

subjected only to supervision of the superior police officer in rank as envisaged in Section 36 of the Code. There is no stage during which the IO is legally obliged to take the opinion of P.P. or any authority<sup>10</sup>.

In a recent judgment delivered by the A.P. High Court in *Bethalam Subbarao v. Superintendent of Police (Urban) Guntur*, (WP No.39478/2013 decided on 5.3.2014) it was held by the Lordships @ as several such cases of legal opinions being sought from and given by the Public Prosecutors have come to the notice of this Court and as the Public Prosecutors appointed by State Government under Section 24(3) and (8) CrPC are subordinates to D.O.P in terms of Section 25-A(6) CrPC, the DGP shall forthwith issue instructions to the DOP to make the Public Prosecutor aware of the law declared by SC and this Court in the afore said judgment; and they should refrain from giving their legal opinion on whether or not the evidence collected by the IO, during the course of investigation necessitates a charge-sheet being filed under Section 173(2) CrPC”.

However it is opt to refer Order 479-5 of A.P. Police Manual Part-I (volume-11) which says “after completion of the investigation the SHO shall forward the file along with Form 67 to the APP for his opinion whether the material is sufficient to charge the case and also discuss with the

APP in person”. The apex Court, held in recent judgment in *State of Gujarat v. Kishan Bhai etc.*, 2014 STPL (web) 15 SC, in Para 19 “on the completion of the investigation in a criminal case, the prosecuting agency should apply its independent mind and require all shortcomings to be rectified, if necessary by requiring further investigation”

Apart from the rulings mentioned supra, the Public Prosecutor invariably plays a vital role in criminal administration and the same has been appreciated by the Courts in various judgments like filing Section 311 CrPC petitions for recalling, adding witness, Section 216 CrPC for adding or altering charges in charge-sheet, Section 319 for adding of the accused person during the course of trial nevertheless these are the powers and duties of the investigating officer enunciated under Section 156 CrPC. The Assistant Public Prosecutor if the situation warrants file a memo under Sections 242(3) and 244 CrPC in order to produce further evidence which the investigating officer fails to collect.

The Public Prosecutor is being minister of justice he provides sufficient legal equipment to police and guides them to investigation by way of giving valuable opinions and represents the dossier before the Court of ultimately strives for justice. Public Prosecutor though confined to trial as according to laws and precedents but in practical and logical he plays a key role both in investigation and trial.

## DEVELOPMENT OF BANKING INSTITUTIONS AND FINANCIAL INSTITUTIONS IN INDIA AND THE PRESENT STATUTORY LAWS GOVERNING BANKING INSTITUTIONS – A BRIEF STUDY

By

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1. Today Banks, whether Nationalised or Private are in great competition and the common sight even in a remote village is a

bank. This expansion of banks began from the middle of the 20th Century. The banks are felt necessary by every one whether a

<sup>10</sup>. *R. Sarala v. T.S. Velu* and in *Satyanarayana v. Government of A.P.* GAD, 1997 (3) ALD 784 (DB)

city based one or a rural person. Now a days taking loans from banks for various needs and purposes has become very common. Barring some short comings or failures, still banking as it stands today is considered a wonder of the world.

2. The word 'BANK' is of a German origin equivalent and cognate with the French word '**banque**' and the Italian word 'banca'. In Greek Parlance during 2000 B.C. temples were considered as very powerful and the Greeks reposed full faith trust and confidence in these temples and these temples were considered as Greek Banking Institutions. Coming to ancient India, this country was having a concept of Banking then also. During the Smruti period followed by Vedic and epic periods, banking became an activity in India and the Great Law Giver Manu in his Smruti said about the earning of interest as the business of the Vysya Community. (*Vide* Verse No.90 of Manu Smruti or The Jurisprudence of Manu in which the functions of the Vysya one of the four communities are stated, and one such function is stated as money lending and agriculture).

3. The modern banking system dates back to 12<sup>th</sup> century and history shows that banks like Bank of Venice and Bank of Genova were established during 1157 and successively other banks were established in Europe and England during the later centuries.

4. As far India is concerned, there is not much to be said about banking system before the advent of the East India Company. During the 18<sup>th</sup> and 19<sup>th</sup> centuries banks by names The Hindusthan Bank, The Bengal Bank, The General Bank of India Ltd., were established but these banks failed. Between 1806 and 1840, Presidency Banks were established in Calcutta, Bombay, and Madras. Finally in the year 1920 all the above banks were amalgamated and new bank with the name "IMPERIAL BANK OF INDIA" was formed. During the 19<sup>th</sup> Century, banks like Allahabad Bank,

Avadh Commercial Bank, and Punjab National Bank were started. Several private banks were also established throughout India between the years 1906 to 1929. During this period Central Bank of India and Bank of Baroda were established and these banks, got stabilized well. Between 1929 to 1932 there was the great depression due to which some small scale private banks failed.

5. After the terrible depression conditions ceased and there was an improvement in the financial position of the country, the then Government on the recommendations of the Royal Commission on Indian Currency and Finance recommended that a Central Bank should be started in India in order to perfect the country's credit and currency organisation. The above referred commission did not favour to convert The Imperial Bank of India as the Central Bank. Therefore, The Reserve Bank of India was established under an Act of 1934 and the same started functioning from 1.4.1935. From then onwards the Reserve Bank of India has been playing the most important and pivotal role in the organization of the country's finances and it is doing much more even now. The Central Office of this Reserve Bank of India is located at Mumbai, the ever economic capital of India with Regional Offices in the capital cities of all states of India. In course of time the authority and control of R.B.I. has been extended over private banks as well as Co-operative Banks. To say in brief about The Reserve Bank it controls the whole financial transactions of the country and it is the supreme authority acting along with the Ministry of Finance. It is said that R.B.I. is the Banker of all banks. It regulates and rationalizes the credit structures.

6. After Independence, the Government felt the need for a codified Law for regulating the running of the Commercial Banks in the country. Therefore The Banking Regulation Act, 1949 (Act 10 of 1949) is enacted and brought into force *w.e.f.*

16.3.1949. The main object of this Act is to consolidate and amend the law relating to banking.

7. After a period of 6 years, the Government also felt the need to regulate the institution Imperial Bank of India and make it a fully Governmental Concern. Therefore in the year 1955 The State Bank of India Act (Act 23 of 1955) is enacted and the main purpose of this Act is to constitute a State Bank for India and to transfer to it the Imperial Bank of India and to provide for other matters connected therewith or incidental thereto. Later in the year 1959 under The State Bank of India (Subsidiary Banks) Act, 1959 all States Banks in the then princely states are amalgamated with the S.B.I. Thus, the largest bank of India S.B.I. has come into existence and this S.B.I acts as an agent of the Reserve Bank of India and it also carries on regular banking business. In the year 1956, the Life Insurance Corporation of India is established regulating the life insurance business. This is a gaigantic organization safe guarding the Life Insurance business in the country and it is on par with State Bank of India.

8. Under the stewardship of this R.B.I, several other financial institutions listed below are set upto improve and control the economy of the country and promote agriculture and rural development.

*List:*

1. The Industrial Finance Corporation of India (1948) (IFCI)
2. The Bill Market Scheme (1952)
3. The State Financial Corporations (1953) (SFC)
4. The Industrial Credit and Investment Corporation of India Ltd., (1955) (ICICI)
5. The National Agricultural Credit (Stabilization) Fund (1956)

6. The Export Credit Guarantee Corporation Ltd., (1957) (ECGC)
7. The Credit Guarantee Scheme (1958)
8. The Agricultural Refinance Corporation Ltd., (1963)
9. The Unit Trust of India (1964) (UTI)
10. The Industrial Developmental Bank of India (1964) (IDBI)
11. The Credit Guarantee Corporation of India Ltd., (Small loans) Guarantee Scheme (1971)
12. National Bank for Agricultural & Rural Development, 1982. (NABARD - deals with Grameena Banks, Agricultural Credit Department, Rural Planning & Credit Cell, Agricultural Re-finance and Development Corporation)
13. Small Industries Development Bank of India, 1990. (SIDBI).

9. In the years 1970 and 1980 the Central Government nationalized several banks depending on their paid up capitals under The Banking Companies (Acquisition and Transfer of undertakings) Act. Act 5 of 1970.

10. As years passed on and as the country was progressing other institutions like :

1. Deposit Insurance and Credit Guarantee Corporation (DIC GC).
2. Housing and Urban Development Cooperation Ltd., (HUDCO)
3. Housing Development Finance Corporation Ltd., (HDFC)
4. National Housing Bank (NHB),

*Etc.*, are also opened. All these are treated as Government Companies as per The Companies Act, 1956.

11. Then in 1972 the General Insurance business was also nationalized under the General Insurance Corporation Act, 1972 and it began functioning with its then existing

four units also on par with the State Bank of India.

12. Several banks and Governmental Institutions began system of giving term loans, housing loans, Industrial loans. But as some unscrupulous persons began adopting evasive methods in the matter of repayment of heavy loan amounts, the banks as well as financial institutions began facing several difficulties. When these institutions approached the civil Courts for recovering the loan amounts, apart from long delays in the matter of realization, the debtors began adopting highly evasive and delaying tactics with the result the Government was obliged to bring in "THE RECOVERY OF DEBTS DUE TO BANKS AND OTHER FINANCIAL INSTITUTIONS ACT, 1993" under which DEBT RECOVERY TRIBUNALS are established throughout the country conferring exclusive jurisdiction on these Special Primary and Appellate Tribunals. This Act came into force on 16.11.1994 and by virtue of the summary procedure and ousting of the jurisdiction of the civil Courts upto a limit, the things became some what better but not upto the expected level due to the tactics adopted by the debtors. Therefore the Government brought in a new Act called "THE SECURITISATION AND RECONSTITUTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 *w.e.f.* 21.6.2002". This Act is popularly called SERFAESI Act. This Act with its Rules and circulars and guidelines is a detailed Act and it is not possible to deal with all these matters in this small article. It can be said that by virtue of the special procedure under this Act, realisation aspect became better after this Act. This Act along with The Debt Recovery Act of 1993 is the subject-matter of a large case Law before Supreme Court and High Courts.

13. In order to provide certain safeguards to citizens and in order to resolve complaints against banks, and in order to resolve

disputes between banks and their constituents, and between one bank and another, the Government brought in The Banking Ombudsman Scheme, 2002 *w.e.f.* 14.8.2002. As far as Andhra Pradesh is concerned, the office of The Ombudsman is in Hyderabad.

14. These are briefly the details of development of Banking Industry in India. It will be useful to mention here that useful amendments are proposed in Banking Law by eminent professors like Dr. N.L. Mitra, Director, National Law School of India University, Bangalore and other respectable academicians under a research conducted under R.B.I. Assistance, 1997. But the proposals remained proposals.

15. In my humble opinion, for dealing with the legal matters relating to Banking and Financial Institutions, one should be in touch with all the enactments pointed out above. In addition thereto, one should also be in touch with the Laws relating to Negotiable Instruments Act, leases, mortgages, charges, *Pari passu* charges, Contract Act Provisions relating to pledges, surety, Registration Act, Stamp Act, and law relating to Registration of Companies and firms, Limitation Act, Evidence Act relating to public and private documents; The Bankers' Books Evidence Act and The Commercial Documents Evidence Act.

16. My avowed object in publishing this article is to make the youngsters in the legal profession acquaint about this subject and if the young friends find this useful I feel highly rewarded.

*By courtesy of*

#### 1. The *Manu Smriti*

(The jurisprudence of *Manu* by His Holiness Sri Vidya Sankara Padamavesa Prakasita Sri Jagadguru Sri Sri Sri Kalyana Ananda Bharathi Manthacharya Swami Maharaj of Sri Virupaksha Sripeetham, Sringeri,

*The Great Books on Law of Banking*

2. Tannan's Banking Law and Practice in India.

3. The Banking Law in Theory and Practice by *S.N. Gupta*. and

4. Eenadu News Paper District Supplement Paper pages of 5.5.2007 and 19.12.2009.

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**IS THERE ANY LEGAL OBLIGATION ON THE PART OF DEFENDANT AS PER PROVISIO OF ORDER 1 RULE 9 OF C.P.C. TO TAKE THE PLEA THAT THE SUIT MUST FAIL FOR NON-JOINDER OF A NAMED NECESSARY PARTY?**

*By*

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1. This question usually arises in the case of partition suits. It is an admitted legal Principle that every one must be deemed to have knowledge of law and even if a person without knowledge of law violates it, he must suffer for it and is not exempted from its application.

2. As per Section 6 of Hindu Succession Act, as amended by Act 39/2005, which came into force on 9.9.2005, daughters whether married or not are also equally entitled to share in co-parcenary property, along with sons.

3. Suppose one son files a suit for partition of co-parcenary property against other male co-parcenars only, leaving, female co-parcenars who are necessary parties to the suit. It cannot be expected that the plaintiff does not know the existence of sisters.

4. Suppose, the plaintiff does not mention about the existence or non-existence of the sisters and also does not mention about their disentitlement to share in co-parcenary property.

5. Then, is there any legal obligation on the male co-parcenar who figured as a defendant in the suit, to make mention in his pleadings, that the suit is not maintainable

as the sisters who are legally entitled to shares are necessary parties to the suit and that suit must fail, because of that infirmity in the suit.

6. Section 3 of Limitation Act says that suit, or other proceedings filed after prescribed time shall be dismissed, although limitation has not been set up as defence.

Suppose, there is no assertion in plaint that suit is in time or is not barred by time. Then there is no obligation or necessity for defendant to assert that suit is barred by time in his pleadings.

But, the suit must be dismissed, even if defendant has not taken plea of limitation in his written statement, if the said fact is brought to the notice of the Court at any stage of the suit, even after closure of evidence, before judgment.

7. Naturally, when there is no averment about sisters and their entitlement to share either in the plaint or in the written statement, the Court will not frame issue. As per Order 14 Rule 1 of C.P.C, issues arise when a material proposition of fact or law is affirmed by one party and denied by the other. So there will be no issue as to whether suit is maintainable or not for not adding