either to match or not.

210. In the United States, in an early case Frye v. United States 54 App. D.C. 46 (1923), it was laid down that scientific evidence is admissible only if the principle on which it is based is substantially established to have general acceptance in the field to which it belonged. The US Supreme Court reversed the above formulation in Daubert v. Merrell Dow Pharmaceuticals, Inc. MANU/USSC/0103/1993 : 113 S.CT. 2786 (1993) stating thus:

11. Although the Frye decision itself focused exclusively on "novel" scientific techniques, we do not read the requirements of Rule 702 to apply specially or exclusively to unconventional evidence. Of course, well- established propositions are less likely to be challenged than those that are novel, and they are more handily defended. Indeed, theories that are so firmly established as to have attained the status of scientific law, such as the laws of thermodynamics, properly are subject to judicial notice under Fed. Rule Evid. 201.

13. This is not to say that judicial interpretation, as opposed to adjudicative fact finding, does not share basic characteristics of the scientific endeavor: "The work of a judge is in one sense enduring and in another ephemeral... In the endless process of testing and retesting, there is a constant rejection of the dross and a constant retention of whatever is pure and sound and fine." B. Cardozo, The nature of the Judicial Process 178, 179 (1921).

211. The principle was summarized by Blackmun, J., as follows:

To summarize: "general acceptance" is not a necessary precondition to the admissibility of scientific evidence under the Federal Rules of Evidence, but the Rules of Evidence- - especially Rule 702- - do assign to the trial judge the task of ensuring that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand. Pertinent evidence based on scientifically valid principles will satisfy those demands.

The inquiries of the District Court and the Court of Appeals focused almost exclusively on "general acceptance," as gauged by publication and the decisions of other courts. Accordingly, the judgment of the Court of Appeals is vacated and the case is remanded for further proceedings consistent with this opinion.

212. After the above judgment, the DNA Test has been frequently applied in the United States of America. In District Attorney's Office for the Third Judicial District et al. v. William G. Osborne 129 Supreme Court Reporter 2308, Chief Justice Roberts of the Supreme Court of United States, while referring to the DNA Test, stated as follows:

DNA testing has an unparalleled ability both to exonerate the wrongly convicted and to identify the guilty. It has the potential to significantly improve both the criminal justice system and police investigative practices. The Federal Government and the States have recognized this, and have developed special approaches to ensure that this evidentiary tool can be effectively incorporated into established criminal procedure- usually but not always through legislation.

... ...

Modern DNA testing can provide powerful new evidence unlike anything known before. Since its first use in criminal investigations in the mid- 1980s, there have been several major advances in DNA technology, culminating in STR technology. It is now often possible to determine whether a biological tissue matches a suspect with near certainty. While of course many criminal trials proceed without any forensic and scientific testing at all, there is no technology comparable to DNA testing for matching tissues when such evidence is at issue.

213. DNA technology as a part of Forensic Science and scientific discipline not only provides guidance to investigation but also supplies the Court accrued information about the tending features of identification of criminals. The recent advancement in modern biological research has regularized Forensic Science resulting in radical help in the administration of justice. In our country also like several other developed and developing countries, DNA evidence is being increasingly relied upon by courts. After the amendment in the Code of Criminal Procedure by the insertion of Section 53A by Act 25 of 2005, DNA profiling has now become a part of the statutory scheme. Section 53A relates to the examination of a person accused of rape by a medical practitioner.

214. Similarly, Under Section 164A inserted by Act 25 of 2005, for medical examination of the victim of rape, the description of material taken from the person of the woman for DNA profiling