14
CRIMINAL PROCEDURE

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I INDRODUCTION

DURING 2013 as in the previous years the superior courts have handed down a number of landmark decisions on different aspects of criminal procedure law. The important trends signified in these decisions have been tried to be captured in this survey. As such, only those cases which the present author considers to be trend-setters alone have been analysed. To help the readers understand the trends better the decisions have been analysed under several heads of importance.

The tendency of some litigants to frequently approach the superior courts on one ground or the other has come to be criticised by the Supreme Court in *Nupur Talwar* v. *CBI*,[1] In this case rejecting the plea that the arguments of the accused were not adverted to by the magistrate while issuing process under section 204 Cr PC, after rejecting closure report, the court pointed out that such an order is not vitiated merely because of lack of reasons. The magistrate did adduce reasons as to why she was not agreeing with closure report.

The Supreme Court had occasion to reiterate its instructions that the high courts should not entertain writ petitions under article 226 and 227 and petitions under section 482 Cr. P.C for granting or rejecting request for bail which is the function of the lower courts.[2] It also reminded the role of the courts below and remitted cases to the high courts for reconsideration as the cases were not properly heard and decided by them.[3] The Supreme Court also reiterated its position that no time limit can be stipulated for disposal of the criminal trial.[4]

The unfortunate trend of some women petitioners making frivolous allegations questioning the character of husbands came to be adverted to by the court in *K. Srinivas Rao* v. *D.A.Deepa*.[5] In this case the wife levelled very serious defamatory allegations against the mother-in-law. The court accepted it as amounting to mental cruelty. While disposing of the petition the Supreme Court issued several directions

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1 (2013) 1 SCC (Cri.) 689.

2 See *Nazma* v. *Javed @ Anjum* (2013) 1 SCC (Cri.) 508.

3 See for example *Iqbal Abdul Samidia Malik* v. *State of Gujarat* (2012) 11 SCC 312.

4 *Niranjan hemchandra Sasghittal* v. *State of Maharashtra* (2013) 4 SCC 642.

5 (2013) 5 SCC. 226 see also discussions and observations in *Geetha Mehrotra* v. *State of U.P.* (2013) 1 SCC (Cri.) 120.

with regard to the disposal of such cases stressing the desirability of utilising mediation facilities.

About the role of the courts in achieving justice, the court said thus: [6]

> Justice is the virtue by which the society/Court/tribunal gives a man his due, opposed to injury or wrong. Therefore, while tempering, justice with mercy, the court must be very conscious, that it has to do justice in exact conformity with some obligatory, law, for the reason that human actions are found to be just or unjust on the basis of whether the same are in conformity with, or in opposition to, the law.

In *Akil@Javed* v. *State*,[7] the Supreme Court disapproved the practice of giving long adjournments during trials. It pointed that there is dire need for the courts dealing with cases involving serious offences to proceed with the trial on day to day basis in *de die in diem* until the trial is concluded, section 309 Cr PC in fact stipulates so.

There have been some cases which came to be remitted by the Supreme Court to the high courts because the latter have failed to give reasons for their decisions in them.[8] However, the court did not remit the decision in *Ankush Shivaji Gaikwad* v. *State of Maharashtra* [9] though it was found lacking in several ways. About absence of reasons, it quoted its own observations in *Hindustan Times Ltd.*v. *Union of India*[10] which run as follows:[11]

> In our view, the satisfaction which a reasoned judgement gives to the losing party or his lawyer is the test of a good judgement. Disposal of cases is no doubt is important but quality of the judgement is equally important. There is no point in shifting the burden to the higher courts either to support the judgment by reasons or to consider the evidence or law for the first time to see if the judgement needs a reversal.

About the decision the court said: coming then to the case at hand, we regret to say that the trial court and the high court appear to have remained oblivious to the provisions of section 357 Cr PC. The judgement under appeal betrays ignorance of the courts below about the statutory provisions and the duty cast upon the courts. Remand at this distant point of time does not appear to be a good option either.

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6 *Union of India* v. *Ex. GNR Ajeet Singh*, (2013) 2 SCC (Cri.) 347 at 357.

7 (2013) 3 SCC (Cri.) 63.

8 See *State of U.P.* v. *Rejit Ram @ Khurpanchi* (2013) 2 SCC (Cri.) 694; *P.Nagesh* v. *State of Karnataka* (2013) 3 SCC (Cri.) 321; *Majjal* v. *State of Haryana* (2013) 7 SCC 798.

9 (2013) 7 SCC 770.

10 (1998) 2 SCC 242.

11 *Id.* at 795.

This may not be a happy situation but having regard to the facts and circumstances of the case and the time lag since the offence was committed we conclude this chapter in the hope that the courts remain careful in future.[12] It is hoped that these observations will have the desired effect in future.

Though the court essayed extensively on victim compensation neither did it grant nor was the case remitted to the high court for awarding compensation to the victim.

II TRIAL AND TRIAL PROCEDURE

Investigation

The Supreme Court dealt with the effect of stay of investigation on the remand of the accused in *Manubhai Ratilal Patel* v. *State of Gujarat*.[13] In this case the appellant was accused of offences under sections 467,468, 409 and 114 IPC. He was arrested and produced before the magistrate who remanded him to custody. On the day of arrest itself the appellant got the investigation stayed by the high court and sought for bail. When rejected he moved *habeas corpus* petition from the high court which rejected it. He approached the Supreme Court but the petition was rejected by it observing thus:

The only ground that was highlighted before the high court as well as before this court is that once there is stay of investigation the order of remand is sensitively susceptible and, therefore, as a logical corollary the detention is unsustainable. It is worthy to note that the investigation has already commenced and as a resultant consequence, the accused was arrested. Thus we are disposed to think that the order of remand cannot be regarded as untenable in law. It is well accepted principle that the writ of *habeas corpus* is not be to be entertained when a person is committed to judicial custody or police custody by the competent court by an order which *prima facie* does not appear to be without jurisdiction or passed in absolutely mechanical manner or wholly illegal.[14]

The question whether the provision enabling supply of a copy of FIR to the informant under section 154(2) is mandatory or directory has been answered as directory in *State* v. *Gnaneswaran*[15] It was pointed out that section 154 prescribes a duty only.

The importance and relevance of proper investigation was stressed by the Supreme Court in *Suball Ghorai* v. *State of W.B.*[16] the court observed: [17]

> Even the society has a great stake in the proper conduct of sessions cases because they have relevance to the maintenance of law and order. Investigation of criminal cases must, therefore, be done very carefully and trials must be conducted with a sense of responsibility.

12 *Id*. at 798.

13 (2013) 1 SCC (Cri.) 475.

14 *Id*. at 485.

15 (2013) 3 SCC 594.

16 (2013) 4 SCC 607.

17 *Id* at 635; See also *Ganga Singh* v. *State of MP* (2013) 7 SCC 378 holding that defective investigation may not result in rejection if prosecution case is proved.

As regards the power to order investigation beyond the first investigation the Supreme Court ruled that where the magistrate can only direct 'further investigation' the courts of higher jurisdiction can direct further investigation reinvestigation or even investigation *de novo* depending on the facts of the case.

It will be the specific order of the court that determines the nature of investigation. No investigation agency is empowered to conduct a 'fresh' '*de novo*' or 'reinvestigation' in relation to the offence to which it has already filed a report in terms of section173(2) Cr PC, It is only upon the orders of the higher courts empowered to pass such orders that further investigation is done. The higher courts should in such cases have to pass a specific order with regard to the fate of the investigation already conducted and the report so filed in the court of the magistrate.

This view emanates from the principle of our criminal jurisprudence that it is the right of a suspect to have a just and fair investigation and trial having regard to the rights under article 21 of the Indian Constitution.

Our Code empowers the magistrate to order investigation by any agency. This is being reiterated again and again. During the period under review also it came to be reiterated in *Madhao* v. *State of Maharashtra*.[18]

A question as to whose information should be accepted as PIL arose in *Umesh Singh* v. *State of Bihar*[19] where the statement of an eye witness rather than the statement of a hear say witness came to be accepted as FIR by the police. The police's action was approved by the Supreme Court.

Voice sample

The question whether as an investigative tool voice sample of the accused could be taken from an accused came to be answered differently by Ranjana Desai and Aftab Alum JJ in *Ritesh Sinha* v. *State of UP*.[20] While Desai J feels that it is physical non-testimonial evidence Alum J feels otherwise. The case has now been referred to a larger bench.

Registration of FIR

In the landmark decision in *Lalitha Kumnari* v. *State of UP* [21] the Supreme Court ruled that it is obligatory for the police to register FIR on information given by an informant. The provisions of section 154 (1) Cr PC are mandatory and the officer concerned is duty bound to register the case on the basis of information disclosing commission of cognizable offence. If no cognizable offence is made out in the information given, then the FIR need not be registered immediately and the police may conduct preliminary verification for the limited purpose of ascertaining as to whether a cognizable offence has been committed. The court has mentioned some such areas as matrimonial/family disputes, medical negligence cases *etc*.

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18 (2013) 5 SCC 615. See also *Anilkumar's* case (2013) 10 SCC 705, *infra* note.24.

19 (2013) 2 SCC (Cri.) 401.

20 (2013) 2 SCC (Cri.) 748.

21 (2013) 4 K.H.C. 552 (S.C) Also see *Doliban Kantilal Patel* v. *State of Gujarat* (2013) 9 SCC 447. Wherein the court expressed the need for preliminary inquiry before registration in certain cases.

The purpose of registering the information received in relation to the commission of a cognizable offence is recorded so that there cannot be any embellishment *etc.*, later. The object of compulsory registration is not only to ensure transparency but also ensuring judicial oversight.

The obligation to register FIR has several advantages *viz*. It is the first step to 'access to justice' for a victim, it upholds the rule of law, it facilitates swift investigation, and it avoids manipulation in criminal cases in several ways.

The request of a person who came to be implicated in a criminal case involving criminal case, for a copy of the complaint was rejected by the court saying that since the complaint was not sent to the court under section 173(5) it was not a part of police report and was not in the custody of the court, unlike the situation in *Sasikala's* [22] case the accused is not entitled for copy of the complaint and for knowing the name of the informant.[23]

The Supreme Court did not approve the order of a magistrate under section 156(3) for investigation in *Anil Kumar* v. *M.K. Aiyappa* [24] as the magistrate did not get sanction for the same under section 19 of the Prevention of Corruption Act, 2001 because the accused was a public servant.

Initiation of proceedings

An interesting question with regard to the right of a person accused of a crime by a complainant, to participate in the revisional proceedings when the issue is subjected to revision arose in *Manharibhai Muljibhai Kakkada* v. *Shaileshbhai Mohanbhai Patel.* [25] The court's observations are self explanatory of its reasoning and order. The court observed thus: [26]

> (W)e hold, as it must be that in a revision petition preferred by the complainant before the High Court or the Sessions Judge challenging an order of the magistrate dismissing the complaint under S.203 of the Code at the stage u/s.200 or after following the process contemplated under S.202 of the code, the accused or a person who is suspected to have committed the crime is entitled to hearing by the Revisional Court. In other words, where the complaint has been dismissed by the magistrate u/s. 203 of the code, upon challenge to the legality of the said order being laid by the complainant in a revision petition before the High Court or the Sessions Judge, the persons who are arraigned as accused in the complaint have a right to be, heard in such revision petition. This is a plain requirement of S.401 (2) of the Code

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22 (2012) 9 SCC 731.

23 *Manjit Singh* v. *State of Maharashtra* (2013)3 SCC (Cri) 905.

24 (2013) 10 SCC 705.

25 (2013) 1 SCC (Cri) 218.

26 *Id.* at 240.

In a case initiated by a person against a public servant for offences under sections 420, 406 and 161IPC the magistrate issued summons.[27] The sessions judge set aside the order as there was no sanction under section 19 of Prevention of Corruption Act 1988. The high court on revision upheld the orders of sessions judge. On appeal the Supreme Court following, *Prakash Singh Badal* v. *State of Punjab* [28] held that there was no real need for sanction and the order was revisable.

It has been clarified in *Suresh Kumar Bhikamchand Jain* v. *State of Maharashtra* [29] that the revision of section 167(2) (a) (ii) Cr PC enabling grant of default bail will be applicable irrespective of the fact of cognizance having been taken. In this case though the police report was submitted within the prescribed period no cognizance was taken as there was no sanction to prosecute. The magistrate went on granting remand till it was questioned by special leave petition after failing to get bail from the high court under section 167(2). The Supreme Court clarified that once the police report is filed within the stipulated time, the question of grant of default bail does not arise. Whether cognizance is taken or not, is not material as far as section167 is concerned.

Speaking about the power of magistrate apparently under section 190, the Supreme Court said that even if the investigating authority is of the view that no case has been made out against an accused the magistrate can apply his mind independently to the materials contained in the police report and take cognizance thereupon.[30]

The jurisdiction of sessions court under section 193 came to be examined by the Supreme Court in *Dharampal* v. *State of Haryana*.[31] In this case the police filed final report. The offences were triable by court of session. But all the persons named in the FIR were not arrayed as accused. The *de facto* complainant filed protest petition. The magistrate issued summons on those accused persons not named in the charge sheet. In this context the jurisdiction of magistrate to issue summons to those persons not arrayed as accused in the charge sheet, when the case was triable by the session's court, arose. A five member bench has ruled that the magistrate can proceed on the basis of police report itself and either inquire into the matter or commit it to the court of session if it is triable by the sessions and the sessions court can issue summons separately under section 193 of the Code.

It has also been reiterated by the court that while passing order of summons under section 204 the magistrate must signify that he applied his mind to the facts of the case and law applicable thereto. Recording of this satisfaction as to the existence of a *prima facie* case against accused on the basis of specific allegations made in the complaint supported by satisfactory evidence and other satisfactory material on record is necessary.[32]

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27 See *Omkar Dhankar* v. *State of Haryana* (2013) 1 SCC (Cri.) 493.

28 (2007) 1 SCC 1.

29 (2013) 2 SCC(Cri.) 229.

30 *Dhrup Singh* v. *State of Bihar* (2013) 2 SCC (Cri) 390.

31 (2013) 3 KHC 229.

32 See *G.H.C.L Employees* v. *Stock Option Trust*, (2013) 2 SCC (Cri) 414.

The provisions in sections 209, 201, 203 and 204 make it clear that the magistrate is required to issue summons for attendance of the accused only on examination of the complaint and on satisfaction that there is sufficient ground for taking cognizance of the offence and that it is competent to take such cognizance of offence. Once the decision is taken and the summons is issued, in the absence of a power of review including inherent power to do so, remedy lies before the high court under section 482 Cr. P.C or under article 227 of the constitution and not before the magistrate.[33]

The purpose and importance of getting sanction under section 197 Cr PC for prosecution of certain accused came to be examined in *Om Prakash* v. *State of Jharkhand*.[34] Whether the sanction is necessary or not has to be decided from stage to stage. This question may arise at any stage of the proceeding.

It has been categorically ruled that magistrate while taking cognizance of an offence under section 200 whether such cognizance is the basis of the inquiry or investigation in terms of section 202, is not required to notify the accused to show cause why cognizance should not be taken and process issued against him to provide an opportunity to him to cross-examine the complainant or his witnesses at that stage.[35]

Bail/Anticipatory Bail

As already indicated certain high courts have been granting or rejecting bail under Cr PC under section 482 of the Code. This is in fact the function of the ordinary criminal courts. The jurisdiction under section 439 of the Code is discretionary and it is to be exercised with great care and caution. These views were reiterated by the Supreme Court in *Nazma* v. *Javed* [36] *@ G Anjim* wherein the high courts was disposing of an application filed after the writ petition was disposed of by it earlier.

As already discussed above the accused may be entitled for default bail if the police report is not filed within the stipulated time under section 167(2) of the Code. It is well established that if an accused does not exercise his right to get grant of statutory bail before the police report is filed, he loses his right to default bail.[37] He can thereafter apply for regular bail. The extension of time for submission of police report in *Sayaed Mohd. Ahmamed Kazori* v. *State* [38] was held not to extinguish the right of the accused to claim default bail.

It has been ruled by the Supreme Court in *CBI* v. *Vijaisai Reddy* [39] that at the time of considering grant of bail it is not expected to have evidence establishing

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33 See *Hardeep Singh* v. *State of Punjab* (2013)2 SCC (Cri.)367. Also see *Devendra Kishanlal Degalida* v. *Dwarkesh Diamonds* 2013 (14) SCALE 397.

34 (2013) 3 SCC (Cri.) 472.

35 See *Sunil Mehta* v. *State of Gujarat*, (2013) 3 SCC (Cri.)881.

36 (2013)1 SCC (Cri.)508.

37 *S.K. Bhikramchand Jain* v. *State of Maharashtra*, (2013) 2 SCC (Cri.)229

38 (2013) 2 SCC (Cri.)488.

39 (2013) 3 SCC(Cri.)563.

guilt of accused beyond reasonable doubt. It has to be kept in mind that for the purpose of granting bail, the legislature has used the words "reasonable grounds for believing" instead of the "evidence".

Trial and trial procedure

Our appellate courts have always been trying to interpret the law of trials and trial procedures keeping in mind our culture and general behaviour of our people.

"In the context of Indian culture, a woman-victim of sexual aggression would rather suffer silently than to falsely implicate somebody". This view was expressed by the Supreme Court in *Rajender* v. *Himachal Pradesh*.[40] This came to be reiterated by the Supreme Court in OM Baby (dead) by *L.R. V. State of Kerala*.[41] wherein it was also noted that while appreciating evidence of the prosecrutrix, the court must always keep in mind that no self respecting woman would put her honour at stake by falsely alleging commission of rape on her.

The Supreme Court has been extending the right of the accused at the initial stages of trial as in the case of *Manharibhai Maljibhai Kakada* v. *Shaileshbhai Mohambhail Patel*.[42] discussed above. It has been clarified by the Supreme Court in *Devinder* v. *State of Haryana*[43] that if after rendering the matters before it the court believes that the husband or the relative of the husband has not caused dowry death, the court cannot convict such persons or husband for dowry death under section 304 B IPC. Section 304 B IPC and section 113 (B) of Evidence Act, 1872 in other words, only provide what the court shall presume if the ingredients of the offence are satisfied, but if the evidence in any case is such that the presumption stand rebutted the court cannot hold that the accused was guilty and was punishable for dowry death. In this case the conviction under section 304B was set aside and that under section 498A upheld. The chain of circumstances allowing the appellate court to intervene has in many cases helped the appellate courts to intervene and deliver justice.[44]

Right to counsel at appellate stage

It is generally understood that an accused should have right to be represented by a counsel. If his counsel is not heard the proceedings may be vitiated. In fact the position of law is that the court should not conclude a criminal case in the absence of the counsel of the accused as the accused should not suffer for the fault of the counsel and the court should in such a situation must appoint another counsel as *amicus curie* to defend the accused and further if the counsel does not appear deliberately even then the court should not decide the appeal on merits is not in accord with the correct position of law on the subject.

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40 (2009)16 SCC 69

41 (2013)1 SCC (Cri.)658.

42 (2013)1 SCC(Cri.)218

43 (2013)1 SCC(Cri.)136.

44 See *Lalku Mian* v. *State of West Bengal* (2013)1 SCC (Cri.)20; *Murugan* v. *State* (2013)1SCC (Cri.) 69; *Praveen Pradhan* v. *State of Uttaranchal* (2013)1 SCC (Cri.)146; *Rajesh Patel* v. *State of Jharkhand*, (2013)3 SCC (Cri.)791

Proof of rape

As regards proof of rape [45] the Supreme Court in *Vijay* v. *State*[46] said thus:

> Thus the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix

This came to be followed in *State of Haryana* v. *Basti Ram*[47] and in *State of Rajasthan* v. *Babu Meena*.[48] In the former the accused's conviction by the trial court was affirmed and in the latter the prosecutrix statement was not accepted to be credit-worthy.

It has been ruled that the Supreme Court has sufficient power to interfere with even factual issues to grant relief. This is so even when it is accepted that appreciation of evidence is essentially the duty of the trial courts and the first appellate court.

The statement of the accused under section 313 of the Code can be taken into consideration not only because of what section 313(4) provides, but also because of law laid down by the Supreme Court in several pronouncements.

Relevance of evidence

Trial court cannot prejudge evidence of witnesses sought to be examined. Nor is it possible to refuse examination of witnesses on the plea that their evidence may not be conclusive. The court may weigh the evidence and consider it relevance only when it is presented.[49]

Non-reliance of evidence of witness

The facts and decision in *Lahu Kamlakar Patil* v. *State of Maharashtra*[50] signify the approach of the Supreme Court in appreciation of evidence. In this case the prosecution witness (PW) no. 1 became hostile. PW no.2 who was the other eye witness to the incidents ran away to Pune from the crime scene and remained inactive and silent without participating in the investigation, though he was residing near the police station. Both the trial court and the high court relied on the evidence of PW no. 2 and convicted the accused. However, the Supreme Court did not rely on his evidence reasoning thus: [51]

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45 *K.S. Panduranga* v. *State of Karnataka* (2013)3 SCC (Cri.)721. The court said that *Bani Singh* v. *State of UP* (1996)4 SCC 720 holds the ground.

46 (2010)8 SCC 9.

47 (2013)4 SCC 2000.

48 (2013)4 SCC 206.

49 See *Natasha Singh* v. *CBI* (2013)5 SCC 741. Also see *Khairuddin* v. *State of West Bengal* (2013)5 SCC753.

50 (2013)6 SCC 417.

51 *Id*. at 426.

> .... [C]ontrary to human behaviour he went to Pune without informing about the incident to his wife and stayed therefor one day; that though the police station was hardly one furlong away yet he did not approach the police, that he even not chosen to inform the police on phone though he reached home; that he came from Pune and learnt from his wife that the police had come on 21.2.1988 he went to the police station. In the backdrop of such conduct, his version does not inspire confidence and deserves to be ignored *in toto*.
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> There cannot be uniformity in human reaction. While the said principle has to be kept in mind, it is also to be borne in mind that if the conduct of the witness is unnatural and is not in accord with acceptable human behaviour allowing variations, then his testimony becomes questionable and is likely to be discarded.

His evidence cannot be treated as so trustworthy and unimpeachable to record a conviction against appellants. The trial court as well as the high court has made an endeavour to connect the links and inject theories like fear, behavioural pattern, tallying of injuries inflicted on the deceased with the post mortem report and convicted the appellants. In the absence of any kind of clinching evidence to connect the appellants with the crime, we are disposed to think that it would not be appropriate to sustain the conviction.[52]

The importance and relevance of putting questions to the investigating officer on the aspects which are sought to be raised in favour of the accused has been spelt out by the Supreme Court in *Yanob Sheikh @ Gugu* v. *State of WB.*[53] If the accused fails to put such question it may not be possible for him to claim any advantage and defeat the prosecution case.

Trial procedure

The Supreme Court expressed anguish over the haphazard manner in which the trial in *Gurnaib Singh* v. *State of Punjab*,[54] was conducted. Adjournments were granted on a mere asking. The cross examination of the witnesses were deferred without recording any special reason and dates were given a long gap.[55]

Condonation of delay

Section 473 Cr PC enables the court to condone delay provided that the court is satisfied with the explanation furnished by the prosecution/complainant and where, in the interests of justice, extension of period of limitation is called for. The principle of condonation of delay is based on the general rule of the criminal justice system which states that a crime never dies. This position was reiterated by the Supreme Court in *Udaishankar Awasthi* v. *State of UP.*[56]

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52 *Ibid.*

53 (2013) 6 SCC 428.

54 (2013) 3 SCC (Cri.) 49.

55 See also *Akil @Javed's* case (2013)3 SCC 63.

56 (2013)2 SCC (Cri.)708.

It has been categorically ruled by the Supreme Court in *Sarah Mathew* v. *Institute of Cardiac Vascular Diseases*,[57] that for the purpose of computing period of limitation under section 468 relevant date is the date of filing of complaints or the date of institution of prosecution.

Summons of additional accused

Where complainant's application under section 319 for summoning up appellants was rejected for a second time in *Mohit @ Sonu* v. *State of MP*,[58] it was held that valid right had accrued to the appellants by reason of the order. The high court's order under section 482 directing summoning, of the appellants without hearing them was held wrong. The Supreme Court remitted the case to high court.

It has been ruled by the Supreme Court that when an order of quashment of summons has been obtained by suppression of information, the Supreme Court has an obligation to set aside and restore the order framing charges and direct the trial to continue.[59] The Supreme Court in *Sunil Mehta* v. *State of Gujarat* [60] expressed the obvious position of law on accused's right, thus:[61]

> there is no gain-saying that a magistrate while taking cognizance of an offence u/s 200 whether such cognizance is on the basis of the statement of the complainant and the witnesses present or on the basis of an inquiry or investigation in terms of S.202, is not required to notify the accused to show cause why cognizance should not be taken and process issued against him or to provide an opportunity to him to cross examine the complainant or his witnesses at that stage.

Inherent powers

The inherent powers under section 482 are being exercised by the high courts. Sometimes this exercise came under criticism of the Supreme Court. This year also there have been some decisions signifying this trend. In *State of MP* v. *Surendra Kori*, [62] the Supreme Court upheld the quashing of the case while in *Praveen Pradhan* v. *Uttaranchal* [63] request for quashment was rejected. The decision in *Jithendra Raghuvanshi's* case [64] was quashed following *B.S.Joshi*,[65] and *Gian Singh's* case [66] permitting quashing of criminal proceedings connected with matrimonial disputes even though they involved non compoundable offences.

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57 (2013)4 K.H.C 806 (S.C.).
58 (2013)3 SCC (Cri.)727.
59 See *Motilal Songara* v. *Prem Prakash* (2013)3 SCC (Cri.)672
60 (2013)3 SCC(Cri.)881.
61 *Id.* at 886.
62 (2013)1 SCC (Cri.)247.
63 (2013)1 SCC(Cri.)146.
64 (2013)4 SCC 58.
65 (2003)4 SCC 675.
66 (2012)10 SCC 303.

The quashment of the proceedings against Central Excise Intelligence officials done by the Delhi High Court in *Vinayakanoova's* case[67] was set aside by the Supreme Court and it ordered proceedings to be commenced by the magistrate.

There is no bar in resorting to section 482 because of the availability of alternative remedy of filing an appeal.

Sentencing

There have been decisions like the one in *State of UP* v. *Munesh* [68] wherein there has been disparate sentencing. In this case involving rape and murder of an 11 year old girl the trial court imposed death penalty. The high court acquitted and the Supreme Court imposed life imprisonment.

The decision in *Shankar Kisanrao Khade* v. *State of Maharashtra*,[69] also involved rape and murder of a girl child with intellectual disability. The accused was awarded the following sentences to run consecutively (a) first sentence of rigorous imprisonment (RI) for life under section 302, (b) second sentence of RI for life under section 376 followed by another 7 years RI under section 366A, (c) 5 years RI under section 363/34 and various fine and default sentences of imprisonment for each offence.

In *Devender Pal Singh Bhullar* v. *State* [70] the Supreme Court opined that commutation of death to life imprisonment adopted by the Supreme Court under article 72 and 161 on the ground of undue delay of execution, in several cases may not be applicable to cases where person is convicted for offence under TADA or such other statutes.

The Supreme Court also had occasion to say that the sympathy for the old age or sickness of the accused in a dowry death case may not entitle it to ignore the feelings of the victim or the immediate family of the victim.[71]

There have been a large number of decisions on sentencing, particularly on death sentence and the alternative sentence of life imprisonment. The court has indeed been cautious in approaching sentencing. It was observed in *Dipak Rai* v. *State of Bihar*[72] thus: [73]

> Incontrovertibly the judicial approach towards sentencing has to be cautious, circumspect and careful. The court at all stages – trial and appellate must therefore peruse and analyse the facts of the case in hand and reach an independent conclusion which must be approximately and cogently justified in the 'reasons' or 'special reasons' recorded by them for imposition of life imprisonment or death penalty. The length of the decision would not be a touch stone for determining connectness of a decision.

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67 (2013)2 SCC (Cri.)731.

68 (2013)2 SCC (Cri.)152.

69 (2013)5 SCC 546.

70 (2013)6 SCC 195.

71 See *Kulwant Singh* v. *State of Punjab* (2013) 2 SCC (Cri.) 339.

72 (2013) 10 SCC 421.

73 *Id.* at 448. See also State of *Madhya Pradesh* v. *Najan Khan*, (2013)9 SCC 509.

> The test would be that the reasons must be lucid and satisfy the mitigating and aggravating factors, recorded sentence.

The court also appreciated the facts in this case and identified the factors that influenced it thus: [74]

> the crime, enormous in proportion having wiped off the whole family is committed so brutally that pricks and shocks not only the judicial conscience but even the collective conscience of the society. It demands just punishment from the court and the court is bound to respond within legal parameters. The demand for justice and the award of punishment have to be in consonance with the legislative command and the discretion vested in the courts.

In fact the decision with regard to choice of death penalty or life imprisonment is seen to have been influenced by the judges' philosophy. The punishments awarded in various cases surveyed signify this.

The Supreme Court during the period also adverted to the remission of sentences provided under the code. In *Rajasthan* v. *Tamilkhan*,[75] the court went on to suggest that a new punishment *viz*. life imprisonment without commutation or remission "so that the benefit of communication or remission may not be extended to those criminals who are sentenced to life imprisonment should be there. The court argues that the rigours of minimum sentences should not be lessened by way of granting remission. The court reasoned:[76]

> the minimum sentence provided for any offence cannot be and shall not be remitted or commuted by the Govt. in exercise of power under S. 432 or 433 Cr. Pc. wherever the penal Code or such Penal sentence for any offence, to that extent, the power of remission or commutation has to be read or restricted; otherwise, the whole purpose of punishment will be defeated and it will be a mockery on sentencing".[77] It is pertinent to point out that grant of remission is indeed within the discretion of the executive prerogative of the states under S. 432. If a person awarded life imprisonment is not granted remission he shall remain in person for the whole life.

Grant or otherwise of remission is no part of the sentence. This has been made clear by the supreme court in *Budh Singh* v. *State of Haryana*.[78] Section 324

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74 *Ibid.* Also read life convict *Bangal @ Khoka* v. *B.K. Srivastava*, (2013) 3 SCC (Cri.) 182.

75 (2013) 10 SCC 721.

76 *Id.* at 740.

77 See life convict Bangal's case (2013)3 SCC (Cri.)182.

78 (2013) 3 SCC 742.

was added to Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 making remission *etc*. not applicable to the sentences under NDPS Act, 1985 with effect from 29.05.89. Rejecting its challenge on the basis of article 20 (1), 21 and 14 of the constitution the supreme court ruled that the exclusion of benefit of remission cannot be understood to have the effect of enlarging the period of incarceration of an accused convicted under the Act nor can it have the effect of extending the period of sentence.

The Supreme Court in *Sahib Hussain @ Sahib Jan* v. *State of Rajasthan*,[79] did not appreciate the criticism of the supreme Court ruling in *Swamy Shraddananda II* [80] resorted to by another bench in *Sangeet.*[81] In the former case the court ruled that the court could order non application of remission to certain cases of life imprisonment. The *Sangeet* bench said that the executive power to grant remission cannot be interfered with. The *Sahib Hussain* court disagreed. It has accepted the view enabling the court to ignore remission observing thus: "In the light of the detailed discussions by the larger bench we are of the view that the observations made in the *Sangeet* case are not warranted. Even otherwise, the above principles as enunciated in *Shraddananda* are applicable only when death sentence is commuted to life imprisonment and not in all cases where the court imposes sentence for life".[82]

Matrimonial disputes

There have been some cases involving matrimonial disputes. The Supreme Court noted the trend of implicating all and sundry in the criminal cases filed by the wives in *Geeta Mehrotra* v. *State of UP*,[83] and *Ashish Dixit* v. *State of UP*[84] quoting its observation on this trend in *G.V.Rao's case*,[85] the court reiterated the need for caution.

The court adopted its approach[86] of getting even non compoundable offences involved in matrimonial cases quashed as has happened in *B.S. Joshi* v. *State of Haryana*.[87]

In *Veena* v. *State Delhi*[88] the Supreme Court settled the whole dispute between spouses who are living separately for 10 years. The custody of the daughter was given to the wife. The court exercised its plenary powers under article 142 of the constitution.

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79 (2013) 9 SCC 778. See also *Ramachandra Yadav* v. *State of UP* (2013) 9 SCC 797.

80 (2008)13 SCC 767.

81 See *Sangeet* v. *State of Haryana* (2013) 2 SCC 452.

82 *Supra* note 79 at 794.

83 (2013) 1 SCC (Cri.)120.

84 (2013)2 SCC (Cri.)337.

85 (2000)3 SCC 69.

86 See *Jithendra Raghuvanshi* v. *Babitta Raghuvanshi* (2013) 2 SCC (Cri.) 302 wherein the Supreme Court approved quashing of the proceedings under section 482 Cr PC by high court.

87 (2003) 4 SCC 675.

88 (2013) 3 SCC (Cri.)256.

89 (2008)16 SCC 155.

Dowry related cases

Several cases involving dowry related offences have been dealt with by the court. In *Tarsem Singh* v. *State of Punjab*,[89] and in *M. Srinivasulu* v. *State of AP*[90] the Supreme Court enunciated a method to determine dowry offences.

The presumption under section 113B Evidence Act, shall be raised only on proof of the following essentials:

i. The question before the court must be whether the accused has committed the dowry death of a woman. This means that the presumption can be raised only if the accused is being tried for the offence under section 304B.

ii. The woman was subjected to cruelty or harassment by her husband or his relatives

iii. Such cruelty or harassment was for or in connection with any demand for dowry

iv. Such cruelty or harassment was soon before her death.[91]

> As already mentioned above in *Kulwant Singh* v. *Punjab*[92] the Supreme Court did not show any sympathy in awarding punishment to the aged offenders.

The Supreme Court has also taken note of the tendency of adding murder change under section 302 IPC along with the offence under section 304 B IPC when the *prima facie* evidence does not support that charge. The court in *Jasvinder Saini* v. *Delhi* [93] did not approve of such a course.

The court in *Vijnesh Venkatray Anvekar* v. *State of Karnataka*, [94] had to deal with a case very badly handled by the sessions judge. It was a case where the wife committed suicide because of the torture. The sessions judge took the trial casually and did not rely on the evidence of near relation of the victim. His observations on wife beating have also come for serious criticism. The court observed: [95]

> One may wary of passing comments against the subordinate courts because such comments tend to demoralise them. But in this case, it would be failure in duty if ignore the insensitivity shown by the learned sessions judge to a serious crime committed against a hapless woman.

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90 (2007) 12 SCC 443.
91 See *Bakshi Ram* v. *State of Punjab* (2013) 4 SCC 131.
92 (2013) 4 SCC 177.
93 (2013) 3 SCC (Cri.) 295.
94 (2013) 3 SCC 462.
95 *Id.* at 470-471.
96 2013 (4) KHC 735 (SC).

> The tenor of the judgement suggests that wife beating is normal facet of married life. Does that mean giving one or two slaps to a wife by husband just does not matter? We do not think that can be a right approach.

The Supreme Court upheld the conviction recorded by the high court

Domestic violence

The Supreme Court in *Saraswathy* v. *Babu*[96] has ruled that the wife whom the husband deserted has to be given compensation of Rs 5 lakhs in addition to other reliefs granted by the courts below under sections 8, 19, and 20 (d) of the Prevention of Domestic Violence Act. The court also pointed out that the high court was in error in holding that the conduct of the parties prior to the coming into force of the Prevention of Domestic Violence Act, 2005 cannot be taken into consideration while passing an order under the Act.

Maintenance

The Supreme Court in *Poongodi* v. *Thangavel*,[97] ruled that proviso to section 125(3) of the Code is a mode of enforcement rather than mode of liability. What it requires to establish is that it is a levy of fine and the detention of the defaulter in custody would not be available to a claimant who had slept over her claim and did not approach the court within a year commencing from the date on which the entitlement to receive maintenance has accrued. In such a situation the ordinary mode of recovery in civil law would also be available.

III CONCLUSION

The criminal procedure law in India thus got vitalised in every respect because of the active judiciary. Despite this achievement it is strongly felt that sentencing did not receive adequate attention in as much as the discussions on theoretical questions were not adequate. Nor was the ratiocination understandable to the commoner.

97 (2013) 10 SCC 618.