

C.B.I. – CAGED PARROT

Some Suggestions, as a sequel to the observations of the Hon'ble Supreme Court to make CBI independent and it's insulation from Political interference

By

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On several occasions, previously also, the CBI has been criticised by the Hon'ble Supreme Court for it probe subject to various extraneous interference, such as Jain Halve case, 2G Spectrum case, Mayavati disproportion case, besides the latest Coalgate Scam probe leading to consistent criticism lead to an observation by the Hon'ble Supreme Court may be a sort of insinuation "CBI is like a caged parrot" and the Hon'ble Supreme Court suggested for the enactment of new law to insulate the CBI from extraneous influence and make it an independent organisation and to ensure its functional autonomy.

The endeavour of the Supreme Court appears to be the integrity of the investigation should not be subverted.

The suggestion of the Supreme Court is worth welcome at all levels especially in view of several pending episodes throughout the country and the CBI should be given functional independent powers.

As a sequel to the directions of the Supreme Court several suggestions are forthcoming to make CBI an independent investigation agency delineated as 1. The head of the agency should be independent and must not be dependent to ministry, 2. It should be on a par with the Election Commission of India or Controller and Auditor General of India, 3. Insistence of prior sanction against corrupt officers and politicians should be dispensed with, in order to set at rest several controversies and to make the process very simple, 4. The

investigation should not be subject to any political influence at any stage, 5. The investigating agency officers should be independent and dedicated officers and should be above board.

Be these suggestions as it may.

There is another need to amend the provisions' of Cr.P.C also Section 428 of Cr.P.C. postulates period of detention undergone by the accused to be set off against the sentence of imprisonment. However Section 250 Cr.P.C. postulates payment of compensation in the event of discharge or acquittal. It does not clearly stipulate to award special compensation for the period of detention. Hence suitable amendment for awarding additional compensation for the illegal and unwarranted detention or confinement.

Now adverting to the statutory right of the accused to be released on bail, it is well settled, even if the investigation into a case is not completed and the charge-sheet is not filed before the expiry of period detention of the accused for 90 days or 60 days, as the case may be the accused is entitled to be released on bail under the provision (a) to Section 167(2) Cr.P.C. 1973. No discretion what so ever is left to the learned Magistrate and it is obligatory on his part to release the accused on bail provided the accused furnishes bail. Inspite of this statutory rule covered by several authorities of the Supreme Court also that the accused should be released on bail on the failure of the agency to complete the investigation and file

the charge-sheet, it is evident in some cases, the accused is not released on bail on the mere pretest, the investigation is not completed despite several months or years, which alone leads the confidence of the public is eroded. Hence to set at rest this controversy, a suitable amendment is a desideratum making the provisions of the Cr.P.C., mandatory regarding the statutory right of the accused to be released on bail on the event of the failure to file a charge-sheet within the stipulated period despite the

failure to complete the investigation and put an end to the frivolous, vague and unwarranted attempts of extension for investigation.

Hence, the entire focus is on the pressing reforms which accelerated the recent coalgate controversy which has tarnished the image and credibility of the C.B.I. institution.

These suggestions are only illustrative but not exhaustive. Let us anxiously look forward for amendments which are on the anvil.

RULE OF DAMDUPAT – ITS SCOPE AND APPLICABILITY

By

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The rule of Damdupat is a branch of Hindu Law of debts. There is lot of confusion with regard to applicability of Rule of Damdupat. Even today we can find that so many Advocates are taking the plea of Rule of Damdupat and contending that the plaintiff is not entitled to interest more than the principal amount. There are certain judgments which are favourable to the application of the Rule of Damdupat and there are certain decisions which are against to the applicability of Rule of Damdupat. There is no clarity with regard to the scope and applicability of this principle. In this article an attempt is made to clarify the position and to clear the ambiguity.

Hindu Law of Debts

“Debt” ordinarily means a liquidated or ascertained sum of money as distinguished from unliquidated damages. A debt may be contracted by a Hindu male for his own private purposes, or it may be contracted by him for the purposes of the joint family. The rule of Damdupat is a branch of Hindu Law of Debts. According to this rule, the

amount of interest recoverable at any one time cannot exceed the principal¹. The reason behind the rule is that the Hindu Law did not recognize any rule of limitation for the recovery of debts. Every debt which was lawful was binding and recoverable from the debtor irrespective of the period which may have elapsed since the original liability was incurred. It thus became necessary to impose a restriction on the amount of interest recoverable by the creditor, and such a restriction has been imposed by a rule of damdupat².

The Hon’ble Supreme Court by referring to various Hindu Law Texts, discussed the usefulness of the rule in *Hukumchand Gulabchand Jain v. Fulchand Lakshmidhand Jain*³, and in Paragraphs 30, 31 and 32 the Apex Court held that

“The rule of Damdupat applies to cases where a loan is advanced. This is clear from Colebrooke’s Digest on Hindu Law.

1. Mulla’s Principles of Hindu Law (14th Edition)
2. (1924) 46 All. 775
3. AIR 1965 SC 1692